

## Procurement and Contracting Rules

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## 1. General provisions

### 1.1. Objective and principles

The objective of the procurement activities within ICMPD is to achieve Best Value for Money (BVM) for the acquisition of goods, services and works in a manner that supports fairness, proportionality, integrity and transparency, and is directed towards maximum economy and effectiveness in accordance with the objectives of the organisation.

In this context, BVM is defined – with respect to the goods, services or works sought – as the most advantageous balance between economy and effectiveness with regard to:

- (a) Compliance with the technical requirements;
- (b) Quality;
- (c) Cost, including total lifecycle cost when applicable;
- (d) Risk mitigation;
- (e) Compliance with ICMPD standard contractual conditions;
- (f) Warranty and long-term sustainability arrangements;
- (g) Ethical and environmental considerations; and
- (h) Best interests of ICMPD.

The objective of achieving BVM in the context of each specific procurement activity is reached in accordance with the process described in these rules.

As part of this process, the following principles shall be followed:

- (a) Economy and effectiveness;
- (b) Fairness, integrity and transparency;
- (c) Avoidance of conflict of interest and adherence to ICMPD's *Code of Conduct*;
- (d) Interests of ICMPD;
- (e) Proportionality; and
- (f) Adherence to the United Nations (UN) Global Compact.

When determining the BVM, all those involved in the procurement process shall strive to:

- (a) Maximise effective competition, where relevant;
- (b) Reduce the risks associated with complex procurements;
- (c) Carefully establish the qualification requirements and evaluation criteria and associated weights (if any) in order to select the tender with the highest expectation to meet the organisation's needs; and
- (d) Ensure the impartial and comprehensive evaluation of tenders in a timely manner.

These principles are further explained in Annex I of these Rules.

## **1.2. Segregation of duties/Four Eyes Principle**

To reduce the risk of error, waste or wrongful acts and the risk of not detecting such problems, no single individual or team shall perform all key stages of a procurement transaction. Duties and responsibilities shall be assigned systemically to a number of individuals to ensure that effective checks and balances are in place.

The different stages of the procurement process shall be carried out, to the extent possible, by different employees with the relevant competencies. As a minimum, two officials shall be involved in carrying out and reviewing the procurement process.

## **2. Purpose and scope**

The following rules for procurement and contracting are based on the ICMPD Financial Regulations and are compulsory for all ICMPD staff, experts and individuals (whether under a contractual relationship with ICMPD or not, e.g. project beneficiaries) involved in ICMPD procurement actions. They may also be applicable to partners throughout project implementation, and if so established in related Agreements.

Exceptions may be made for governments/government agencies operating under their national laws, or organisations following internationally accepted procurement standards, incorporating the principles described in Annex I herein. These exceptions shall be documented in writing.

The present rules are complemented by the Procurement Manual. In addition forms and templates may be developed as necessary.

### **2.1. Nature of procurement**

Procurement is the overall process of acquiring goods, services and works, which includes all steps from planning; identification of needs; selection of supplier, service provider or contractor; and preparation and award of contract, through to all phases of contract management and administration, until the end of a service or works contract or disposal and transfer of assets.

Procurement covered by these rules means procurement of services, supplies or works from commercial service providers and/or private and public organisations. The procurement process also covers activities necessary for the purchase, rental, lease or sale of goods, services and other requirements such as works and property.

The administration and selection of individual external experts (in particular government experts in substance areas of ICMPD's mandate), staff and the awarding of grants are not part of the procurement procedures described in these Rules.

### **2.2. Applicable rules and internal control**

The relevant provisions of the ICMPD Financial Regulations, including those of internal control, as well as the rules and procedures laid down in this document, shall apply for all procurement actions of the organisation, regardless of the source of funds, unless established differently in specific agreements, having regard to donors' requirements and/or the characteristics of the project.

In the event of a conflict between these Rules and specific provisions laid down in project agreements with donors, the terms as agreed in the relevant agreement shall take precedence. It is therefore mandatory to check each donor contract for specific requirements before the procurement process is started.

For all procurement actions performed by ICMPD, regardless of the procedure applied, the required inspection, verification, certification and approval steps, as laid down in the detailed process descriptions from these Rules and the Procurement Manual, must be performed.

### **2.3. Procurement responsibilities**

According to the ICMPD Financial Regulations, the Dir ROM is responsible for the procurement function and is accountable to the Director General for its integrity. He/she delegates, as appropriate, the responsibility for the various elements of this function to members of staff according to their role, but maintains authority over and responsibility for all issues regarding the procurement process.

Procurement of goods, services and works is managed by the Procurement Team (PT) except for procurement of standard services and goods under simplified procedure<sup>1</sup> with a value of up to EUR 60,000, which is undertaken by the Directorates/Project Implementation Teams (PITs) concerned, under the overall functional supervision of the Resource Management Officer (RMO).

Certifying Officers (COs)/RMOs exercise internal control and compliance checks with established procedures and/or Procurement Officers assigned to the various projects/funds. In case of large and complex procurement actions, external procurement experts may be hired on a case-by-case basis to support the PT, and for periods and intervals required by the process. Such expertise should be included in project budgets as applicable.

A Procurement Project Team (PPT) advises the Dir ROM on proposals for individual procurements with an estimated value above EUR 60,000. The Rules of the PPT are set out in chapter 5.7.

A Tender Evaluation Committee (TEC) evaluates the tenders/offers/bids and recommends to the Dir ROM the awarding of individual procurements with an estimated value above EUR 60,000. The Rules of the TEC are set out in chapter 5.8.

Requesting Directorates/PITs are responsible for the elaboration of their intended yearly procurement activities. The yearly procurement plan (PP) is determined in collaboration between Directorates/PITs and the PT. For this purpose, they shall use the templates defined in the Procurement Manual.

Any deviation or exceptions shall first be sought in writing from the Dir ROM after the PT review.

The procurement authority is delegated in writing and given on an individual, functional and personal basis. The written authority characteristically defines the limit of financial commitment by the delegated officer, as well as the validity period of the procurement authority. If the delegation is connected to the function of the staff member/personnel, such validity shall cease once the staff member/personnel no longer exercises such function/s. The delegation of procurement authority shall be published internally. The procurement authority and its related responsibilities are not transferable.

### **2.4. Unauthorised procurement and post facto/retroactive procurement cases**

Staff members entering into contractual commitments without the required authority are personally liable, and may furthermore be required to reimburse the organization, either partially or in full (Reference Staff Rule 2.04: Reimbursement for Financial Losses).

A retroactive situation occurs when no purchase order (PO)/contract or amendment thereof was issued by ICMPD, but deliverables have already commenced and/or provided in part.

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<sup>1</sup> A non-exhaustive list of procurement actions under simplified procedure is available in the Procurement Manual.



A post facto situation occurs when no PO/contract or amendment thereof was issued by ICMPD, but the deliverables have already been provided in full.

In case of unauthorised procurement or post facto/retroactive procurement cases, the staff member/personnel is required to explain in writing and in detail the reasons why the procurement procedures were not followed. PT shall assess, as far as is practical, if the cost of the goods, services and works procured could be considered reasonable. Based on the PT assessment, the Dir ROM may decide to authorise the settlement of charges with the supplier resulting from unauthorised procurement/post facto/retroactive procurement cases.

Settling the charges does not imply acceptance of liability for the unauthorised procurement by ICMPD.

## **2.5 Ethical standards and tackling modern slavery, forced labour and human trafficking**

ICMPD staff members/personnel shall observe the highest standard of ethics throughout the procurement process to ensure the integrity, fairness and transparency of the procurement process.

Vendors shall be selected and contracts awarded based on ICMPD's Procurement Rules, defined selection and award criteria.

Staff members/personnel becoming involved in any way in corruption and/or knowingly letting corruption take place shall face disciplinary action. Failure to comply with ethical and anti-corruption standards may lead to summary dismissal for serious misconduct, and may involve reimbursement of financial losses. The relevant articles of the Staff Regulations are recalled in this regard:

*Art. 2.01: Conduct of ICMPD Staff Members*

*Art. 2.02: Use and Release of Information*

*Art. 2.04: Reimbursement for Financial Losses*

*Art. 9.06: Summary Dismissal for Serious Misconduct*

Vendors shall declare if they have any affiliation with staff members/personnel of ICMPD, and family or relatives employed by ICMPD. A vendor found to have an undisclosed conflict of interest with ICMPD, or with a competing tenderer, shall be disqualified from participating in a tender. Likewise, vendors participating in tenders must declare their adherence to ethical behaviour and anti-corruption principles and practices.

ICMPD requires that tenderers, suppliers, contractors, their agents (whether declared or not), subcontractors and consultants (including their respective officers, directors, employees and agents) adhere to the highest ethical standards, and promptly report to ICMPD any known or suspected acts of fraud, corruption or other illegal activities during the bidding process, and execution of ICMPD contracts and agreements.

ICMPD is committed to the principles of the Universal Declaration of Human Rights and the UN Global Compact, and expects its suppliers and partners to share these values.

ICMPD does not tolerate, in any context, the use of servitude, child labour, forced labour, human trafficking or slavery in any part of its supply chain.

ICMPD's staff members/personnel shall not, either directly or indirectly, engage throughout the procurement process in any practice inconsistent with international human rights laws and standards that prevent, *inter alia*, child labour, sexual exploitation and trafficking in human beings.

### 3. Procurement methods/procedures

The table below gives an overview of different procurement procedures and related thresholds:

<b>Services</b>	<b>&gt; €60.000</b> International open tender procedure (ITT)	<b>€10.000 - €60.000</b> Competitive negotiated procedure (RFQ)	<b>≤ €10.000</b> Single offer (RFO)  For services and supplies of value <b>≤€2.500</b> a payment may be made against invoice (low-value procurement)
<b>Supplies</b>	<b>&gt; €60.000</b> International open tender procedure (ITT)	<b>€10.000 - €60.000</b> Competitive negotiated procedure (RFQ)	
<b>Works</b>	<b>&gt; €60.000</b> International open tender procedure (ITT)	<b>€10.000 - €60.000</b> Competitive negotiated procedure (RFQ)	

*ITT – Invitation to Tender; RFO – Request for Offer; RFQ – Request for Quotation.*

The above-mentioned thresholds are applicable per project (or funds in case of core budget), per calendar year and per supplier in order to avoid artificial splitting of requirements.

Below is a description of the general characteristics of each of the above procedures. Detailed process descriptions for each of the procurement methods are given in the Procurement Manual.

The estimated value of the procurement case may be disclosed to tenderers in the tender documents upon prior approval of the PT or Directorate/PIT (approval depends on the team responsible for the procurement case).

#### **3.1 International open tender procedure – (procurement cases above EUR 60,000) (procurement procedure: ITT)**

For cases with an estimated value above EUR 60,000.00 an international open tender procedure shall take place through an ITT for the procurement of goods, services and works.

In international open tender procedure, all economic operators may submit a tender.

For cases with an estimated value above EUR 150,000.00, the tender is given maximum visibility by publishing a procurement notice on the ICMPD website and, if possible, in any other appropriate media to ensure proper outreach.

For cases with an estimated value below EUR 150,000.00, the publication of a procurement notice is not mandatory but may still be published upon recommendation from PT or request from Directorate/PIT.

Tenders in reply to an ITT shall be submitted as indicated in the tender documents published on the ICMPD e-Tendering system or ICMPD website.

The submission period for tenders shall normally be 15 to 90 days, depending upon the complexity of the requirements. Any changes to the tender submission period shall be sought in writing from the PT.

All tenders correctly received on or before the closing date specified in the ITT shall be considered. Tenders that do not satisfy the stated requirements, or are submitted after the stated deadline, shall be rejected. Where external factors may delay delivery of the tenders, and if duly justified, the Dir ROM may accept the participation of the tenderer to the competition.

All communication with potential tenderers, such as responding to requests for technical clarifications prior to closing of tendering period, shall only be made in writing through the PT.

The PT shall work closely with the Directorate/PIT to collect all necessary information to answer queries within the pre-defined period. To ensure that all potential tenderers receive the same information at the same time, the PT shall publish all questions received and their related clarification on the ICMPD website and/or e-Tendering system.

### **3.2 Restricted procedure**

Due to the nature of the procurement case, and upon prior approval of the Dir ROM, ICMPD may publish a restricted invitation to tender.

If there is a requirement for the organisation to procure strategic goods, services and works which are not, in the normal course of business, part of the routine procurement for the organisation, the PT may issue a Call for Expression of Interest (CEOI).

The CEOI shall be given maximum visibility by publishing a notice on the ICMPD website via the ICMPD e-Tendering tool and, if possible, in any other appropriate media to ensure proper outreach.

This approach may also be used to broaden the market base for certain procurement solicitations to increase competition. Finally, a CEOI may also be used to pre-qualify vendors for more complex procurement activities that need to have a two-stage procurement process.

The selection criteria and the tasks to be undertaken are described in the published procurement notice. A list of all the candidates replying to the notice is reduced to a shortlist of the qualified candidates, based on their replies and the requirements of the advertised selection criteria.

A 'restricted' invitation to tender may also be a result of a list of tenderers approved by the Dir ROM, without the necessity of a prior CEOI.

A restricted invitation to tender also includes cases where geographically limited competition is envisaged. This modality is used when competition is limited by the donor(s) of funds to one or several countries, in accordance with the donor's agreement. For such cases, the Tender Dossier shall indicate that only companies or organisations from particular country(ies) or from a particular region are eligible to submit tenders.

In cases where geographically limited competition is not explicitly specified in the donor's agreement, use of this method shall be approved, based on the request and justification from Directorate/PII through PT by the Dir ROM.

### **3.3 Competitive negotiated procedure – (procurement cases from EUR 10,000 to EUR 60,000) (procurement procedure: RFQ)**

For cases with an estimated value from EUR 10,000 to EUR 60,000, a tender procedure shall take place through an RFQ for the procurement of goods, services and works.

For competitive negotiated procedures, the tender documents shall include an RFQ with Technical Specifications (TS) or Terms of Reference (ToR), if applicable. It is recommended that a minimum of three offers be obtained by the Directorate/PIT, through advertisements or solicited from potential vendors. Reasons for not obtaining three offers shall be duly justified and clearly recorded on file.

The Directorate/PIT, with the support of the dedicated RMO (for simplified procedures<sup>2</sup>) or PT (for non-simplified procedures<sup>3</sup>), draws up a list of at least three potential tenderers and justifies its choice. The candidates shall receive the cover letter of the RFQ (together with the request for quotation) specifying content and modalities of the RFQ.

Quotations must reach ICMPD at the address and by no later than the deadline shown in the RFQ. The chosen candidates must be allowed as a minimum 15 days from the dispatch of the RFQ documents to tenderers to submit their quotations. In exceptional cases, a shorter deadline may be approved by the responsible RMO and/or PT.

For reasons of compatibility and standardisation, purchases of IT-related goods and services for ICMPD use must be validated by ICT.

In the event of a failure of the competitive negotiated procedure, i.e. ICMPD receives only one quotation that is administratively and technically compliant, the Directorate/PIT shall enter into commercial negotiations with the tenderer, provided that the selection and award criteria are met. Any type of commercial negotiation shall be made in writing in order to ensure full audit-track.

An RFQ shall not require a PPT or a TEC. A list of the vendors contacted, offers received and reason for selection (Quotation Protocol (QP)), technical and financial capacity and any other documentation requested by the RMO/CO or PT shall be added to the file/Procurement Request (PR).

The Requesting Officer shall detail the procurement process and justify the selection of vendor in the QP. The QP should be reviewed and signed by at least three staff/personnel/experts involved in the evaluation process.

### **3.4 Single offer procedure – (procurement up to EUR 10,000) (procurement procedure: RFO)**

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<sup>2</sup> A non-exhaustive list of simplified procedures is available in the Procurement Manual.

<sup>3</sup> All cases that do not fall within the simplified procedure list.

For cases with an estimated value below or equal to EUR 10,000, a simplified procedure including an RFO shall be used. If the estimated threshold is close to EUR 10,000, it is advisable to use the RFQ.

This modality shall be undertaken by duly delegated officers in each Directorate/PIT, under the support of the RMO responsible. The ultimate responsibility for the procurement of low value items lies with the Director of Directorate/Project Manager.

A contract (*i.e.* PO) may be awarded on the basis of a single offer when the contract amount does not exceed EUR 10.000 per project (or funds in case of core budget), per calendar year and per supplier.

Multiple POs to one vendor may be issued, provided that the threshold mentioned in the latter paragraph has not been reached. Splitting POs to vendors to avoid exceeding the Single Offer procurement threshold is not allowed.

For reasons of compatibility and standardisation, purchases of IT-related goods and services for ICMPD use must be validated by ICT.

When the need for procuring a low value item arises, the Directorate/PIT shall first verify if a Framework Contract already exists. If not, the Directorate/PIT shall, as a minimum, ensure that at least one written offer is received, confirming that such a quotation is in line with applicable market rates and prices, and represents BVM to ICMPD.

The offer(s) must include relevant details in respect of the procurement requirement, including, but not limited to, price, quantity, delivery time, etc. The selection shall be approved by the CO/RMO when approving the PR.

If no advance payment is envisaged, procurement for amounts less than or equal to EUR 2.500 may be made against direct invoicing (no need for a signed contract/PO following the standard procedure for the certification of funds through a PR. In cases of exchange of personal, sensitive or confidential data, a *non-disclosure undertaking* should be signed between ICMPD and the vendor.

### **3.5 Direct contracting (procurement procedure: RFO)**

In exceptional situations, direct contracting may be authorised by the Dir ROM, upon PT recommendation. These situations are described below:

- (a) The value of the commitment is below the monetary amount established by the Dir ROM for formal methods of solicitation (single offer procedure);
- (b) There is sufficient evidence that no competitive market exists for the requirement (monopoly, prices fixed by legislation or government regulations, proprietary product or service);
- (c) There is a previous documented decision or there is a need for a standardisation of supplies or equipment rendering competition impracticable, e.g. IT equipment;
- (d) The proposed contract relates to services that cannot be evaluated on the basis of objective criteria;
- (e) Tenders for identical products and services have been obtained competitively within a reasonable period (not exceeding one year from the date of contract signature) and the prices and conditions tendered remain unchanged;

- (f) The proposed procurement contract is for the purchase or lease of real estate, and market conditions do not allow for effective competition;
- (g) A mandatory condition is attached to funds made available by a government or international development organisation;
- (h) There is a genuine and documented exigency of the activity concerned that does not permit the time required for the issuance of a formal procurement procedure;
- (i) Contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures (e.g. security standard of hotel or transportation) or for the protection of essential interests of ICMPD, or the beneficiary country so requires. For such cases, verification from SEC may be sought before submission to the Dir ROM; and
- (j) The Dir ROM specifically determines, having carefully weighed up the best interests of the organisation and the advice of the PPT as appropriate, that a formal solicitation shall not be applied. In such cases, a written record (note for the file) shall be made providing appropriate reasons for such determination.

In the above situations, the Dir ROM, having carefully weighed up the interests of the organisation and the advice of the PPT and/or PEC, where appropriate, may decide to waive formal solicitation procedures and approve direct contracting.

When a decision is made pursuant to the exceptions above, the Dir ROM or other authorised officer may then award a procurement contract on the basis of an RFO to a qualified vendor whose offer substantially conforms to the requirements and at an acceptable price.

### **3.6 Derogations**

On a case-by-case analysis, the Dir ROM may approve derogations related to the applicable Rules of the tender process if duly justified.

### **3.7 Procurement timelines**

The procurement timelines in respect of the various procurement methods described below are average figures, which must be considered by the Directorate/PIT for planning purposes and for the preparation of PPs. Any procurement timeline needs to be determined in collaboration with the PT.

The actual procurement timelines may deviate from the average depending on the actual time consumed for completing certain activities during the procurement process, such as:

- (a) Review of TS/ToR/statement of works (SOW)/bill of quantities;
- (b) Preparation and publishing of Tender Dossiers;
- (c) Submission of offers by tenderers;
- (d) Evaluation of offers;
- (e) Review by the PPT and TEC (when applicable);
- (f) Negotiations (when relevant);
- (g) Contract award;

- (h) Pre-contract signature meeting between the Directorate/PIT, PT and awarded supplier (whenever applicable);
- (i) Issuance of contracts/POs;
- (j) Receipt of goods, equipment (or Provisional Acceptance (PAC) in case of projects);
- (k) Contract of Transfer of Ownership – for projects;
- (l) Handover of assets (for projects); and
- (m) Invoicing.

*N.B: Depreciation, write-off and disposal of assets are the responsibility of CFM.*

Taking the above into account, the following indicative procurement timelines should be considered by the Directorate/PIT:

<b>STEPS</b>	<b>Procurement Notice</b>	<b>Publication</b>	<b>Evaluation</b>	<b>Award, Contract signature</b>
<b><u>International Tender</u></b> <b>(as of EUR 60.000)</b> <b><i>Up to 6 months*</i></b>	Up to 1 month	Up to 3 months	Up to 1 month	Up to 1 months
<b><u>Competitive negotiated</u></b> <b>(from 10.000 to EUR 60.000)</b> <b><i>Up to 2 months*</i></b>	-	Minimum 2 weeks	Up to 2 weeks	Up to 3 weeks
<b><u>Single offer</u></b> <b>(up to EUR 10.000)</b> <b><i>Up to 1 month*</i></b>	-	Minimum 1 week	Up to 1 week	Up to 2 weeks

*\* Maximum period under regular circumstances*



## **4. Preferred contracting modalities**

For reasons of internal efficiency, the following contracting modalities shall be used whenever possible:

### **4.1 Framework contracts**

The purpose of framework contracts is to define arrangements for the acquisition of goods/services/works that ICMPD procures on a regular basis through repetitive procurement procedures. This is achieved through the establishment of a long-term contractual relationship between ICMPD on the one part, and one or several contractors on the other, to ensure quick and uninterrupted supply.

The advantage of a framework contract is to reduce workload, minimise lead times, and secure competitive prices and rates for goods/services/works, under terms and conditions that meet the best interests of ICMPD. Framework contracts also enable ICMPD to fully leverage its market position by taking advantage of its size, procurement volume and geographical presence in order to obtain BVM. Further, a framework contract is useful for providing immediate stock availability, for instance during accelerated project implementation requirements.

Framework contracts should be the first option to be considered by the Directorate/PIT during the procurement process. In case an existing framework contract cannot be used, the requisitioning Directorate/PIT shall provide corresponding justifications.

The process for establishing a framework contract shall be the same as an international open tender procedure.

Framework contracts are normally negotiated and concluded, on a non-exclusive basis, for a period of up to three years, with the possibility of further extension(s) of up to one year twice only, i.e. for a maximum total of five years.

Once the framework contract is in place, the Rules for single offer procedure (irrespective of the amount contracted) shall apply.

### **4.2 Preferred suppliers**

For recurring services (such as translations or interpretation services; hotels and venues; design services; training; graphic design in a specific project or location), a list of preferred suppliers may be drafted. The process of including preferred suppliers within ICMPD's database shall depend on specific project requirements (e.g. security clearance, etc.) and is further described in the ICMPD Procurement Manual.

Once a vendor becomes an ICMPD preferred supplier, the thresholds for single offer, competitive negotiated and international open tender procedures shall nevertheless apply. If the Directorate/PIT, PT or RMOs notices that a high number of procurement cases are issued for certain goods, services or works under a project or series of projects, a Framework Contract shall be envisaged.

## **5. The procurement process**

### **5.1. Procurement planning**

Towards the end of a calendar year, the Directorate/PIT shall define and outline their yearly PPs for the following year. The yearly PP is determined in collaboration between the Directorate/PIT and the PT (for cases above EUR 60,000). The plans shall include a description of required goods, services or works; value; contract duration; anticipated delivery date; envisaged procurement procedure; and project milestone.

Procurement planning is mandatory and Project Managers shall define and outline their yearly PPs for the following year. Sufficient time should be allowed to complete the required procurement steps based on lead times.

Unforeseen procurement activities that may be required throughout the year and were not included in the PP shall be included as soon as the need arises.

In any case, the Directorate/PIT PPs shall be updated by end of June, for the remaining part of the same year.

### **5.2 Sourcing (market research)**

A Market Research and Consultation is a process undertaken by, or on behalf of, ICMPD (PT; Directorate/PIT and technical expert, if any) to collect information that can assist the contracting authority in:

- Defining its procurement requirements;
- Selecting the most appropriate tender method;
- Analysing and evaluating bids; and
- Determining more effectively the outcome of the most economically advantageous tender.

Market research/surveys are used in the sourcing/requisitioning process, especially in cases where the procurement requirements are new to ICMPD or as input in the design stages of technical cooperation projects. Furthermore, market research/surveys may be carried out to determine if goods/services/works are available to meet ICMPD's needs, or could be modified to meet its needs.

A market research/survey should lead to a clear understanding of the business practices and preferred commercial terms and conditions of the supply market, and be used to facilitate the elaboration of a procurement strategy (including tender documents, TS/ToR/SOW, qualification requirements and evaluation criteria, and evaluation and selection methodology).

The amount of effort required for market research/surveys depends on the value/risk of the requirement. For standard procurement requirements, research may be limited to searching existing rosters and reviewing previous contracts/POs. For novel, high value or high risk, complex procurement requirements, an extensive market analysis may be required.

Where applicable, before developing new TS and soliciting new products which are not familiar to ICMPD, a market survey/research shall be performed. The market survey/research shall be based on generic and preferably performance-based descriptions of the business requirements to be fulfilled.

The guidelines to conduct market researches can be found in the Procurement Manual.

### **5.3 Request for Information**

A Request for Information (RFI) may be used to request information on anything from technical developments and supply availability to price indications. Depending upon the expected value of the procurement, the RFI may be openly advertised, or sent to individual companies or organisations suggested by the Directorate/PIT and/or identified by the PT.

### **5.4 Establishing a Procurement Project Team**

A PPT is established and nominated by the Dir ROM before the start of procurement activities above EUR 60,000.

The PPT will report at any stage to the Dir ROM during the procurement process.

The composition of a PPT shall be defined by the Dir ROM depending on the complexity of each case. Ideally, the members shall be appointed by the timing of the requirements definition, and remain the same throughout the procurement process.

The PPT is responsible, among other duties described in these Rules, for:

- Validating market research/approving the list of suppliers and TS, TOR or SOW;
- Selection and proposal of the procurement method;
- Advising the Dir ROM on derogations as described under these Rules; and
- The contract management phase.

### **5.5 Requirements definition**

For the procurement of goods, services or works of an estimated value above EUR 10,000, the procurement process begins with the definition by the requesting Directorate/PIT of:

- (a) For goods: clear, generic (i.e. not linked to a specific vendor) and unambiguous TS, including minimum functional and technical requirements. A generic template for the definition of TS is provided in the Procurement Manual;
- (b) For services: clear, generic (i.e. not linked to a specific vendor) and unambiguous ToR, specifying the nature of the service, its deliverables with timings, and acceptance criteria for these deliverables. A generic template for the definition of ToR is provided in the Procurement Manual;
- (c) For works: clear, generic (i.e. not linked to a specific vendor) and unambiguous SOW, which are generally accompanied by a bill of quantities (BoQ) listing all main inputs for a works project, including equipment, supplies, auxiliary services, etc. The BoQ shall include the estimated quantities in tabular form for each respective input item, such as soil movements/excavations, structures, floors, roofing, sanitation, etc. A generic template for the definition of SOW and BoQ is provided in the Procurement Manual;
- (d) For goods, services and works: objective evaluation criteria. These shall be used in the subsequent evaluation of tenders. These criteria can be derived from a list of standard evaluation criteria provided in the Procurement Manual; and
- (e) For simplified procedures: if within the threshold of Competitive negotiated procedure, a clear, generic (i.e. not linked to a specific vendor) and unambiguous description of services to be provided specifying the nature of the goods/service, its deliverables with timings, and acceptance criteria for these deliverables.

The requesting Directorate/PIT may suggest a list of suppliers. Such suggestions shall be justified in writing. If the procurement case is above EUR 60,000.00, the invitation of these suppliers is evaluated in the context of the PPT.

When defining a requirement, it is not permissible to split a procurement requirement containing the same or a series of related items into several smaller transactions for the sole purpose of avoiding formal methods of competition.

### **5.6 Division of requirements into lots**

Requirements may be divided into several lots, enabling ICMPD to award contracts to different economic operators, in order to enhance the competition and increase efficiency. The division of a requirement into lots shall be taken, whenever possible, in consultation with the PT.

### **5.7 Tender guarantee**

A tender guarantee assures ICMPD that submitted tenders will not be withdrawn. If ICMPD deems a tender guarantee to be appropriate and proportionate, it may request it, representing 1% to 5% of the overall value of the contract. ICMPD shall return the guarantee following communication of results (see article 5.25) to the unsuccessful tenderers. ICMPD shall return the tender guarantee to the successful tenderer(s) following presentation of any requirement from the contract (e.g. performance and/or pre-financing guarantee).

The necessity of a tender guarantee shall be duly requested in the tender documents. If a tender guarantee is required, the tender must contain an original of the tender guarantee.

### **5.8 Performance and pre-financing guarantee**

Following a careful risk assessment, ICMPD may request a performance and pre-finance guarantee from tenderers for contracts above EUR 60,000. The staff/personnel handling the procurement process shall ensure that the necessity of both guarantees are clearly defined and specified in the tender documents. Failure to present such guarantees may entitle ICMPD to not issue or cancel the contract; to retain the pre-finance/advance payment; or to retain the related amount of the guarantee from the final payment (provided that the validity of such warranty does not impact on project/financial year closure).

For contracts above EUR 60,000, no advance payment/pre-finance shall be granted without prior consultation with CFM, if the PT deems it necessary.

For contracts below EUR 60,000, tenderers may have the possibility of negotiating the payment schedule. The RMO (or the PT) shall, whenever necessary, be consulted in such negotiations. This process may be performed in consultation with CFM.

### **5.9 Qualification requirements and evaluation criteria**

The tender documents shall clearly indicate any and all qualification requirements and evaluation criteria which shall be applied objectively during the examination, comparison and evaluation of tenders.

All technical and commercial qualification requirements and criteria, and their associated weights, if any, shall be directly relevant and proportionate to the particular procurement requirement(s) and shall not unduly disqualify companies or organisations but allow for open and fair competition.

Qualification requirements and evaluation criteria should be reasonable in number, and as clear as possible so as not to render the evaluation of the tenders more difficult.

Once published, it is strictly not permissible to introduce new requirements and/or criteria beyond those contained in the tender documents, unless made in the form of an amendment to the tender documents issued prior to the deadline for the receipt of tenders and duly published in the same media as the initial tender documentation.

For procurement cases above EUR 60,000, qualification requirements and evaluation criteria shall be defined and agreed by both the PT and Directorate/PIT.

#### **5.10 Contact and communication with vendors by the Directorate/PIT prior to and during the solicitation process**

For procurement up to EUR 60,000, duly authorised ICMPD representatives can communicate directly with vendors for soliciting offers up to the finalisation of the order. Communication shall be in writing in order to maintain the audit-track.

For requirements valued above EUR 60,000, only PT staff are authorised to communicate with vendors at any stage of the solicitation process and up to the award of the contract. Communications with vendors, including any exchange of information between the organisation and invited vendors, shall be kept to a minimum.

The PT shall maintain records of all communication with the vendors. The PT reserves the right to disqualify a vendor from the solicitation process if the Directorate/PIT has had any communications with the vendor without prior approval from the PT.

When there is a requirement to undertake market research during the pre-tender phase for specialised goods and services, the Directorate/PIT can use the internet or attend trade fairs for this purpose. If there is a requirement to meet vendors on a bilateral basis (ICMPD and the vendor) to undertake market research, the Directorate/PIT shall ensure that they inform the PT, so that the PT can attend the meeting if necessary. In order to ensure fairness and transparency, the Directorate/PIT shall advise the PT in a timely manner.

#### **5.11 Establishing a Tender Evaluation Committee**

For all procurement cases envisaged to commit funds above EUR 60,000 requiring the evaluation of tenders, the procurement process shall be undertaken in the context of a TEC.

The requesting Directorate/PIT, in collaboration with the PT, shall propose the TEC's composition. For procurements with an estimated value of more than EUR 60,000, the requesting Directorate/PIT shall propose:

- (a) A member of the PT (or a delegated officer) as the non-voting Chairperson, thus ensuring the integrity of the evaluation process;

- (b) Another member of the PT or a Project Assistant shall act as Secretary of the TEC (non-voting);
- (c) At least one member from the Requesting Directorate/PIT as a voting member;
- (d) At least one external/internal expert as a voting member; and
- (e) At least one additional member (from the beneficiary or from another Directorate/PIT) as a voting member.

The committee can be composed ad hoc whereby its composition should cut across both substantive and administrative services, and should always be an odd number of voting members. The minimum number of the committee is three voting members.

The appointed TEC voting members shall possess the technical and administrative capacities necessary to give an informed opinion on the tenders. All members of the TEC shall be available at all stages of the selection process and attend all the respective meetings (including the opening and evaluation of the tenders). Any absence of TEC members is to be recorded and explained in the TEC Report.

The composition of the TEC shall be approved by the Dir ROM or a duly authorised officer.

The principles of impartiality and confidentiality are to be observed by all members and observers of the TEC at all stages of the procurement process. At the time of the TEC constitution, all members shall sign a Declaration of Impartiality and Confidentiality Form, confirming their personal independence and neutrality with regard to the subject matter dealt with in the context of the specific procurement action. Should these conditions cease to exist during the evaluation process, the TEC member concerned shall immediately inform the TEC Chairperson or the PT and withdraw from the TEC.

Any evaluator or observer who has or might have an actual or potential conflict of interest with any tenderer must declare it and immediately withdraw from the TEC.

Within its mandate, the TEC shall be responsible for the following:

- (a) Ensuring transparency during the tender opening session;
- (b) Establishing a schedule for the main steps of the evaluation process;
- (c) Opening and proceeding with the administrative checks;
- (d) Performing the technical and financial evaluation of the compliant tenders received; and
- (e) Recommending the award of a contract to the Dir ROM.

The TEC Chairperson is responsible for overall coordination of the evaluation process in accordance with ICMPD's procurement procedures and principles described in Annex I.

The voting members of the TEC have collective responsibility for decisions taken by the Committee. The Secretary of the Committee is responsible for administrative support related to the evaluation procedure and minute-taking.

The members of a TEC are appointed in their personal capacity and shall not disclose information received as part of the tender process to others outside the TEC, with the exception of members of the PT.

All decisions and recommendations taken by the TEC shall be recorded in written form in the TEC Report and duly archived.

## **5.12 Evaluation criteria**

In order to determine the BVM and ensure full transparency in the procurement process, an ITT, RFQ or RFO shall include the following in the solicitation documents:

- (a) The criteria to be used in evaluating tenders/quotations, in descending order of importance, together with the associated weight given to each criterion (if applicable);
- (b) Any minimum requirements for each criterion, if applicable;
- (c) A statement that ICMPD shall award a contract based on BVM and an explanation how the BVM will be achieved. In the absence of such an explanation, the contract shall be awarded using the criteria of technically compliant lowest cost principle; and
- (d) In case there is one or more critical criteria considered as “pass/fail”, this circumstance shall be disclosed in the solicitation documents.

The evaluation criteria list shall be exhaustive, fair, measurable, clear and all-inclusive, to ensure that the evaluation process is thorough, complete and robust. It is of key importance that the criteria defined in the solicitation documents remain consistent during the whole process to prevent the perception of changing the rule in the middle of the procurement process.

Criteria which were communicated to the tenderers cannot be changed after tenders/quotations have been received.

In most instances, an ITT, RFQ or RFO shall have pass/fail selection criteria. In addition, an ITT shall have weighted evaluation criteria requiring technical evaluation, except in cases where technically compliant lowest cost award criteria are used.

## **5.13 Receipt of tenders/quotations**

Offers/quotations shall normally be received in electronic form, by post, or via the ICMPD e-Tendering tool following the template developed and provided by the PT.

On receiving tenders/quotations, the authorised ICMPD representative (indicated in the tender documents) shall register them and provide a receipt for those delivered by hand. The envelopes shall remain sealed and be kept in a safe place until the opening session. Under the competitive negotiated procedure, (RFQ) quotations may be received by e-mail and are entered by the authorised ICMPD representative in the QP. The register of tenders/quotations should contain the following information:

- The registration number of the tender/quotation;
- The name of the person who received and signed the delivery receipt;
- The date and hour of receipt;
- The reference of the tender/quotation; and
- The tenderer’s name and address.

## **5.14 Opening session and administrative checks**

All tenders are opened in a single opening session, where members of the TEC may participate by videoconference if necessary and duly authorised by the TEC Chairperson. If the opening session is intended to be organised using the remote participation of a few TEC members, it shall be indicated during the composition of the TEC. At the opening session, the registration details of the tenders received are checked and the tenders numbered sequentially.

All tenders received by the given deadline shall be subject to an administrative check to verify that they fulfil all the criteria mentioned in the Tender Dossier, respectively the ITT.

If any of the requested information is missing or incorrect, the tender may be rejected on that sole basis and will not be evaluated further. However, if, due to an obvious clerical error on the part of the tenderer, they failed to submit evidence, the TEC may ask them to provide, within a set deadline, the missing information or clarify supporting documents.

Following the opening session and the administrative checks, the TEC will decide on any contentious case and proceed with the evaluation of the tenders.

### **5.15 Exclusions check and sanctions list**

A tenderer shall be excluded from participation in the procurement procedures if it falls into one or more of the conditions/lists specified in any donor/contributor requests through the Agreement between ICMPD and the donor/contributor. ICMPD shall rely on the remedies provided by its donors/contributors. Nevertheless, such reliance shall be done with proportionality, e.g. if the exclusion check or sanction is final and there is no possibility for further appeal.

Without excluding the above paragraph, and in observance of the principle of proportionality, ICMPD shall exclude from participation tenders and suppliers which were found in situations of:

- (a) Bankruptcy, insolvency or winding-up procedures;
- (b) Breach of obligations relating to the payment of taxes or social security contributions;
- (c) Grave professional misconduct, including misrepresentation;
- (d) Fraud;
- (e) Corruption;
- (f) Conduct related to a criminal organisation;
- (g) Money laundering or terrorist financing;
- (h) Terrorist offences or offences linked to terrorist activities; and
- (i) Child labour and other forms of trafficking in human beings.

The right of defence shall be taken into account when deciding on exclusion from funding on the above-mentioned situations. In case the TEC decides to exclude a tenderer from funding, the Dir ROM shall be responsible for analysing any complaint received from the tenderer.

Following a decision related to exclusion of a tenderer from access to funding, the remedial measures put in place by the entity to demonstrate the tenderer's reliability, shall be assessed by the Dir ROM.

### **5.16 Evaluation of tenders**

Tenders which passed the administrative and exclusion checks shall be evaluated against the methodology and criteria reflected in the Tender Dossier.

For solicitations with an estimated value above EUR 60,000, the evaluation shall be made in the context of a TEC. For solicitations with an estimated value below EUR 60,000, the evaluation shall be made in the context of a QP as per Article 3.3.



Technical and financial offers in reply to an ITT shall be evaluated separately. Technical offers shall be opened during the official opening session and after the deadline indicated in the ITT.

The evaluations are made by using an evaluation grid. Where a scoring system is used, the overall assessment shall be based on the scores obtained under each heading (evaluation criterion).

If clarifications are required from tenderers at any stage of the evaluation process, the request for clarification and further related communication on this matter is to be made in writing. Copies of such communication(s) shall be attached to the TEC report.

### **5.17 Technical evaluation**

The TEC shall conduct the technical evaluation and prepare a written report thereof, describing:

- (a) The relative score obtained by each of the offers assessed in respect to the evaluation criteria, including the relative weight if applicable, resulting in an overall technical ranking of the offers from highest to lowest score, if a scoring system was applicable; where a pass/fail system is used, an evaluation grid shall be provided;
- (b) Clear and unambiguous explanatory notes, providing the rationale for attributing each of the above scores or pass/fail criteria; and
- (c) A summary of the technical evaluation of each offer, containing an assessment of the tenderer's ability to satisfy the technical requirement(s), strengths and weaknesses of the offer (if applicable) and a conclusion on whether the offer is technically acceptable.

### **5.18 Financial evaluation**

The financial proposals that meet the technical evaluation criteria shall be opened by the TEC and subsequently evaluated.

The TEC shall conduct the financial evaluation and prepare a written report thereof, describing:

- (a) The tenderers' financial capacity and capability;
- (b) The acceptability of the tenderers' financial proposals to deliver the goods, services and/or works;
- (c) A summary of the financial offers received, expressed as comparable conditions and ranked by overall proposed contract value;
- (d) Financial risks, if any, in the proposal; and
- (e) Any financial points that need to be negotiated.

Financial proposals shall be presented by tenderers in the currency requested in the tender documents. In case tenderers provide offers in a different currency, an exchange rate system shall be identified in the tender documents (e.g. InforEuro). The date of the exchange rate applicable shall be the date of opening of tenders.

The financial proposals of technically disqualified tenderers shall not be opened, unless paragraph 5.19 is applied.

### **5.19 Best and Final Offer (BAFO)**

A request for BAFO is a method of obtaining an improvement of specific aspects of an offer, or a revised offer, from a shortlist of technically-compliant tenderers or from a single tenderer. It is an optional step to be taken upon completion of a consolidated evaluation, with the objective of enhancing BVM.

The TEC shall propose issuing a request for a BAFO to the PT, on the basis of an interim TEC report clearly justifying the reason why a BAFO needs to be undertaken, as well as the specific aspects requiring clarification or improvement. The PT is responsible for requesting and managing the BAFO process. A request for a BAFO shall not unduly affect the transparency of the procurement action or prejudice future dealings with vendors.

A BAFO may be used in any of the following cases:

- (a) The tender(s) exceed(s) the planned or available budget;
- (b) The tender(s) contain(s) additional equipment or services that were not required in the solicitation document;
- (c) The TEC unanimously decides on higher/lower quantities than those indicated in the tender documents which could result in a lower unit price; or
- (d) The TEC has reason(s) to expect that improvements in one or more aspects of the tender(s) could be obtained.

A request for a BAFO shall be conducted in accordance with the following procedure:

- (a) An interim TEC report shall propose the conducting of a BAFO, including a short list of technically-compliant tenderers to be invited as well as the specific aspects requiring clarification or improvement;
- (b) The TEC Chairperson shall request the tenderer(s) to improve specific aspects of the offer, technical and/or commercial, and to submit a revised offer by a specified date according to the previously agreed submission method;
- (c) All requirements, guidelines, documents, clarifications or other information shall be communicated in writing to all tenderers requested to submit a BAFO;
- (d) The request for a BAFO may only permit tenderers to improve their offers (e.g. to lower costs, extend warranties, give additional discounts, shorten delivery times, etc.). Tenderers are not allowed to change the specifications of the offered goods, services or works. Tenderers shall be informed that they may decline the request to improve the original tender and that such decision shall not disqualify the original tender;
- (e) The tenderer shall be given a reasonable time to submit their BAFO; and
- (f) The TEC Chairperson is responsible for documenting any modifications to the recommendation resulting from BAFOs.

Upon receipt of BAFOs, the TEC shall reconvene and include the revised proposal(s) in the technical and financial evaluations and make a final evaluation of the competing tenders.

## **5.20 Opening of the financial proposal of a technically non-compliant vendor**

In exceptional circumstances, and duly authorised by the TEC Chairperson and unanimously approved by the TEC voting members, in order to ensure that the organisation is obtaining BVM, it may be prudent to open the commercial submission of a tender that has been evaluated as technically non-compliant, to undertake further due diligence and mitigate risk. For example, if only one submission has been found to be technically compliant, opening one or more commercial tenders of non-

compliant tenders proves that they could benchmark the comparison and verify that the price offered by the technically compliant submission is fair and reasonable.

### **5.21 Results of the evaluation – Tender Evaluation Committee Report**

The results of the evaluation and the corresponding recommendation for award of a contract shall be contained in a written report prepared by the TEC Secretary and countersigned by all TEC members. Such a report shall summarise the main elements of the evaluation process and justify the recommendation for awarding the contract to one or more suppliers or to enter into negotiations with a specified number of suppliers in respect of the evaluation criteria established for the procurement action.

Dissenting views, if any, shall be recorded in such a report.

The TEC Report, including the recommendation to award the contract to the successful tenderer, shall be approved by the Dir ROM.

### **5.22 Decision to award contracts**

The decision to award contracts shall be made by:

- (a) The Dir ROM, for contracts having a value beyond the life of the contract above EUR 60,000, following a recommendation issued by the TEC and/or PPT; and
- (b) The duly delegated officer, with the technical support of the RMO/PT if needed, for contracts with an estimated value beyond the life of the contract up to EUR 60,000.

Notwithstanding the thresholds defined above, the Dir ROM shall approve all contracts, if in the assessment of PT, the procurement is novel or contentious.

The above responsibilities to award contracts shall not be sub-delegated: in the case of designated approver absence, the decision shall be taken by the duly nominated Officer-in-Charge.

### **5.23 Award criteria**

Contracts are awarded on the basis of award criteria detailed in the tender documents, normally adopting the BVM principle, i.e. the most economically advantageous tender. The criteria set in the tender documents must be precise, non-discriminatory and not prejudicial to fair competition.

### **5.24 Cancellation of a tender**

If a procurement procedure above EUR 60,000 is cancelled, a cancellation notice must be published as soon as the decision is taken and approved by the Dir ROM. If tenders were already submitted, tenderers shall be notified in writing of the reasons for the cancellation.

After cancelling a tender procedure, the TEC/PPT may recommend to:

- Launch a new tender procedure;
- Open negotiations with one or more tenderers who participated in the tender procedure and who meet the selection criteria, provided that the original terms of the contract have not been substantially altered (this option is not available if the procedure was cancelled because of irregularities which might have prevented fair competition); or

- Not to award the contract.

The final decision is taken by the Dir ROM upon the recommendation of the TEC/PPT.

If a procurement procedure below EUR 60,000 is cancelled, a cancellation notice/communication must be published/shared with tenderers as soon as the decision is taken and approved by the duly delegated officer.

### **5.25 Negotiations**

Following the internal contract award decision, negotiations may be carried out with the selected supplier regarding payment terms, supplementary terms and conditions, delivery and other elements that may be indicated in the TEC report.

For contracts up to EUR 60,000, duly authorised ICMPD representatives can communicate directly with the vendors. Written communication is recommended in order to maintain the audit-track.

For contracts above EUR 60,000, all communication shall involve PT staff up to the award of the contract.

The results of the negotiations shall be reflected in the procurement contract.

### **5.26 Communication of results**

Upon approval of the QP or the TEC report, the ICMPD representative responsible for the procurement process shall inform all tenderers about the final results of their tenders.

All tenderers having sent an offer shall be informed of the outcome of the tender within a reasonable time period, unless justifiable circumstances may prevent such information.

### **5.27 Debriefing of tenderers**

Upon written request, unsuccessful tenderers may seek an informal debriefing to the PT.

If unsuccessful tenderers request further information, they may be provided with any information which is not confidential, e.g. comments regarding their strengths and weaknesses, as this may assist them to be successful in future tenders.

### **5.28 Issuance of a contract (Purchase Order, Contract or Framework Contract)**

For contracts of a value above EUR 60,000, the PT is solely responsible for negotiating any contractual terms and conditions (e.g. terms of payment, means of delivery, etc.) before entering into the contract.

For contracts of a value below EUR 60,000, the ICMPD representative responsible for the procurement process shall use the ICMPD standard terms and conditions. In case it becomes necessary to apply conditions that substantially differ from the ICMPD standard terms and conditions, the draft contracts with potential suppliers shall be reviewed by the PT and/or a legal expert prior to signature.

Depending on the nature of the procurement, the PT shall issue different forms of a contract to the selected supplier on behalf of ICMPD:

- (a) Contract: in general terms, is a written, legally binding agreement between ICMPD and a supplier, which establishes the terms and conditions for the provision of goods, services or works, including the rights and obligations of the parties. In the ICMPD context, the term contract is used to define all contractual obligations which do not fall within the category of a PO or Framework Contract;
- (b) Purchase Order: is a simplified form of contract, which is used for standard off-the-shelf goods and/or services. Its main content is limited to the indication of the item to be procured (e.g. units, unit price and total price), the delivery schedule and the standard ICMPD terms and conditions. In the ICMPD context, the term PO also identifies the ERP record created to commit the financial resources corresponding to any contractual obligation (generally used for a single offer procedure); and
- (c) Framework Contract: is a form of contract that defines a framework of conditions with a supplier, which is valid for a defined period of time, for requesting the provision of specific goods or services, and with no contractual obligation to order any minimum or maximum quantity.

With the exception of low value procurement (below € 2.500), any form of contract between ICMPD and the supplier shall be signed by the duly delegated officer. This step constitutes the issuance of a contract. It therefore defines the point at which ICMPD enters into a contractual commitment with the supplier to provide the agreed goods and services at the agreed prices, and in conformity with all agreed terms and conditions relating to the contract.

In the case of contracts under a competitive, negotiated procedure and single offer procurement, the standard contract of the supplier (confirmation of offer as applicable) may be used following approval by the Dir ROM or as delegated through the delegation of procurement authority.

In the case of contracts under other procedures, the standard ICMPD contract templates shall be used, respectively the contracts must include the ICMPD terms and conditions as specified in the tender documents.

## **5.29 Contracts made in writing**

Written procurement contracts shall be used to formalise every procurement for a monetary value above EUR 2,500.

Written contracts or POs shall, as appropriate, specify in detail:

- The nature of the goods, services or works to be procured;
- The quantity being procured (as applicable);
- The contract or unit price, the conditions of delivery and the terms of payment (as applicable);
- The time period covered;
- The conditions to be fulfilled, including ICMPD general conditions of contract, and implications for non-delivery/non-compliance; and
- The name and address of supplier/contractor.

The requirement for written procurement contracts shall not be deemed to restrict the use of any electronic means of data interchange. Before any electronic means of data interchange is used, the Dir ROM shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality of the information transmitted.

### **5.30 Contract signature**

Contracts and all relevant annexes are prepared and submitted for signature in line with the signature procedure (as described in the signature rules) including the delegation of procurement authority. For contracts above EUR 60,000, two copies of the signed contract are sent to the successful tenderer requesting contract signature and return of one signed contract within a given deadline. The cover letter shall state that changes in the signed contract shall make it void.

### **5.31 Publication of awarded and signed contracts**

A list of awarded and signed contracts for all procurement procedures having a value above EUR 60,000 (or as required by the Agreement with the donor) shall be published on the ICMPD website at least once a year, unless justifiable circumstances prevent such publication.

For contracts above EUR 60,000, it is recommended that a contract award notice is advertised on the ICMPD website after the contract is countersigned.

The contract award notice/list of awarded and signed contracts shall contain the nature and purpose of the contract, total value, name and country of the vendor.

ICMPD may waive publication for reasons of confidentiality and security, for example if publication would threaten the rights and freedom of individuals or harm the recipient's commercial interest. The waiver shall be approved by the Dir ROM, notwithstanding the fact that the full list shall be made available yearly to the Dir ROM.

### **5.32 Complaints procedure**

A tenderer having a dispute or complaint about a procurement process shall address the relevant dispute or complaint in writing to the Dir ROM within ten working days (stand-still period<sup>4</sup>) after receiving the communication of tender results as per article 5.25. The written communication shall provide details of the basis upon which the dispute or complaint is being lodged, including:

- A clear statement regarding what the tenderer considers defective in the procurement process and/or tender result;
- Copies of, or references to, information to support the complaint; and
- A statement regarding what the tenderer wishes to achieve as an outcome from the complaint process.

The Dir ROM shall investigate the complaint, involving the TEC in the procedure, and reply to the complainant within 15 working days from receipt of the complaint.

If the tenderer is not satisfied with the answer received, it may address itself to the Director General up to ten working days following receipt of the answer from Dir ROM. The Director General shall establish a complaints committee and relevant procedures, taking on board, if so warranted, external experts.

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<sup>4</sup> The stand-still period is a pause between the point when the contract award decision is notified to tenderers, and the final contract conclusion, during which time tenderers can challenge the decision. If the amount of the contract is below EUR 60,000, the stand-still period does not apply.

The decision of the Complaints Committee shall be binding for all parties.

The above provisions shall be published in the procurement section of ICMPD's website and included in the tender documents.

## **6 Contract management**

### **6.1 Responsibilities**

After placement of any contract, the requesting Directorate/PIT is responsible for day-to-day management of the contract, for the monitoring and evaluation of supplier performance, and for requesting any contract/budget amendments as may become necessary.

Contract management includes monitoring performance (i.e. quality of deliverables/outputs, timely delivery of services, works, supplies), inspection, verification and payment, initiating amendments and the orderly resolution of any disputes that may arise in the overall process.

The PT, in close collaboration with the Directorate/PIT, is responsible for contract administration, for dealing with any contractual issues arising during the life of the contract (e.g. invoicing, revision of terms and conditions, extensions, etc.) and for the issuance of staged or regular POs that fall within the terms of existing contracts.

### **6.2 Invoicing and payments**

Invoicing and payments shall be done in accordance with internationally acceptable commercial practices applicable for the market in question and follow the *Invoice Procedure*.

### **6.3 Contract amendments**

Contracts may need to be modified if the circumstances have changed since the contract was signed.

Any changes to the contract must be made in writing and can only be done during the contract's execution period.

Substantial changes to the contract (including the value of the contract) must be made by means of a Contract Amendment (CA). Such CAs must be signed by both contracting parties. CAs shall be approved by the ICMPD officer responsible and who has approval authority for the contract value after the amendment.

Minor changes, such as change of address, change of contact person or changes of bank account can simply be made by written notification to be annexed to the existing contract.

### **6.4 Suppliers' performance evaluation**

For procurement contracts with an estimated value over their lifetime of EUR 10,000 and above, the requesting Directorate/PIT shall evaluate the supplier performance using the standard template for supplier performance evaluation, in order to ensure the highest possible standards of services, supplies and works procured by ICMPD.

The standard template for supplier evaluation is to be completed by the Project Manager or requesting officer responsible and uploaded into the ERP supplier database. Staff/personnel involved in the procurement of goods, services and works must check the supplier database before inviting a tenderer to provide for supplies or implementing a services contract.



The purpose of the evaluation report is to document whether the goods, services or works were provided satisfactorily, and to record any performance issue experienced in the relationship with the supplier.

### **6.5 Asset management and inventory**

The Dir ROM shall maintain a physical inventory, and records and controls the movement, disposal of all recorded assets and special property items procured by ICMPD and for the benefit of ICMPD. Assets shall be registered in accordance with the relevant ICMPD normative (or otherwise requested in the donor's agreement).

CFM shall be responsible for setting up financial assets and their depreciation.

### **6.6 Transfer of ownership**

Equipment, vehicles and supplies procured in the framework of a project shall be officially transferred to beneficiaries or final recipients of the action, depending on agreement with the donor and whether it foresees the transfer of ownership. The transfer of ownership must be done at latest by the end of the implementation of the project. Transfer of ownership process is documented by using the templates indicated in the Procurement Manual. The signed transfer records must be submitted with the final report to the donor, if required and kept in the project file as part of the audit documentation of the project.

## **7 Language, documentation, archiving and safekeeping, and data protection**

### **7.1 Language of the procurement process**

The language of the procurement process and documentation shall be English, unless otherwise agreed during the planning phase with the PT, Directorate/PIT, and project beneficiaries, if applicable.

### **7.2 Documentation**

Throughout the procurement process, only forms, templates and sample contracts developed by the PT shall be used.

All documents produced and obtained in the procurement process (e.g. procurement notices, invitation to tender, requests for quotation, Tender Dossiers, TS, ToR, notices, offers received, and selection and award decisions) shall be saved electronically in a dedicated space on a shared drive<sup>5</sup> for the specific procurement action.

Upon procurement completion for contracts above EUR 60,000, all documentation must be saved in a dedicated (project) folder (hard and electronic copy) by the PT as part of the audit documentation for storage as required by the financial regulations. For contracts below EUR 60,000, the Directorate/PIT and RMOs shall be responsible for saving documentation (electronic copies) in a dedicated (project) folder/virtual space as part of the audit documentation for storage and as required by the *Financial Regulations*.

### **7.3 Archiving and safekeeping of procurement documentation**

The PT is responsible for the archiving and safekeeping of all documentation relating to contracts of a value above EUR 60,000, including original copies of contracts, amendments and related documentation. The Directorate/PIT and RMOs shall be responsible for the archiving and safekeeping of all documentation relating to contracts of a value below EUR 60,000, including original copies of contracts, amendments and related documentation.

### **7.4 Data protection**

Data protection shall be handled in accordance with ICMPD's *Data Protection Rules and Procedures*.

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<sup>5</sup> For cases below EUR 60,000 it should be accessible to other ICMPD employees.

## Annex I: Procurement principles

### (a) Economy and effectiveness

The principle of economy and effectiveness means that procurement actions shall be carried out in such a manner as to guarantee economic and efficient use of funds and successfully achieve the goals of the action in line with applicable regulations.

- Economy: The principle of economy requires that services, goods and works procured are available at the right time, in appropriate quantities and quality and at best prices.
- Effectiveness: The principle of effectiveness is measured by the attainment of specific determined goals and foreseen results.

### (b) Fairness, integrity and transparency of the procurement process

Fairness<sup>6</sup>, integrity<sup>7</sup> and transparency<sup>8</sup> shall be applied throughout the procurement process. All procurement activities shall be carried out based on clear and appropriate rules and procedures that are applied consistently to all tenderers.

This principle of fairness means that all eligible potential tenderers are provided with timely and adequate notification of ICMPD requirements and an equal opportunity to tender for the required goods, works and services.

Fair competition means having a process of equity and equivalence between potential tenderers.

Procurement activities shall be fair, transparent and open. Equal criteria and conditions known in advance, timely and proper notices of tendering and opening procedures and on procurement awards, contribute to the implementation of this principle. Transparency is an important tool for preventing and monitoring discriminating behaviour. It involves four aspects:

- Publicity or advertisement for contracts;
- Publicity or advertisement for the rules of each procedure;
- Rule-based decision making;
- Opportunities for verification and enforcement.

### (c) Avoidance of conflict of interest / Confidentiality / Supplier-Tenderer Code of conduct

A conflict of interest occurs when personal interests (which may include financial interests) interfere or appear to interfere with the proper performance of professional functions or obligations, compromising professional judgment and integrity and, in doing so, the best interests of ICMPD.

A conflict of interest occurs when observance of the principles of competition, non-discrimination against or equality of treatment of candidates or tenderers, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a tenderer/ competitor.

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<sup>6</sup> Treating all tenderers in the same and impartial manner.

<sup>7</sup> Personal and institutional behavior such as honesty, truthfulness, accuracy of one's actions, impartiality and incorruptibility.

<sup>8</sup> All transactions are open, visible and well documented, ensuring full audit trail.

In the context of procurement, staff members/personnel must declare any affiliation to vendors, shall provide the same information at the same time to vendors, shall not deprive any vendors of such information, shall not disclose any information on price, terms and conditions of a tender to other tenderers (unless as stipulated on these Rules) and shall refrain from any action which would favour a tenderer or put at disadvantage another tenderer/tenderers. Failure to make such a declaration shall be construed as conflict of interest.

Grounds for exclusion shall be considered case by case. Any automatic exclusion deprives the candidate/tenderer of the right to present supporting evidence which might remove all suspicion of a conflict of interest.

Any staff or non-staff involved in ICMPD procurement process facing a conflict of interest or potential conflict of interest should immediately report to their supervisor. Where a potential conflict of interest occurs with regard to on-going contracts, measures shall be adopted to prevent such a conflict, including cancelling the contract if necessary or excluding proposed experts and/or ensuring that no staff working on the contract has a conflict of interest.

Unless otherwise provided in the Agreement with donors and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to tenderers set out in these Rules, ICMPD shall not disclose information forwarded to it by tenderers and/or suppliers which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

ICMPD may impose on economic operators requirements aimed at protecting the confidential nature of information which ICMPD make available throughout the procurement procedure.

ICMPD expects all contracted suppliers and tenderers seeking to enter into business with ICMPD to conduct their business in accordance with the highest ethical standards. Suppliers or tenderers must strictly comply with all rules and regulations on fraud, bribery, corruption and avoid unacceptable business practices as described in the Code of Conducts of Suppliers/Tenderers available in the Procurement Manual.

ICMPD procurement ethics focuses on zero tolerance on fraud, corruption, avoiding any form conflict of interest and honest representation of supplier's capabilities.

**(d) Interest of ICMPD**

Staff members/personnel shall serve the interest of ICMPD in performing their procurement activities, in particular keeping in mind:

- The need for economy and efficiency in procurement actions;
- Providing equal opportunities and fair competition to potential tenderers
- Safeguarding ICMPD's reputation.

**(e) Proportionality**

According to this principle, any qualifications and/or requirements must not be disproportionate or excessive and must have a natural and causal relationship to the goods, services or works being procured.

## **Annex II: The UN Global Compact's Ten Principles**

The UN Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- (a) The Universal Declaration of Human Rights;
- (b) The International Labour Organization's Declaration on Fundamental Principles and Rights at Work;
- (c) The Rio Declaration on Environment and Development;
- (d) The United Nations Convention Against Corruption.

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption:

### Human Rights

- (a) Principle 1: Businesses shall support and respect the protection of internationally proclaimed human rights; and
- (b) Principle 2: make sure that they are not complicit in human rights abuses.

### Labour

- (a) Principle 3: Businesses shall uphold the freedom of association and the effective recognition of the right to collective bargaining;
- (b) Principle 4: the elimination of all forms of forced and compulsory labour;
- (c) Principle 5: the effective abolition of child labour; and
- (d) Principle 6: the elimination of discrimination in respect of employment and occupation.

### Environment

- (a) Principle 7: Businesses shall support a precautionary approach to environmental challenges;
- (b) Principle 8: undertake initiatives to promote greater environmental responsibility; and
- (c) Principle 9: encourage the development and diffusion of environmentally friendly technologies.

### Anti-Corruption

- (a) Principle 10: Businesses shall work against corruption in all its forms, including extortion and bribery.