

## 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 regarding:

- (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 and II 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 several 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. This means that the entities that are not registered to perform commercial activities and cannot issue an invoice in line with Organisation's requirements are not considered for procurement activities<sup>1</sup>. Internal invoicing and inter-departmental services within the ICMPD shall not be covered under 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 legal framework with donors, the terms as agreed in the relevant agreement shall take precedence. Donor's contracts for specific requirements (e.g. rule of origin, rule of nationality, applicable thresholds) are to

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<sup>1</sup> In case a non-governmental or non-profit organization that cannot meet this requirement is considered for procurement activities, this shall be clearly stated in the donor's agreement or official letter from the donor shall be provided to the PGU

be checked before the procurement process is initiated. Additionally, sanctions, if any, imposed by the donor can be used as grounds for exclusion.

For all procurement actions performed by ICMPD, regardless of the procedure applied, the required inspection, verification, certification and approval steps and compliance 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 Duly Delegated Authority 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. Delegation of responsibilities of the Duly Delegated Authority is further developed in Procurement Manual.

Procurement of goods, services and works is managed by the Procurement and Grants Unit (PGU) except for procurement of services and goods under simplified procedure<sup>2</sup> with a value of up to EUR 100,000, which is undertaken by the Directorates/Project Implementation Teams (PITs) concerned, under the technical supervision of the Resource Management Officer (RMO). PGU, as the owner of the procurement processes, could monitor overall compliance of all procurement cases with applicable rules, procedures, manual and templates, including the simplified procurements. This will happen in form of ad hoc or regular checks, compliance monitoring and oversight activities or missions. Purpose of such ad hoc check is internal feedback to colleagues and do not constitute by nature and methodology an internal audit.

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 PGU, 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 Duly Delegated Authority on proposals for individual tenders with an estimated value above EUR 100,000. The Rules of the PPT are set out in chapter 5.4.

A Tender Evaluation Committee (TEC) evaluates the tenders/offers and recommends to the Duly Delegated Authority the awarding of individual procurements with an estimated value above EUR 100,000. The Rules of the TEC are set out in chapter 5.11.

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

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

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<sup>2</sup> An exhaustive list of procurement actions under simplified procedure is available in the Procurement Manual.



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 Procurement Purchase Order (PPO)/contract or amendment thereof was issued by ICMPD, but deliverables have already commenced and/or provided in part.

A post facto situation occurs when no PPO/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 are required to explain in writing and in detail the reasons why the procurement procedures were not followed. PGU shall assess the cases above EUR 20,000, as far as is practical, if the cost of the goods, services and works procured could be considered reasonable. The cases below EUR 20,000 shall be assessed by the responsible RMO. Based on the PGU assessment, the Duly Delegated Authority 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:

*Conduct of ICMPD Staff Members*

*Use and Release of Information*

*Reimbursement for Financial Losses*

*Disciplinary Measures*

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 tendering 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:

- direct or indirect "Forced Labour," *i.e.*, by exacting work or service from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily
- direct or indirect "Trafficking in Persons," *i.e.*, by recruiting, transporting, transferring, harbouring, or receiving persons by threat or use of force or other forms of coercion, abduction, fraud, deception, or abuse of power.

Whenever Forced Labour or Human Trafficking occurs in the Contractor's operations, including in its supply chain, the Contractor shall, as soon as reasonably practicable, take all reasonable action to address or remove these occurrences, including where relevant, by addressing any practices of other entities in 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, Supplies, Works</b>	<b>≥ €100,000</b>	<b>€20,000 - €100,000</b>	<b>≤ €20,000</b>
	International open tender procedure (ITT)	Competitive negotiated procedure (RFQ)	Single offer (RFO)  For services and supplies of value <b>≤€2,500</b> a payment may be made against invoice (low-value procurement)

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

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 maximum value of the procurement case for service contracts may be indicated in the solicitation documents (in case of non-simplified competitive negotiated procedure and ITTs). As for the maximum value for supplies, works and service<sup>3</sup> contracts, it may be disclosed to tenderers in the solicitation documents only upon prior approval of the PGU or RMO as described in the Procurement Manual.

#### 3.1. International open tender procedure – (procurement cases above EUR 100,000) (procurement procedure: ITT)

For cases with an estimated value above EUR 100,000 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.

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.

Tenders in reply to an ITT shall be submitted as indicated in the tender documents published on the ICMPD eTendering platform, ICMPD website, and/or in any other appropriate media.

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

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 Chairperson may accept the participation of the tenderer to the competition.

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<sup>3</sup> simplified competitive negotiated procedure for service

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 PGU.

The PGU 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 PGU shall publish all questions received and their related clarification on the ICMPD website and/or eTendering platform.

### **3.2. Restricted procedure**

Due to the nature of the procurement case, and upon prior approval of the Duly Delegated Authority, 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 PGU may issue a Call for Expression of Interest (CEOI).

The CEOI shall be given maximum visibility by publishing a notice on the ICMPD website and/or via the ICMPD eTendering platform 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 CEOI. A list of all the candidates replying to the CEOI 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 Duly Delegated Authority, 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) 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/PIT through PGU by the Duly Delegated Authority.

### **3.3. Competitive negotiated procedure – (procurement cases from EUR 20,000 to EUR 100,000) (procurement procedure: RFQ)**

For cases with an estimated value from EUR 20,000 to EUR 100,000, a procurement procedure shall take place through an RFQ for the procurement of goods, services and works.

For competitive negotiated procedures, the documents shall include an RFQ with Technical Specifications (TS), Terms of Reference (ToR) or Statement of Works (SoW), if applicable. In case of a

competitive negotiated procedure, it is mandatory that a minimum of three potential vendors are invited to participate in the RFQ. If duly justified, RFQ may be launched as an open procedure via ICMPD eTendering platform, where every potential vendor who meets the published criteria may submit an offer. The decision on publication of the RFQ as an open procedure shall be taken by the responsible RMO (for simplified procedures) or PGU (for non-simplified procedures<sup>4</sup>). At least one fully compliant offer submitted in response to the RFQ must be obtained.

The Directorate/PIT, with the supervision of the responsible RMO (for simplified procedures) or PGU (for non-simplified procedures), draws up a list of at least three potential vendors and justifies its choice. The potential vendors shall receive the RFQ specifying content and modalities of the RFQ.

Quotations must reach ICMPD by no later than the deadline shown in the RFQ which must be given 7-21 days from the dispatch of the RFQ documents.

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

An RFQ shall not require a PPT or a TEC appointment. The Requesting Officer shall detail the procurement process and justify the selection of vendor in the Quotation Protocol (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 20,000) (procurement procedure: RFO)**

For cases with an estimated value below or equal to EUR 20,000, a simplified procedure including an RFO, if applicable, shall be used. If the estimated threshold is close to EUR 20,000, 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.*, Procurement Purchase Order (PPO)) may be awarded on the basis of a single offer when the contract amount does not exceed EUR 20,000 per project (or funds in case of core budget), per calendar year and per supplier.

Multiple PPOs to one vendor may be issued, provided that the threshold mentioned in the latter paragraph has not been reached. Splitting PPOs 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/Long Term Agreement already exists. If not, the Directorate/PIT shall, as a

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<sup>4</sup> All cases that do not fall within the simplified procedure list

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 must include relevant details in respect of the procurement requirement, including, but not limited to, price, quantity and delivery time. The selection shall be certified by the 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. Any supporting documents other than invoice would be the requirements defined by RMOs based on specific donors' rules or ICMPD certification requirements and/or specific local regulations. 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 Duly Delegated Authority, upon PGU recommendation. These situations are described below:

- (a) There is sufficient evidence that no competitive market exists for the requirement (i.e., monopoly, prices fixed by legislation or government regulations, proprietary product, or service)
- (b) There is a need for a standardisation of services or supplies rendering competition impracticable or too costly and inefficient, e.g., IT equipment/services where product to be purchased is determined by previous purchase (compatibility) or continuation of an existing contract where single responsibility for the output is required and any change of the supplier would be detrimental
- (c) The proposed contract relates to services that cannot be evaluated on the basis of objective criteria
- (d) Tenders for identical products and services have been obtained competitively (under the same or another project implemented by ICMPD) within a reasonable period (not exceeding one year from the date of the initial contract signature) and the unit prices without VAT (excluding transportation and customs related costs) remain unchanged. Cumulative contract amount awarded using this procedure shall not exceed doubled initial contract amount. The thresholds related to the procedure as described in these Rules shall nevertheless apply
- (e) The proposed procurement contract is for the purchase or lease of real estate and market conditions do not allow for effective competition
- (f) A mandatory condition is attached to funds made available by a government or international development organisation
- (g) 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. The exigency of service must be beyond the ICMPD control or other compelling circumstances which are not due to the lack of planning or slow administrative process within the organisation
- (h) 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 Duly Delegated Authority

- (i) ICMPD, being part of the UN Procurement Network, in some specific cases could use the Long Terms Agreements or Contract of UN Organisations (relying on a procurement decision of another UN Organisation). PGU will manage the process and assess if conditions (value for money and fit-for-purpose) represent the best interest of the organisation
- (j) The Duly Delegated Authority specifically determines, having carefully weighed up the best interests of the organisation and the advice of the PGU/RMO as appropriate, that a formal solicitation shall not be applied. In such cases, a written record shall be made providing appropriate reasons for such determination.

In the above situations, the Duly Delegated Authority upon advice of the PGU/RMO, where appropriate, may decide to approve direct contracting.

When a decision is made pursuant to the exceptions above, the Duly Delegated Authority 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 Duly Delegated Authority may approve derogations related to the applicable Rules of the procurement process if duly justified.

### **3.7. Procurement timelines**

The procurement timelines in respect of the various procurement methods described below are indicative figures, which must be considered by the Directorate/PIT for planning purposes and for the preparation of PPs. Procurement timelines are determined in collaboration between PGU and the Project team.

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) Preparation of a Market Research
- (b) Preparation and review of TS/ToR/ SoW/bill of quantities
- (c) Preparation and publishing of Tender Dossiers
- (d) Submission of offers by tenderers
- (e) Evaluation of offers
- (f) Review by the PPT and TEC (when applicable)
- (g) Negotiations (when relevant)
- (h) Contract award
- (i) Pre-contract signature meeting between the Directorate/PIT, PGU and awarded supplier (whenever applicable)
- (j) Issuance of contracts/PPOs
- (k) Receipt of goods, equipment (or Final Acceptance (FAC))

- (l) Contract of Transfer of Ownership / Handover of assets (for projects); and
- (m) Invoicing.

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

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>Solicitation period</b>	<b>Evaluation</b>	<b>Award, Contract signature</b>
<b><u>International Tender</u></b> <b>(As of EUR 100,000)</b> <b><i>Up to 8 months*</i></b>	15-90 days	15-90 days	Up to 30 days	Up to 30 days
<b><u>Competitive negotiated</u></b> <b>(From 20,000 to EUR 100,000)</b> <b><i>Up to 2 months*</i></b>	-	7-21 days	Up to 14 days	Up to 21 days
<b><u>Single offer</u></b> <b>(Up to EUR 20,000)</b> <b><i>Up to 1 month*</i></b>	-	Minimum 7 days	Up to 7 days	Up to 14 days

*\* 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 / Long Term Agreements**

The purpose of framework contracts/Long Term Agreements (LTA) 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/LTA 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/LTA 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/LTA is useful for providing immediate stock availability, for instance during accelerated project implementation requirements.

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

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

Framework contracts/LTAs 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/LTA is in place, the Rules for single offer procedure (irrespective of the amount contracted) shall apply.

Details concerning different approaches of framework contract/LTA implementation are provided in the ICMPD Procurement Manual.

### **4.2. Preferred suppliers**

For recurring services which fall under simplified procedure, 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) 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, PGU 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/LTA shall be envisaged.

## **5. The procurement process**

### **5.1. Procurement planning**

Following the organisation's annual budgeting forecast process, the Directorate/PIT shall define and outline their yearly PPs for the following year. For cases dealt by the PGU a yearly PP is determined in collaboration between the Directorate/PIT and the PGU and this follows the budget forecasting cycles.

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 shall be regularly updating their project procurement plans, whenever changes occur.

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

A Market Research and Consultation is a process undertaken by, or on behalf of, ICMPD (PGU; 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 tenders; 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 exploring the potential vendors registered on the ICMPD eTendering platform, searching existing rosters and reviewing previous contracts/PPOs. 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, 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.

### **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. RFI shall be performed under the lead of PGU and sent to individual companies or organisations suggested by the Directorate/PIT and/or identified by the PGU.

Details of the RFI are further described in the ICMPD Procurement Manual.

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

A PPT is established and nominated by the Duly Delegated Authority before the start of procurement activities above EUR 100,000 and applies to ITT procedures only.

The PPT will report at any stage to the Duly Delegated Authority during the procurement process.

The composition of a PPT shall be defined by the Duly Delegated Authority depending on the complexity of each case. The members shall be appointed by the time of the requirements definition and remain the same throughout the procurement process.

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

- Conducting of market research
- Preparation of TS, ToR, or SoW
- Suggestion of the procurement method; and
- Advising the Duly Delegated Authority on derogations as described under these Rules.

Right after the PPT constitution, all members shall sign a Declaration of Objectivity and Confidentiality Form<sup>5</sup>, 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 change after the PPT appointment, the PPT member concerned shall immediately inform the PGU.

The responsibilities of the PPT members shall end as soon as TEC is appointed by the Duly Delegated Authority.

### **5.5. Requirements definition**

For the procurement of goods, services or works of an estimated value above EUR 20,000, 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 Procedure
- (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

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<sup>5</sup> Declaration of Objectivity and Confidentiality signed by PGU shall be valid for one year and shall apply to all procurement cases handled by the PGU. The Declarations shall be resigned on a yearly basis.

for these deliverables. A generic template for the definition of ToR is provided in the Procurement Procedure

- (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 Procedure
- (d) For goods, services and works: objective evaluation criteria. These shall be used in the subsequent evaluation of tenders; and
- (e) For simplified procedures: 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 100,000, the invitation of these suppliers is evaluated in the context of the PPT, if applicable.

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 PGU.

#### **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 5.26) 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 if requested so in the tender dossier.

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

Following a careful risk assessment, ICMPD may request a performance and/or pre-finance guarantee from tenderers for contracts above EUR 100,000. The staff/personnel handling the procurement process shall ensure that the necessity of both guarantees is 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 100,000, no advance payment/pre-finance shall be granted without prior consultation with CFBM, if the PGU deems it necessary.

For contracts below EUR 100,000, tenderers may have the possibility of negotiating the payment schedule. PGU/RMO shall, whenever necessary, be consulted in such negotiations. This process may be performed in consultation with CFBM.

## **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 100,000, qualification requirements and evaluation criteria shall be defined and agreed by both the PGU and Directorate/PIT.

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

For non-simplified competitive negotiated procedures up to EUR 100,000, from the moment of the launch of the procedure until the contract signature, PGU is solely responsible for the communication with vendors. As for simplified competitive negotiated procedures up to EUR 100,000, 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 100,000, only PGU 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 PGU shall maintain records of all communication with the vendors. The PGU reserves the right to disqualify a vendor from the solicitation process if any other PPT or TEC member has had any communications with the vendor without prior approval from the PGU.

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 PGU, so that the PGU can attend the meeting if necessary. In order to ensure fairness and transparency, the Directorate/PIT shall notify the PGU in a timely manner and prepare the list of questions to be asked to all potential suppliers in those bilateral meetings.

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

For tenders envisaged to commit funds above EUR 100,000 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 PGU, shall propose the TEC's composition, which shall consist of<sup>6</sup>:

- (a) A member of the PGU as the non-voting Chairperson (together with a Co-Chairperson, if applicable), thus ensuring the integrity of the evaluation process
- (b) Another member of the PGU shall act as a non-voting Secretary of the TEC (together with a Co-Secretary, if applicable)
- (c) At least one member from the Requesting Directorate/PIT as a voting member<sup>7</sup>
- (d) At least one member with technical expertise (either internal ICMPD expert or external expert under supervision of the Requesting Directorate/PIT) related to the subject of the tender as a voting member; and
- (e) At least one additional member (from the beneficiary or from another Directorate/PIT) as a voting member.

Maximum of three additional members (from the beneficiary, another Directorate/PIT, internal ICMPD or external expert) as observers. The total number of observers shall not exceed three, unless duly justified and approved by the Duly Delegated Authority.

Directorate/PIT may propose an external/internal expert to participate in the TEC. The participation of an external/internal expert in the TEC shall be approved by the PGU and it is recommended that

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<sup>6</sup> Donor's contracts for specific requirements are to be checked before the TEC is established

<sup>7</sup> For ITTs with the estimated contract value of more than EUR 500,000 the participation of the Project Manager as voting member is highly recommended

external technical expert is not the same as the one involved in drafting ToR/TS/SoW. The external/internal expert, when observer, shall only be allowed to participate in administrative and technical evaluation of the offers. PGU may approve participation of the external/internal expert in the financial evaluation of offers on an exceptional basis.

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. In any size of the committee ICMPD Directorate/PIT should constitute the majority of the voting members.

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

The composition of the TEC shall be approved by the Duly Delegated Authority.

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<sup>8</sup>, 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 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 Duly Delegated Authority.

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.

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<sup>8</sup> Declaration of Impartiality and Confidentiality signed by PGU shall be valid for one year and shall apply to all procurement cases handled by the PGU. The Declarations shall be resigned on a yearly basis.

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 PGU.

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. It has to be clear from the documentation if the contract shall be awarded using the criteria of technically compliant lowest cost principle or based on the price/quality ratio with a weighing formula defined.
- (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 as well as technical criteria. In addition, an ITT / RFQ 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 via the ICMPD eTendering platform or email following the templates developed and provided by the PGU.

For ITT/RFQ procedure the standard approach is to use the eTendering platform. Interested potential vendors shall complete registration on the eTendering platform in order to have access to the solicitation documentation.

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

All tenders are comprised of 3 separate (e-)envelopes: administrative, technical, and financial. Administrative (e-)envelopes of the submitted tenders are opened from the eTendering platform in a single opening session.



At the opening session, the submission 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 Instructions to tenderers.

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 performed by Secretary (with co-Secretary if applicable) and reported to the Chair (and the co-Chair if applicable), the TEC Chairperson will decide and report to the rest of the TEC members on any contentious case and proceed with the evaluation of the tenders.

Details of the opening session and administrative checks are further described in the ICMPD Procurement Manual.

#### **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) Direct or indirect child labour, forced labour, trafficking in persons in suppliers' operations including its supply chain.

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 Director of Management 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 Director of Management.

#### **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 100,000, the evaluation shall be made in the context of a TEC. For solicitations with an estimated value below EUR 100,000, 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. 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 acceptability of the tenderers' financial proposals to deliver the goods, services and/or works
- (b) A summary of the financial offers received, expressed as comparable conditions, and ranked by overall proposed contract value

- (c) Financial risks, if any, in the proposal; and
- (d) 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 the submission deadline of tenders.

The financial proposals of technically disqualified tenderers shall not be opened unless paragraph 5.20 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 listing the specific aspects requiring clarification or improvement. 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 modified price
- (d) The TEC has reason(s) to expect that improvements in one or more aspects of the tender(s) could be obtained
- (e) Only one administratively and technically compliant offer is received.

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

- (a) The TEC shall propose the conducting of a BAFO, including the specific aspects requiring clarification or improvement
- (b) The TEC Chairperson or a duly authorised officer 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). 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 Duly Delegated Authority.

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

The decision to award contracts shall be made by:

- (a) The Duly Delegated Authority, for contracts having a value beyond the life of the contract above EUR 100,000, following a recommendation issued by the TEC; and
- (b) The Duly Delegated Authority, with the technical support of the RMO/PGU if needed, for contracts with an estimated value beyond the life of the contract up to EUR 100,000.

Notwithstanding the thresholds defined above, the Duly Delegated Authority shall approve all contracts, if in the assessment of PGU, the procurement is novel or contentious.

The above responsibilities to award contracts shall not be sub-delegated. In the case of the absence of the Duly Delegated Authority only the nominated delegated authority can award contracts.

### **5.23. Award criteria**

Contracts are awarded on the basis of award criteria detailed in the tender documents 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 tender procedure above EUR 100,000 is cancelled, a cancellation notice must be published/shared as soon as the decision is taken and approved by the Duly Delegated Authority. 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 Duly Delegated Authority upon the recommendation of the TEC/PPT.

### **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 100,000, 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 100,000, all communication shall involve PGU 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 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 PGU.

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 (Procurement Purchase Order, Contract or Framework Contract/LTA)**

For contracts of a value above EUR 100,000, the PGU is solely responsible for negotiating any contractual terms and conditions (e.g., terms of payment, means of delivery) before entering into the contract.

For contracts of a value below EUR 100,000, 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 PGU/RMO and/or a legal expert prior to signature.

Depending on the nature of the procurement, the PGU 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 PPO or Framework Contract/LTA;
- (b) Procurement 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; and
- (c) Framework Contract/LTA: 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 quantity.

With the exception of low value procurement (below EUR 2,500), any form of contract between ICMPD and the supplier shall be signed by the Duly Delegated Authority as specified in Signature rules and procedure and valid sub-delegations. 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 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 PPOs 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 Director of Management 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. The signed contract is sent to the successful tenderer requesting contract signature and return of the countersigned contract within a given deadline. The notification 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 100,000 (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 100,000, 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 Head of PGU, notwithstanding the fact that the full list shall be made available yearly to the Head of PGU.

### **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 Director of Management within ten working days (stand-still period<sup>9</sup>) after receiving the communication of tender results as per article 5.26. The written communication shall provide details of the basis upon which the dispute or complaint is being lodged, including:

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<sup>9</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 100,000, the stand-still period does not apply.

- 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 Director of Management 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 Director of Management. The Director General shall establish a complaints committee and relevant procedures, taking on board, if so warranted, external experts.

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 PGU, in close collaboration with the Directorate/PIT, is responsible for contract administration and for dealing with any contractual issues arising during the life of the contract (e.g., invoicing, revision of terms and conditions, extensions), whereas the Directorate/PIT is responsible for the issuance of staged or regular PPOs 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 Processing*.

### **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 20,000 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 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 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.

Contractor who receives poor performance review may be rejected / banned from the participation in ICMPD procurement procedures or may be refused to be awarded the contract for the total period of up to one year.

The final decision on refusal on participation in ICMPD procurement procedures is rested with the PGU who needs to be consulted on case-by-case basis.

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

The Head of CFBM 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).

The CFO shall maintain a physical inventory and record and control the movement and disposal of all recorded assets and special assets procured by and for the benefit of ICMPD and owned by ICMPD. Assets are recorded in accordance with relevant ICMPD standards (or as provided for in the agreement with the donor).

Where project rules require an inventory, this is maintained according to project rules.

CFBM 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 PGU, Directorate/PIT, and project beneficiaries, if applicable.

### **7.2. Documentation**

Throughout the procurement process, only forms, templates and sample contracts developed by the PGU 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 dedicated (project) folder/virtual space for the specific procurement action.

Upon procurement completion for contracts above EUR 100,000, all documentation must be saved in a dedicated (project) folder (electronic copy) by the PGU as part of the audit documentation for storage as required by the *Financial Regulations*. For contracts between EUR 20,000 and EUR 100,000, the Directorate/PIT and PGU shall be responsible for saving documentation (electronic copies and hardcopies where applicable) in a dedicated (project) folder/virtual space as part of the audit documentation for storage and as required by the *Financial Regulations*. For contracts below EUR 20,000, the Directorate/PIT 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 PGU is responsible for the archiving and safekeeping of all documentation relating to contracts of a value above EUR 100,000, including electronic copies of contracts, amendments, and related documentation. The Directorate/PIT shall be responsible for the archiving and safekeeping of all documentation relating to contracts of a value below EUR 100,000, including original (where applicable) and electronic copies of contracts, amendments, and related documentation if applicable.

### **7.4. Data protection**

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

## 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>10</sup>, integrity<sup>11</sup> and transparency<sup>12</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>10</sup> Treating all tenderers in the same and impartial manner.

<sup>11</sup> Personal and institutional behavior such as honesty, truthfulness, accuracy of one's actions, impartiality, and incorruptibility.

<sup>12</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 regarding 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 agree and comply with all rules and regulations on fraud, bribery, corruption and avoid unacceptable business practices as described in the Supplier Code of Conduct. In addition all staff have access to this document in the Procurement Manual and ICMPD website.

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 should work against corruption in all its forms, including extortion and bribery.