

**Customised Model of Grant Contract for  
Non State Actors (ACP-EU) and EU Public Bodies**

On the basis of the standard grant contract for external action, a Customised Model has been adapted to the needs of the first call for proposal of the ACP-EU Water Facility. This is applicable to Non State Actors (ACP-EU) and EU Public Bodies.

The Customised Model includes the **Special Conditions** (provided below) and its **Annexes**

The **Annexes** include the following documents:

Description of the Action (Annex I): This is the complete application form provided under the preliminary and detailed proposal with the logical framework.

General Conditions (Annex II): These are published on the following web-site:  
[http://europa.eu.int/comm/europeaid/tender/gestion/cont\\_typ/st/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/cont_typ/st/index_en.htm)

Budget for the Action, Expected Sources of Funding and Procurement Plan (Annex III): These documents are those provided in the detailed proposal

Contract Award Procedures (Annex IV): (provided below)

Standard Request for Payment and Financial Identification Form (Annex V): This is published on the following web-site:  
[http://europa.eu.int/comm/europeaid/tender/gestion/cont\\_typ/st/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/cont_typ/st/index_en.htm)

Model Audit Certificate (Annex VI): This is published on the following web-site:  
[http://europa.eu.int/comm/europeaid/tender/gestion/cont\\_typ/st/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/cont_typ/st/index_en.htm)

Model Financial Guarantee (Annex VII): This is published on the following web-site:  
[http://europa.eu.int/comm/europeaid/tender/gestion/cont\\_typ/st/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/cont_typ/st/index_en.htm)

**GRANT CONTRACT**  
**- EXTERNAL ACTIONS OF THE EUROPEAN COMMUNITY -**

**[Grant contract identification number]**

The European Community, represented by the Commission of the European Communities, ("the Contracting Authority")

of the one part,

and

**[full name of Beneficiary or acronym where relevant]** with its office at **[address [of registered office for companies and associations, of main office for public bodies and universities], VAT number or equivalent official registration number where appropriate]**, ("the Beneficiary"),

of the other part,

have agreed as follows:

## **Special conditions**

### **Article 1 - Purpose**

- 1.1 The purpose of this contract is the award of a grant by the Contracting Authority for the implementation of the Action entitled: **[title of Action]** ("the Action").
- 1.2 The Beneficiary will be awarded the grant on the terms and conditions set out in this contract, which consists of these special conditions ("Special Conditions") and the annexes, which the Beneficiary hereby declares it has noted and accepted.
- 1.3 The Beneficiary accepts the grant and undertakes to carry out the Action under its own responsibility.

### **Article 2 - Implementation period of the Action**

- 2.1 This contract shall enter into force on the date when the last of the two Parties signs.
- 2.2 Implementation of the Action shall begin on:  
**choose one of the following:**

- "the day following that on which the last of the two Parties signs"
- "the first day of the month following the date on which the first instalment of prefinancing is paid by the Contracting Authority"
- [a later date],
- [exceptionally, a date preceding the signature of the Contract but not preceding the Beneficiary's request for a grant]<sup>1</sup>.

2.3 The Action's implementation period, as laid down in Annex I, is [number of months].

### Article 3 - Financing the Action

- 3.1 The total cost of the Action eligible for financing by the Contracting Authority is estimated at ... [.....], EURO as set out in Annex III.
- 3.2 The Contracting Authority undertakes to finance a maximum of ... [...], equivalent to [...] % of the estimated total eligible cost specified in paragraph 1; the final amount shall be established in accordance with Article 17 of Annex II.

### Article 4 - Technical and financial reporting and payment arrangements

4.1 Technical and financial reports shall be produced in support of payment requests, in compliance with Articles 2 and 15.1 of Annex II.

4.2 Payment will be made in accordance with Article 15 of Annex II:

First instalment of pre-financing (80% of the part of the forecast budget for the first 12 months of implementation financed by the EC):

...[.....]

Further annual instalment(s) of pre-financing:

...[.....]

Forecast final payment (subject to the provisions of Annex II):

...[.....]

### Article 5 - Contact addresses

Any communication relating to this contract must be in writing, state the number and title of the Action and be sent to the following addresses:

For the Contracting Authority<sup>2</sup>

**Option 1: where the Contracting Authority is a headquarters service of the European Commission:**

<sup>1</sup> The date can never be a date before the deadline for the deposit of the detailed proposal (2<sup>nd</sup> step of the call for proposals) and the Beneficiary should demonstrate the need to start the Action before the signature of the Contract.

<sup>2</sup> Select one option

Payment requests and attached reports, including requests for changes to bank account arrangements should be sent to:

European Commission  
EuropeAid Cooperation Office  
For the attention of the finance unit [*address of the finance unit*]

Copies of the documents referred to above, and correspondence of any other nature, should be sent to:

European Commission  
EuropeAid Cooperation Office  
For the attention of the management unit [*address of the management unit*]

A copy of the reports referred to in Article 4.1 must be sent to the European Commission Delegation in charge of monitoring the Action, at the following address: [*address of the Delegation*]<sup>3</sup>

Option 2: where the Contracting Authority is a Delegation of the European Commission:

[*address of the Delegation*]

For the Beneficiary

[*address of the Beneficiary for correspondence*]

## **Article 6 - Annexes**

6.1 The following documents are annexed to these Special Conditions and form an integral part of the contract:

- Annex I: Description of the Action
- Annex II: General Conditions applicable to European Community-financed grant contracts for external Actions
- Annex III: Budget for the Action, Sources of Funding and Procurement Plan
- Annex IV: Contract-award procedures
- Annex V: Standard request for payment and financial identification form
- Annex VI: Model audit certificate
- Annex VII: Model financial guarantee

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<sup>3</sup> Delete if not applicable.

- 6.2 In the event of conflict between the provisions of the Annexes and those of the Special Conditions, the provisions of the Special Conditions shall take precedence. In the event of conflict between the provisions of Annex II and those of the other annexes, those of Annex II shall take precedence.

**[Article 7 - Other specific conditions applying to the Action]**

- 7.1 The General Conditions are supplemented by the following:

- 7.1.1 The audit firm which will carry out the audit(s) referred to in Article 15.6 of Annex II is **[name, address, telephone and fax numbers]**.<sup>4</sup>
- 7.1.2 The rules of nationality and origin for the participation in contracts to be awarded by the Beneficiary are those applicable in conformity to the Cotonou Agreement
- 7.1.3 With reference to Article 8.1 of the Annex II independent mid-term and final evaluations to be financed as part of the budget of the Action are compulsory for projects under component B of the Water Facility.
- 7.1.4 With reference to Article 14 of Annex II, a contingency reserve may be included in the Budget of the Action, to cover any adjustment necessary in the light of changed circumstances on the ground. The contingency reserve should not be higher than 5% of eligible costs and can only be used with the prior written authorization of the European Commission, upon a duly justified request from the Beneficiary.

- 7.2 The following derogations from the General Conditions shall apply:

- 7.2.1 By derogation from Article 1.3 of the Annex II, the portion of the Action which can be sub-contracted can be important and can cover works, supplies and services. However it can never be for the entire amount of the Action.
- 7.2.2 By derogation from Article 1.3 of the Annex II, in case another donor imposes to the Applicant specific procurement rules on its co-financing, the Applicant shall consider that the EC and the other donor have different procurement rules and shall limit the use of the other donor's procurement rules to the contracts directly financed by the other donor. This is subject to the fact that these contracts are clearly identified and distinguished from the rest of the project and are tendered separately. The provisions of Annex IV will continue to apply to the part of the Action financed by the EC and the Applicant.
- 7.2.3 By derogation from Article 2.1 of the Annex II, technical and financial reports for projects under component B of the Water Facility must be provided on a quarterly basis.
- 7.2.4 By derogation from Article 14.5 of the Annex II, and exclusively within the framework of component C (civil society initiatives), the labour (in-kind) contributions provided by final beneficiaries (end users, citizens, etc ...) can be considered eligible costs for the implementation of civil society initiatives.
- 7.2.5 By derogation from Article 15.7 of the Annex II, if the sum of total pre-financing under the Contract is more than 1.000.000 Euro or 80% of the Contract amount (90% if the Beneficiary is a NGO), a financial guarantee will be requested, except where the Beneficiary is an administration or a public body from a Member State of the European Community. The financial guarantee must be denominated in Euro and must be issued by a bank established in one of the Members States of the European Union or in the relevant ACP State and in conformity with the model given in Annex VII. The guarantee shall

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<sup>4</sup> This provision is inserted only where an audit is provided for in Article 15.6 of Annex II.

remain valid until its release by the European Commission when the total amount of the pre-financing under the Contract is again less than 1.000.000 Euro or after payment of the balance.

Done at [.....] in three originals in the English language, two of them for the Contracting Authority and one for the Beneficiary.

For the Beneficiary

[name and title of the individual(s) authorised to sign]

[signature]

[date]

For the European Community

[name of the official(s) authorised to sign]

[signature]

[date]

## **Annex IV**

### **Procurement by grant Beneficiaries in the context of European Community external actions**

#### **1. GENERAL PRINCIPLES**

If the implementation of an Action requires procurement by the Beneficiary, the contract must be awarded to the most economically advantageous tender (i.e., the tender offering the best price-quality ratio), in accordance with the principles of transparency and fair competition for potential contractors and taking care to avoid any conflicts of interest.

To this end, the Beneficiary must comply with the rules set out in sections 2 to 7 below, subject to section 8.

Where the Beneficiary makes use of the services of a central buying office, the buying office must obey the same rules as the Beneficiary.

In the event of failure to comply with the rules referred to above, expenditure on the operations in question is not eligible for Community financing.

In case the value of the service or supply contract is more than 150,000 € and the value of the works contract is more than 1 million €, the Commission will undertake an ex-ante control as follows:

- a prior approval will be given on the tender dossier before its launch;
- a prior approval will be given with regard to the proposal of award of contract and the Commission endorses the contract;
- a prior approval will be given with regard to the use of the negotiated contract procedure.

The ex-ante control will be done by the Delegation of the European Union in the relevant country.

Below the thresholds mentioned in the preceding paragraph, the Commission will do an ex-post check on the respect of the rules by the Beneficiary.

All contracts for which the Commission does ex-ante checks will be endorsed by the Commission (Delegation of the relevant country) for financing within the limits of the indicated amount.

## **2. ELIGIBILITY FOR CONTRACTS**

### **2.1. The nationality rule**

Participation in tender procedures administered by the Beneficiary is open on equal terms to all natural and legal persons of the eligible Member States of the EU in conformity to the Cotonou Agreement and of the eligible ACP States in conformity to the Cotonou Agreement.

This rule also applies to the experts proposed by service providers taking part in tender procedures or service contracts financed by the grant. Tenderers must state, in the tender, the country of which they are nationals by presenting the usual proof of nationality under their national legislation.

### **2.2. The rule of origin**

If the basic act or the other instruments applicable to the programme under which the grant is financed contain rules of origin for supplies acquired by the Beneficiary in the context of the grant, the tenderer must state the origin of supplies. Contractors must present a certificate of origin to the Beneficiary no later than when the first invoice is presented. The certificate of origin must be made out by the competent authorities of the country of origin of the supplies or supplier and must comply with the international agreements to which that country is a signatory or to the relevant Community legislation if it is an EU Member State.

### **2.3. Exceptions to the rules on nationality and origin**

Where an agreement on widening the market for procurement of goods or services applies, the procurement contracts must also be open to nationals of other countries under the conditions laid down in that agreement.

In addition, in duly substantiated exceptional cases, the Commission may allow nationals of countries other than those referred to in section 2.1 to tender for contracts (or supplies of goods originating in such countries) on the basis of the specific conditions laid down in the basic act or other instrument governing the programme under which the grant is financed.

### **2.4. Grounds for exclusion from participation in procurement**

Candidates or tenderers will be excluded from participation in a procurement procedure if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;

- c) they have been guilty of grave professional misconduct proven by any means which the Beneficiary can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Beneficiary or those of the country where the contract is to be performed;
- e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Candidates or tenderers must certify that they are not in one of the situations listed above.

### **2.5. Exclusion from award of contracts**

Contracts may not be awarded to candidates or tenderers which, during the procurement procedure:

- (a) are subject to a conflict of interests;
- (b) are guilty of misrepresentation in supplying the information required by the Beneficiary as a condition of participation in the contract procedure or fail to supply this information.

### **3. RULES COMMON TO ALL TENDER PROCEDURES**

The tender documents must be drafted in accordance with best international practice. For service and supply contracts worth more than 150,000 € and works contracts worth more than 1 million € the Beneficiary must use the models of tender dossiers annexed to the Practical Guide of contract procedures financed by the 9<sup>th</sup> EDF<sup>5</sup> and published on the website of the Commission and relating to external actions. Below the above mentioned thresholds, and in case the Beneficiary does not have its own documents, he/she may use these models.

The time-limits for receipt of tenders and requests to participate must be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.

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<sup>5</sup> [http://europa.eu.int/comm/europeaid/tender/gestion/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm)

All requests to participate and tenders declared as satisfying the requirements must be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance. This committee must have an odd number of members, at least three, with all the technical and administrative capacities necessary to give an informed opinion on the tenders. For service and supply contracts worth more than 150,000 € and works contracts worth more than 1 million €, the Commission/Delegation of the EU will be invited as observer to the evaluation committees.

#### **4. RULES APPLICABLE TO SERVICE CONTRACTS**

##### **4.1. Contracts worth more than 150,000 €**

Service contracts worth more than 150,000 € must follow the procedures of publication, evaluation and award as described in the Practical Guide of contract procedures financed by the 9<sup>th</sup> EDF<sup>6</sup>, with the exception of the following items:

- no publication in the Official Journal of the EU for international tenders;
- no possibility to use the framework contract procedure;
- establishment of each tender dossier by the Beneficiary (international, local and simplified procedure).

##### **4.2. Contracts worth less or equal to 150,000 €**

Service contracts worth less than 150,000 € must be awarded by means of a negotiated procedure without publication, in which the Beneficiary consults at least three service providers of its choice and negotiates the terms of the contract with one or more of them.

For services of a value of 5,000 € or less, the Beneficiary may place orders on the basis of a single tender.

#### **5. RULES APPLICABLE TO SUPPLY CONTRACTS**

##### **5.1. Contracts worth more than 150,000 €**

Supply contracts worth more than 150,000 € must follow the procedures of publication, evaluation and award as described in the Practical Guide of contract procedures financed by the 9<sup>th</sup> EDF<sup>7</sup>, with the exception of the following items:

- no publication in the Official Journal of the EU for international tenders;

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<sup>6</sup> [http://europa.eu.int/comm/europeaid/tender/gestion/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm)

<sup>7</sup> [http://europa.eu.int/comm/europeaid/tender/gestion/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm)

- establishment of each tender dossier by the Beneficiary (international, local and simplified procedure).

### **5.2. Contracts worth more or equal to 30,000 € and worth less or equal to 150,000 €**

Such contracts are awarded by means of an open tender procedure published locally: the procurement notice is to be published in all appropriate media only in the country where the Action is being carried out.

A local open tender procedure must provide other eligible suppliers with the same opportunities as local firms.

### **5.3. Contracts worth less than 30 000 €**

Supply contracts worth less than 30,000 € must be awarded by means of a negotiated procedure without publication, in which the Beneficiary consults at least three suppliers of its choice and negotiates the terms of the contract with one or more of them.

For supplies of a value of 5,000 € or less, the Beneficiary may place orders on the basis of a single tender.

## **6. RULES APPLICABLE TO WORKS CONTRACTS**

### **6.1. Contracts worth more than 1 million €**

Works contracts worth more than 1 million € must follow the procedures of publication, evaluation and award as described in the Practical Guide of contract procedures financed by the 9<sup>th</sup> EDF<sup>8</sup>, with the exception of the following items:

- no publication in the Official Journal of the EU for international tenders;
- establishment of the tender dossier by the Beneficiary (international, local and simplified procedure).

### **6.2. Contracts worth more or equal to 300,000 € and worth less than 1 million €**

Such contracts are awarded by means of an open tender procedure published locally: the procurement notice is published in all appropriate media but only in the country in which the Action is being carried out.

A local open tender procedure must provide other eligible contractors with the same opportunities as local firms.

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<sup>8</sup> [http://europa.eu.int/comm/europeaid/tender/gestion/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm)

### **6.3. Contracts worth less than 300,000 €**

Works contracts worth less than 300,000 € must be awarded by means of a negotiated procedure without publication, in which the Beneficiary consults at least three contractors of its choice and negotiates the terms of the contract with one or more of them.

For works of a value of 5,000 € or less, the Beneficiary may place orders on the basis of a single tender.

## **7. USE OF THE NEGOTIATED PROCEDURE**

The Beneficiary may use the negotiated procedure on the basis of a single tender in the following cases:

- (a) where, for reasons of extreme urgency brought about by events which the Beneficiary could not have foreseen and which can in no way be attributed to him, the time-limit for the procedures referred to in sections 3 to 6 cannot be kept. The circumstances invoked to justify extreme urgency must in no way be attributable to the Beneficiary.

Actions carried out in crisis situations identified by the Commission are considered to satisfy the test of extreme urgency. The Commission will inform the Beneficiary if a crisis situation exists and when it comes to an end.

- (b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
- (c) where contracts extend activities already under way which are not included in the main contract but which, because of unforeseen circumstances, have become necessary to perform the contract, or which consist of the repetition of similar services entrusted to the contractor providing services under the initial contract;
- (d) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the Beneficiary to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
- (e) for additional works not included in the initial contract concluded which have, through unforeseen circumstances, become necessary for carrying out the works;
- (f) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial terms of the tender procedure are not substantially altered;

- (g) where the contract concerned follows a contest and must, under the rules applying, be awarded to the winner of the contest or to one of the winners of the contest, in which case, all winners shall be invited to participate in the negotiations;
- (h) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;
- (i) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents.

In case the value of the service or supply contract is more than 150,000 € and the value of the works contract is more than 1 million €, the use of the negotiated procedure will be subject to a prior approval of the Commission/Delegation of the EU.

## **8. SPECIAL CASES**

### **8.1. Co-financing**

Where:

- the Action is cofinanced by several donors and
- one of the other donors, whose contribution to the total cost of the Action is greater than that of the Commission, imposes procurement rules on the Beneficiary that differ from those set out in sections 3 to 6,

the Beneficiary may apply the rules imposed by the other donor as far as these procedures offer guarantees equivalent to internationally accepted standards and the Beneficiary receives prior written authorisation by the European Commission. In all cases, the general principles and rules on nationality and origin set out in sections 1 and 2 still apply.

### **8.2. Public administrations of the Member States**

Where the Beneficiary is a contracting authority and/or a contracting entity within the meaning of the Community Directives applicable to procurement procedures, it must apply the relevant provisions of those texts, in preference to the rules set out in 3 to 7.

In all cases, the general principles and rules on nationality and origin set out in 1 and 2 still apply.