

RULES COVERING PUBLIC PROCUREMENT AND GRANTS

Expertise France

The French public agency for international technical assistance

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**EXPERTISE
FRANCE**

AGENCE FRANÇAISE
D'EXPERTISE TECHNIQUE
INTERNATIONALE

Foreword

This document defines the rules covering purchasing contracts (public procurement) and grant contracts awarded by Expertise France for its own purposes and for those of the cooperation projects implemented under its responsibility. It is linked with a set of reference documents incorporating models, guides and forms to be used in accordance with these rules (“the Rules”).

Decision

The Director-General of Expertise France (“the Agency”):

- Having regard to Law no. 2010-873 of 27 July 2010, as amended, on the external activities of the State;
- Having regard to Law no. 2016-1691 of 9 December 2016 on transparency, anti-corruption and modernisation of the economy;
- Having regard to Ordinance no. 2018-1074 of 26 November 2018 establishing the legislative elements of the Public Procurement Code;
- Having regard to Decree no. 2018-1075 of 3 December 2018 establishing the regulatory elements of the Public Procurement Code;
- Having regard to Decree no. 2014-1656 of 29 December 2014 on the Agency, notably Article 11 of said decree;
- Having regard to the Decree of 30 November 2018 on the appointment of the Director-General of the Agency;

hereby approves these rules covering public procurement and grants.

Paris, _____ 2020

Jérémie PELLET

Director-General

These rules come into force once they have been signed by the Director-General of Expertise France.

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INTRODUCTION

In order to ensure the operational implementation of the guiding principles applicable to procurement and grants, the Rules set out the scope, the various procedures to be applied in line with specified financial limits and the main provisions covering the archiving of and access to contractual and tender submission documents.

The Rules are supplemented by a set of tender presentation documents: tender submission information sheets specifying (depending on the nature and amount of the procurement) the different steps of the tender, the role of participants, key review points and standard documents, models and guides.

Rules applicable to public procurement

When placing public procurement contracts, Expertise France is subject to **Ordinance no. 2018-1074 of 26 November 2018**, establishing the legislative elements of the Public Procurement Code, and to its implementation decree, namely **Decree no. 2018-1075 of 3 December 2018**, establishing the regulatory elements of the Public Procurement Code for tenders issued from 1 April 2019.

These texts incorporate the provisions set out in EU directives on public procurement and specify the procedures to be applied for public procurement contracts above EU thresholds, defining the following guiding principles that apply to all contracts or all amounts placed by Expertise France, unless covered by specific derogation:

- The purchasing procedures employed are based on the principles of freedom of access to public procurement, transparency, equal treatment of and non-discrimination between candidates;
- They must maximise the efficiency of public procurement and ensure that financing is used in a proper manner;
- The attainment of objectives in compliance with these general principles will be sought by means of appropriate competition by:
 - Drafting technical specifications for the need with reference, as applicable, to recognised standards;
 - An appropriate level of publication;
 - Specifying a deadline that is adequate for the preparation of bids.

In the context of certain cooperation projects, Expertise France may also apply procurement rules set out in contracts with the main donors (Twinning Manual, EU grant contract, World Bank service contract, etc.).

Rules applicable to the awarding of grants

In order to comply with Pillar 4 for approval of delegated management of EU funds relating to grants, Expertise France adopts the rules set out in Section 5 of the Rules.

Regarding the awarding of grants not relating to EU financing, French rules shall apply, whether emanating from regulatory provisions or case law. In the context of certain cooperation projects, however, Expertise France may also apply award rules for grants (or financial support for third parties) as specified by donors in the main contracts (EU grants, World Bank service contract, etc.).

1. SCOPE OF THE RULES

The Rules are applied by Expertise France to all its purchases of goods, services and works, and to grants awarded under cooperation projects. The scope of the Rules is as follows:

1.1 Contracts falling within the scope of the Rules

For purchasing contracts covering:

- Supplies;
- Works;
- Services, whether recurrent services (reprographics, printing, travel agency services, etc.) or intellectual services (consultancy, design, IT services, etc.);

For grant awards:

- Cash grants:
 - Grants for projects;
 - Operating grants;
- Grants in kind (or transfer of assets).

Regarding the location of contract award and implementation:

- The contracts and grant awards covered by Rules are conducted in the name of Expertise France by its head office in France, by an office located abroad or in the context of its cooperation projects;
- Implementation may take place at head office, in France or abroad;
- If the process is principally conducted abroad, however, special provisions may be applied by the Legal Affairs Department in order to take account of the local legal and economic environment and in light of the need, for efficiency reasons, to delegate to local bodies the role devolved under the Rules to the Evaluation Committee.

Regarding the financing of contracts:

- Subject to any special conditions covering procurement that may be required by donors in the context of international financing, the same procurement and internal control rules shall apply whether the purchase supports the running of the Agency's cross-functional activities or is related to the delivery of a project implemented by Expertise France.

1.2 Exclusions to the application of reference laws and regulations

Article L. 2512 et seq. of the Public Procurement Code covers the various exclusions under which the reference laws and regulations may not be applied, purely on an exceptional basis.

The Rules notably provide for non-application of the reference laws and regulations, notably the Public Procurement Code, in the following circumstances:

- Purchasing contracts to be entered into under procedures specified by an international organisation or in line with a procedure peculiar to an international organisation where the public procurement is being financed in full by said international organisation;
- Purchasing or grant contracts requiring secrecy, or where the execution of which must be accompanied by special security measures, or if so dictated by the essential interests of the State;
- Purchasing and service contracts relating to travel by rail or underground or covering the acquisition or rental of land, buildings or other immovable property.

1.3 Adaptation of application of the Rules to particular contexts

The Rules for placing contracts may be adapted to include the application of specific arrangements in the following circumstances:

- Contracts placed in the name and on behalf of another contracting authority: where it acts under mandate from another public authority or department of the State, Expertise France shall be subject to the rules that apply to said principal;
- Contracts placed in the context of an agreement financed by an international organisation under which Expertise France is required to apply specific procurement rules;
- For purchases requiring specific verification (export inspection process applicable to dual-use goods, health checks, etc.), Expertise France has a duty of compliance and must submit the draft contracts to the relevant authority.

In all other circumstances, the organisational rules of the Agency shall continue to apply, subject to any adaptation of the Evaluation Committee's composition rules. Where no other particular rules apply, the Rules shall apply in accordance with the purchasing procedures set out in the Public Procurement Code.

2. GENERAL PRINCIPLES

2.1 Guiding principles

2.1.1 Equal treatment and non-discrimination

Expertise France respects the principle of equality of treatment between candidates when awarding a public procurement contract, as set out in the Public Procurement Code.

This primarily means that all candidates must enjoy the same opportunities and have the same level of information required to establish the terms of their offer.

Also to be specified and made public are the criteria Expertise France intends to apply to determine the level of economic, financial or technical capacity required from candidates in order to select the bids (public procurement) and project proposals (grants) submitted by applicants. Such criteria must be clear, precise, weighted and justified by the object of the contract, its terms or execution or the stated objectives.

During the procedure, the Expertise France employee must guarantee absolute equality of treatment between candidates with regard to the information relating to the procedure in question. Employees must distinguish between information that may be disseminated and information of a strategic nature of which any disclosure would run the risk of distorting competition and must similarly ensure that no information is provided that would give any company with an unjustified advantage. Companies wishing to obtain information during the procedure must be directed to a single contact person.

In the context of awarding grants under EU financing, no favourable treatment may be shown to any potential beneficiary, not only during the process of determining and selecting beneficiaries, but also during project implementation.

In the context of French financing, the final decision to award a grant is discretionary.

2.1.2 Freedom of access to public procurement

Expertise France applies the principle of candidates' freedom of access to public procurement awards under the conditions set out in the Public Procurement Code.

The criteria of eligibility and of bidder and bid selection adopted by Expertise France must be non-discriminatory.

2.1.3 Transparency

The selection of candidates for a public procurement or grant award procedure must be conducted in complete transparency. Expertise France must therefore publish all the pertinent information required for potential candidates to be able to make a submission in full possession of the facts.

In order to ensure the transparency and traceability of exchanges between Expertise France and the various candidates, questions and responses alike must be issued in writing and be made available to all candidates.

Expertise France must notify the preferred bidder of the result of the procedure and all other candidates of their bid having been rejected, including the reasons for the rejection.

All contracts awarded during a given financial year shall be covered in an annual publication in accordance with applicable regulations and in compliance with confidentiality and security obligations.

2.1.4 Principle of proportionality

All provisions covering competitive tendering, documentation and control of procedures and contracts set out in the Rules shall apply in accordance with the principle of proportionality, i.e. to a greater degree where justified by the value or sensitivity of the contract and the type of procedure in question.

2.2 Ethics and the prevention of conflicts of interest, fraud, money laundering and the financing of illegal, criminal and terrorist activities

All contractual undertakings entered into by the Agency, whether purchases, the awarding of grants or any other form of partnership, require the strict application of the measures implemented by the Agency to prevent conflicts of interest, fraud, money laundering and the financing of illegal, criminal or terrorist activities. Accordingly, during the competitive tendering process and at the time of mobilising the various stakeholders for project implementation, the Agency requires every participant to comply with the prevention rules set out below. These rules fall within the scope of or supplement the internal systems established under the law of 9 December 2016 on transparency, anti-corruption and modernisation of the economy, the so-called "Sapin 2" law.

Employees must make an undertaking prior to being hired that they will declare any personal situation of conflict of interests, whether existing or potential, of which they may become aware during the performance of their functions.

Most notably, any member of the Evaluation Committee placed in a situation of actual or potential conflict of interests in the context of public procurement or the awarding of a grant must immediately notify the Chair of the Evaluation Committee or, failing this, a member of the Legal Affairs Department responsible for the matter at hand. A recusal procedure is then activated in order to distance the committee member from the purchasing or grant process.

In general terms, every employee is required to declare any litigious situation with which they may become confronted: pressure, conflict of interests, requests likely to lead to the commission of an offence, etc.

It should be noted that any act of active or passive corruption, influence peddling, bribery, illegal acquisition of interests or the offences of favouritism or the granting of an unjustified advantage may lead to criminal prosecution, notably in the context of public procurement or the awarding of grants. Furthermore, every employee of Expertise France is obliged under the law to declare any act of fraud or wrongdoing they may witness. Notification and declaration measures to prevent conflicts of interest systematically apply to all Expertise France employees involved in a public procurement procedure and are also extended to procurement activities with external service providers, individual experts and beneficiaries of grants required to place purchase orders in the context of cooperation projects.

In this regard, they take all necessary measures to prevent the following situations:

- **Conflict of interests:** A conflict of interests exists where the impartial and objective execution of a contract is compromised due to reasons of economic interests, political or national affinity, family or emotional links or for any other reason of shared interests.
- **Fraud:** Fraud exists where the impartial and objective execution of the contract results from an act performed via unfair means intended to illicit consent, obtain an undue material advantage or unethical benefit, or which is conducted with the intention of circumventing the performance of the law.
- **Corruption:** Corruption exists where the impartial and objective execution of the contract is compromised by a person requesting, approving or accepting any form of gift, offer, promise, present or advantage in order to carry out, delay or omit to carry out an act directly or indirectly related to the performance of their functions.
- **Favouritism:** Favouritism exists where the impartial and objective execution of the contract is compromised due to any interested party being granted an unjustified advantage contrary to legislative or regulatory provisions with the effect of compromising the freedom of access and equal treatment enjoyed by candidates in the context of public procurement.
- **Insider dealing:** Insider dealing exists where the impartial and objective execution of the contract is compromised due to the dissemination, holding and exploitation by any interested party of so-called inside information, thereby procuring a certain advantage over any other similarly interested party.

Each contractor must declare in writing, using the form provided for this purpose, that it has not agreed to, looked for or sought to obtain or accepted, and undertakes not to agree to look for, seek to obtain or accept any advantage, whether financial or in kind, in favour or on behalf of any person where said advantage constitutes an illegal practice as set out above and may be likened to a gratuity or reward relating to the execution of the contract.

For the purposes of the execution of its contracts, Expertise France and all its contractors shall comply with the embargo rules and prescriptions adopted by the United Nations, European

Union and France¹ in addition to the ten principles of the UN Global Compact, which may be viewed at the following website address:

<https://www.unglobalcompact.org/what-is-gc/mission/principles>

Expertise France and its contractors shall make every effort, notably via a system verifying non-inclusion on exclusion lists, in order to ensure that its procurement and grant contracts do not contribute directly or indirectly to any criminal organisation or to money laundering, or to any other illegal activity or one which may undermine the financial interests of the EU or France.

For the application of these various principles, the Legal Affairs Department may be consulted by employees and by any other person participating in the procurement or grant contract on behalf of Expertise France (procurement expert, assessor, etc.), as may be the Whistleblowing Officer of Expertise France (see 2.2.3).

2.2.1 Contractor exclusion from public procurement or grant financing

Pursuant to:

- Law no. 2016-1691 of 9 December 2016 on transparency, anti-corruption and modernisation of the economy, the so-called “Sapin 2” law;
- Chapter II of the French Monetary and Financial Code setting out provisions for the freezing of assets and the prohibition of the making available of funds (notably Article L. 562-4 and Article L. 562-5);
- Relevant requirements emanating from accreditation for managing delegated EU funds (Pillar 7 relating to exclusion from accessing financing);
- Any final court ruling or administrative decision concerning any of the following matters:
 - Bankruptcy, insolvency or liquidation
 - Violation of obligations to pay taxes or social security contributions
 - Serious professional misconduct, including false declarations
 - Fraud
 - Corruption
 - Inappropriate conduct relating to criminal organisations
 - Money laundering or terrorism financing
 - Terrorist offences or offences relating to terrorist activities
 - Child labour or any form of human trafficking
 - Any form of irregularity
 - Creation of a shell company

Inclusion on any official exclusion list constitutes in its own right an ineligibility criterion for any bidder, whether principal, co-contractor, subcontractor or co-applicant to a public procurement or grant contract, regardless of the sum of money at stake.

¹ For information purposes, the list can be viewed at the following website: <https://www.sanctionsmap.eu>

This verification procedure is to be carried out in accordance with the due diligence procedure adopted by Expertise France. This verification and exclusion system is designed to facilitate the detection of persons and entities posing a threat to the interests of Expertise France or its donor. The objective is to prevent entities and persons subject to specific exclusion situations (or “exclusion motives”) from receiving funds from Expertise France or any of its beneficiaries, or from participation in public procurement or grant award procedures.

The exclusion decision shall be taken in accordance with the due diligence procedure in light of a definitive court ruling or administrative decision or, in the absence of any such ruling or decision, on the basis of established facts or findings and their preliminary legal assessment.

2.2.2 Notification obligation

The contractor must notify Expertise France in writing and without undue delay of any situation contravening the ethical undertakings set out in its Code that may come to pass during the execution of a contract placed by Expertise France. It shall immediately take all necessary measures to remedy any such situation. Expertise France reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken within a specific deadline.

The contractor shall notify the pertinent obligations in writing to the members of its personnel and to any natural person authorised to represent it or to take decisions on its behalf, and shall ensure that the interested parties are not placed in a situation which could give rise to a conflict of interest.

2.2.3 Whistleblowing

If, during the performance of their functions, any employee of Expertise France or any co-contractor or expert participating in a cooperation project becomes aware of a crime, offence or serious and manifest violation of any international undertaking duly ratified or approved by France (or of a unilateral act of an international organisation issued on the basis of any such undertaking), or of a breach of the law or regulations, or becomes aware of any threat or serious prejudice to the public interest, they may notify the situation in question to the Whistleblowing Officer of Expertise France.

As applicable, they shall enjoy the status of whistleblower acting in good faith and benefit from the triple protection set out in regulations, namely (i) strict confidentiality of the process, (ii) prohibition on any professional reprisals being taken against them, and (iii) criminal non-culpability.

The Whistleblowing Officer for Expertise France is the one who reports to the French Minister for Europe and Foreign Affairs. Contact details:

E-mail: referent.lanceursdalerte@diplomatie.gouv.fr

Tel: +33 1 43 17 69 84

Bureau CNV C 366 B,
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75732 PARIS CEDEX 15.

2.2.4 Ethics during interaction with companies

The principle of equality of treatment between candidates must prevail, including prior to the launch of the procedure, notably in the context of sourcing and benchmarking activities relating to suppliers and partners (commercial activities with potential candidates, exhibition visits, product presentations, etc.).

The offence of favouritism may notably arise when a company executing a contract is a potential candidate for a new contract. In order to maintain the principle of transparency and equality of treatment, the buyer and incumbent contractor may not discuss the new procedure.

Accepting invitations to a restaurant or gifts from companies may compromise the independence or integrity of the employee and give rise to conflicts of interest and a degree of ambiguity in their working relationships.

In general terms, in the context of their participation in contract award procedures, all employees of Expertise France must comply with the Code of Conduct applicable within the Agency.

2.3 Principles relating to contract scheduling, awards and monitoring

2.3.1 Scheduling of requirements

Expertise France takes all the necessary steps to anticipate its purchasing requirements and grant projects. It makes every effort to identify in year N-1 all purchases and grants to be covered by a contract award in year N. In the context of cooperation projects, Expertise France rationalizes its purchasing requirements in order to optimise the forecast scheduling of cross-functional and multi-annual purchasing contracts, with the support of the Legal Affairs Department.

A contract award plan is established for every project incorporating a large volume of purchasing and grant contracts to be entered into. These are defined as projects involving:

- More than 5 contracts in any given year;
- More than 10 contracts over the duration of the project;
- At least one works contract of a value greater than €40,000 excluding VAT over the duration of the project.

Such projects require the Specification Department or the project team to establish a clear plan for the placement of contracts (PPC) setting out the scheduling of contract awards throughout the project duration. The PPC must be approved by the Legal Affairs Department and be updated every 6 months.

Whenever possible, the schedule must be published at the start of the year.

2.3.2 Financial estimate of needs and determination of the procedure

The initial determination and financial estimate of the needs require particular attention such that purchases of the same nature conducted by different departments may be aggregated. An overall financial estimate must be made once the buyer determines which threshold-dependent procedure is to be employed.

The procedure is selected by reconciling the estimate of the need with EU thresholds requiring, as applicable, a formalised procedure to be conducted (amount above the EU threshold) or an adapted procedure (amount below the EU threshold).

The definition of the needs must be genuine and may not be split up in order to avoid the publication and competitive tendering obligations in order to remain below the formalized procedure thresholds (a practice known as “salami slicing”).

An estimate of the total value of the needs must be made for services, goods or works considered to be uniform (inherent properties or functional unit) throughout the term of the proposed contract.

A functional unit covers all the requirements of works, goods or services contributing to the delivery of a given project, such as:

- Work carried out by carpenters, plumbers or electricians in order to fully renovate a building;
- The purchase of medical equipment and the services of a trainer to reinforce the operational capacity of a medical center;
- IT software development and maintenance services and user change management training in support of the installation and acceptance of a new administration IT system.

The estimated value of the need is calculated based on the total amount excluding VAT of the proposed contracts.

2.3.3 Expression of needs

Specifications are to be produced by Expertise France in complete independence and may not favour any particular company. The clarity and neutrality of the expression of needs must enable potential candidates to provide a technical and financial offer in keeping with their own expertise in terms of processes and know-how.

2.3.4 Allotment

As a matter of principle, each procedure should be broken down into different lots. Any non-allotment must be justified in the tender documents or, failing this, in the bid analysis report.

Where allotment takes place, the services are broken down into different lots each covered by a separate contract. Allotment is particularly appropriate where the characteristics of the contract exceed the technical and financial capacity of a single company. In all cases, it is the estimated amount of all the lots of given tender that must be used to estimate the needs and therefore to determine which procedure should be applied.

2.3.5 Eco-responsible and socially responsible purchasing

In order to take account of the national objectives specified for French public-sector buyers in terms of eco-responsible and socially responsible purchasing, every effort must be made by Expertise France to apply these requirements when placing contracts.

In compliance with the principles of freedom of access and equality of treatment in public procurement, when producing specifications and/or bid selection criteria, all Expertise France employees must:

1. Favour technical solutions and products that generate a minimum of waste and/or are recyclable and, as far as possible, take account of their total cost-in-use;
2. Favour an organizational structure that maximizes the use of non-polluting modes of transport or, failing this, the least polluting, and limit travel as far as possible;
3. Favour devices and technical solutions with low consumption of energy, raw materials and non-food products;

4. Favour at least reasonable use of chemicals and even avoid their utilisation by means of substitute technical solutions or alternative products that are eco-labelled as environmentally friendly, or equivalent;
5. Favour eco-responsible construction, development and renovation solutions;
6. Encourage the use of food products certified to have been sourced from organic farming, sustainable agriculture or fair trade;
7. Encourage as far as possible the employment and inclusion of people who have been excluded from the workplace.

2.3.6 Referencing and publication of contract awards

Expertise France allocates a reference number to all purchasing contracts of more than €1,000 excluding VAT and all grant contracts of any amount, recorded in ATLAS for contracts placed in the context of cooperation projects and in CRONOS for the own requirements of Expertise France (head office requirements).

At the start of each year Expertise France publishes a summary of all purchasing and grant contracts recorded during the previous year, in accordance with the procedure covering the publication of essential contract information.

2.3.7 Dematerialisation of purchasing

Purchases of more than €40,000 excluding VAT must be dematerialised via the PLACE government purchasing platform, at www.marchespublics.fr.

Certain exceptions to this obligation have been provided for, however, notably for public procurement contacts negotiated without prior publication or competitive tendering, namely direct negotiation as set out in Articles R. 2122-1 to R. 2122-11 of the Public Procurement Code, or for the public procurement of social services and other specific services set out in Article R. 2132-12 of the Public Procurement Code.

PLACE is notably used to:

- Place the tender documents online to enable them to be accessed by any interested company via the download link contained in the publication;
- Receive applications and bids;
- Receive candidates' questions and issue responses;
- Request and receive from candidates any missing documents;
- Announce awards;
- Publish essential contract data;
- Electronically archive all documents and exchanges relating to the procedures.

2.3.8 Use of the Legal Affairs Department's contract models

Purchasing and grant contracts placed by Expertise France must be prepared on the basis of models available on the intranet, issued by the Legal Affairs Department. Any waiver request must be approved in advance by the Legal Affairs Department.

2.3.9 Ex ante contract control conducted by the Legal Affairs Department

Level 1 (ex-ante) controls, i.e. prior to the validation of any stage of the procedure or to the taking of a decision, are carried out by the Legal Affairs Department in accordance with the contract amount and with the Rules, duly summarised in tables provided in annex.

Controls are documented by a non-objection opinion (NOO) that may take the form of validation or the formulation of objections or recommendations, notably in relation to the regulatory conformity of the procedure, the contractual and financial security of the proposed contract and the administrative acceptability or eligibility of the preferred bidder.

Depending on the significance of the objections announced by the Legal Affairs Department, it may require receipt of documents modified accordingly in order to be able to issue a NON if the objections are judged by the Legal Affairs Department to be critical, or demand to be kept informed of the action taken by the specifications department in response to said objections, prior to the signing of the contract.

In the event of rejection by the Legal Affairs Department, the matter may be passed up the line to the Director-General for a decision on validation and/or the modifications to be made to the documents.

2.3.10 Ex post contract control

Level 2 (ex post) contract control, i.e. carried out after the contract comes into force or even after its full execution, is conducted and monitored by the Legal Affairs Department or delegated to another department. Every year, the Legal Affairs Department and Internal Control Department jointly agree a Level 2 contract control plan for the year ahead. These controls may cover the regulatory conformity of the procedure, the contractual and financial security of the contracts, the contractual conformity of their execution, the administrative acceptability of incumbent contractors and the detection of fraud.

Controls are carried out via sampling and are defined in a control sheet designed to reveal any non-conformities and possible areas of improvement to the contract award process. It must also lead to recommendations and improvements to be applied to the internal control system.

Level 3 controls may also be carried out at any time by Internal Audit, covering all types of contract entered into by Expertise France.

2.3.11 Adapting the process, contract models and control mechanisms

The Legal Affairs Department may propose modifications of the process and changes to any delegated purchasing/grant control responsibilities where the PPC of a project is especially large or it is justified by the project implementation context, and is able to be supported by a competent team on the ground.

Such exceptions to the Rules must take account of the organisational structure of the project and optimise the placement of related implementation contracts. They may cover documentation, the holding of Evaluation Committee meetings, shared or delegated responsibility for competent bodies and the terms under which the departments responsible for Level 1 and 2 controls perform their tasks.

Regardless of the circumstances, such adaptations must be covered by a specific decision jointly approved by the Legal Affairs Department and the Head of Internal Control of Expertise France.

2.4 Principles governing contract execution

2.4.1 Monitoring of execution and compliance with contractual clauses during execution

The specifications department is responsible for monitoring contract execution and for ensuring compliance with contractual clauses. It notably ensures compliance with the financial framework of the contract (prices, penalties, prefinancing terms, etc.), with technical clauses (materials/products used, technical requirements, quality levels, etc.) and with administrative clauses (deadlines, verification, reporting, suspension, etc.).

2.4.2 Non-retroactivity

As a matter of principle, it is prohibited to enter into a contract retroactively, i.e. after the commencement of services, goods, works or project constituting the object of the contract.

However, retroactivity is permissible in the context of a grant within the following limits:

Grants may not be used to finance projects that have already been completed and which have therefore been demonstrated to be feasible without financial support from Expertise France. This rule also prohibits the awarding of operating grants to activities carried out during the beneficiary's previous financial years.

A grant may exceptionally be awarded during a project if the applicants are able to demonstrate and substantiate the necessity for commencing the project prior to contract signature. In such cases, the expenditure incurred prior to submission of the grant application are in principle ineligible for financing.

Expenditure incurred at an earlier date, i.e. prior to the signing of the grant contract, is only eligible in duly substantiated exceptional circumstances in a situation of extreme urgency and where rapid commitment from Expertise France is of particular importance:

- In the context of humanitarian aid;
- For emergency aid operations, civil protection operations or aid targeting crisis situations;
- And any other duly justified exceptional and urgent situation.

In such cases, the grant contract must explicitly state an eligibility date prior to the application submission date and comply with the eligibility rules specified in the financing contract entered into with the donor. The pertinent eligibility date must be stated in the call for projects rules issued to applicants.

All operating grants must be allocated within four months of the start of the beneficiary's budget year. The costs eligible for financing may not pre-date the grant application submission date nor the start of the beneficiary's budget year.

2.4.3 Prior verification of invoices received

Prior to making any payment, Expertise France must verify the services, goods and works delivered or performed on its account. The person duly designated in the contract must certify that the services, deliveries of goods or the works have been completed in accordance with the contractual provisions, notably the specifications. This may take the form of written notification, certification on delivery notes or a clear signature on the invoice itself (Service delivered - certified by: ...).

Only unreserved acceptance expressed by Expertise France justifies the forwarding of invoices and confers entitlement to definitive settlement of due amounts.

2.4.4 Rule of origin applicable to goods

In the context of the performance of contracts placed with an EU body, Expertise France shall verify compliance with the rule of origin as defined in the CIR (Common Implementing Regulation) governing project implementation outside the EU depending on the financial instrument in question (European Commission, FED, FFU, ISP, etc.).

Exemption from the rule of origin may be requested from the donor prior to the contract being signed with the latter.

Failing this, the rule of origin applies to goods (supplies, materials or items to be incorporated within or form part of permanent structures) of a value over €100,000 excluding VAT acquired in the context of a goods or works contract.

Consequently, at the bid submission stage in the context of implementation of a project financed by the EU, the supplier's bid must clearly state the origin of the goods and supplies being offered

and demonstrate their compliance with the applicable rule of origin. In the event of non-compliance with the rule of origin, the bids in question must be rejected.

In the event of any doubt regarding the origin of products, additional information must be requested.

Certificates of origin must be presented during contract execution, at the latest when the provisional acceptance certificate is requested. Failing this, the adjudicating authority shall suspend the payments due to the contractor.

Goods and supplies failing to comply with the rule of origin or where the origin cannot be substantiated by a certificate issued by a competent authority must be rejected, in accordance with our undertaking to the donor.

2.4.5 Definitive payment in arrears

Amounts due under a contract shall be settled in arrears, i.e. after receipt or utilisation of a good or service. Payment shall therefore be made at the end of the period in which it is due. The holder of a public procurement contract may only request payment for services once they have been delivered and Expertise France has certified that they comply with the contract as signed.

Under the conditions set out in the Public Procurement Code, the holder of a contract may receive a down payment prior to commencement of the services and further advances as service delivery progresses, unless it has expressly waived the benefits thereof.

2.4.6 Contract modification via amendment

A contract currently in force (public procurement contract, consortium agreement, lease contract, etc.) may be amended.

Amendments may not change the object of the contract nor disrupt its economic balance, unless caused by unforeseen technical constraints outside the parties' control.

The contract amount may be amended. Apart from in exceptional circumstances, the amount of the modification must be below EU thresholds and below 10% of the initial contract value for public procurement contracts covering services and goods, and below 15% for works contracts.

The controls conducted by the Legal Affairs Department on an amendment apply to amendments for contracts with a value of over €100,000 excluding VAT, regardless of the financial impact.

The amendment must be signed by a person enjoying the level of signing authority that applies to the value of the contract to which the amendment relates.

2.4.7 Value added tax (VAT)

The terms for applying value added tax are set out in a specific note drawn up by the Finance Department of Expertise France and can be viewed on the intranet.

3. COMPETENT BODIES

As a matter of principle, the **Board of Directors of Expertise France** is responsible for approving tender and contract awards.

As the representative of the Agency in law and under the articles of association, the **Director-General of Expertise France** is responsible as a matter of principle for signing purchasing and grant contracts.

Via adoption of the Rules, the Director-General of Expertise France delegates contract award and rejection decisions to the bodies set out below, notably to the Evaluation Committee (in its restricted and enlarged forms), of which the members are designated specifically for each award procedure.

The Director-General may delegate authority to other employees for the signing of contracts or any other procedural instrument required for the conclusion of said contracts (see signing authorities on the intranet).

The **specifications department** is the department of Expertise France for which the purchase is made and is therefore at the origin of the purchase. It is responsible for drafting the specifications and for technical analysis of the bids. Once the contract has been awarded, it is responsible for its effective execution and financial monitoring until its conclusion.

The **Specifications Manager** (SM) is the manager of the specifications department for which the purchase is made.

The **Project Coordinator, Project Manager or a member of the local team** may be provided with ad hoc signing authority by the Director-General. A such person may not have the status of treasurer and the delegation or mandate must be justified by the requirement for a high number of small purchases to be made.

Reporting to the Department of Transversal Functions, the **Legal Affairs Department** (LAD) is responsible for ex ante permanent control of purchase and grant procedure implementation, for proposing any general or special measure to this end to the Director-General, notably entailing a modification of the Rules, and for acting in an expert and consultative capacity for the various departments in the definition and implementation of their purchasing and grant award procedures. It is also responsible for ex post permanent control of the effective implementation of the Rules and for compliance with the purchasing and grant processes of Expertise France.

The **Contract Manager** is the person responsible for implementing the contract award procedure and for administration during its execution. Depending on the model applicable to the project, the contract manager may be the Specifications Manager, the person responsible for specifications in the local team, a member of the Legal Affairs Department or an external consultant (procurement expert). On project launch, the role of the contract manager must be clearly assigned to a member of the project team.

The **Buyer** (BUY) reporting to the Legal Affairs Department coordinates purchases, meeting “needs specific to a department or the cross-functional needs” of Expertise France. To this end, the buyer produces a draft annual purchasing policy, proposes purchasing gain objectives and monitors the process. The buyer coordinates the expression of needs and produces the annual procurement plan designed to meet the “head office requirements” of the Agency and the cross-functional requirements of the Operations Department during implementation of cooperation projects. The buyer collates the expressed recurrent purchasing requirements for consolidation purposes and establishes robust procurement processes and framework agreements for the contracts under their responsibility. Depending on the value of the purchasing contract, the buyer validates specifications, candidate analysis and the bids, and subsequently manages negotiations.

For all procedures in excess of €40,000 euros excluding VAT, the **Bid Opening Committee** (BOC) is responsible for time-stamping and receiving bids and applications, for opening submissions, for verifying the enclosed documents and for circulating to the various internal participants within Expertise France all the documents required to analyse bids and applications in accordance with their specifically assigned roles. Each BOC meeting produces a record of all submissions and documents received at each stage of the procedure.

For all procedures in excess of €200,000 excluding VAT, the **Expanded Evaluation Committee** (EEC) is responsible for analysing bids, applications and, on conclusion of the procedure, for issuing a contract award proposal. The committee issues an opinion on the draft contract, on compliance with the guiding principles of public procurement, on the correctness of the adopted award procedure, on candidate selection and on negotiating documents for procedures where negotiation is authorised and for proposing the successful candidate.

The holding of an EEC meeting is optional for contracts not subject to competitive tendering and without prior publication.

It is composed of the following **permanent members**:

- The **Chair**, whose role is performed by a representative of the Legal Affairs Department. The Chair is responsible for verifying that the correct procedure has been adopted and for ensuring compliance with the principles of public expenditure and, as applicable, with grant award principles. The Chair does not vote on the award proposal but validates the administrative acceptability of the successful candidate and the regulatory compliance of the award procedure, in addition to issuing an opinion on the legal and contractual security of the draft contract. The Chair issues final validation on behalf of the Evaluation Committee with regard to the procedure adopted and the resultant award proposal;
- An odd number of **Appraisers** (at least 3) each holding one vote, responsible for analysing candidates, bids and project proposals. The Appraisers must be permanent employees of Expertise France (at head office or in the field) and are designated at the start of each procedure by the department to which the subject matter of the process relates.

For purchases meeting “head office requirements”, a buyer must be an appraiser member of the Evaluation Committee. For purchases conducted in the context of a cooperation

project, a non-permanent employee (project manager, project expert or representative of the donor or beneficiary) may be designated as an appraiser member of the Evaluation Committee, subject to prior approval from the Legal Affairs Department and providing a majority of Appraisers are permanent employees of Expertise France;

- A **Secretary** responsible for producing minutes and preparing the letters resulting from the Committee's decisions. The Secretary must be a member of the Legal Affairs Department if the draft contract covers the own requirements of Expertise France. The secretarial role is performed jointly by the Legal Affairs Department and specifications department for contracts placed in the context of cooperation projects. The Secretary is a non-voting role.

The following are invited as **permanent non-voting observers**:

- CGEFI, responsible for economic and financial control at Expertise France;
- The Operations Department employee responsible for administrative and financial coordination;
- The Finance Department employee responsible for management control over the head office budget or cooperation project.

The following may also be designated by the Chair as **non-permanent, non-voting observers**:

- Any person whose participation is of particular merit given the object of the contract.

The contract signatory may not be a committee member.

The committee shall sit validly if convened three days prior to the date of the meeting. The committee may validly deliberate if a quorum of Appraisers (voting members) is in attendance.

If quorum is not achieved, the committee shall be reconvened. On second meeting, it may validly deliberate without quorum. In any such case, the Chair shall record the dispensation of quorum in the minutes.

The Reduced Evaluation Committee (REC) enjoys competence for all procedures of between €40,000 and €200,000 excluding VAT; it is responsible for analysing candidates, bids and award proposals. It is composed of an odd number of Appraisers (at least 3), a majority of whom must be permanent employees of Expertise France. The Appraisers are designated at the start of each contract procedure by the head of the department concerned. The contract signatory may not be a member of the REC.

REC meetings may be convened via all reasonable means without any specified deadlines. The quorum rule does not apply to REC meetings.

Assessors: As and when required, external or internal assessors may perform all or part of the related administrative or technical analysis, such that the Evaluation Committee is able to deliberate on the basis of said analysis. Assessors work under the supervision of the Chair of the Evaluation Committee, who may delegate this task to any competent Appraiser. Assessors

participate in Evaluation Committee meetings as observers in order to present the findings of their assessments and to answer any questions the Evaluation Committee may have.

The **CGEFI** (Economic & Financial General Comptroller) acts as ex ante controller of contract award procedures.

4. PUBLIC PROCUREMENT CONTRACT AWARD PROCEDURES

4.1 Overview

The award procedure employed and the level of documentation required depend on the estimated amount and type of expenditure.

The amount in question is the maximum amount of the contract excluding VAT, covering all items and lots over its full term and including all possible extensions to the term of the project.

- **Purchase of an estimated amount above €200,000 excluding VAT for goods and services and above €5,350,000 excluding VAT for works:** the formalised procedures that may be employed are the call for tenders (open or restricted) and, subject to regulatory provisions, the directly negotiated procedure with competitive tendering, competitive dialogue or competitive tendering alone. Where regulatory conditions have been met, it is also possible to employ a negotiated procedure without competitive tendering or an adapted procedure.
- **Purchase of an estimated amount between €40,000 and €200,000 excluding VAT:** an adapted procedure based on the formalised procedures is to be employed, with the following main simplifications:
 - o Companies are not subject to any minimum response time for submitting their application or bid;
 - o A directly negotiated procedure may be conducted with five companies or the publication process may be adapted;
 - o Negotiations may be held with the best-placed candidates.
- **Purchase of an estimated amount below €40,000 excluding VAT:** an adapted procedure is to be employed, with the following main simplifications:
 - o Drafting of simplified contract/specifications for services and works, or a countersigned quote (simple technical and commercial offer) for goods;
 - o A company may be selected directly, subject to the Specifications Manager being able to justify the selected contractor via all reasonable means and that the same contractor has not been used on multiple successive occasions where there are multiple economic operators in the sector in question.
- **Special case: service contract placed with individual experts for cooperation projects:** the Agency may call on individual experts for project implementation. The individual consultant selection procedure has specific characteristics, as set out below. The individual consultants shall be covered by a service contract concluded *intuitu personae* directly with the expert if they have legal personality (self-employed) or via an umbrella company. However, the use of individual experts must be assessed on a case-by-case basis and must not constitute a systematic approach covering all types of need

having the effect of undermining the expression of needs process and seeking pertinent offers from qualified operators.

4.2 Negotiated procedure without competitive tendering (direct negotiations)

4.2.1 Payment against invoice for purchases below €1,000 excluding VAT

Certain purchases of goods and services specified in the budget of a cooperation project or of an Expertise France department may be paid directly against invoice to local service providers, suppliers or retailers without entering into any prior legal undertaking.

This flexible purchasing procedure is authorised up to 1,000 euros excluding VAT per purchase for limited categories of purchase (fuel, printing services, office equipment, IT consumables, catering, etc.), a list of which is in annex to the Rules.

Such direct purchases may be made by the designated signatory of an Expertise France bank account or petty cash facility, or by any other Expertise France employee authorised under a delegated signing authority or prior purchasing authorisation. In the context of cooperation projects, prior purchasing authorisations must be recorded in writing by a person authorised to enter into commitments on behalf of Expertise France.

The invoice settled at the time of the purchase must be retained; it constitutes proof of the purchase, of the eligibility of the expenditure or of the expenses reimbursement claim. Receipts are to be forwarded to and recorded by the accounts department in accordance with applicable procedures.

It should be noted that such expenditure may not be split up in order to artificially circumvent the obligation to enter into a prior legal undertaking (i.e. no “salami slicing”).

4.2.2 Negotiated procedure without competitive tendering for purchases below €40,000 excluding VAT (direct negotiations)

Applicable rule

In accordance with Article R. 2122-8 of the Public Procurement Code, the buyer may, in principle, negotiate a contract directly if the value is below 40,000 euros excluding VAT.

However, this option is subject to “*ensuring that a pertinent offer is selected, that proper use is made of public funds and that **contracts are not systematically entered into with the same economic operator where there are multiple offers able to meet the need in question***”.

Formal requirements applicable to contracts and procurement documents

A draft simplified contract (or at least a countersigned quote for goods) must be produced.

The tender documents are to be composed of a technical description of the need accompanied, as applicable, by a draft simplified contract and/or a letter of procurement.

Main stages of the procedure

The simplified procedure is implemented in full by the specifications department.

The stages are as follows:

- Identification of one or more companies potentially able to satisfy the need;
- Verification of the preferred bidder's eligibility;
- Head office purchases above 5,000 euros excluding VAT must be submitted for approval to a buyer in the Legal Affairs Department for verification of its compliance with the Expertise France purchasing policy;
- Drafting and forwarding of the tender documents via e-mail;
- Based on the offer submitted, negotiations may be held with the supplier;
- Drafting of the contract and/or the company's quote;
- Signing of the contract by a person authorised to commit Expertise France;
- Notification of contract award to the successful supplier.

Note:

- All contracts above 1,000 euros excluding VAT must be numbered

4.2.3 Negotiated procedure without competitive tendering for purchases above €40,000 excluding VAT (direct negotiations)

Applicable rule

Direct negotiation of a contract above 40,000 euros excluding VAT must be justified by the nature or circumstances of the purchase in accordance with the legal bases set out in Article R2122 of the Public Procurement Code (de facto or de jure monopoly, additional contracts, consequences of an unsuccessful tender, etc.). Accordingly, the use of this procedure must be covered by a reasoned and clear justification demonstrating consistency between the object of the proposed contract, the circumstances of its implementation and the applicable legal basis.

Prior to commencing the procedure, the reasoned argument must be submitted to the Legal Affairs Department for a NON.

Formal requirements applicable to contracts and procurement documents

The draft contract and tender documents must meet the standard formalised requirements and be adapted using the Expertise France document models available on the intranet.

Main stages of the procedure

The stages are as follows:

- Identification of the company able to satisfy the need;
- Verification of the preferred bidder's eligibility;
- Legal Affairs Department NON covering justification of the directly negotiated procedure being used without competitive tendering;
- Head office purchases above 5,000 euros excluding VAT must be submitted for approval to a buyer in the Legal Affairs Department for verification of compliance with the Expertise France purchasing policy;
- The following are to be drafted and, as applicable, forwarded to the pre-selected company:
 - Specifications (or detailed technical specifications for goods purchases);
 - Draft contract;
 - Procurement letter;
- Based on the offer submitted, negotiations may be held with the supplier;
- Final contract;
- Contractualisation report, notably including justification of the procedure and any negotiation stages;
- Verification of the preferred bidder's eligibility;
- From 100,000 euros excluding VAT, Legal Affairs Department NON for the contractualisation report and draft contract;
- From 200,000 euros excluding VAT, CGEFI opinion;
- Signing of the contract by a person authorised to commit Expertise France;
- Notification of contract award to the supplier.

Note:

- All contracts must be numbered

4.3 Procedure for purchases between €40,000 and €200,000 excluding VAT with competitive tendering (adapted publication or restricted tendering)

General comments

For this type of purchase, French regulations require implementation of the adapted procedure set out in Article R2123 et seq. of the Public Procurement Code.

The adapted procedure is a competitive procedure that may also be subject to negotiation. Competitive tendering may take the form of publication (in appropriate media) or a restricted tender involving at least 5 (five) companies able to make a suitable offer to a need expressed in specifications.

Restricted tendering may only be used after verifying that the identified companies enjoy sufficient objective characteristics enabling them to satisfy the expressed need.

Formal requirements applicable to the contract and tender documents

The draft contract and procurement documents must comply with the standard Expertise France contract and tender document models available on the intranet.

The tender documents generally comprise the following:

- Tender rules, notably including:
 - Bidder selection criteria: the Expertise France requirements must be listed in terms of technical and financial capacity in order to select only acceptable candidates and, in the case of restricted and negotiated procedures, to classify candidates such that the best can be selected;
 - The submission assessment criteria and weightings;
 - A detailed description of the tender process.

The objective of this document is to specify the framework for competitive tendering and for the submission of applications and bids; the provisions apply to both candidates and the awarding body but this document has no contractual value.

- Draft special and general clauses to apply to the contact;
- Specifications, or Special Technical Specifications (STCs):

This document defines the need to be covered in the form of technical specifications of the service in question. The specifications department is responsible for drafting this document and any annexes (financial, plans, drawings, etc.); it has contractual value.

Competent bodies and responsible persons

The roles of the competent bodies are as follows:

- For purchases made in the context of cooperation projects, the buyer attached to the specifications department, or the specifications department itself, is directly responsible for managing the procedure, for drafting the tender documents and defining the mode of publication, by exploiting standard documents provided by the Legal Affairs Department;
- The specifications department is free to select the appropriate mode of publication in accordance with the characteristics of the contract (notably the type and value of the services). This may be via a publication in appropriate media (local legal gazette, dedicated international cooperation tender publication, professional social networks, tender platform announcement platform, etc.) or direct negotiation with at least five companies possessing adequate objective characteristics enabling them to satisfy the expressed need;
- The Reduced Evaluation Committee (REC) composed on an odd number of designated Assessors is responsible for analysing and selecting the preferred bidder;

From €100,000 excluding VAT, the Legal Affairs Department must:

- Validate the procedure by issuing a non-objection opinion prior to launch, notably verifying the conformity of the competitive tendering provisions (candidate and bid criteria and, as applicable, pre-selected companies or the tender announcement and publication media), and designate the Assessors and document models to be used.
- Issue a non-objection opinion at the end of the award procedure prior to the contract being signed by a person authorised to commit Expertise France.

Main stages of the procedure

1. Identification of needs;

2. Head office purchases above 5,000 euros excluding VAT must be submitted for approval to a buyer in the Legal Affairs Department for verification of compliance with the Expertise France purchasing policy;

3. Sourcing approach, if deemed pertinent;

4. Definition of the specifications and tender documents;

5. Verification of the candidates placed on the restricted list, as applicable;

6. From €100,000 excluding VAT, NON from the Legal Affairs Department on the proposed procedure and competitive tendering provisions; Validation of the list of Assessors proposed by the specifications department;

7. Drafting and forwarding of the publication, as applicable;

8. Placing of tender documents online, as applicable, publication on additional websites;

9. Tender duration (application phase) – Exchanges and questions & answers;

10. Receipt of applications - BOC report;
11. Analysis of applications and definition of the restricted list;
12. Tender duration (bid phase) – Exchanges and questions & answers;
13. Receipt of bids - BOC report;
14. Technical and financial analysis of bids, classification of bidders and identification of negotiation areas/requests for clarification;
15. Negotiation, as applicable: negotiation sessions and submission of optimised bids;
16. Completion of bid analysis and verification of the preferred bidder's eligibility;
17. Validation by the Assessors of the contractualisation report;
18. Verification of the preferred bidder's eligibility (if not carried out during the restricted list stage);
19. From €100,000 excluding VAT, Legal Affairs Department NON for the analysis report, contractualisation report and draft contract;
20. Forwarding of rejection letters;
21. Signature of the contract by the Director-General of Expertise France or their authorised signatory;
22. Contract notification;
23. Archiving.

Note:

- There is no mandatory regulatory period for the submission of applications. However, the period must be reasonable, i.e. sufficiently long to enable potential applicant companies to respond and to guarantee effective competitive tendering (at least 2 to 3 weeks, depending on the complexity of the purchase).
- The utilisation of PLACE is mandatory.
- All contracts must be numbered.

4.4 Procedure for purchases above €200,000 excluding VAT with competitive tendering

Description of applicable regulatory procedures

For this type of purchase, French regulations set out two types of competitive procedure, namely formalised procedures and adapted procedures.

Adapted procedures below EU thresholds

The adapted procedures set out in Article R2123 et seq. of the Decree of 3 December 2018 are applicable:

- To purchases of works, services and goods below the applicable EU² thresholds.
- To purchases of so-called social services and other specific services covered by Article R2123.1.3°.

Including for purchases covered by the exclusions set out in Article L2512 et seq. and Article L2513 et seq. of the Public Procurement Code, the adapted competitive tendering procedure may be used should the circumstances so dictate.

The adapted procedure is the negotiated competitive procedure. Competitive tendering may take the form of competitive tender announcement (in appropriate media) or a restricted tender involving at least 5 companies able to make a suitable offer to a need expressed in specifications.

Formalised procedures above EU thresholds

So-called formalised procedures are described in the Public Procurement Code and are mandatory where the estimated value of the contract exceeds EU thresholds³.

Depending on the context, the following may be applied:

- The “call for tenders” that may take the following forms in accordance with Article R2124-2:
 - The “open procedure”, namely a single-stage call for tenders enabling any interested company to submit an offer following the notice of competitive public tender being published in the OJEU; or
 - The “restricted procedure”, namely a two stage call for tenders firstly enabling any company interested in the notice published in the OJEU to make an application, and subsequently for Expertise France to ask only candidates selected for the restricted list in accordance with predefined criteria to submit an offer.
- The “competitive negotiated procedure” in the limited number of cases set out in the Public Procurement Code, namely a restricted procedure incorporating a formalised negotiation stage;
- The “competitive dialogue” in the limited number of cases set out in the Public Procurement Code, namely restricted procedure incorporating one or more phases of formalised dialogue with the bidders yet without constituting negotiations (prohibited in this case).

Formal requirements applicable to the contract and tender documents

² At the time of adoption of the Rules, the EU threshold for goods and service contracts is 214,000 euros excluding VAT and 5,350,000 euros excluding VAT for works contracts.

³ Idem 2

The draft contract and procurement documents must comply with the standard Expertise France contract and tender document models available on the intranet.

The tender documents generally comprise the following:

- Tender rules, notably including:
 - Bidder selection criteria: the Expertise France requirements must be listed in terms of technical and financial capacity in order to select only acceptable candidates and, in the case of restricted and negotiated procedures, to classify candidates such that the best can be selected;
 - The submission assessment criteria and weightings;
 - A detailed description of the tender process.

The provisions apply to both candidates and the awarding body but this document has no contractual value.

- Draft special and general clauses to apply to the contact;
- Specifications, or Special Technical Specifications (STCs):

This document defines the need to be covered in the form of technical specifications of the service in question. The specifications department is responsible for drafting this document and any annexes (financial, plans, drawings, etc.); it has contractual value.

Competent bodies and responsible persons

The roles of the competent bodies are as follows:

- For purchases made in the context of cooperation projects, the buyer attached to the specifications department, or the specifications department itself, is directly responsible for the expression of needs and producing the tender documents;

- The Legal Affairs Department validates the regulatory compliance and legal security of each stage of the procedure by issuing a non-objection opinion. It notably verifies the conformity of the competitive tendering provisions (candidate and bid criteria and, as applicable, pre-selected companies or the tender announcement and publication media), and designates the Assessors and document models to be used; the Legal Affairs Department chairs the Extended Evaluation Committee (EEC);

- The designated Assessors are responsible for analysing and scoring applications and bids;
- The EEC meets on completion of the procedure in order to consider the analysis of applications and assessment of bids, and to decide on the proposed award of the contract by Expertise France;

- The CGEFI (comptroller) issues an opinion before the contract is signed by Expertise France.

Main stages of the procedure

1. Identification of needs;

2. Head office purchases above 5,000 euros excluding VAT must be submitted for approval to a buyer in the Legal Affairs Department for verification of compliance with the Expertise France purchasing policy;

3. Sourcing approach, if deemed pertinent;

4. Definition of the specifications and tender documents;

5. Issuance of a NON by the Legal Affairs Department on the proposed award procedure and the tender documents, notably in relation to the regulatory conformity of the procedure and the contractual and financial security of the proposed contract. The NON must specify the list of assessors and appraisers proposed by the specifications department;

6. Drafting and issuance of the notice of public competitive tender (as applicable, publication in the OJEU by the Legal Affairs Department constitutes a NON);

7. Placing of tender documents online, as applicable, publication on additional websites;

8. Tender duration (application phase) – Exchanges and questions & answers;

9. Receipt of applications - BOC report;

10. Analysis of applications and definition of the restricted list;

11. Verification of the candidates placed on the restricted list;

12. Issuance of a NON by the Legal Affairs Department on the analysis of applications, the restricted list and the tender documents (bid phase);

13. Tender duration (bid phase) – Exchanges and questions & answers;

14. Receipt of bids - BOC report;

15. Technical and financial analysis of bids, classification of bidders and identification of negotiation areas/requests for clarification;

16. Negotiation: negotiation sessions and submission of optimised bids;

17. Completion of bid analysis, the analysis report and contractualisation report by the Assessors;

18. Issuance of a NON by the Legal Affairs Department on the analysis report;

19. Extended Evaluation Committee, organised and chaired by the Legal Affairs Department;

20. Final validation of the contractualisation report and draft contract;

21. Forwarding of rejection letters;

22. CGEFI opinion on the draft contract in its version signed by the company;

23. Signature of the contract by the Director-General of Expertise France or their authorised signatory;

24. Contract notification;

25. Archiving;

26. Publication of award notification in the OJEU (for formalised procedures).

Note:

- In the case of formalised procedures:
 - o Mandatory regulatory periods for the submission of applications and bids are set out in the Public Procurement Code;
 - o A “standstill” period prevents the signing of the contract by Expertise France for a period of 11 calendar days after rejection letters have been sent (unless provided for otherwise).
- The utilisation of PLACE is mandatory.
- All contracts must be numbered.

4.5 Purchase procedure for individual expertise in the context of cooperation projects (call for CVs)

General comments

Where, for project implementation purposes, Expertise France calls on experts under a service contract (SC), the contract constitutes public procurement subject to the Public Procurement Code and these Rules.

An SC may be entered into with a natural person benefiting from a legal personality or with a legal entity under contract with an umbrella company.

A contract covering an assignment of individual expertise is entered into *intuitu personae* and must therefore name the natural person responsible for performing the assignment.

The objective of a technical expertise assignment conducted in the context of an international cooperation project is to provide technical assistance and to enhance the capacity of the State bodies of a developing country responsible for implementing public policy.

Applicable rule

Individual expertise SCs in the context of cooperation projects may be placed using an adapted procedure, regardless of the estimated value of the need.

The award of individual expertise SCs must comply with EU publication rules from €750,000 excluding VAT but are not subject to the obligation for tender documents to be made available on PLACE.

The following individual expertise SCs may be negotiated directly:

- Amount below 40,000 euros excluding VAT (see 4.2.2)
- If seeking highly specific expertise; this exception must be covered by a prior NON issued by the Legal Affairs Department above 40,000 euros excluding VAT (see 4.2.3);
- For a named expert designated in a tender bid submitted by Expertise France (see 4.2.3).

Umbrella companies

Depending on the national legislation applicable in the country where Expertise France is required to act, and on the status of the Agency in said country, it is permissible to employ the services of an umbrella company.

In all such cases, the contract entered into with the umbrella company constitutes public procurement within the meaning of the Public Procurement Code. The contract must comply with the rules set out in said code and in these Rules.

Where implementation of a project calls for the use of an umbrella company, the estimate of the need to be taken into consideration when selecting the appropriate procedure is the estimated costs to be owed to the umbrella company, excluding salaries paid to agents.

Framework agreements may also be used in order to combine requirements associated with multiple projects. In such cases, the value of the estimated need to be taken into consideration is the sum of all expenses to be owed to the company for all projects.

In such circumstances, it should be noted that the Agency has no direct contractual link with the recruited agents who are paid by the umbrella company.

Formal requirements applicable to contracts and procurement documents

The draft contract and procurement documents must comply with the standard Expertise France contract and tender document models available on the intranet.

The call for CVs is launched directly on the Expertise France expert recruitment platform (GEX), which notably enables the following procurement documents to be placed online:

- Application form;
- Description of the assignment and required deliverables (terms of reference);
- A draft of the special and general clauses to apply to the contact;

The applicant selection criteria stated in the notice of call for CVs published on the expert recruitment platform.

Competent bodies and roles

Individual expertise SC procedures are implemented by the specifications department concerned.

For proposed contracts of more than 100,000 euros excluding VAT, the restricted list of expressions of interest must be validated by the manager of the entity in question.

For proposed contracts of more than 200,000 euros excluding VAT, the Legal Affairs Department conducts a control via NON prior to contract signature.

Main stages of the procedure

From 40,000 euros excluding VAT, the steps of the procedure are as follows:

1. Preparation of a call for expressions of interest (CEI) in the form of a call for CVs specifying the required profile of individual expertise and a description of the assignment to be performed;

2. Publication of the CEI on the Expertise France website and/or on the experts listing system (GEX) and in any other pertinent publication media depending on the type of expertise required (procedure without a minimum consultation period);
3. Drafting of a restricted list of at least three experts with the required profile based on the education, training, skills required to perform the assignment;
4. Consultation procedure with the preselected experts;
5. Interview with the preferred expert;
6. If required, negotiation of the financial provisions. Negotiations on the value of the contract, including fees, are conducted subsequently with the preferred expert;
7. Updated analysis of the offers and completion of the contractualisation report;
8. Verification of the preferred expert's eligibility;
9. From €200,000 excluding VAT, Legal Affairs Department NON for the analysis report, contractualisation report and draft contract;
10. From €200,000 excluding VAT, CGEFI opinion;
11. Signature of the contract by the Director-General of Expertise France or their authorised signatory;
12. Contract notification;
13. Archiving;

Note:

- All contracts must be numbered.
- Individual expertise SC procedures are exempt from submission to Evaluation Committee.

5. GRANT AWARD PROCEDURES

5.1 Definition and main characteristics

Definition

Grants are defined as financial contributions of all kinds which are valued in the award instrument (grant contract), justified in the public interest and are to be used to implement an initiative, work programme or investment project and contribute to the development of activities or the overall financing of the activities of a beneficiary organisation⁴.

The signatory organisation of a grant contract is designated as the beneficiary of the grant and must not be conflated with the partner country, which is the end beneficiary of the operation⁵ nor with the target group⁶. The beneficiary entity of the grant retains sole responsibility for its utilisation and is the owner of the deliverables and results achieved via the financing.

Differences between a contract and a grant

Multiple factors distinguish a grant from a contract:

<u>Public procurement contract</u> <u>“purchase”</u>		<u>Grant</u> <u>“financing, providing money”</u>
<u>Purchase</u> Of services, goods or works defined in specifications	Object	<u>Financing (i.e. gift)</u> Of which the objectives are to financially support the implementation of an activity being conducted in the public interest
<u>Commercial sector</u> Sale of goods and services, including works (supply of software, maintenance work, repairs, etc.)	Field of intervention	<u>Non-commercial sector</u> Population support initiatives, strengthening of institutions, etc.

⁴ Definition inspired by Law no. 2014-856 of 31 July 2014 known as the “Social and solidarity economy law”.

⁵ The “end beneficiaries” are those who benefit from the project in the long term at the level of society or the sector in its broadest sense.

⁶ “Target group” means groups/entities benefitting from the project directly.

<u>Public procurement contract</u> <u>“purchase”</u>		<u>Grant</u> <u>“financing, providing money”</u>
Authorised	Profit for the successful bidder or grant beneficiary	Not authorised (unless specified otherwise)
Expertise France defines the need and the winning bidder defines the resources required to satisfy the need As the contracting authority, Expertise France acts in a “prescriptive” capacity	Definition of activities	Expertise France determines the amount available to be awarded per contract, the objectives and outputs to be achieved through its financing, and the award beneficiaries determine the entire contents, budget and process of the activities to be implemented. As the contracting authority, Expertise France acts in a “non-prescriptive” capacity
Expertise France	Owner of the results	Beneficiary of the grant
Payment in arrears after delivery of the goods/works	Payment	Payment of prefinancing and regular financial report issued on the financial execution of the grant in accordance with the eligible expenditure defined in the contract

5.2 Forms of contractualisation

Project grant and operating grant

A grant is used to finance:

- A project designed to promote the attainment of an objective falling within the scope of a cooperation project; this is known as a **project grant**, or
- The running (e.g. operating costs) of an organisation pursuing an objective of public interest or an objective falling within the scope of a cooperation project; this is known as an **operating grant**⁷. An operating grant takes the form of a financial contribution to the entity’s work programme.

⁷ The duration of the grant may not exceed 12 months.

Partnership

Grant contracts may take the form of a **financial partnership framework agreement** in order to establish a durable collaboration between Expertise France and beneficiaries. Financial partnership framework agreements specify the form of the financial cooperation, including the obligation to define in specific signed contracts how attainment of the defined objectives will be monitored. Where the financial partnership framework agreement takes the form of grants, it must also specify: the nature of the actions planned on an individual basis or in the context of an approved works programme, the procedure for the awarding of special grants in compliance with the principles and provisions of these Rules and the general rights and obligations of each party within the context of specific contracts. The duration of the partnership may not exceed four years. Financial partnership framework agreements are treated as grants in terms of programming, ex ante publication and the award procedure. They may also specify the use of the beneficiary's systems and procedures.

Financial partnership framework agreements should only be considered where their utilisation offers significant added value. For example, if just a single specific grant is being planned, the financial partnership framework agreement is not appropriate.

5.3 Principles applicable to grants

Equal treatment and non-discrimination

See 2.1

Transparency

See 2.1

Non-retroactivity

See 2.4.2

Co-financing

Although co-financing by the beneficiary of the subsidised action is not mandatory, this practice for financing cooperation projects is commonplace in the international development sector.

It notably helps to strengthen the beneficiary's commitment to successful project implementation due to investing its own financial resources, and similarly strengthens its ownership and the longevity of its actions in the sector in question.

Non-aggregation

A given beneficiary may not receive more than one grant per project nor more than one operating grant per financial year. In their application form, the applicant must specify if they are submitting multiple applications or have received multiple grants for the same project or same work programme.

Non-profit rule

Profit is defined as a surplus of receipts over the eligible costs approved by Expertise France when the request for payment of the balance is issued.

The objective or effect of the grant may not be to generate a profit from the project or programme, apart from in specific circumstances stated in the special conditions of the grant contract (see below). It must therefore be restricted to financing eligible expenditure required for the implementation of a project.

The non-profit rule applies to the project, but not necessarily to the beneficiary (see below for further details). Accordingly, the fact that an organisation is not-for-profit does not mean that it may only be awarded grant contracts - it may also be awarded public procurement contracts.

For operating grants, amounts allocated to constituting reserves shall not be treated as receipts.

Where a profit is made, Expertise France retains the right to deduct from the balance of the grant the percentage of the profit corresponding to its final contribution to the approved eligible expenditure actually incurred, apart from the exceptional circumstances set out in the paragraph below.

The non-profit rule does not apply:

- a) To projects of up to 300,000 euros designed to reinforce the financial capacity of the beneficiary⁸;
- b) To projects generating an income in order to ensure their continuity after the financing period specified in the grant contract⁹;
- c) To support paid to natural persons for the purposes of studies, research, training or education, or other direct support paid to natural persons in urgent need, such as unemployed or displaced persons¹⁰;
- d) To low-value grants of up to 40,000 euros.

Service, goods or works contracts in the context of a project receiving a grant

If the implementation of a project or work programme requires services, goods or works contracts to be placed by the beneficiary of the grant, the rules set out in Annex IV of the grant contract must be applied to each such contract. If the beneficiary of the grant fails to comply with Annex IV, the expenditure relating to such contracts shall be deemed ineligible.

⁸ As applicable, this must be clearly specified in the special conditions of the grant contract

⁹ *Idem*

¹⁰ *Idem*

Financial support for third parties

In order to avoid the proliferation of small contracts, financial support for third parties may represent an effective means of financing organisations on the ground or local authorities, within the limits set out above.

If implementation of the project requires financial support for third parties, such support may be provided subject to the following conditions:

- a) Before awarding the grant to the beneficiary, Expertise France has verified that it provides appropriate guarantees concerning the collection of due amounts;
- b) The amount of the financial support may not exceed 40,000 euros per third party, unless attainment of the project's objectives would be impossible or excessively problematic in the absence of such support. In such cases, no limit applies once authorisation has been received from the Legal Affairs Department of Expertise France;
- c) The following conditions for providing such support must be strictly defined in the grant contract. Applicant beneficiaries must include the following information in their full application:
 - i. The planned objectives and results to be obtained from the financial support.
 - ii. The different types of activities that may benefit from financial support based on an exhaustive list. It must also be specified if no specific activity is supported (e.g. unconditional cash transfers to refugees for subsistence purposes or to defenders of human rights to support their work in general). In such cases, the beneficiary of the grant is not required to prove that the financial support has been used by the beneficiaries for a specific purpose.
 - iii. The types or categories of persons able to benefit from financial support.
It should be noted that no restriction in terms of nationality or origin may be defined for beneficiaries of financial support.
 - iv. The selection criteria for these entities and for the awarding of financial support.
Beneficiaries may use their own procedures provided they comply with the principles of proportionality, good financial management, equality of treatment and non-discrimination, that they guarantee transparency with adequate publication of calls for proposals and that conflicts of interest are avoided throughout the award procedure.
 - v. The criteria used to define the exact amount of the financial support awarded to each third-party entity.

Example: if the contracting authority wishes to ensure that the financial support is based on costs actually incurred or that it complies with the non-profit rule, it must specify such requirements in the call for projects rules issued to applicants.

- vi. The maximum amount that may be awarded.

Where Expertise France wishes to apply a maximum total amount of financial support (i.e. the total amount available for applicants), it must be specified in the call for projects rules issued to applicants.

In the call for projects rules, applicants may also be asked to produce the necessary documents to be retained by third parties to substantiate that the financial support has been used in accordance with the grant contract.

The rules covering financial support solely apply if a beneficiary provides such support to a third party. The above criteria do not apply if the funds are provided for co-beneficiaries or affiliates.

Verification of the financial and organisational reliability of grant recipients

The specifications department must verify the financial viability and organisational robustness of preferred beneficiaries.

It shall make every effort to assess their financial capacity, human and technical resources, operating results over the preceding three years and internal control system, notably in budgetary and accounting terms. More generally, it shall verify their ability to perform effective administration and financial management, notably regarding the production of accounts on expenditure incurred in the context of any project in receipt of a grant award.

For grant applications for projects in excess of 500,000 euros or any operating grant over 100,000 euros, the lead applicant must provide an audit report produced by an accredited external auditor whenever available, and in all cases where required under domestic or EU law. The report must certify the accounts for three preceding financial years. In all other cases, the applicant shall provide a sworn declaration signed by its legal representative certifying the validity of the accounts for the three preceding financial years.

This requirement only applies to the first application made by the beneficiary with Expertise France during a given financial year.

These verifications do not apply to:

- Natural person beneficiaries of a bursary or natural persons in great need receiving direct support;
- French public entities;
- Entities approved by the EU to manage delegated funds;
- International organisations;
- Entities that have already been verified during the previous 12 months;
- Third parties benefitting from financial support provided by a beneficiary in performance of a grant awarded by Expertise France;
- International, national or local NGOs with an average annual activity level over the preceding 3 financial years of more than €200,000,000;
- Grant awards of less than €100,000.

5.4 Call for projects procedure

Applicable rule

The call for projects procedures applicable to grant contracts are subject to the consultation and award rules set out in the call for projects rules of the procedure in question.

Call for projects procedure

In principle, a call for projects must at least be covered by publication and by the placing online of the documents defining the procedure. It is also permissible to publish a pre-information notification.

By default, calls for projects are to be planned via the restricted procedure. It is conducted in two stages, firstly enabling interested parties to notify their application and the main elements of their proposed project (concept note). Expertise France subsequently presents and directly consults with the selected candidates regarding the submission of a full project proposal (full application).

In exceptional circumstances, and with prior approval from the Legal Affairs Department, the call for projects may be planned via an open procedure. The decision to conduct an open rather than restricted procedure must be justified by the particular nature of the call for projects, by the limited available budget, by the expected limited number of proposals or by organisational constraints (e.g. the call for projects is being organised by a decentralised entity of Expertise France).

Grant award procedures are not conditional on the estimated value of proposed contracts.

Competent bodies and roles

The amount that determines which body is to be responsible for the procedure and the level of control is the total amount allocated to grants of the same type or with the same objectives.

The Reduced Evaluation Committee is responsible for managing calls for projects of less than €200,000.

The Extended Evaluation Committee is responsible for managing calls for projects of more than €200,000.

The Legal Affairs Department is involved in and conducts ex ante controls at each stage of calls for projects in excess of €200,000

Formal requirements applicable to the contract and tender documents

The draft contract and tender documents must comply with the standard Expertise France models available on the intranet.

The tender documents are composed of the following:

- The call for project rules, notably containing:
 - A clear and detailed definition of the objectives and priorities of the call for projects;
 - The types of projects and costs eligible for financing;
 - The application eligibility and selection criteria (defining the minimum technical and financial capacity required of potential candidates for project implementation and the criteria used to classify candidates by the pertinence of their profile and experience);
 - The project assessment criteria and weightings;
 - The indicative timetable of the procedure;
 - A detailed description of the practical details of the procedure and instructions on how to complete the application form;
 - Appendices covering:
 - The structure of candidates' proposals (structure of the concept note and full application, budget model, logical framework model, etc.);
 - Assessment of candidates' financial and organisational capacity.
- A draft grant contract containing:
 - A draft grant contract incorporating an undertaking framework for determining the beneficiary's commitments, a special conditions section and a general conditions section setting out the administrative and financial provisions of the grant;
 - A precise description of the project developed by the beneficiary of the grant, to include all the actions and components to be implemented, accompanied by a detailed budget by cost and expense type and a precise implementation timetable.

Main stages of the procedure

1. Definition of the objectives of the call for projects, the profiles of the target beneficiaries and the scale of the grants to be awarded;
2. Identification of and possible contact with entities potentially capable of participating in the call for projects;
3. Production of the tender documents, the call for projects rules and all annexes and preparation of the notification;
4. As applicable, verification of the eligibility of candidates selected for the restricted list;
5. For calls for projects in excess of €200,000, an NON from the Legal Affairs Department on the legal conformity of the proposed procedure and on the call for projects rules.

Validation of the list of assessors and any appraisers proposed by the specifications department;

6. Publication of the call for projects notification:

Each call for projects must be published:

- On the corporate website of Expertise France

and

- In the local press or on a dedicated website of the cooperation project in question, provided it has adequate visibility for the target operator profiles.

Offer submission deadline:

The minimum period between publication of the call for projects notification for the attention of applicants and the deadline for the submission of proposals is:

- 90 days for open calls for proposals;
- 60 days minimum where the maximum size of each grant to be awarded under the programme is 100,000 euros or less;
- 45 days minimum for restricted calls for proposals.

In certain exceptional cases, a shorter deadline may be set with approval from the Legal Affairs Department.

Quality cannot be guaranteed without a reasonable deadline for the submission of proposals. If the deadline is too short, it may deter potential applicants from submitting a proposal or lead them to submit an incomplete or ill-prepared offer;

7. Information for the attention of applicants:

Once the call for projects has been published, it is highly recommended to hold one or more information sessions which all potential applicants may attend. Such information sessions must be held no later than 21 days prior to the deadline for submission of concept notes. All presentations and documentation provided during information sessions must also be made available on the website where the call for projects was published.

In the period between publication and the proposal submission deadline, in addition to any information sessions, applicants may submit questions about how to complete the form and develop their application. Expertise France must specify a contact point to which questions may be forwarded. The information to be disseminated in all regions concerned must be harmonised in a non-discriminatory manner. The responses are to be published on the pertinent website(s); individual responses must not be given.

If Expertise France modifies the call for projects, either on its own initiative or in response to a request for clarification, an amended version incorporating the changes must be published in accordance with the same publication conditions as the original call for

projects. The submission deadline may be extended for the amended version to enable applicants to react to the changes;

8. Receipt of concept notes (or full applications for open calls for projects) and production of the BOC report;
9. Analysis of concept notes and drawing up of the restricted list by the Assessors with support, if required, from the Appraisers;
10. Verification of the candidates placed on the restricted list;

11. For calls for projects in excess of €200,000, a NON from the Legal Affairs Department on the rejection of ineligible candidates and the composition of the restricted list, notably with regards to the legal conformity of the criteria set out in the call for project rules;

12. Consultation of candidates placed on the restricted list (for restricted calls for projects);
13. Receipt of full applications and production of the BOC report (for restricted calls for projects);
14. Technical and financial analysis of full applications, classification of applicants and identification of areas requiring clarification;
15. Analysis of the financial and organisational robustness of the preferred candidates;
16. Completion of analysis of project proposals, of the analysis report and of the contractualisation report by the Assessors;
17. Verification of the preferred candidate's eligibility;

18. For calls for projects in excess of €200,000, an NON from the Legal Affairs Department on the analysis report;

19. For calls for projects above €200,000, Extended Evaluation Committee organised and chaired by the Legal Affairs Department;

20. Final validation of the contractualisation report;
21. Forwarding of rejection letters;
22. Signature of the contract by the Director-General of Expertise France or their authorised signatory;
23. Contract notification;
24. Archiving;
25. Publication of the award notification.

Note:

- All contracts must be numbered.

5.5 Direct grant award procedure (direct negotiation)

Applicable rule

In the context of a project exploiting French financing (initiative 5%, project financed by the AFD or a French ministry), utilisation of the direct grant award procedure is discretionary, unless provided for otherwise in regulations. However, all direct awards must be justified by the expediency of selecting the identified beneficiary or by the context of project implementation.

In the context of a project exploiting EU financing, direct negotiation of a grant contract must be justified by the nature of the project or the profile of the recipient beneficiary, in accordance with the following legal bases:

- Exceptional and duly justified urgent circumstances.
- Humanitarian aid, civil protection operations or aid in crisis situations.
- Where the grant is awarded to an organisation enjoying a *de facto* or *de jure* monopoly, duly specified in the relevant award decision. A *de facto* or *de jure* monopoly shall be understood to mean that the beneficiary, which may be a consortium:
 - Enjoys exclusive competence in the field of activity and/or in the geographical region targeted by the grant in accordance with the applicable law; or
 - Is the only organisation (i) operating, or (ii) capable of operating in the field of activity and/or geographical region targeted by the grant as a result of any *de facto* or *de jure* circumstances.
- For technological research and development.
- For projects with specific characteristics requiring the involvement of an entity due to its technical expertise, high level of specialisation or its administrative capacity, provided that the projects in question do not fall within the scope applicable to calls for projects.
- For grants with a total amount below €40,000.

Accordingly, the use of this direct award procedure must be covered by a reasoned and clear justification demonstrating consistency between the object of the proposed contract, the circumstances of its implementation and the applicable legal basis.

Prior to launch, the justification for the procedure must be forwarded to the Legal Affairs Department for a NON (apart from in the case of f. above).

Formal requirements applicable to the contract and grant award documents

The draft contract and grant award documents must comply with the standard Expertise France contract and award document models available on the intranet.

Main stages of the procedure

The stages are as follows:

- Identification of and contact established with the beneficiary entity able to implement the operation in order to meet the objectives of the project;
- Verification of the preferred candidate's eligibility, notably non-inclusion on any exclusion list;
- From €40,000, Legal Affairs Department NON covering justification of utilisation of the direct award procedure;
- Drafting and forwarding to the entity in question:
 - Draft contract;
 - Letter of consultation specifying the objectives and formal requirements of the full application (description/budget/timetable/logical framework/etc.).
- Based on the full application submitted, the proposed beneficiary entity may be requested to provide clarification;
- Drafting of contract;
- Drafting of the contractualisation report, notably including justification of the procedure and any contract drafting stages;
- From 100,000 euros excluding VAT, Legal Affairs Department NON for the contractualisation report and draft contract;
- Signing of the contract by a person authorised to commit Expertise France;
- Notification of contract award.

Note:

- All grant contracts above 1 euro must be numbered.

6. COOPERATION BETWEEN FRENCH PUBLIC ENTITIES

6.1 General principles

In the context of the cooperation projects in which it participates, Expertise France may exploit the know-how of French public entities. Regardless of their legal form or field of intervention, the terms of cooperation between public entities are defined in conventions subject to French regulations.

Accordingly, depending on the purpose of the cooperation and the role assigned to each public entity, the following contractual provisions may be applied.

6.2 Public procurement negotiated directly with a public entity

Where the purpose of the cooperation between Expertise France and the public entity concerns the attainment of shared objectives in the context of public service assignments for which it is responsible, a public procurement contract may be placed through direct negotiation in accordance with Article L.2511-6 of the Public Procurement Code, subject to compliance with all other regulatory provisions.

The object of the public procurement contract may be the delivery of services, goods or works by the public entity itself in order to contribute to implementation of the project.

The contract must comply with the provisions set out in Article 4.2.3 of the Rules.

Payment terms are set out in Article 2.4.5 the Rules.

6.3 Grants awarded to public entities

Expertise France may award grants to public entities as set out in Article - of the Rules. In such cases, the public entity is treated in the same manner as any other operator. In accordance with Article 5.2 of the Rules, partnership agreements with or without financial flows may be entered into with public entities in order to jointly define the conditions of a specific or recurrent cooperation initiative.

Grants for action

Expertise France may notably award grants to French public entities for specific actions, provided it is objectively established that the public entity alone is able to implement the action identified in the context of the project, or for any of the reasons stated in Article 5.5 of the Rules.

Financing agreements

Any grant contract placed with a public entity may also take the form of a financing agreement, notably where Expertise France is not the instigator of the action or mission yet has a direct interest in supporting its implementation.

For example, this may be the case where the public entity benefitting from the grant must itself place one or more public procurement contracts for the delivery of services.

7. DISPUTES, LITIGATION AND COMPETENT COURT

7.1 Competent court

Purchase contracts placed by Expertise France fall under the jurisdiction of the administrative courts, with the exception of contracts entered into with international organisations.

Grant contracts placed by Expertise France fall under the jurisdiction of the administrative courts.

7.2 Managing disputes and litigation

The management of disputes, pre-litigation and litigation relating to procurement and grant contracts is the responsibility of the Legal Affairs Department, with the support of legal advisors as and when required.

8. DOCUMENT ARCHIVING AND ACCESSIBILITY

8.1 Archiving of contractual and procedural documents

All the paper documents received are archived in accordance with the archiving procedure applicable within Expertise France.

A paperless version of contractual documents for contracts placed in the context of cooperation projects is saved in ATLAS.

A paperless version of public procurement contracts placed for head office is saved in a restricted access area of the shared network.

An electronic version of consultation documents is saved in a restricted access area of the shared network.

Electronic award procedure documents deposited in PLACE are directly archived on this platform.

8.2 Access to contractual and procedural documents

Article L.311-1 of the Public-Private Sector Relations Code provides that: *“Subject to the provisions of Articles L. 311-5 and L. 311-6, government agencies (...) are required to forward or publish online the administrative documents in their possession to any person issuing a request to this effect.”*

Accordingly, the documents relating to public procurement and grant contracts entered into by Expertise France may be communicated in accordance with the Public-Private Sector Relations Code.

However, access to the various procedural documents is governed by the following principles:

- Any information received during the procedure shall remain confidential until the conclusion of said procedure;
- On conclusion of the procedure, the documents and information may be communicated, subject to compliance with provisions covering industrial and commercial secrecy and intellectual property rights.

Requests issued by unsuccessful candidates and/or by CADA (administrative document access commission) are managed by the Legal Affairs Department in collaboration with the specifications department.

Acronyms and abbreviations

NOO	Non-Objection Opinion
EC	Evaluation Committee
EEC	Extended Evaluation Committee
REC	Reduced Evaluation Committee
CGEFI	General economic and financial comptroller
BOC	Bid Opening Committee
DAF	Finance Department
DAJ	Legal Affairs Department
DCE	Contract and tender documents
GEX	Expertise France application for listing and recruiting experts
OJEU	Official Journal of the European Union
PLACE	Government purchasing platform