

Toolkit Contents

Legal guide on how to make a tender material

Joint Action on implementation
of validated best practices
on nutrition



Best-ReMaP
Healthy Food for a Healthy Future

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Purpose of the guide

EU's regulation of public procurement is primarily based on the Procurement Directive. The Procurement Directive is part of the EU's efforts to create an internal market with a free movement of goods and services, as well as effective competition. The purpose of the Procurement Directive is to create an internal market for public contracts, and to achieve this goal, extensive obligations and limitations have been imposed on public contracting authorities, which must be observed when entering into a public contract.

The Procurement Directive establish a legal framework for public procurement procedures, ensuring that public funds are spent in a responsible and accountable manner. Overall, the Procurement Directives play a crucial role in ensuring that public procurement processes are conducted in a fair, transparent, and efficient manner, ultimately contributing to the effective use of public funds and the development of a competitive and open internal market within the European Union.

The aim of this guide is to provide instructions on how to prepare for a public procurement with practical steps and templates within the scope of the Procurement Directive. In the guide we assume that the estimated value of the contract is above the EU thresholds in Article 4, and therefore the Procurement Directive section II, about the rules on public contracts, is applicable.



Part 1: The tender material in general

The tender material, it is defined in the directive as a collective term for the documents that the contracting authority prepares or refers to in order to describe or determine elements of a tender or a procedure for awarding a public contract.

The tender material forms the basis for both the purchase and the process. Therefore, it's a good idea for the contracting authority to write the tender material as clearly and precisely as possible and design the material so that the tenderers can gain a sufficient understanding of the task. The tenderers must be able to see both the extent of the purchase, the process by which the purchase is made, and the specific requirements for execution and final delivery. A clear and precise tender material is essential for a good tender process and a good purchase.

Article 2

*13. 'procurement document' means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the **contract notice**, the prior information notice where it is used as a means of calling for competition, the technical specifications, the **descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.***

The tender material is an overarching term that covers all tender documents, and Article 2 states that the tender material can consist of:

- Contract notice (tender notice).
- Technical specifications.
- The descriptive document (can only be used in the competitive dialogue procurement procedure in Article 30).
- Proposed contract terms.
- Formats for the presentation of documents by candidates and tenderers.
- Information on generally applicable obligations (For example, a reference to legal obligations for the tenderer).
- Possibly supplementary documents.

1.1 Contract notice

The contract notice is part of the overall tender material. It contains the overall information that, as a minimum, must be published for potential tenderers to be able to assess their possibilities to bid for the task. It entails, among other things, information about the task, the form of the tender, suitability requirements, selection criteria, award criteria, deadlines for submission of tenders and the contracting authority's contact details. The other tender documents specify and elaborate on these frameworks.

1.1.2 Publication of a contract notice

A tender with an estimated value above the EU thresholds must be published. No matter the chosen procedure, the contract notice must be used in the interest of calling for competition.

Article 49

Contract notices shall be used as a means of calling for competition in respect of all procedures, without prejudice to the second subparagraph of Article 26(5) and Article 32. Contract notices shall contain the information set out in Annex V part C and shall be published in accordance with Article 51.

The contracting authority must therefore complete and submit the contract notice on a mandatory standard form provided by the European Commission. The standard forms are available in an online version on SIMAP's website.¹ The completed notice is sent electronically via SIMAP's website to the EU's Publications Office. The order is then published in the Tenders Electronic Daily (TED) no later than five days after it is sent.

Article 51

1. Notices referred to in Articles 48, 49 and 50 shall include the information set out in Annex V in the **format of standard forms**, including standard forms for corrigenda. L 94/124 Official Journal of the European Union 28.3.2014 EN **The Commission shall establish those standard forms** by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

2. Notices referred to in Articles 48, 49 and 50 shall be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Annex VIII. **Notices shall be published not later than five days after they are sent.** The costs of publication of the notices by the Publications Office of the European Union shall be borne by the Union.

1.2 The other documents in a tender material

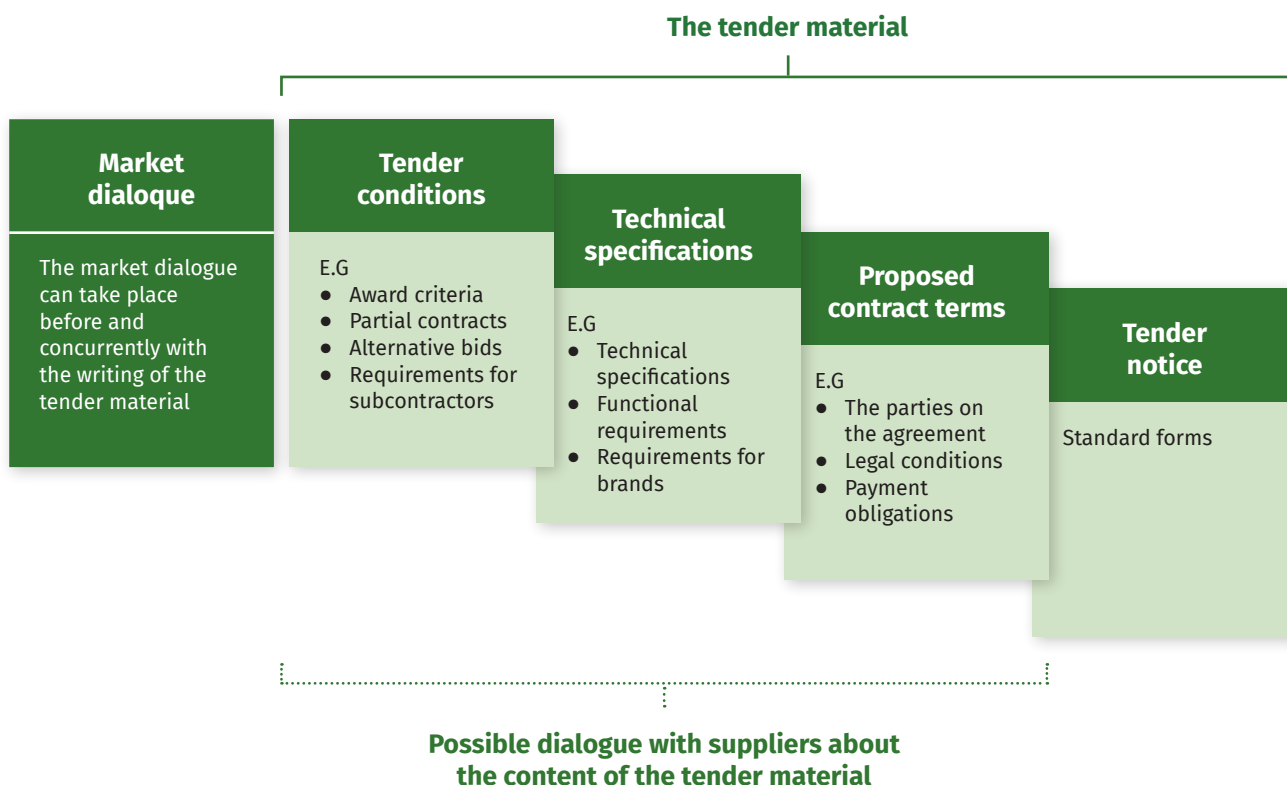
As seen above, the contracting authority must use a contract notice to publish a tender that is above the threshold values, but the law does not set any further requirements on how to structure the rest of tender material.

As a starting point, tender materials should be prepared in connection with all types of tenders. It is rarely seen that a tender is so simple that all information can be found in the contract notice. In this guide we assume that more documents, other than the contract notice, are needed in order to determine the elements of the tender. Usually, these other tender documents are prepared before the actual completion of the contract notice because these other tender documents must be published when the contract notice is published, in this way, you can ensure that the information referred to in the contract notice is in accordance with the other tender materials.

The scope of the other tender documents depends on the specific task to be solved. The content and structure of the material will also be influenced to some extent by which tendering procedure is used, but from the above perspective, a tender material can consist of: (see also figure 1 below)

- The tender conditions.
- The technical specifications.
- The proposed contract terms.
- The contract notice.

¹ [eNotices – Forms for public procurement \(europa.eu\)](http://eNotices - Forms for public procurement (europa.eu))



Figur 1 *The tender material*²

Figur 1 illustrates the different documents that can be drafted as part of the tender material. The market dialogue is not a tender document, but it is included in the figure because it is important to create the most efficient competition for a public contract. It can therefore be a valuable tool in the preparation of a procurement document. More Information about the market dialogue is not included in this toolkit, but if you want to read more about it, it can be found here: Legal Guide on Farm to Fork Procurement - Urgenci Hub in part 2.

It is not a requirement that the tender material is structured or prepared as illustrated in figure 1. However, it is important to have a structured tender material that ensures an overview of the process and the overall tender material. There is no specific order in which the documents can be prepared, but as the documents are often prepared simultaneously and by different professionals, it is a good idea to ensure coherence in the individual parts of the material to avoid overlapping and conflicting information.

The contracting authority must provide free, direct, and electronic access to the tender material from the date of publication of the contract notice. This means that the contracting authority must publish the entire tender material when the contract notice is published, as well as provide access to it free of charge. This gives the tenderers the best conditions for making relevant offers and promotes the basic requirement of transparency.

² Illustration from: Udbudsloven Vejledning om udbudsreglerne, Januar 2016, page 127

Article 53

*1. Contracting authorities shall by electronic means offer **unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with Article 51** or the date on which an invitation to confirm interest was sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which the procurement documents are accessible.*

Based on the tender material, the tenderers must be able to assess whether the task is attractive enough for them to apply for participation or to submit an offer. Adequate tender material is therefore essential for a good tender process, a good purchase, and the future cooperation with the supplier. It is also important to have adequate and structured tender materials, as otherwise there is a risk that unexpected issues will arise, which in the worst case may lead to the tender having to be cancelled, or a contract subsequently having to be terminated and re-tendered.



Part 2: The tender conditions

The tender conditions describe the process for carrying out the tender and determine the requirements for the tender procedure. Some of the information that may be contained in the tender conditions may also be specified in the contract notice. To create the best overview for the tenderers, it may be an advantage if several of the points which are only described superficially in the contract notice appear in more detail in the tender conditions.

The content in the tender conditions depends on which tender procedure is used, but the tender conditions should include:

- Criteria for exclusion (Article 57), eligibility (Article 58).
- Criteria for awarding and evaluation method (Article 67).
- Rules regarding the offer, for example:
 - Requirements for information on subcontractors (Article 71).
 - Division into subcontracts (Article 46).
 - Access to alternative bids (Article 45).

The list is not exhaustive but is an expression of the topics that are regulated in the Procurement Directive, and which the contracting authority should therefore consider and decide on in connection with the preparation of the tender conditions. In addition to these topics, the tender conditions may contain more formal rules such as form requirements, time, and place for submitting the tender, language, number of copies, access to ask questions, contact details etc. There may also be tenders that require descriptions of other special subjects.

Figure 2 below shows an overview of the topics that this guide will cover. First the exclusion grounds will be explained, then the rules for eligibility and lastly the evaluation and award criteria rules.

Tender conditions		
Exclusion grounds (Article 57)	Eligibility (Article 58)	Evaluation and award criteria (Article 67)
<ul style="list-style-type: none"> • Mandatory • Voluntary • Self-cleaning 	<ul style="list-style-type: none"> • Professional activity • Economic and financial standing • Technical and professional ability 	<ul style="list-style-type: none"> • The economically most advantageous tender • Evaluation method
<p style="text-align: center;">European single procurement document (ESPD) (Article 59)</p>		

Figure 2 Tender conditions.

2.1 Criteria for exclusion and eligibility

The contracting authority must state in the tender material which criteria the contracting authority sets for exclusion and eligibility. And when the contracting authority has received all applications or offers within the specified deadline, the contracting authority must assess whether individual applicants or tenderers should be excluded. The contracting authority must also assess whether the applicants or tenderers are suitable to carry out the contract.

2.1.1 Exclusion

The Procurement Directive contains both mandatory and voluntary grounds for exclusion. The mandatory grounds for exclusion imply that companies must be excluded if they are covered by them. The voluntary exclusion grounds, on the other hand, are voluntary for the contracting authority to use. It must be stated in the tender material whether one or more of the voluntary grounds for exclusion will be used. When it is published, the contracting authority will be obliged to reject companies that are covered by the grounds for exclusion.

Mandatory exclusion grounds			Voluntary exclusion grounds		
Article	Exclusion grounds	Exclusion period	Article	Exclusion grounds	Exclusion period
Article 57, 1 (a)	Participation in a criminal organisation	Article 57, 7 5 years from the date of the final judgement	Article 57, 4 (a)	Environmental, social or labor law regulations	Article 57, 7 3 years from the date of relevant event
Article 57, 1 (b)	Corruption		Article 57, 4 (b)	Bankrupt or is the subject of insolvency	
Article 57, 1 (c)	Fraud		Article 57, 4 (c)	Grave professional misconduct	
Article 57, 1 (d)	Terrorist offences or offences linked to terrorist activities		Article 57, 4 (d)	Entered into agreements with other economic operators aimed at distorting competition	
Article 57, 1 (e)	Money laundering or terrorist financing		Article 57, 4 (e)	Irremediable conflicts of interests	
Article 57, 1 (f)	Child labour and other forms of trafficking in human beings		Article 57, 4 (f)	Irremediable distortion of competition	
Article 57, 2	Unpaid overdue taxes to the government	Article 57, 2 When taxes are paid, or an agreement have been made	Article 57, 4 (g)	Previous breach of contract	
			Article 57, 4 (h)	Issues with supplying the information required for the verification of the absence of grounds for exclusion or fulfilment of the selection criteria	
			Article 57, 4 (i)	Attempt influence the decision-making process of the contracting authority	

Figure 3 Exclusion grounds³

3 Illustration from: Udbudsloven Vejledning om udbudsreglerne, Januar 2016, page 173

2.1.1.1 Mandatory exclusion grounds

The contracting authority must at any time during the tender procedure exclude the applicant or tenderer if the company is convicted either before or during the tender procedure for a breach of the mandatory exclusion grounds. The same applies if the company has had a preliminary fine adopted for the infringement.

Article 57

1. Contracting authorities **shall** exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with Articles 59, 60 and 61, or are otherwise **aware that that economic operator has been the subject of a conviction by final judgment for one of the following reasons:**

- (a) **participation in a criminal organisation, (...)**
- (b) **corruption, (...)**
- (c) **fraud (...)**
- (d) **terrorist offences or offences linked to terrorist activities, (...)**
- (e) **money laundering or terrorist financing, (...)**
- (f) **child labour and other forms of trafficking in human beings (...)**

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

2. An economic operator shall be excluded from participation in a procurement procedure where the contracting authority is aware that the economic operator is in **breach of its obligations relating to the payment of taxes or social security contributions** and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

2.1.1.2 Voluntary exclusion grounds

To use one of the voluntary exclusion grounds, the contracting authority must state in advance in the contract notice which exclusion grounds it will use. Since the contracting authority is always bound by the conditions it sets, the voluntary grounds for exclusion will become mandatory for the contracting authority when it has announced that it will use one or more grounds for exclusion. Conversely, a contracting authority cannot exclude a company based on the voluntary grounds for exclusion, if it is not stated in the contract notice that the contracting authority will make use of them.

Article 57

4. Contracting authorities **may exclude** or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations:

(a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Article 18(2);

- Article 18 (2): Violation of **environmental, social or labor law regulations**

b) where the economic operator is **bankrupt or is the subject of insolvency** or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations;

(c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of **grave professional misconduct**, which renders its integrity questionable;

(d) where the contracting authority has sufficiently plausible indications to conclude that the economic operator has **entered into agreements with other economic operators aimed at distorting competition**;

(e) where a conflict of interest within the meaning of Article 24 cannot be effectively remedied by other less intrusive measures;

(f) where a **distortion of competition from the prior involvement of the economic operators in the preparation of the procurement procedure**, as referred to in Article 41, **cannot be remedied** by other, less intrusive measures;

(g) where the economic operator has **shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract**, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions;

(h) where the economic operator has been guilty of serious **misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria**, **has withheld such information or is not able to submit the supporting documents required pursuant** to Article 59; or

(i) where the economic operator has undertaken to **unduly influence the decision-making process of the contracting authority**, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

2.1.1.3 Self-cleaning

Applicants and tenderers can document that they are reliable, even if they are covered by one or more reasons for exclusion. This option is called “self-cleaning” and applies to both the mandatory and the voluntary grounds for exclusion.

When a contracting authority has ascertained that an applicant or tenderer is covered by one of the grounds for exclusion and has notified the company of this, the company must have the opportunity to “cleanse”

itself. It is the contracting authority who, based on a concrete assessment, decides whether the company has sufficiently documented its reliability.

The contracting authority must set an appropriate deadline for the company to submit documentation of its reliability. When assessing what constitutes an appropriate deadline, all relevant factors connected with the company's documentation of its reliability must be considered, including the possibility of obtaining information and documentation from the relevant authorities, the extent of the violation that has led to the exclusion, the number of persons covered by the reason for exclusion, etc. The rule of an appropriate time limit constitutes a protection for the tenderers, and a contracting authority cannot exclude an applicant or tenderer before he has been given the opportunity to document his reliability.

The contracting authority must make a specific assessment in each individual case. In the assessment, the contracting authority can, for example, consider the nature of the offenses and the measures taken. Consideration can also be given to the specific circumstances of the contract award in question. Such concrete circumstances could be, for example, that the contract to which the tender relates does not contain services that the excluded company has seriously neglected in connection with the exercise of its profession.

If the self-cleaning measures are sufficient to ensure the reliability of the applicant or tenderer, the contracting authority cannot exclude the applicant or tenderer.

Article 57

6. Any economic operator that is in one of the situations referred to in paragraphs 1 and 4 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

For this purpose, the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the economic operator shall receive a statement of the reasons for that decision.

An economic operator which has been excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under this paragraph during the period of exclusion resulting from that judgment in the Member States where the judgment is effective.

2.1.2 Eligibility

An applicant or tenderer is suitable to carry out the tendered contract if the tenderer meets the requirements for eligibility that the contracting authority has set out in the tender documents. The requirements must relate to either (a) the practice of the profession in question, (b) the tenderers economic and financial capacity or (c) the tenderers technical and professional capacity. The requirements give the contracting authority the opportunity to ensure that the applicants or tenderers have the necessary resources to com-

plete the contract, both in relation to the tenderer's finances and in relation to the tenderer's technical capabilities.

The requirements for the tenderer's eligibility must be set as minimum requirements, and they must be published in the contract notice. The requirements must be relevant to the performance of the specific contract, and thus relate to the object and value of the contract.

An applicant or tenderer must be rejected as unsuitable if the applicant or tenderer does not meet the set minimum requirements. Conversely, a contracting authority cannot reject an applicant or tenderer as unsuitable if the applicant or tenderer meets the set minimum requirements.

Article 58

1. Selection criteria may relate to:

- (a) suitability to pursue the professional activity;
- (b) economic and financial standing;
- (c) technical and professional ability.

*Contracting authorities **may only impose criteria referred to in paragraphs 2, 3 and 4 on economic operators as requirements for participation.** They shall limit any requirements to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject matter of the contract.*

2.1.2.1 Eligibility to pursue the professional activity

When assessing the tenderers suitability to carry out the profession in question, the contracting authority may require that applicants or tenderers:

- To be enrolled in one of the professional or trade registers kept in their Member State of establishment, as described in Annex XI.
- To comply with any other request set out in Annex XI. (The annex contains a list of the relevant professional registers and trade registers as well as declarations and certificates for each Member State).

Article 58

*2. With regard to suitability to pursue the professional activity, **contracting authorities may require economic operators to be enrolled in one of the professional or trade registers kept in their Member State of establishment, as described in Annex XI, or to comply with any other request set out in that Annex.** In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.*

The contracting authority must demand that the applicants or tenderers prove that they meet the requirements. It is up to the contracting authority to determine which documentation applicants or tenderers must present. However, the contracting authority must consider the basic principles of proportionality, equal treatment and transparency when making demands for this documentation.

The contracting authority can also require proof that a tenderer has a specific authorization or membership of a specific organization if this is required in the tenderers home country when performing the service in question.

2.1.2.2 Economic and Financial standing

If the contracting authority requires that applicants or tenderers meet certain minimum requirements in connection with the economic and financial capacity, the contracting authority must state in the contract notice how the tenderer must document that they meet these requirements. For example, the relationship between assets and liabilities can be considered when the contracting authority specifies the methods and criteria to be used. Methods and criteria must be transparent, objective, and non-discriminatory.

2.1.2.2.1 Turnover exceeding double the estimated value

The contracting authority cannot, as a general rule, require that the tenderers have an annual turnover exceeding double the estimated value of the contract. If the contracting authority still wishes to set a higher requirement, it must be duly justified in the procurement documents. Justifications for such higher requirements may include:

- Increased risks associated with the contract's implementation.
- The contract's timely and correct completion is critical, for example, because it is a necessary prerequisite for the completion of other contracts.

In such duly justified cases, the contracting authority is free to decide whether it is appropriate and relevant to set higher requirements for annual turnover. If higher turnover requirements are used, the contracting authority can freely determine the size, as long as it is proportional and it relates to the subject matter of the contract.

Article 58

*3. With regard to economic and financial standing, contracting authorities may **impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract.** For that purpose, contracting authorities may require, in particular, that economic operators have a **certain minimum yearly turnover**, including a certain minimum turnover in the area covered by the contract. In addition, contracting authorities may require that economic operators **provide information on their annual accounts showing the ratios**, for instance, between assets and liabilities. They may also require an **appropriate level of professional risk indemnity insurance.***

Requirements for the company's turnover

***The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value**, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents or the individual report referred to in Article 84.*

The ratio**, for instance, **between assets and liabilities** may be taken into consideration where the contracting authority **specifies the methods and criteria for such consideration in the procurement documents.** Such methods and criteria shall be **transparent, objective and non-discriminatory.

Turnover requirements for contracts divided into lots

Where a contract is **divided into lots this Article shall apply in relation to each individual lot**. However, the contracting authority may set the minimum yearly turnover that economic operators are required to have by **reference to groups of lots** in the event that the successful tenderer is awarded several lots to be executed at the same time.

Contracts based on framework agreements and dynamic purchasing systems

Where contracts based on a **framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement**. In the case of **dynamic purchasing systems**, the maximum yearly turnover requirement referred to in the second subparagraph shall be calculated on the basis of the **expected maximum size of specific contracts to be awarded under that system**.

2.1.2.3 Technical and professional ability

The contracting authority may set requirements that applicants and tenderers possess the necessary human and technical resources and experience to complete the tendered contract in a quality that the contracting authority desires. In addition, the contracting authority may require that the company has sufficient experience, which can be demonstrated by suitable references from previously completed contracts.

The contracting authority must state in the contract notice the minimum requirements for suitability regarding technical and professional ability, as well as how the applicant must document the fulfilment of the minimum requirements for suitability.

Article 60 (4) in the Procurement Directive contains an exhaustive list of the documentation that the contracting authority can require so that the companies can document their technical and professional ability, and thus forms the framework for what can be demanded.

Article 58

4. With regard to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the **necessary human and technical resources and experience to perform the contract to an appropriate quality standard**.

Contracting authorities may require, in particular, that economic operators have a **sufficient level of experience demonstrated by suitable references from contracts performed in the past**. A contracting authority may assume that an economic operator does not possess the required professional abilities where the contracting authority has established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

In procurement procedures for **supplies requiring siting or installation work, services or works**, the professional ability of economic operators to provide the service or to execute the installation or the work may be **evaluated** with regard to **their skills, efficiency, experience and reliability**.

5. Contracting authorities shall indicate the required conditions of participation which may be expressed as **minimum levels of ability**, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

2.2 Documentation / ESPD

When assessing the tenderer's exclusion and eligibility, the contracting authority must accept the European Single Procurement Document (called the ESPD) as preliminary evidence. The ESPD functions as a form of self-declaration from the applicant or tenderer and was introduced to limit the burdens associated with participating in tenders, by requiring applicants and tenderers to present only one document rather than a large number of certificates and documents and to make it easier and faster for the contracting authorities to handle with the documentation. The contracting authority must complete and attach an ESPD as part of the tender documents and the ESPD must therefore be published at the same place and at the same time as the other tender material. Tenderers wishing to bid or apply for participation must therefore download the ESPD, fill it in and send in the completed ESPD together with the application or offer.

As a starting point, it will only be the winning tenderer who must submit documentation that the information in the ESPD regarding the offeror's exclusion and eligibility are correct. However, the contracting authority may, at any time during the procedure, ask an applicant or tenderer to submit parts or all the documentation if the contracting authority considers that it is necessary to ensure a correct completion of the tendering procedure.⁴

Article 59

1. At the time of **submission of requests to participate or of tenders**, contracting authorities **shall accept the European Single Procurement Document (ESPD)**, consisting of an updated self-declaration as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils the following conditions:

(a) it is not in one of the situations referred to in Article 57 in which economic operators shall or may be excluded;

(b) it meets the relevant selection criteria that have been set out pursuant to Article 58;

(c) where applicable, it fulfils the objective rules and criteria that have been set out pursuant to Article 65.

(...)

The ESPD shall consist of a formal statement by the economic operator that the relevant ground for exclusion does not apply and/or that the relevant selection criterion is fulfilled and shall provide the relevant information as required by the contracting authority. The ESPD shall further identify the public authority or third party responsible for establishing the supporting documents and contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents.

Where the **contracting authority can obtain the supporting documents directly by accessing a database** pursuant to paragraph 5, the **ESPD shall also contain the information required for this purpose**, such as the internet address of the database, any identification data and, where applicable, the necessary declaration of consent.

Economic operators may reuse an ESPD which has already been used in a previous procurement procedure, provided that they confirm that the information contained therein continues to be correct

The contracting authority can only award the contract when the contracting authority has checked that the offer from the tenderer meets the requirements laid down in the contract notice and in the other tender materials. The contracting authority must read the offer and make sure that the content corresponds to the prescribed requirements. There may, however, be an obligation to examine the content of an offer in more detail if doubts arise about the content.

If an applicant or tenderer submits a correctly completed ESPD, the contracting authority cannot reject the applicant or tenderer on the grounds that he or she is covered by one of the grounds for exclusion. Nor with reference to the fact that it does not meet the minimum requirements for suitability, unless, of course, the tenderer in question has indicated in the ESPD that it is covered by a reason for exclusion or that it does not meet the minimum requirements for suitability.

On the other hand, failure, or incorrect completion of the ESPD gives access to rejecting an application or an offer. However, it is entirely possible for the contracting authority to request an applicant or tenderer to supplement, clarify or complete the application instead of rejecting it. This also applies, if the ESPD is completely missing from the application or offer.⁵

2.3 Evaluation and awarding of the contract

The contracting authority must establish criteria for the award of the contract as part of the procurement procedure. The award criteria are the criteria on which tenderers compete when awarding the contract. It is important that the criteria are carefully considered in relation to what the contracting authority intends to procure. The contracting authority must award the contract to the tenderer who has submitted the economically most advantageous tender. This refers to the economically most advantageous tender from the contracting authority's perspective, meaning what the contracting authority considers to be the economically best solution. The criteria for awarding the contract must be specified in the procurement documents.

The concept of the economically most advantageous tender is a broad one, and the contracting authority must identify the economically most advantageous tender by using the award criterion of price, cost, or the best price-quality ratio.

Article 67

*1. Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, **contracting authorities shall base the award of public contracts on the most economically advantageous tender.***

(...)

The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

Member States may provide that contracting authorities may not use price only or cost only as the sole award criterion or restrict their use to certain categories of contracting authorities or certain types of contracts.

*3. **Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:***

5 Article 56 (3)

- (a) the specific process of production, provision or trading of those works, supplies or services; or
- (b) a specific process for another stage of their life cycle, even where such factors do not form part of their material substance.
- (...)

Figure 4 illustrates the possible award criteria that the contracting authority can use to evaluate and awarding the contract.

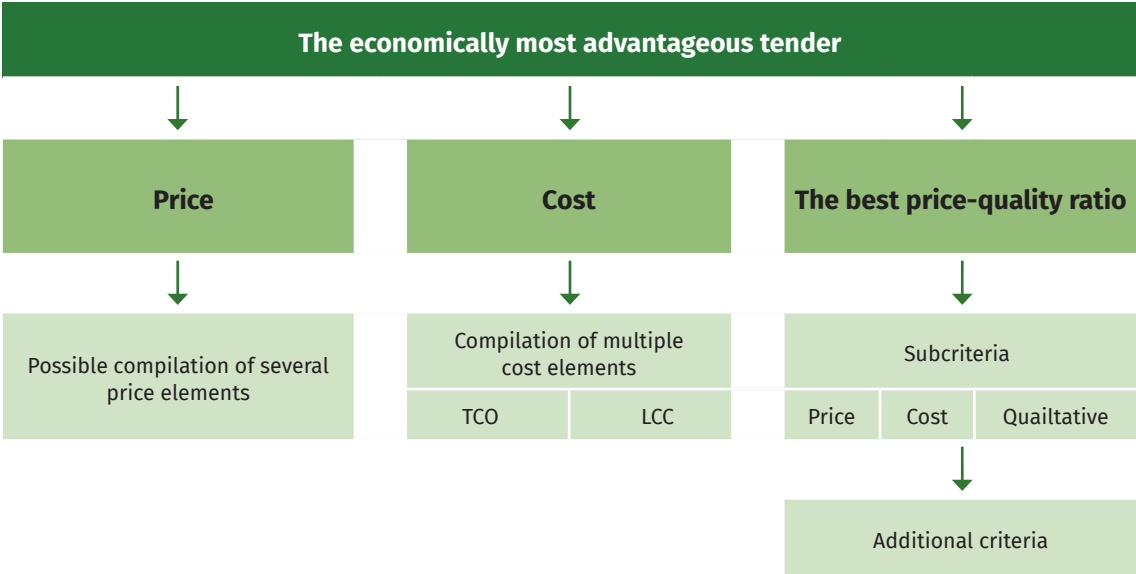


Figure 4 Overview over contract award criteria.⁶

2.3.1 The contract award criteria - price

The contracting authority can identify the economically most advantageous tender based on the award criterion of price. The tenders are therefore evaluated solely on the total price, and the tender with the lowest price wins the procurement.

The total price can comprise several pricing elements, including hourly rates, unit prices, prices for any options, etc. If multiple pricing elements are used, these should be calculated or consolidated into an overall price, which forms the basis for the price assessment.

The use of the price award criterion is best suited for procurements of simple purchases or purchases that are very precisely described in the procurement documentation, and there is therefore no need for competition on factors other than price.

2.3.2 The contract award criteria - cost

The contracting authority can identify the economically most advantageous tender based on the cost criterion. Where the tenders are evaluated based on the total costs. The contracting authority must specify the method to be used for cost calculation in the procurement documentation. The tender with the lowest costs wins the procurement.

6 Illustration from: Udbudsloven Vejledning om udbudsreglerne, Januar 2016, page 213.

It is not always just the purchase price that is crucial for what is economically most advantageous for the contracting authority. There can also be various costs associated with the use of the particular purchase, such as maintenance costs. When the cost criterion is used, these costs can be considered.

The contracting authority has the option to consider the total cost of ownership. Total costs of ownership encompass all costs during the usage period, including the purchase price, operating costs, and disposal value. Similarly, the contracting authority has the option to consider life cycle costs. Lifecycle costs may include costs beyond the usage period and indirect costs, such as environmental impact.

When using total costs or life cycle costs, it is a requirement that the contracting authority specifies in the contract notice or other procurement documentation which costs should be included in the calculation, making it clear and precise for the tenderers.

2.3.2.1 Total cost of ownership (TCO)

Total Cost of Ownership is the term used to describe the sum of the purchase cost and the costs incurred during the usage period. It encompasses all expenses associated with acquiring, owning, and using a product during the period in which the contracting authority has control over the product. Costs during the usage period may include expenses for transportation, installation, servicing, operation, energy consumption, maintenance, and disposal, among others.

Calculations of total cost of ownership are relevant when there are expenses both for acquisition and subsequent use, and when the costs during the usage period constitute a significant portion of the total costs. This can be relevant in the case of purchasing goods, such as cars, photocopiers, or refrigerators, where there are high expenses related to energy consumption during the usage period. It can also be applicable in construction and infrastructure projects, where there may be high operating expenses, such as energy, cleaning, and maintenance, during the usage period.

2.3.2.2 Life cycle costs (LCC)

Life Cycle Costs encompass all direct and indirect costs that occur in the various phases of a life cycle, including:

- Research and development that need to be conducted.
- Production, trade, and related conditions.
- Transportation, use, and maintenance throughout the existence of a product or construction project.
- Delivery of a service from the acquisition of raw materials or resource processing to disposal, approval, and the completion of delivery or use.

In the calculation of life cycle costs, a distinction is made between costs incurred by the contracting authority or other users and costs that can be attributed to external environmental impacts, which are referred to as external costs.

Article 68

1. **Life-cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works:**

(a) **costs, borne by the contracting authority or other users, such as:**

- (i) costs relating to acquisition,
- (ii) costs of use, such as consumption of energy and other resources,
- (iii) maintenance costs,
- (iv) end of life costs, such as collection and recycling costs.

(b) **costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.**

2. Where contracting authorities assess the costs using a lifecycle costing approach, **they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data.**

(...)

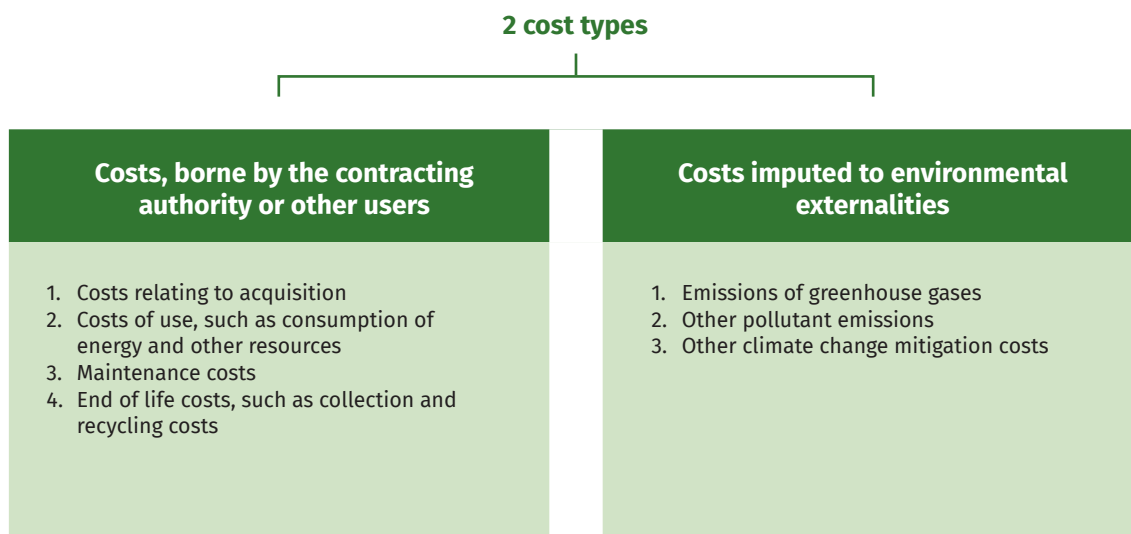


Figure 5 Life cycle cost types⁷

The list of examples in figure 5 is not exhaustive, and the contracting authority can include other costs, except for costs incurred by the tenderers. The tenderers' costs will be included in the acquisition price and, therefore, reflected in the contracting authority's costs associated with the acquisition of the item.

The contracting authority must specify in the contract notice or other tender documentation the method it will use to calculate life cycle costs and the data that tenderers must provide with their tender.

⁷ Illustration from: Udbudsloven Vejledning om udbudsreglerne, Januar 2016, page 216

Calculating life cycle costs can be associated with significant expenses for tenderers, and therefore, the contracting authority should consider the requirements for the data that tenderers must submit with their bids.

2.3.2.2.1 Costs imputed to environmental externalities

When using life cycle costs, the contracting authority must provide information about the method that will be used to assess the costs associated with external environmental effects. The method must meet the following conditions:

- It must be based on objective, verifiable, and non-discriminatory criteria. This requirement applies especially when the method is not intended for repeated or constant use.
- It must not unduly favour certain applicants or tenderers or treat them less favourably.
- It must be accessible to all applicants and tenderers.
- The required data should be obtainable with reasonable effort from the tenderers who exercise ordinary care, including tenderers from third countries that are parties to the Agreement on Government Procurement (GPA) or other international agreements to which the EU is a party.

The contracting authority must describe the method in a manner similar to the rules for describing the evaluation method. The description of the method should make it clear to potential applicants and tenderers how the contracting authority will incorporate life cycle costs into the evaluation of the offers. This should provide potential applicants and tenderers with a basis for assessing whether they want to expend resources on preparing an application or an offer, as well as the opportunity for tenderers to optimize their offer when they know the method used for evaluation. Finally, the publication of the method allows tenderers to subsequently verify whether the contracting authority's evaluation has been carried out in accordance with the publicly disclosed method for assessing life cycle costs.

Article 68

2. (...)

*The method used for the assessment of **costs imputed to environmental externalities shall fulfil all of the following conditions:***

*(a) **it is based on objectively verifiable and non-discriminatory criteria.** In particular, where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;*

*(b) **it is accessible to all interested parties;***

*(c) **the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the Union is bound.***

2.3.3 The contract award criteria - the best price-quality ratio

The contracting authority can identify the economically most advantageous tender based on the award criterion of the best price-quality ratio. Under this award criterion, in addition to price, costs can also be used as an economic sub-criterion. In addition to economic sub-criteria such as price or costs, there must also be qualitative sub-criteria related to the qualitative content of the tender, i.e., non-economic factors.

The award criterion specifies that the contracting authority must determine the economically most advantageous tender through economic and qualitative sub-criteria. This means that the contracting authority cannot determine the winning tender solely based on price or costs.

Article 67

2. The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the **price or cost**, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include **the best price-quality ratio**, which shall be assessed on the basis of criteria, **including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question**. Such criteria may comprise, for instance:

(a) **quality**, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;

(b) **organisation**, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or

(c) **after-sales service and technical assistance**, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

In addition to the mentioned options, the evaluation can also be a so-called reverse auction, where only quality criteria are evaluated. This occurs when the contracting authority, using the award criterion of best price-quality ratio, has pre-determined the bid price, and the competition is solely based on quality.

2.3.3.1 Sub-criteria

Under the award criterion of the best price-quality ratio, the contracting authority must establish sub-criteria. Sub-criteria can also have several additional criteria associated with them. The contracting authority can use the sub-criteria that allow them to achieve a high-quality acquisition and best meet their needs.

The Procurement Directive lists a range of possible qualitative sub-criteria that can be used under the award criterion of the best price-quality ratio (see Article 67, 2 above). This is not an exhaustive list of legal sub-criteria. The contracting authority can establish appropriate sub-criteria if they are related to the subject matter of the contract and enable the contracting authority to assess the tenders objectively.

The sub-criteria may include the following:

- Quality, including technical value, aesthetic and functional characteristics, social, environmental, and innovative characteristics.
- Professional qualifications and experience of the staff who will perform the contract, where the quality of the staff who will perform the contract can significantly affect the level of contract performance.
- Customer service, technical assistance, and delivery conditions, including delivery date and delivery procedure, among others.

It is a precondition for the use of a sub-criterion regarding the quality of the staff that the quality of the staff has an impact on the quality of contract performance and the economic value of the tender. For example, in intellectual and creative services such as consulting and architectural services, the quality of the staff offered for the task can enhance the quality of task execution. When such a sub-criterion is used, the contracting authority must ensure through contractual measures, such as in the contract, that the staff designated to perform the contract effectively meets the offered quality, and that the staff can only be replaced with the consent of the contracting authority. The contracting authority must ensure that replacement staff has a similar level of quality.

2.3.3.1.1 Requirements for qualitative sub-criteria and additional criteria

When designing qualitative sub-criteria and additional criteria, it is important to ensure that the principles of transparency, equal treatment, and proportionality are upheld, including that:

- The criteria are disclosed in advance in the procurement documents.
- The criteria are related to the subject matter of the contract.
- The criteria are suitable for identifying the economically most advantageous offer.
- The criteria do not grant the contracting authority unrestricted discretion.
- The criteria are proportionate to what the contracting authority intends to purchase.
- The contracting authority is obligated to create transparency by informing which sub-criteria and sub-sub-criteria will be used.

Qualitative sub-criteria and sub-sub-criteria, just like economic ones, should be suitable for identifying the economically most advantageous offer based on the best price-quality ratio. This means that competition should be possible based on these criteria. For example, competition can be based on the best fulfilment of one or more sub-criteria, or by competing on how many of a set of specified requirements are met.

2.3.3.2 Additional criteria

Sub-criteria can further be divided into additional criteria. Additional criteria are specific criteria that together form the basis for how the bidder's proposal will be evaluated on each individual sub-criterion. For example, under a sub-criterion like "quality" in a furniture procurement, there could be an additional criterion like "durability of upholstery fabric."

The formulation of both sub-criteria and additional criteria must be clear, precise, and unambiguous. This means that the wording should provide bidders with a precise understanding of the criteria and allow for an interpretation that is the same for all reasonably informed and normally diligent bidders.

The description of the criteria should enable the contracting authority to verify that the proposals meet the criteria for the award of the contract. All criteria should ensure the possibility of effective competition

Table 1 Sub-criteria and additional criteria in a furniture procurement.

Sub-criteria	Additional criteria
Price	
Quality	Durability of upholstery fabric

for the contract. This can be achieved by having criteria that include a competitive element or otherwise provide a basis for competition suitable for identifying the proposal with the best balance between price and quality. This can be done, for example, by having criteria where the degree of fulfilment is assessed. Assessment is related to the specific degree of fulfilment. The better a bidder fulfils a specific criterion, the higher the assessment they receive. Similarly, sub-criteria and additional criteria can also be linked to any minimum requirements specified in the requirements specification, allowing the contracting authority to let bidders compete on exceeding specified minimum requirements.

2.3.3.3 Related to the subject matter of the contract

The sub-criteria and the additional criteria that the contracting authority chooses to use must be related to the subject matter of the contract. Sub-criteria are related to the subject matter of the contract if they

relate to what needs to be delivered under the contract. Sub-criteria can be factors involved in the manufacturing and delivery of, or trade of the goods, or services. In such cases, they must be related to the subject matter of the contract.

The contracting authority can incorporate social and environmental considerations into the procurement process by using sub-criteria or setting conditions for the implementation of the contract, regarding all aspects and every stage in the life cycle of the subject matter of the contract. This can include setting criteria from the creation of raw materials for a product to the time of disposal of the product.

Factors involved in the specific process of manufacturing and delivering or trading of the relevant, goods, or services can be sub-criteria related to the subject matter of the contract. Likewise, factors involved in a specific process at a later stage in their life cycle can also be sub-criteria related to the subject matter of the contract, even if such factors do not constitute part of the material content of the contract. This means that these factors do not affect the performance or function of the procurement but have an indirect added value. This can include environmental efficiency or social inclusion.

In general, it is not possible to require the bidder's general policy because criteria related to a general policy cannot be considered as a factor characterizing the specific process of manufacturing or delivering the subject matter of the contract. Therefore, a contracting authority cannot require a bidder to have a specific corporate social responsibility (CSR) policy, unless these requirements are related to the subject matter of the contract.

2.3.3.4 Description of what is considered important

Another element in the evaluation procedure is that the contracting authority must describe in the procurement document what is considered important in the evaluation of individual sub-criteria and additional criteria. The description should make it clear to potential applicants and tenderers what is considered important so that the contracting authority does not have an unrestricted choice in the evaluation. Potential applicants or tenderers should be able to assess whether they want to invest resources in preparing an application or tender and how they can optimize their tender.

Article 67

4. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.

It is not a requirement that the contracting authority provides a comprehensive description of what is considered important in the evaluation of the qualitative sub-criteria and, if applicable, the additional criteria. However, during the evaluation, the contracting authority must not consider factors that have not been disclosed in the procurement documentation. Factors that a reasonably informed and normally diligent tenderer could not have deduced from the description in the procurement documentation must not be considered. Undisclosed factors that could be important for tenderers in shaping their tenders or in deciding whether to submit tenders must also not be considered.

Regardless of the procurement procedure chosen by the contracting authority, the requirements for describing what is considered important are the same. In relation to flexible procedures, the contracting authority can advantageously describe functionality. Unlike a specific technical description, this will give tenderers better opportunities to propose different methods which meet the contracting authority's needs.

When it comes to assessing how well a tender meets the specified sub-criteria and additional criteria, the contracting authority has broad discretion within the framework of the procurement documents.

2.3.3.5 Weighting of sub-criteria and additional criteria

When using the award criterion “best price-quality ratio,” the contracting authority must specify in the procurement documents the weighting of the sub-criteria. The weighting should ensure that the sub-criteria are balanced in the evaluation of the tenders according to the contracting authority’s preferences.

In the case of the award criterion “best price-quality ratio,” the weight assigned to each sub-criteria, especially the price sub-criterion, must not be set in a way that makes price the sole determining factor in the evaluation of tenders. Such an approach would be contrary to the transparency principle.

The contracting authority can use percentages to assign weightings to the chosen sub-criteria. This means that for the award criterion “best price-quality ratio,” which typically includes two sub-criteria, price and quality, the contracting authority can determine the weighting of these two sub-criteria. For instance, the contracting authority may decide to multiply the scores from the evaluation of the price sub-criterion by 55% and the scores from the evaluation of the quality sub-criterion by 45% (see table 2 below.)

Article 67

5. The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

Table 2 Example of a weighting on price and quality.

Sub-criteria	Weight
Price	55%
Quality	45%

2.3.3.5.1 Intervals for weighting

The Procurement Directive allows the contracting authority to choose to determine the weighting assigned to the sub-criteria using an appropriate interval. This means that instead of specifying a specific weighting, the contracting authority can, for example, decide that quality should be weighted between 40% and 45%.

The contracting authority is not required to use the same range for all sub-criteria, and some sub-criteria can be specified with precise weightings. For instance, the weighting of price can be fixed, while intervals are used for other sub-criteria. But the total weighting must always add up to 100%.

There are two important conditions attached to the use of weighting within intervals.

Firstly, the specified interval must be appropriate. This means that it would be contrary to the transparency principle if the interval is so wide that it does not effectively show the significance of the sub-criterion in

the tender evaluation. When determining the interval, the contracting authority should assess what would be an appropriate range in the context of the specific procurement.

Secondly, the contracting authority must determine the final weighting of the sub-criteria before commencing the tender evaluation. The tender evaluation is considered to begin when the contracting authority starts assessing the tenders with the aim of identifying the economically most advantageous offer.

In accordance with the transparency principle, tenderers must have the opportunity to verify whether the tender evaluation has been conducted in accordance with the Procurement Directive and the tender documentation. Therefore, the contracting authority must be able to document that the precise weighting has been definitively established before the tender evaluation begins. This documentation can take the form of a decision note that is logged before the tender evaluation, a system log from an e-procurement system, and so on.

If the contracting authority wishes to avoid any doubt about whether the specific weighting has been determined before the evaluation, it can choose to publish the selected, specific weighting in the same place where the tender documentation was initially published, at the time the tender deadline expires. This approach can also reduce the need for tenderers to seek access to documents through freedom of information requests.

The contracting authority's final determination of the weighting of sub-criteria must be based on legitimate grounds. The final weighting of the sub-criteria can, for example, be based on new information about the market or the service being offered that the contracting authority has become aware of during the procurement process, such as due to questions or requests for additional information.

2.3.3.6 Evaluation method

When the contracting authority has established criteria for award, including sub-criteria and, if applicable, additional criteria, weighting of sub-criteria, and a description of what is considered important in the evaluation, the contracting authority can determine an evaluation method. The evaluation method can assist the contracting authority in evaluating the received bids and identifying the economically most advantageous bid. This is not a requirement in the Procurement Directive, but it is recommended to do so, because it's then transparent to the bidders what factors that are emphasized in the evaluation and how it will be carried out. If the contracting authority chooses to use an evaluation method, they must publish the evaluation method in the tender documentation.

Evaluation methods encompass all the systematic approaches and arrangements that the contracting authority uses in evaluations. It refers to the techniques and tools the contracting authority employs to support the framing of evaluations. This includes the methods used to identify the economically most advantageous bid, regardless of whether the award criterion is price, cost, or the best price-quality ratio.

The description of the evaluation method should make it clear to the bidders what the practical implications of the evaluation method are expected to be and how it might affect weighting and, consequently, competition among the bidders. Based on this information, bidders should be able to assess whether they want to invest resources in participating in the procurement or submitting bids, and if so, how they can optimize their bids.

Finally, the publication of the evaluation method allows bidders to subsequently verify whether the evaluation has been conducted in accordance with what was disclosed. In other words, bidders can assess whether the stated has been implemented.

The contracting authority is free to choose an appropriate evaluation method. The chosen evaluation method may for example be based on a price or point model. In price models, points from quality assess-

ments are converted into prices, which are then combined with bid prices form an evaluation price. The bid with the lowest evaluation price wins the tender. In point models, bid prices are converted into points, which are combined with points for quality. The bid with the highest overall point score wins the tender.

The guide outlines five specific evaluation models: two focused on price and three on points. These model illustrations are demonstrated through a consistent standard example, providing a clear comparison of their functionalities. The examples are in Danish crowns, but it should still be possible to understand the examples.

2.3.3.6.1 Price models

In price models, points for quality are converted into monetary amounts, which are then weighted alongside the tender prices in the evaluation of which offer has the best price-quality ratio.

The evaluation takes place in three stages:

1. Assessment of the offers on quality criteria.
2. Conversion of point to amounts in national currency.
3. Calculation of total evaluation amount.

2.3.3.6.1.1 Assessment of the offers on quality criteria

The first step of assessing the offers on qualitative criteria can be carried out in various ways. In price models, it is typically chosen to conduct separate assessments to determine how many points each offer should receive on an absolute point scale. In the assessment, for example, the lowest possible points are given for the best possible fulfilment of the quality criteria, and the highest possible number of points are given for the worst possible fulfilment of the quality criteria.

The choice of point scale used will depend on a specific evaluation. The point scale should be able to cover the variation in the offers that the contracting authority receives in a tender. A scale with too few steps in the point scale may result in all offers receiving the same number of points, even if there are differences in quality between the offers. Such a scale would not allow for differentiation between offers. A scale with too many steps can make it difficult for the contracting authority to distinguish between different offers. In this case, relatively similar offers may end up with different numbers of points.

Contracting authorities should consider how the chosen sub-criteria should be assessed when evaluating the received bids. Contracting authorities must use the same scale for different sub-criteria, but the choice of an appropriate scale will be a specific evaluation. For example, a scale with few steps would be suitable for a sub-criterion with little room for variation.

In the following example, a scale with nine steps from 0-8 is used. This scale is chosen because it allows for the evaluation of offers with a sufficient range of steps to differentiate between them.

Table 3 Point scale for assessing qualitative criteria in a price model.

Fulfillment of the criterion	Points
Best possible fulfillment of the criterion	0
Excellent fulfillment of the criterion	1
Good/very satisfactory fulfillment of the criterion	2
Above average fulfillment of the criterion	3
Average/satisfactory fulfillment of the criterion	4
Below average fulfillment of the criterion	5
Less satisfactory fulfillment of the criterion	6
Less satisfactory fulfillment of the criterion	7
Inadequate fulfillment of the criterion (but compliant offer)	8

2.3.3.6.1.2 Conversion of point to amounts in national currency

The second step in converting points for qualitative criteria into monetary amounts can be done in different ways. Below, two of these methods are explained. In the first method, the conversion amount from quality points to a price supplement is based on the average prices in the received bids. In the second method, the amount is determined before submitting bids based on a calculation of the task.

The monetary amounts to which the quality assessments are converted are fictional amounts used solely to identify the winner of the tender.

2.3.3.6.1.2.1 Price model based on average prices

In this price model, the conversion amount is determined as the average of the bid prices divided by the highest possible score on the quality scale:

$$\text{Conversion amount} = \text{average price} / (\text{highest score} - \text{lowest score})$$

When this model is used, the contracting authority must decide which weight percentages to apply in the evaluation. We use the weighting from table 2.

The model is illustrated in a standard example used to explain the two evaluation models in this guide. By using the same standard example for both evaluation models, the differences between the models and how they work in relation to each other are illustrated. In the example below all the bids are relatively close in terms of price and quality since this demonstrates how the models work in relation to each other and there is only used two sub-criteria, price and quality.

Example 1 Price Model with Conversion Amount Calculated from Average Prices in the Bids

A contracting authority uses a price model where:

- The conversion amount is calculated as the average price divided by eight.
- Prices are weighted at 55%, and the conversion amount for quality is weighted at 45%, corresponding to the weighting.

The contracting authority receives five bids containing the following prices and quality (assessed on a scale from 0-8 points, where 0 points are given for the best quality):

	A	B	C	D	E
Prices (DKK)	2.000.000	2.050.000	2.250.000	2.600.000	2.700.000
Quality (points)	7	5	4	1	0

The conversion amount is calculated as the average price (2,320,000 kr.) divided by the highest possible number of points minus the lowest number of points on the quality assessment scale (8 points).

This results in a conversion amount of 290,000 kr. per point.

The bids' total evaluation amounts are calculated as follows:

	Weight	A	B	C	D	E
Prices (DKK)		2.000.000	2.050.000	2.250.000	2.600.000	2.700.000
Quality (290.000 kr. per point)		2.030.000	1.450.000	1.160.000	290.000	0
Prices	55%	1.100.000	1.127.500	1.237.500	1.430.000	1.485.000
Quality	45%	913.500	652.500	522.000	130.500	0
Evaluation Amount		2.013.500	1.780.000	1.759.500	1.560.500	1.485.000

Bid E has the lowest evaluation amount and therefore wins the procurement.

In the example, all the bids have relatively similar price-to-quality ratios, as bids with low prices also have low quality, and bids with high prices have high quality. Therefore, which bid should win the procurement in such an example depends on the weighting that a contracting authority has assigned to the price and quality sub-criteria.

2.3.3.6.1.2.2 Price model based on calculated amounts

The model described above calculates the conversion amount based on the content of the bids, and it will depend on the actual prices submitted in the bids. However, a contracting authority can also use a pricing model where the amount is not dependent on the submitted prices but is fixed or pre-determined.

When determining the fixed calculation amount or conversion amount, it's important to consider that the higher the amount, the more value is attributed to quality. Therefore, it may be prudent to test this model to find the calculation amount/conversion amount and weighting percentages that achieve the desired balance between price and quality in the evaluation. Having a good understanding of the market can help in determining the calculation amount/conversion amount effectively.

One way to determine a conversion amount is by selecting a model that starts with a predetermined calculation amount for the task divided by the highest possible number of points on the quality scale:

$$\text{Conversion amount} = \frac{\text{calculation amount}}{(\text{maximum points} - \text{minimum points})}$$

In this model, the contracting authority needs to decide what fixed calculation amount to use for calculating the conversion amount and what weighting percentages to apply in the evaluation.

Example 2 pricing model where the conversion amount is determined from a fixed calculation amount.

The contracting authority uses a calculation amount of 2.2 million DKK and will assess quality on a scale from 0 to 8 points. Therefore, the conversion amount can be calculated as the calculation amount (2,200,000 DKK) divided by the highest number of points on the quality assessment scale (8 points). This results in a conversion amount of 275,000 DKK per point.

The contracting authority thus employs a pricing model where:

- The conversion amount is 275,000 DKK per point.
- Prices are multiplied by 55 percent, and the conversion amount for quality is multiplied by 45 percent, corresponding to the weight. (See table 2)

The contracting authority receives the same five bids as in example 1.

	A	B	C	D	E
Prices (DKK)	2.000.000	2.050.000	2.250.000	2.600.000	2.700.000
Quality (points)	7	5	4	1	0

The bids' total evaluation amounts are calculated as follows:

	Weight	A	B	C	D	E
Prices (DKK)		2.000.000	2.050.000	2.250.000	2.600.000	2.700.000
Quality (275.000 kr. per point)		1.925.000	1.375.000	1.100.000	275.000	0
Prices	55%	1.100.000	1.127.500	1.237.500	1.430.000	1.485.000
Quality	45%	866.250	618.750	495.000	123.750	0
Evaluation Amount		1.966.250	1.746.250	1.732.500	1.553.750	1.485.000

Bid E has the lowest evaluation amount and therefore wins the procurement.

As evident, in example 1 and 2 the result is the same. This is because the conversion amounts are nearly identical. The only difference lies in how the conversion amount is determined. In the first example, it depends on the content of the bids, while in the second example, the contracting authority sets a calculation amount from which the conversion amount is calculated.

Table 4 Point scale for evaluating qualitative criteria in a point model.

Fulfillment of the criterion	Points
Best possible fulfillment of the criterion	8
Excellent fulfillment of the criterion	7
Good/very satisfactory fulfillment of the criterion	6
Above average fulfillment of the criterion	5
Average/satisfactory fulfillment of the criterion	4
Below average fulfillment of the criterion	3
Less satisfactory fulfillment of the criterion	2
Less satisfactory fulfillment of the criterion	1
Inadequate fulfillment of the criterion (but compliant offer)	0

2.3.3.6.1.3 Calculation of total evaluation amount

The third and final step is to calculate the overall point score for the bids. In this context, the contracting authority must ensure that the specified weighting from the tender documentation is maintained. The contracting authority should multiply the points awarded for price and quality by the respective weighting percentages.

2.3.3.6.2 Point models

In point models, the prices in the bids are converted into points, which can be compared with the points for quality when evaluating which bid has the best price-to-quality ratio.

The evaluation takes place in three stages:

1. Assessment of the offers on quality criteria.
2. Conversion of prices in bids to points.
3. Calculation of total point score.

2.3.3.6.2.1 Assessment of the offers on quality criteria

The first step is an assessment of the bids based on quality criteria. This can be done in various ways. The contracting authority must choose a point scale for the assessment of sub-criteria in the evaluation model. The point scale must be able to cover the variation in the bids received by the contracting authority. As mentioned, this guide is based on an absolute point scale with 8 points for the best possible fulfilment of the quality criterion and 0 points for the worst possible, but conditional.

2.3.3.6.2.2 Conversion of prices in bids to points

The second step is the conversion of the bid prices into points. This can be done in various ways in point models. In this guide, two different linear point models and one non-linear model are described.

When linear point models are used, a price range is determined and used in the conversion of bid prices into points. When non-linear point models are used, a price range is not established.

2.3.3.6.2.2.1 Linear point model

In linear point models, the conversion of bid prices to points is based on a price range. Bid prices corresponding to the lower end of the range are converted to the maximum points, while prices corresponding to the upper end of the range are assigned the minimum points. For prices between these extremes, the conversion is linear, corresponding to the number of points the bid price represents. Since the prices in the bids are specified in a unique unit, such as currency, the conversion in a linear point model can be very precise, typically resulting in a point value with two decimal places.

2.3.3.6.2.2.1.1 Lowest price plus X percent

In this model, maximum points are awarded to the lowest price, and minimum points are awarded to the lowest price plus X percent (for instance, if the lowest price is 50 EUR and the contracting authority anticipates that the highest price will be 50 percent higher than the lowest price, then the lowest price plus X percent, which is 50 EUR plus 50 %, will be 75 EUR and will receive the minimum points).

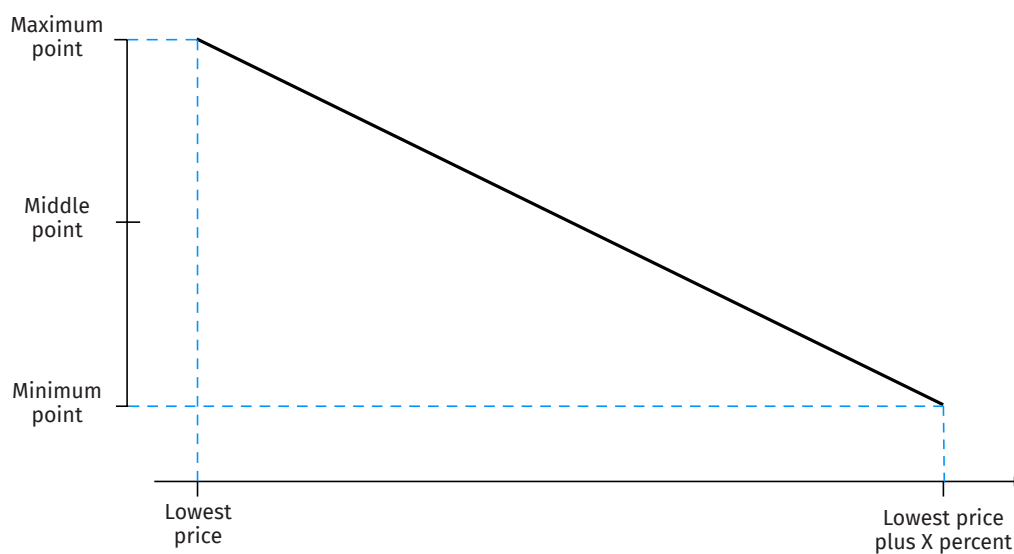


Figure 6 Linear model, where the lowest price plus X percent yields minimum points.

Mathematically, the points in this type of model can be calculated using the following formula:

$$\text{Points} = \text{maximum points} - \left(\frac{\text{maximum points} - \text{minimum points}}{X \text{ percent}} \right) \times \frac{\text{price} - \text{lowest price}}{\text{lowest price}}$$

In this model, the contracting authority must choose what the X percent should be in the specific tender. The spread in the bid prices, actual or expected, can influence the choice of the X percent so that all bid prices can fit within the model. After the contracting authority has set the X percent and thus the price range and slope for the model, it must be ensured that the weighting is maintained in relation to the relationship between price and quality in the evaluation.

Once the contracting authority has determined the X percent and thus the price range and slope for the model, it must be ensured that the weighting is maintained in the relationship between price and quality in the evaluation.

The contracting authority must be attentive to the fact that the weighting of price and quality in the evaluation depends on:

- The model for converting prices to points and the chosen price range in this model.
- The selected weight percentages that are to be multiplied by the points for prices and quality criteria.

When it comes to weighting, there is a difference depending on whether the slope is calculated by setting the X percent as 50 percent above the lowest price or 100 percent above the lowest price. (The 50 percent and 100 percent are examples. The contracting authority must use the X percent that they find most economically advantageous, taking into account the specified weighting.)

Once the contracting authority has chosen a model and percentage weights, the next step is to compile the sub-criteria. This can be done, for example, as illustrated in example 3.

Example 3 Linear point model, where the range spans from the lowest price to X percent.

A contracting authority uses a linear point model, where:

- The lowest price is awarded the maximum (8 points) and the minimum points are assigned to the lowest price plus 50 percent.
- Points for prices are multiplied by 55 percent, and points for quality by 45 percent, corresponding to the weighting. (See table 2)

The contracting authority receives five bids, which contain the following prices and quality (rated on a scale from 0-8 points, where 8 points are given for the best quality):

	A	B	C	D	E
Prices (DKK)	2.000.000	2.050.000	2.250.000	2.600.000	2.700.000
Quality (points)	1	3	4	7	8

The content of these bids implies that there will be a range that goes:

- From the lowest price of 2,000,000 kr. (which gives 8 points)
- To the lowest price plus 50 percent, corresponding to 3,000,000 kr. (which gives 0 points).

Subsequently, the bid prices can be linearly converted to the following points (row 1 in the table), which can then be multiplied by the chosen weight percentages (rows 3 and 4)

	Weight	A	B	C	D	E
Prices (points)		8,00	7,60	6,00	3,20	2,40
Quality (points)		1	3	4	7	8
Prices	55%	4,40	4,18	3,30	1,76	1,32
Quality	45%	0,45	1,35	1,80	3,15	3,60
Total point score		4,85	5,53	5,10	4,91	4,92

Bid B has the highest total point score and therefore wins the tender.

The example in example 3 is the same as in the examples 1 and 2 on price models. The only difference is that the scoring on the quality scale is reversed in point models compared to price models.

2.3.3.6.2.1.2 Average price plus/minus X percent

A weakness of the model above can be that the conversion of prices to points is based on just one element from one of the bids (the lowest price). This could mean that the size of the price in the lowest bid could be crucial in determining which bid wins.

Instead of the lowest price, the contracting authority can use a point model where the average prices in the bids are used as the basis. Such a model could be formulated as follows:

- The average price in the bids corresponds to the midpoint on the points scale.
- Minimum and maximum points are set to the average price plus/minus X percent. Bids are converted to points based on deviations from the average price (linearly).

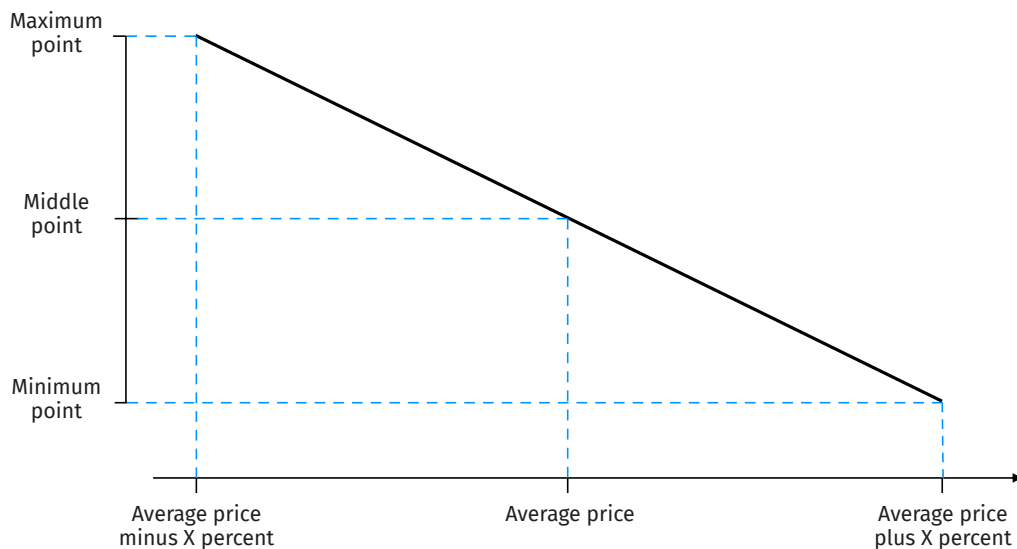


Figure 7 Linear model where the range is the average price plus/minus X percent.

As shown in figure 7, the price range is also set here by an X percent for deviation from the contents of the bid prices. Therefore, the contracting authority should, as far as possible, set the X percent so that the expected or actual spread in the bid prices can be accommodated in the model.

Mathematically, the conversion of bid prices in this model can be done using the following formula:

$$\text{Points} = \text{minimum points} + (\text{maximum points} - \text{minimum points}) * \left(1 - \frac{(\text{price} - \text{LP})}{(\text{HP} - \text{LP})}\right)$$

- LP is the low-price triggering maximum points (average price minus X percent)
- HP is the high price triggering minimum points (average price plus X percent).

The next step for this model is to set the weight percentages that will be multiplied by points for prices and quality to determine the winner of the tender. Here, the contracting authority can test to ensure that the model provides the specified weighting in the evaluation.

Example 4 Linear point model where the range is the average price plus/minus X percent

A contracting authority uses a linear point model, where:

- In the linear point model, the average price minus 20 percent yields the maximum (8 points), and the average price plus 20 percent yields the minimum (0 points). Points for prices are multiplied by 55 percent, and points for quality by 45 percent, corresponding to the weighting. (See table 2)

The contracting authority receives five bids, which contain the following prices and quality (rated on a scale from 0-8 points, where 8 points are given for the best quality):

	A	B	C	D	E
Prices (DKK)	2.000.000	2.050.000	2.250.000	2.600.000	2.700.000
Quality (points)	1	3	4	7	8

The content of these bids implies that there will be a range that goes:

- From 1,856,000 kr. (corresponding to the average price of 2,320,000 minus 20 percent), which gives 8 points,
- To 2,784,000 kr. (corresponding to the average price of 2,320,000 plus 20 percent), which gives 0 points.

Subsequently, the bid prices can be linearly converted to the following points (row 1 in the table), which can then be multiplied by the chosen weight percentages (rows 3 and 4)

	Weight	A	B	C	D	E
Prices (points)		6,67	6,33	4,60	1,59	0,72
Quality (points)		1	3	4	7	8
Prices	55%	3,72	3,48	2,53	0,87	0,40
Quality	45%	0,45	1,35	1,80	3,15	3,60
Total point score		4,17	4,83	4,33	4,02	4,00

Bid B has the highest total point score and therefore wins the tender.

In the example, the evaluation of the quality in the offers is, like in the other examples in this guideline, done through separate assessments of the quality in each individual offer in relation to an absolute scale.

2.3.3.6.2.2.2 Non-linear point model

A non-linear point model, such as figure 8 below, does not contain an upper limit for the size of the prices. Because, the model is not based on a price range.

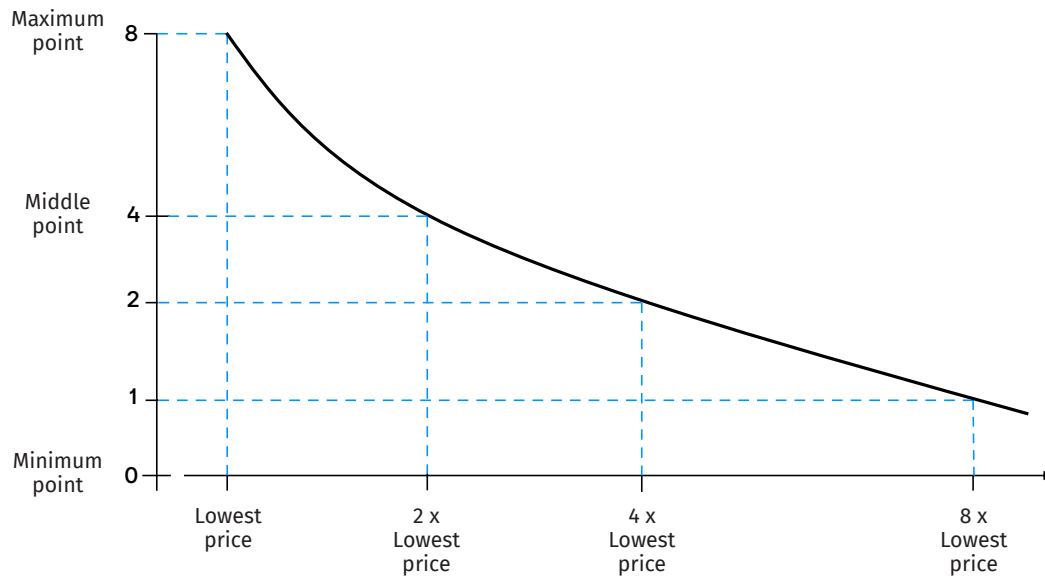


Figure 8 Non-linear point model.

Mathematically, the points in this model can be calculated using the following formula:

$$\text{Points} = \text{minimum points} + (\text{maximum points} - \text{minimum points}) * \frac{\text{lowest price}}{\text{price}}$$

If a minimum of 0 points is given on the scale, the following formula can be used:

$$\text{Points} = \text{minimum points} * \frac{\text{lowest price}}{\text{price}}$$

The non-linear model in the figure above has an inherent tendency that may be relevant to consider when contemplating its use. In many procurement processes, there may not be a significant spread in the bid prices, and in such cases, it is unlikely that the contract will be awarded to a bid that is, for example, more than 50 percent higher than the lowest bid. When the non-linear model in Figure 8 is used in procurement processes with limited price spreads, only a small portion of the points scale will be utilized in the conversion of prices to points.

The non-linear model can result in smaller differences in points between bid prices compared to linear models, thus emphasizing the importance of quality criteria in the overall evaluation results. This effect should be reflected in the determination of the weighting of the individual sub-criteria. Consequently, the model tends to favour bids with higher prices (and higher quality) as winners of the procurement process. The impact of the model is illustrated in the following example, which involves the same bids, quality assessments, and weight percentages as the other evaluation models.

Example 5 Non-linear point model

A contracting authority uses a non-linear point model, where:

- The bid prices are converted to points using the formula: Maximum points * lowest price / price.
- Points for prices are multiplied by 55 percent, and points for quality by 45 percent, corresponding to the weighting. (See table 2)

The contracting authority receives five bids, which contain the following prices and quality (rated on a scale from 0-8 points, where 8 points are given for the best quality):

	A	B	C	D	E
Prices (DKK)	2.000.000	2.050.000	2.250.000	2.600.000	2.700.000
Quality (points)	1	3	4	7	8

The bid prices are converted to points using the formula above (row 1 in the table), which can then be multiplied by the chosen weight percentages (rows 3 and 4)

	Weight	A	B	C	D	E
Prices (points)		8,00	7,80	7,11	6,15	5,93
Quality (points)		1	3	4	7	8
Prices	55%	4,40	4,29	3,91	3,38	3,26
Quality	45%	0,45	1,35	1,80	3,15	3,60
Total point score		4,85	5,64	5,71	5,71	6,86

Bid E has the highest total point score and therefore wins the tender.

The example illustrates that with this model, it may be relevant for the contracting authority to ensure that the predetermined weighting is maintained.

2.3.3.6.2.3 Calculation of total point score

The third and final step is to determine the overall point score of the bids. In this process, the contracting authority must ensure that the specified weighting from the tender documentation is maintained. The contracting authority should multiply the points awarded for price and quality by the respective weight percentages.

2.3.4 Award of the contract

The contracting authority's examination and assessment of received bids can only take place after the bid deadline has expired. After the deadline, the contracting authority must verify the content of the bids, and bids that do not meet the requirements specified in the contract notice or other tender documents are deemed unacceptable and must be rejected. However, there are certain opportunities to rectify any errors and deficiencies. Additionally, the contracting authority must also consider whether the bids contain any reservations or if there is an unusually low bid. If the contracting authority is in doubt about the information provided in the bid, an effective verification thereof must be carried out. The examination of the content of the bids typically takes place prior to the actual evaluation of the bids.

The evaluation must be conducted based on the criteria for award, weighting, and descriptions of what is considered important, as well as the evaluation method outlined and published in the tender material. The decision for awarding the contract is made after the evaluation. However, before notifying the bidders, the contracting authority must obtain documentation regarding the ESPD from the bidder with whom they intend to enter a contract. Following this, simultaneous notification must be given to all affected applicants or bidders.



Part 3: Technical specifications

The technical specifications are the characteristics that the contracting authority require for the specific service or product. There is great freedom to choose what the contracting authority wishes to purchase, and there are broad guidelines for describing the desired procurement.

The technical specifications must enable tenderers to submit tenders that meet the contracting authority's requirements, and they must be specified in the tender documents and the technical specifications must be designed so that they do not lead to an artificial narrowing of the market. For example, reference must not be made to the fact that labour, materials etc. must originate from the contracting authority's own country. Likewise, the technical specifications must not lead to discrimination or unfounded obstacles to competition.

Article 42

1. The technical specifications as defined in point 1 of Annex VII shall be set out in the procurement documents. The technical specification shall lay down the characteristics required of a works, service or supply.

Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

(...)

For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.

The technical specification can also include information that doesn't directly relate to the characteristics of the service but, for example, requirements for the supplier and its staff, determine characteristics regarding environmental and climate performance, access options for people with disabilities, functionality, safety, quality assurance, terminology, symbols, testing and testing methods, packaging, labelling, instructions for use, production processes and methods, etc. (see Annex VII below.) The specified characteristics will depend on the specific acquisition, as well as whether it is a product, a service or construction work.

Annex VII

Definitions of certain technical specifications

(1) 'technical specification' means one of the following:

(a) in the case of public works contracts (...)

*(b) in the case of **public supply or service contracts** a specification in a document defining the required characteristics of a product or a service, such as **quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods** at any stage of the life cycle of the supply or service and conformity assessment procedures;*

The transparency principle implies that the technical specifications must be clear and unambiguous about what is required, as well as which properties the offered solutions must contain, and which properties can form the basis of the competition.

It should be noted that requirements can only be set in proportion to the specific contract's value and objectives. Therefore, the contracting authority can only establish requirements that are necessary and appropriate to achieve the intended goals. When the requirements match the contract's scope, the contracting authority often achieves a lower price because bidders don't have to allocate resources to meet requirements that go beyond what's necessary in relation to the procurement's scope.

In continuation of the principle of equal treatment, the contracting authority must not create unfounded obstacles to competition in the technical specifications or artificially narrow competition in other ways. It will therefore only be possible to set requirements for technical specifications with a restrictive effect on competition if the contracting authority can state factual reasons for setting the requirements.

Article 42

*2. Technical specifications shall **afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.***

If the contracting authority chooses to award the contract based on the price or costs criteria, the requirement specification should usually be relatively detailed since only the price or costs are being competed on. If the award is based on the best price-quality ratio with several sub-criteria such as functionality and quality, the requirement specification for these aspects can be less detailed since bidders will compete on meeting these criteria.

However, this does not necessarily mean that the requirement specification always needs to be very detailed. There are no specific requirements regarding the level of detail, but the material should be clear and precise. In relation to the specific procurement, the contracting authority should assess how detailed the requirement specification needs to be. It's also possible to formulate requirements in different ways. For example, functional requirements can be formulated instead of specifying the solution. In this way, it is left to the bidder to determine how the contract will be fulfilled.

3.1 Use of minimum requirements

The use of minimum requirements in the technical specification is possible. Minimum requirements are requirements for the characteristics of the offered service, which specify characteristics (especially physical, functional, and legal) that all tenderers must meet. If the contracting authority uses minimum require-

ments, it must ensure that it is clear to the tenderers what the minimum requirement entails. It must also be clear how the tenderer wishes the compliance with the minimum requirement to be disclosed or documented in the offer. If an offer does not comply with a minimum requirement, the offer must be rejected.

Tenderers cannot make reservations for a minimum requirement in the offer, and there cannot be competition on meeting a minimum requirement unless it is explicitly stated in the tender documentation because the offered service must at a minimum meet the specified minimum requirements. It will be possible to compete on an over-fulfilment of a minimum requirement if this is stated in the tender documentation and is indicated as part of the award.

The contracting authority must be careful to only set relevant and necessary minimum requirements for the service. Too many or too high requirements can result in fewer offers being submitted. This can harm competition, and unnecessary minimum requirements can contribute to higher procurement costs.

Minimum requirements are central requirements for the characteristics of the offered service, and as a result, changing minimum requirements will generally be considered a change in fundamental elements that cannot be made without a renewed procurement procedure.

However, the principle of equal treatment does not exclude changes to minimum requirements if the changes cannot affect the participation of potential applicants or tenderers in the relevant procurement procedure and do not distort competition between applicants or tenderers.

3.2 Specification methods

A contracting authority must prepare the technical specifications in one of the ways below:

- Performance or functional requirements. Specification of the contracts subject matter in the form of a description of the required functionality, functional requirements, technical requirements, or other requirements.
- Standards etc. by reference to one or more of the standards.
- A combination of standards etc., functionality and functional requirements.

Article 42

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, **the technical specifications shall be formulated in one of the following ways:**

(a) in terms of **performance or functional requirements**, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(b) by reference to **technical specifications** and, in order of preference, to national **standards** transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when any of those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent';

(c) in terms of **performance or functional requirements** as referred to in point (a), with **reference to the technical specifications** referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

(d) by reference to **the technical specifications** referred to in point (b) for certain characteristics, and by **reference to the performance or functional requirements** referred to in point (a) for other characteristics.

3.2.1 Functional requirements

Functional requirements describe requirements for the performance of the service, including results and effects, rather than making requirements for the exact procedure or detailed specification.

For example, a functional requirement in a maintenance contract for green areas, could be a requirement that the grass must not exceed a certain height, measured in centimetres, at any given time. Such a functional requirement can be used instead of specifying how many times per week the grass should be mowed.

The contracting authority can partly prepare its description using technical requirements. Partly in the case of activity-based requirements, where the contracting authority describes the activities to be carried out but does not necessarily describe the technical characteristics or the results to be achieved.

In the case of tenders with functional requirements, the contracting authority will not have to describe in detail and in advance how the task is to be solved, but instead a number of functional requirements will be drawn up. In this way, the focus can be directed on the result the contracting authority wants, and not on the way the supplier must solve the task. In this way, it is left to the supplier to decide how the contract is to be fulfilled. Functional requirements can be an advantage, as the supplier gets the opportunity to think creatively in solving the task and come up with its own ideas on how to best approach a task.

Functional requirements can give the contracting authority the option of different technical solutions and thereby expand competition. They also provide greater opportunity for innovation and for the task to be solved in other ways that are more appropriate than the approach used so far.

The most important thing is that the contracting authority describes the requirements so precisely that the tenderers can identify the contracts subject matter and the contracting authority can award the contract. When a contracting authority prepares technical specifications by describing functional requirements or requirements for performance, it cannot reject a tender that complies with one of the following specifications if those specifications meet the functional requirements or performance requirements set by the contracting authority:

- A national standard for the implementation of a European standard.
- A European technical approval.
- A common technical specification.
- An international standard.
- A technical reference prepared by a European standardization organization.

Article 42

6. Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, **it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international**

standard or a technical reference system established by a European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

In its tender, the tenderer shall prove by any appropriate means, including those referred to in Article 44, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

The tenderer must be able to demonstrate, using appropriate means, that the proposed solution that complies with one of the above standards also meets the functional requirements or requirements for performance set by the contracting authority. Appropriate means may include submitting test reports, certification, and other relevant documentation.

3.2.2 Standards

The technical specifications can be drawn up by referring to standards etc. which contain the relevant requirements for the subject of the contract. If reference is made to a standard, the contracting authority will be able to predict the content of the offer with certainty. The disadvantage is that the requirements for the acquisition are fixed and cannot be changed, but it can also create transparency with regard to the technical specifications of the procurement, as the technical requirements are determined in advance in a publicly available document prepared by an independent body.

A standard is:

Annex VII

Definitions of certain technical specifications

(2) **'standard'** means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:

(a) **'international standard'** means a standard adopted by an international standardisation organisation and made available to the general public,

(b) **'European standard'** means a standard adopted by a European standardisation organisation and made available to the general public,

(c) **'national standard'** means a standard adopted by a national standardisation organisation and made available to the general public;

The contracting authority can prepare the technical specifications by referring to one or more of the standards below in order of priority:⁸

- National standards transposing European standards.
- European Technical Assessments.
- Common technical specifications.
- International standards.
- Other technical reference systems established by the European standardisation bodies.
- National technical approvals.
- National technical specifications relating to the design, calculation and execution of the works and use of the supplies.

8 Article 42 (3,b).

The Procurement Directives establish a hierarchy of published standards, where European standards must preferably be used before national standards. Only if there are no relevant European standards can reference be made to national standards and then, if necessary, only followed by the term or equivalent. The background for this division of standards is that a contracting authority's reference to national standards as a basis for entering a contract can be extremely disruptive to the competition, as often only economic operators from the same Member State will be able to document that their products meet the requirements of the standard.

The tenderer must document in his tender that the solution offered meets the requirements set by the contracting authority. An offer that, in terms of content, meets the requirements set by the contracting authority in the technical specifications may not be rejected, even if it does not meet a required standard or specification, if the offeror proves in its offer by appropriate means that the offered solution meets the requirements laid down by the contracting authority. The appropriate means can, for example, be the submission of test reports, certification, and other appropriate documentation.⁹

3.3 Prohibition on referring to specific brand, origin, etc.

In the technical specifications, it is not allowed to specify a particular brand, origin, or manufacturing process that characterizes products or services from a specific supplier. The technical specifications must also not refer to a specific trademark, patent, type, origin, or production in a way that favours or eliminates certain bidders or products.

The purpose of this prohibition is to prevent competition from being limited or distorted and to ensure transparency in the actual requirements for the procurement. It can create doubt among bidders about whether a product that is not of the same brand as the reference product meets the needs that the contracting authority has.

Article 42

*4. Unless justified by the subject-matter of the contract, **technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products.** Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words 'or equivalent.'*

Note that in certain situations, if it is necessary for the specific acquisition to be compatible with existing products held by the contracting authority, the contracting authority may be justified in referring to the product with which the acquisition needs to be compatible. In such a situation, the contracting authority may refer to a specific trademark to clarify its needs. In exceptional cases where it is not possible to provide a sufficiently precise and coherent description of the complexity of the specific acquisition or other unique circumstances, the contracting authority may refer to a specific brand or similar, followed by the term "or equivalent." The burden of proof for demonstrating that a sufficiently precise and understandable description is not possible lies with the contracting authority. It may be useful in some situations to specify or exemplify how a product can be considered equivalent.

9 Article 42 (5)



Part 4: Proposed contract terms

The contract between the contracting authority and the winning tenderer determines the mutual obligations and rights of both parties, encompassing collaborative aspects, default protocols, and more. The contract governs the supply of goods and services throughout the contract's duration, often spanning several years. The contract is therefore an extremely important document in the tender material. The tender documents will usually contain a draft of the contract to be concluded between the contracting authority and the winning tenderer. This preliminary contract outlines various considerations, incorporating technical, financial, and legal components. The contract can also refer to a separate document containing technical descriptions related to the contract's subject, as well as specific guidelines for the provision and execution of the project, and a comprehensive list of bids with itemized pricing, among other elements.

Contract terms are the conditions that the contracting authority requires the bidder to fulfil in connection with the specific procurement. Contract terms may concern general legal matters that do not vary with the subject of the contract. This may include remuneration and payment obligations, security requirements and insurance, remedies for breach, force majeure, and more.

With regard to general contract terms, the contracting authority may consider the options of using any standard contracts available within the relevant market area. Specific contract terms also relate to more specific conditions that are relevant to the particular task. These terms must be carefully considered and formulated in relation to the specific procurement. This may involve regulation of the use of subcontractors, employee substitution, regulation of intellectual property rights, environmental requirements, social requirements, labour clauses, possible amendment clauses, and more.

While the Procurement Directive contains certain rules regarding the requirements that a contracting authority may impose in the contract, the contracting authority has significant discretion in setting contract terms. It is important for the contracting authority to design the contract in a way that ensures the best possible competition, meaning that only necessary requirements are imposed, and consideration is given to the costs associated with the requirements. A clear and precise contractual basis is essential for a successful collaboration between the contracting authority and the supplier.

4.1 Requirements for the contract terms

The contract conditions establish specific requirements for the implementation of the contract. These are objective requirements that do not affect the assessment of a bid. However, it is possible for the contracting authority to indicate in the tender material that bidders may make reservations regarding the contract conditions. The bidders' reservations will then be included in the contracting authority's evaluation of the specific bids.

There must be coherence between the contract conditions and the contract subject matter. Thus, it is not possible to set contract conditions that address general aspects of the supplier or other tasks performed by the supplier for the contracting authority. The contracting authority cannot impose conditions on a company's general policies, as such a condition cannot be considered as something that characterizes the specific process of manufacturing or delivering the specific procurement. The contract conditions must be related to the specific task to be performed under the contract.

Article 70

*Contracting authorities may lay down special conditions **relating to the performance of a contract**, provided that they are **linked to the subject-matter of the contract** within the meaning of Article 67(3) and indicated in the call for competition or in the procurement documents. **Those conditions may include economic, innovation-related, environmental, social or employment related considerations.***

4.2 Environmental, social and employment-related considerations

The contract conditions may also contain environmental, social, or employment-related considerations. The contracting authority can make demands on all aspects and at every stage of the products' life cycle from the origin of raw materials to the time of disposal of the product. This also applies even if the stipulated conditions do not form part of the material content of the acquisition. For example, a requirement may be that the purchased services must be delivered using energy-efficient machines. Conditions may be set for the implementation of the contract as far as the delivery or use of fair-trade products is concerned in the case of a specific acquisition.

The contracting authority cannot set conditions on a company's general policy because there must be a connection between the contract conditions and the contract's subject matter. And therefore, can the contracting authority not require a tenderer to have a valid company policy for social or environmental responsibility. That type of requirement is not considered a factor that characterizes the specific process of manufacture or delivery.

It is crucial that the conditions for the implementation of the contract, which concern the social aspects of the manufacturing process, relate to the services to be provided under the contract and that they are in accordance with the Posting of Workers Directive.¹⁰ A contracting authority can therefore not choose or apply social aspects about the manufacturing process in a way that directly or indirectly discriminates against tenderers from other EU countries or third countries that are parties to the WTO's Agreement on Government Procurement (GPA) or to free trade agreements to which the Union is a party. Requirements for the basic working conditions set out in the Posting of Workers Directive, for example on minimum wages, should remain at the level set through national legislation or collective agreements that apply in accordance with EU legislation in relation to Posting of Workers Directives.

It is also possible to set contract conditions which, for example, promote equality between men and women in the workplace, promote the protection of the environment or animal welfare, etc. The contracting authority can set clauses, e.g., work clauses and other clauses, to the extent that they do not conflict with national law or EU law.

The contracting authority can also, through conditions for the implementation of the contract, ensure the health protection of the staff who participate in the production or promote the social integration of disadvantaged persons. These could be, for example, conditions regarding the employment of long-term unemployed or the initiation of training initiatives for the unemployed and young people during the implementation of the specific contract.

In addition to the requirements set out in the Procurement Directive in relation to the content of the contract conditions, the contracting authority must be aware that various special rules may apply which have an impact on the procurement area. For example, the obligation to use social clauses in relevant tenders for

¹⁰ DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

state, regional and municipal contracting authorities. For public contracting authorities, there is a "follow or explain" principle in connection with the use of social clauses.



Part 5: Templates

5.1 Tender conditions

The tender form in these tender conditions is an open tender. This means that any supplier can submit an offer.

The tender conditions presented below are an example on how to write the tender conditions, this is not the only way to write it and you can choose what you want to include or what you want to exclude from the document.

Table of Contents

1.	Ordering authority	X
2.	Tender documents	X
3.	Object of the contract	X
4.	Tender process	X
5.	Submitting an offer	X
6.	Exclusion and suitability	X
7.	Award of contract	X
8.	Own declaration in relation to Council Regulation (EU) 2022/576	X
9.	Notification of allocation decision	X

Case no.: [•]

Document no.:

1 Contracting authority

The contracting authority under this tender is:

[Insert name of contracting entity]

[Insert Address]

[Insert zip code and city]

[Insert country]

EAN number: [number]

(hereinafter referred to as “Ordering Party”)

The Ordering Party is responsible for the organization and execution of the tender, and any contract will have to be entered into with the Ordering Party.

2 The tender material

In addition to these tender conditions, the tender material consists of the following components:

Tender notice:

Annex A: *Draft contract with associated annexes*

Appendix 1: *Technical specification*

Appendix B: *Offer list*

Annex [xx]: *[background material for the use of the tender process]*

Appendix C: *Template for declaration of joint representative in consortia*

Appendix D: *Template for declaration of support*

Appendix E: *Self-declaration regarding restrictive measures because of Russia's actions destabilizing the situation in Ukraine*

The common European tender document is filled in, in your Electronic platform in connection with the submission of the tender.

3 The object of the contract

3.1 Brief description of the contract

In this tender, the Ordering Party wishes to obtain offers for X.

The client's requirements for contract terms appear in the draft contract (appendix A), while the requirements for the service are described in detail in the technical specification (appendix 1).

In addition to the stated minimum requirements in the technical specification (appendix 1), the Ordering Party also considers section [insert point(s)] in the draft contract (Appendix A) as a minimum requirement.

3.2 The framework agreement 's estimated value and maximum value

The estimated value of the framework agreement is [•] EUR, while the maximum value of the framework agreement is [•] EUR.

3.3 Share contracts

3.4 Number of economic operators on the contract

The ordering party wishes to enter into an agreement with one tenderer.

Publication of tender materials	[•]
Information meeting	[•]
Offer deadline	[•]
Documentation regarding exclusion and eligibility	[•]
Issuance of award decision	[•]
Contract conclusion	[•]

The timetable is only an expression of the Ordering Party's expected completion of the tender process, which is why the times may be changed, and the times after the tender deadline are only indicative.

4 The tender process

4.5 Communication

4.5.1 Inquiries to the Ordering Party

All inquiries to the Ordering Party prior to the submission of the offer must be made in writing via [your electronic platform](#) cf. section 4.2.

Bidders can ask questions about the tender documents.

Similarly, the tenderer, who becomes aware of errors or inadequacies in the tender material, can make the Ordering Party aware of this, so that the Ordering Party can remedy the situation by changing the tendering material to the extent that the tendering rules permit. The invitation also includes any inappropriately worded requirements for service or contract that are an expression of deviations from the usual on the market, which are of importance to the tenderers in general.

The ordering party's answers to questions and changes are notified within the periods in section 4.5.2 specified deadlines.

Bidders are encouraged to contact the Ordering Party as early as possible.

4.5.2 Supplementary information on the tender material

The ordering party must provide any supplementary information about the tender material or supplementary documents no later than 6 days before the end of the tender deadline. The Ordering Party may also provide supplementary information on the tender material or supplementary documents later than 6 days before the offer deadline, if the Ordering Party simultaneously extends the deadline in question.

However, the contracting authority can answer questions that do not give rise to clarifications, but which are only references to clear parts of the tender material, later than 6 days before the end of the offer deadline without simultaneously extending the offer deadline.

Supplementary information as well as questions and answers in anonymized form will be published [via your Electronic platform](#).

4.5.3 Information meeting

The ordering party will hold an information meeting on [·], at [·] at insert where you will host the meeting, where a supplementary presentation of the tender will be given and Where you will have the opportunity to ask questions [\[insert description of the information session\]](#).

Registration for the information meeting must be done no later than [·] to the Ordering Party, cf. section 4.5.1. A maximum of people can participate in the information meeting for each economic actor.

To the extent that the Ordering Party presents written material at the information meeting, the material will subsequently be made available together with any questions and answers from the information meeting.

4.6 Language

Communication and offers must be in (choose language)

However, any appendices comprising technical specifications, suitability documentation or brochure material may preferably be formulated in (choose language)

4.7 Return of offer

The tenderer cannot demand that his tender be returned from the Ordering Party.

4.8 Bidder's costs

The Bidder's costs associated with submitting an offer are unrelated to the Ordering Party.

4.9 Confidentiality

The contracting authority will, as far as possible, ensure the confidentiality of all information in the tenderer's offer, which concerns the tenderer's confidential business relationships, cf. Section 5 of the Procurement Directive. To the extent that the tenderer himself considers information to be confidential, please state this clearly and specifically in the tender, after which the Ordering Party will ensure that the information is not passed on, unless the information is publicly available in advance or similarly cannot be considered confidential. General statements about competitive sensitivity or the like cannot be expected to be given importance.

In the nature of the matter, the promise of confidentiality must waive to the extent that the legislation obliges the Ordering Party to pass on information to third parties. The ordering party will obtain a statement from the tenderer in connection with a possible request for access to documents in order to clarify the risk that the disclosure of information will entail a proximate risk of significant financial damage being inflicted on the tenderer.

The Ordering Party is at all times entitled to use information to the extent that this is for the legitimate safeguarding of the Ordering Party's interests during a legal or complaint case related to the tender.

4.10 Cancellation of the tender procedure

Until the tender has been concluded with the conclusion of a contract, the Contracting Authority will be entitled to cancel the tendering procedure if the Contracting Authority has a factual reason, unless it concretely conflicts with the basic principles of Community law, including the principles of equal treatment and transparency.

The Tenderer cannot claim compensation in connection with the Ordering Party's annulment of the tendering procedure.

5 Submitting an offer

5.1 Form requirements for the offer

The information in the completed eESPD is used as:

- provisional documentation that the economic operators are not covered by the grounds for exclusion in these tender conditions
- provisional documentation of suitability
- provisional documentation that the information relating to selection

The ordering party reserves the right to demand that all or parts of the necessary documentation be presented at any time during the tender process.

The information in the common European tender document must be up-to-date and valid at the time of the expiry of the offer deadline.

5.1.1 If the tenderer is an association of economic operators

If the tenderer is an association of economic operators (consortium), the following must be submitted:

- Completed eESPD for each economic operator,
- Declaration of the joint proxy (e.g. generated from Annex D).

5.1.2 If the tenderer relies on the financial or technical capabilities of other entities

If the tenderer relies on the financial and/or technical capacity of other entities, the following must be submitted:

- Completed eESPD for tenderer and each of the supporting entities
- Declaration in which each of the supporting entities undertakes to make resources available to the applicant (e.g. generated from Annex D).

5.1.3 Documents for use in awarding a contract

The tenderer must attach a completed list of tenders (appendix B) and those in section 7.2 listed documents.

5.2 Place of delivery

The offer must be submitted via your Electronic platform, cf. 4.2 .

It is the tenderer's responsibility that the tender is submitted correctly.

5.3 Offer deadline

Offers received after the offer deadline will not be considered.

5.4 Persistence period

The offeror is obliged to stand by his offer from the offer deadline.

5.5 Reservation

The ordering party is obliged to reject any offer as unacceptable if the offer contains reservations, relating to basic elements of the tender material, including reservations regarding minimum requirements. The ordering party is also entitled to reject any offer with reservations regarding the tender material in general, unless the reservation is trivial and can otherwise be easily priced.

The tenderer is therefore encouraged not to make reservations or set preconditions for his offer, as reservations and preconditions entail a significant risk that the offer will not be taken into account. If the tenderer nevertheless chooses to make a reservation or set prerequisites, the tenderer must explicitly state the reservation or prerequisite and explain the background. The tenderer is also encouraged not to attach standard documents in the form of standard delivery conditions etc. for offers, as such documents may contain unintended reservations.

The tenderer should therefore ensure that the tender is designed in such a way that the contract can in principle be entered into without prior discussions between the Ordering Party and the tenderer. In this connection, the tenderer should ensure that the tender is adequate and contains all necessary information and is accurate in every respect.

The contracting authority reserves the right to request tenderers to supplement, clarify or complete incomplete or erroneous tenders by submitting relevant information or documents in accordance with the general principles of equal treatment and transparency.

5.6 Alternative offers

An alternative offer means an offer where the offeror proposes a different solution to the task than that described in the tender material.

The tenderer is not entitled to submit alternative tenders.

5.7 Paged offers

A side-by-side offer means an offer in which the Ordering Party determines an alternative task solution that the offeror can or must tender with. The side-by-side offers compete with each other.

The tenderer is not entitled to submit side-by-side tenders.

6 Exclusion and Eligibility

6.1 Grounds for exclusion

The tenderer is excluded from participating in the tender if the tenderer:

- is established in a country that is on the EU list of non-cooperative tax jurisdictions and has not acceded to the WTO's Government Procurement Agreement or other trade agreements that oblige Denmark to open the market for public contracts to bidders established in the country in question.
- has received a final judgment or adopted a preliminary injunction within the last 5 years for (criminal convictions in accordance with section 135, subsection 1 of the Procurement Directive):
 - actions committed as part of a criminal organization as defined in Article 2 of Council Framework Decision 2008/841/RIA of 24 October 2008 (EU Official Journal 2008, no. L 300, page 42),
 - bribery as defined in Article 3 of the Convention on Combating Bribery involving officials of the European Communities or of the Member States of the European Union, and Article 2, paragraph 1, in the Council's framework decision 2003/568/JHA of 22 July 2003 on combating bribery in the private sector (EU Official Journal 2003, no. L 192, page 54) and bribery as defined in national law in the tenderer's Member State or home country or in the country where the tenderer is established,
 - fraud as referred to in Article 1 of the Convention on the Protection of the Financial Interests of the European Communities,
 - terrorist acts or criminal acts related to terrorist activity as defined respectively in Articles 1, 3 and 4 of the Council's framework decision 2002/475/RIA of 13 June 2002 on combating terrorism (EU Official Journal 2002, no. L 164, page 3) as amended by the Council's framework decision 2008/919/RIA of 28 November 2008 amending framework decision 2002/475/RIA on combating terrorism (EU Official Journal 2008, no. L 330, page 21),
 - money laundering or terrorist financing as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on preventive measures against the use of the financial system for money laundering and terrorist financing (L:2005:309:TOC, page 15) or
 - violation of Section 262 a of the Criminal Code or, as regards a judgment from another country regarding child labor and other forms of human trafficking as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on the prevention and combating human trafficking and protecting its victims, and on replacing the Council's framework decision 2002/629/RIA (EU Official Journal 2011, no. L 101, page 1).
- Has a member of the board of directors, the executive board or the supervisory board who has been convicted by final judgment or has adopted a fine within the past 5 years for the actions mentioned in Article 57 (a) of the Procurement Directive. The same applies if the convicted person has the authority to represent, control or make decisions in the tenderer's board of directors, management or supervisory board.
- Has unpaid overdue debt to public authorities regarding taxes, levies or contributions to social security schemes, cf. Article 57(2) of the Procurement Directive, unless the tenderer provides security for payment of the debt or has entered into an agreement with the recovery authority on a settlement scheme and complied with it.
- Is in a conflict of interest in relation to the tender, cf. Article 57 (4) the Procurement Directive.
- Has been involved in the preparation of the tender in a way that leads to distortion of competition, cf. Article 57 (4, f) of the Procurement Directive.
- In connection with the tender in question, has provided grossly incorrect information, has withheld information or has not been able to send additional documents regarding grounds for exclusion, cf. Article 57 (4, h) of the Procurement Directive.

- In connection with the exercise of his profession, has committed serious negligence that casts doubt on the integrity of the applicant or tenderer, including but not limited to having committed actions that have led to a conviction for violating applicable tax legislation within the area where the company exercises its profession cf. Article 57 (4, c) of the Procurement Directive.

The Tenderer is also excluded from participating in the tender if the Ordering Party can demonstrate that the Tenderer within the past 3 years:

- The contracting authority can demonstrate that the tenderer has disregarded applicable obligations in the area of environmental, social or labor law pursuant to EU law, national legislation, collective agreements or the environmental, social or labor law obligations derived from the conventions that is mentioned in Annex X to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and on the repeal of Directive 2004/18/EC (EU Official Journal 2014, no. L 94, page 65), or is covered by legal acts adopted by the European Commission in accordance with the Directive's Article 57, paragraph 4.
- The tenderer has been declared bankrupt or is undergoing insolvency or liquidation proceedings, if its assets are being administered by a receiver or by the court, if it is under compulsory settlement, if its business has been discontinued or it is in a similar situation according to a similar procedure, that is stipulated in national legislation where the tenderer is domiciled Article 57 (4, c) of the Procurement Directive.
- The contracting authority has sufficient plausible indications to conclude that the tenderer has entered into an agreement with other economic actors with a view to distorting competition Article 57 (4, d) of the Procurement Directive.
- The contracting authority can demonstrate that the tenderer has significantly breached a previous public contract, contract with a supply company or concession contract and the breach has resulted in the cancellation of the contract in question or a similar sanction Article 57 (4, g) of the Procurement Directive.
- The contracting authority can demonstrate that the tenderer has unlawfully tried to influence the contracting authority's decision-making process, if the tenderer has obtained confidential information that may give them unfair advantages in connection with the tender procedure, or if the tenderer has grossly negligently provided misleading information that may have a significant influence on decisions regarding exclusion, assessment of the minimum requirements for suitability, selection or award of contract Article 57 (4, i) of the Procurement Directive.
- The tenderer has unpaid overdue debts to public authorities regarding taxes, levies or contributions to social security schemes in accordance with Danish legislation or legislation in the country where the tenderer is established 57(2) of the Procurement Directive)

However, the ordering party cannot exclude a tenderer who can document his reliability ("self cleaning") in accordance Article 57 (6) of the Procurement Directive.

6.2 Bidder suitability

6.2.1 Suitability in relation to the exercise of the profession in question

The tenderer must be registered or have equivalent authorization or membership in the country where the tenderer's business is established.

6.2.2 Suitability in relation to economic and financial ability

The tenderer must meet the following minimum requirements to be financially fit to fulfill the contract:

- The tenderer's professional liability insurance must have a cover sum per insurance year of minimum EUR [·].
- The tenderer's average turnover in the 3 most recent available financial years or the tenderer's

turnover in the most recent available financial year must amount to a minimum of EUR [·] (excluding VAT).

- The tenderer must have a solvency ratio of at least [·] % in the most recent available financial year.
- The tenderer must have an equity capital of at least EUR [·] in the most recent available financial year.

6.2.3 Suitability in relation to technical and professional ability

The tenderer must meet the following minimum requirements to be technically and professionally suitable to fulfil the contract:

- The tenderer must have performed a minimum of [·] deliveries of goods or services that have been carried out within the last 3 years and which are similar to the subject of the contract.
- The tenderer must be certified according to [·] or have equivalent quality assurance measures.
- The tenderer must have a supply chain management tracking system which the tenderer will use during the execution of the contract to manage and control its subcontractors in relation to the fulfilment of the contract.
- The tenderer may leave a maximum of [·] % of the fulfilment of the contract to subcontractors, unless the tenderer bases its suitability on the ability of the economic actors in question, cf. 6.2.5 .
- The bidder's goods must be certified by [·] or an equivalent body in accordance with the criteria of [·].
- If more references than indicated above are given, emphasis is only placed on [·] first.

6.2.4 Suitability for associations of economic operators

If the offer is submitted by an association of economic operators:

- Must each of the economic actors participating in the association be clearly and unambiguously stated.
- Must the association appoint one joint representative or leading partner in relation to the tender.
- May none of the economic operators participating in the association be covered by the grounds for exclusion in section 6.1 .
- It is only a requirement that the association of economic actors together meet the minimum requirements for economic and financial ability as well as technical and professional ability. As far as the requirement for suitability for the performance of the profession in question is concerned, cf. section 6.2.1 it is only a requirement that at least one of the participants in an association of economic actors fulfils the requirement.
- An economic operator can only be a participant in one association of economic operators. The same economic operator may, however, be a participant in one association and at the same time let other tenderers base their suitability on them, cf. 6.2.5 , or be a subcontractor to several bidders.
- If the association of economic operators is awarded the tendered contract, the economic operators participating in the association must assume direct, joint and several and unlimited liability for the fulfilment of the contract.

6.2.5 Suitability based on the ability of other economic actors

If the tenderer bases its suitability on the capabilities of other economic actors:

- Should the economic operators on whom the tenderer bases its suitability be legally obliged to the tenderer to make their capacity available.
- May none of the economic actors on which the tenderer bases its suitability be covered by the grounds for exclusion in section 6.1

- Must the economic actors on which the tenderer bases its economic and financial capacity, cf. section 6.2.2, assume direct, joint and unlimited liability for the performance of the contract.
- Should the economic operators on whom the tenderer bases its technical and professional ability regarding parts of the contract, cf. 6.2.3, are also used as subcontractors and carry out the parts in question when fulfilling the contract.

It is only a requirement that the tenderer and the economic operators on whom the tenderer bases its suitability meet the minimum requirements for economic and financial ability as well as technical and professional ability.

An economic actor may at the same time let several tenderers base their suitability on him or be a subcontractor to several tenderers.

7 Award of contract

7.1 Criteria for award

The contracting authority will award the contract to the tenderer who submitted the most economically advantageous tender, which is identified on the basis of (insert award criteria).

7.2 Documentation regarding exclusion and eligibility

Before the Ordering Party's notification of contract award, cf. 9 , the tenderer to whom the Ordering Party intends to award the contract must provide documentation that there is no basis for exclusion and that the minimum requirements for suitability have been met.

It is therefore not a requirement that the documentation be attached to the tender, but this can be done to promote the tender process, for example if the tenderer already has the documentation.

The ordering party will exclude the tenderer if he does not meet the minimum requirements for suitability and submits the requested documentation. The Tenderer is not obliged to provide documentation if the relevant information is available in a national database with direct and free access or if the Ordering Party is already in possession of the requested documentation as a result of a tender previously completed by the Ordering Party.

The ordering party has listed below the documentation that a company must present as documentation regarding exclusion and suitability. If the tenderer is a foreign company, the tenderer can use e-Certis to identify the information and documents that are useful as documentation. If no documents or certificates are issued in the country where the tenderer's business is established, they can be replaced by a declaration under oath. If oath-taking is not used in the country in question, they can be replaced by a declaration of faith and law, made before a competent judicial or administrative authority, before a notary public or before a competent professional organization in the country in question.

7.2.1 Grounds for exclusion

The tenderer must present a service certificate issued by the Danish Business Authority, with information on:

- The grounds for exclusion regarding criminal convictions in accordance with 57 (1-3), of Procurement Directive.
- Payment of taxes and fees or contributions to social security schemes in accordance with 57(1,c), of the Procurement Directive.
- Grounds for exclusion regarding bankruptcy, insolvency or liquidation proceedings in accordance with 57(4,b), of the Procurement Directive.
- Payment of taxes and fees or contributions to social security schemes in accordance with 57(2) of the Procurement Directive.

7.2.2 Practice of the profession in question

The tenderer must provide an extract from:

- [-] or have equivalent authorization or membership in the country where the tenderer's business is established.

7.2.3 Economic and financial ability

The tenderer must document his economic and financial capacity by presenting:

- Copy of applicable insurance policy or statement from the relevant insurance company.
- Annual accounts certified by the tenderer's accountant stating the tenderer's total turnover in the last 3 available financial years.
- Annual accounts signed by the tenderer's accountant indicating the tenderer's solvency ratio in the most recent available financial year.
- Annual accounts certified by the tenderer's accountant, stating the tenderer's equity in the most recent available financial year.

The tenderer can demonstrate his economic and financial capacity by any other document that the Ordering Party deems appropriate if the tenderer is unable to provide the above documents for a valid reason. This exception option only applies if there is a valid reason why the tenderer cannot provide the required documentation, and if the reason for this cannot be attributed to the tenderer himself. It can, for example, be in the situation where the tenderer is a newly started company or a company in the process of being established, and therefore cannot present the above required documents. In that situation, the tenderer must demonstrate his economic and financial capacity with other appropriate documentation. It is the Client's assessment whether the documentation in the specific situation is sufficient and thus "appropriate", just as it is the Client's assessment whether there is a "valid reason".

If there have been significant changes since the submission of the latest annual report, the corrected amount is taken as a basis.

7.2.4 Technical and professional ability

The tenderer must document his technical and professional ability by presenting:

- A list of the most significant supplies of goods or services carried out within the last 3 years, indicating the amounts and times and the public or private recipient (including contact details).
- Description of the technical equipment and the measures taken by the tenderer to ensure quality, and of the company's examination and research facilities, which can be done by presenting a certificate issued by the responsible body for approval in Denmark or by a similar body. The tenderer can also provide other appropriate documentation if the tenderer does not have the opportunity to obtain the required certificate or can otherwise document having equivalent quality assurance measures.
- Indication of the supply chain management and tracking systems that the tenderer may use in the performance of the contract (description of the manner in which the tenderer will manage and control its subcontractors in relation to performance of the contract).
- Information on how large a part of the contract the tenderer intends to give to a subcontractor.
- Certificates issued by officially recognized quality control institutes or bodies certifying that the tenderer's goods, clearly identified by reference to technical specifications or standards, conform to them.

7.2.5 Suitability for associations of economic operators

When the tenderer is an association of economic operators, the following must be presented:

- Declaration of joint representative or leading partner with whom the Ordering Party can enter into agreements with binding effect for the association (e.g. generated from Annex D).

- Declaration that the economic parties participating in the association assume direct, joint and several liability for the performance of the contract (e.g. generated from Annex D).
- Documentation as stated in section 7.2.1 - 7.2.4 for each participant in the association.

7.2.6 Suitability based on the ability of other economic actors

When the tenderer bases its suitability on the capabilities of other economic actors, the following must be presented:

- Declaration of support or other documentation proving that the tenderer actually has the necessary capacity and that the economic operator on which the tenderer bases its suitability is legally obliged to the tenderer to make its capacity available (e.g. generated out from Appendix D).
- Documentation as stated in section 7.2.1 for the economic actors on which the tenderer bases its suitability.
- Documentation as stated in section 7.2.3 for the economic operators on whom the tenderer bases its economic and financial capacity together with a declaration that the economic operators in question assume direct, joint and unlimited liability for the performance of the contract.
- Documentation as stated in section 7.2.4 for the economic players on whom the tenderer bases its technical and professional ability.

8 Self-declaration in relation to Council Regulation (EU) 2022/576

The ordering party must draw attention to the fact that pursuant to Article 5k of Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No. 833/2014 on restrictive measures on the basis of Russia's actions that destabilize the situation in Ukraine (hereinafter "the Regulation") applies a ban on awarding contracts to Russian companies and Russian-controlled companies, etc. The prohibition also includes awarding to tenderers who use supporting entities or subcontractors covered by Article 5 k of the Regulation, if the value of such supporting entity's/subcontractor's deliveries amounts to more than 10% of the contract value.

The contracting authority can therefore at any time in the tender process demand that applicants and tenderers document that they are not in circumstances covered by Article 5k of the Ordinance, including that the contracting authority can request applicants and tenderers to sign the declaration of faith and law attached with the tender materials this relationship. In this connection, the Ordering Party is of the opinion that the applicant/tenderer is the closest to knowing its own ownership and its own business partners, and is therefore also the closest to documenting the absence of the circumstances covered by Article 5k of the Ordinance.

The ordering party reserves the right to reject bidders who do not sign the attached declaration of faith and law (Appendix E).

9 Notification of award decision

The ordering party will simultaneously and in writing notify all tenderers of which tenderer will be awarded the tendered contract.

The Ordering Party's notification of the award decision is not a promise to enter into a contract, but only notification that, in the Ordering Party's assessment, the Offeror has submitted the winning offer. There is no contract or promise until any contract is signed by all parties. The ordering party's notification of the award decision also does not exempt failed tenderers from their obligations following the tender, which remains binding in accordance with section 5.4.

Contracts can only be entered into after the end of the stand still period, which basically runs 10 days from the day after the Ordering Party's notification of the award decision.

The Contracting Authority must enter into a contract at the earliest after the expiry of a standstill period of 10 days from the day following the Contracting Authority's notification of the award decision, when the notification has been made electronically.

5.2 Technical specifications

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1 General requirements:

1.1 Reservation

The technical specification describes the contracting authorities expectations for deliveries, and no reservations can be made to the specifications, unless specifically stated in this document.

If the offer and the offeror do not meet all the specifications below, the contracting authority will be obliged to reject the offer as non-conditional.

1.2 Institutions/ kitchens that will be users of the contract

List the institutions / kitchens here.

1.3 Institutions that are not part of the contract

If there are specific parties of a larger group that is not obligated nor will be part of the tender, they can be listed here.

Specific situations that will exclude an exclusive use of the tender can also be described here.

E.g. Institutions that choose to make use of an offer for the purchase of meal boxes are not covered by the agreement.

1.4 Quality of the delivered products during the contract period

Here you can describe the quality of the products. The example below describes a minimum requirement, but you can decide if that is necessary for your tender.

For the supply of food, it is a minimum requirement that the Municipality of Copenhagen wants goods delivered of a high quality, and food that meets all the requirements generally set for food. As a starting point, products of 1st quality must be delivered, unless otherwise specifically stated.

For certain food groups, additional specific requirements have been set, which will appear in the last section of this requirement specification.

1.5 Availability of products.

A minimum requirement could be that all offered products shall be readily available and always in stock.

1.6 Food waist

Here you can write in requirements regarding food waist. Below are ideas of what to include and not to include in the calculation of the suppliers food waist.

It is a minimum requirement that the Supplier who is awarded the contract, for the length of the contract period, must register, report and prevent food waste in his company in cooperation with the contracting authority. No later than one year into the contract period, the Supplier must have implemented the measure and be able to start reporting.

1.6.1 Exceptions

1.6.1.1 Waste from the primary producer

Some goods delivered from the primary producer are rejected in the quality control performed by the supplier. This waste belongs to the primary producer and shall be included in the calculation of the suppliers waste. A procedure must therefore be ensured in connection with the registration of food waste for how the employees must register the goods, so that the suppliers and the primary producer's waste can be separated from each other.

1.6.1.2 Donations

Disposed of units that are donated to e.g. The food bank or other sustainable and socially responsible organizations, where the food ends up as human food, should be calculated and deducted from the total calculation of food waste. The donations cannot be considered as food waste or food waste but must be calculated separately and included in the overall calculation.

1.6.1.3 Animal feed

According to the EU's definition, food that is donated for animal feed is not 'food waste' and should therefore not be counted as such. However, according to this initiative, where the purpose is to calculate food waste, in order to identify areas where food waste can be prevented, whole foods donated to animal feed should also be calculated and therefore not deducted from the total calculation of food waste.

2 The order

2.1 The minimum order

Insert the minimum order here.

2.2 Contact person

Here you can write in if you want the supplier to provide a contact person that the user of the contract can contact during the contract period.

2.3 Place of order

Insert where shall the user of the contract order from the supplier.

2.4 The deadline for ordering

Insert when the user of the contract shall order to get delivered the goods the day after / or when the user of the contract needs delivery.

2.5 Punch-out

In the city of Copenhagen ordering of goods must be made through a punch-out solution. This can vary from city to city. Insert here if a special solution is needed for ordering from the supplier.

3 General requirements for packaging, transport, and delivery

3.1 Packaging

Here you can write all the requirements for packaging. You can consider EU law, national law and guidelines in your municipality.

The Copenhagen municipality request:

- The packaging must be labeled with sorting instructions so that it can be easily sorted after use
- The transport packaging must be clean and intended for the transport of food
- Overpackaging should be avoided
- Packaging must not contain chemicals, PVC waste substances and the like, which are on the Danish Environmental Protection Agency's list of unwanted chemical substances
- The packaging must also be intact and clean - and must be able to be recycled to the greatest extent possible, either for reuse or recycling.
- Packaging and other material that comes into contact with food must be PVC- and phthalate-free
- Cardboard packaging should to the greatest extent, consist of recycled cardboard and not consist partially of cardboard combined with other materials.
- Plastic packaging should to the greatest extent consist of recycled plastic and not be composed of different types of plastic.

3.1.1 Award criterion - packaging

This is an example of how to make a award criterion on packaging

PET packaging is included as an award criterion, so that suppliers receive points based on how many fresh products they can deliver in packaging made from PET.

3.2 Labelling

Write here if there are any EU or national requirement regarding labelling of goods. For example if there are any guidelines on how to use the good or if the stated weight on the packaging must correspond to the actual weight of the product.

3.3 Cages or pallets

Write here how you want the goods delivered. For example, if you want the supplier to deliver the goods in transport cages, full pallets, half pallets or ¼ pallets.

You can consider how tall the cages maximum can be, if the transport packaging should be clean, if the pallets must be covered to protect the goods from dust, how heavy the top box on cage is allowed to be or if the supplier is required to take back the transport packaging.

3.4 Vehicle

Write here if there are any requirements to the supplier's vehicle.

The city of Copenhagen has this requirement: The vehicles used must either be at least Euro 6, or be fitted with an approved particulate filter if the vehicle is Euro 5 or less. But it is positively weighted if the Supplier uses an even greener alternative for deliveries. Green vehicles are defined under the Agreement as, among other things, vehicles powered by electricity, biogas or hydrogen, and plug-in hybrid vehicles. Other non-motorized forms of transport such as bicycles are also considered.

3.4.1 Award criterion – green vehicles

This is an example on how to make an award criterion on green vehicles.

It will be weighted in the evaluation of the offer, how many kilometres within the Municipality of Copenhagen are delivered with a green vehicle already from the start of the contract, on the assumption that approximately 4000 km are driven in the Municipality of Copenhagen per week.

When tendering, the Supplier must submit a list of all vehicles that the Supplier uses to perform services under the Framework Agreement, indicating which Euro norms they comply with. Upon conclusion of the contract, registration certificates are attached for all vehicles that the Supplier uses to perform services under the Framework Agreement. Once a year from the conclusion of the contract, the Supplier must submit registration certificates for newly purchased vehicles, which the Supplier uses to perform services under the Framework Agreement.

3.4.2 Documentation for the means of the transport used

Here you can write what kind of documentation you want the suppliers to provide. For instance, the city of Copenhagen requires the suppliers to provide statistics and documentation regarding which vehicles the supplier has used for each delivery.

Requirements to consider

3.4.3 Idling

If you want the Suppliers drivers to not let the engine run for longer than absolutely necessary and for a maximum of 1 minute.

3.4.4 Tire change for all vehicles

Tires that are replaced must adhere to the current highest EU rating class for labelling of used tire types, with wet grip performance as the primary priority, followed by rolling resistance and noise level (the last two are equivalent in importance).

Winter tires replaced on vehicles must bear the 3PMSF symbol on the tire sidewall.

For tire changes on vehicles over 3500 kg, the Supplier should, whenever possible, use tires that meet the ongoing minimum requirements described in the DS 2168 standard.

Follow-up during contract compliance meetings will involve the Supplier providing evidence that tire replacements under the agreement meet the requirements. The Municipality may request documentation of this work.

3.4.5 Drive green course

If you want the suppliers drivers to have completed a Drive Green course

3.4.6 Identification

If the driver needs to wear visible identification

3.4.7 Temperature requirements

If the cold chain never can be broken.

3.5 Delivery

Here, you can write how often the kitchens should receive deliveries of goods:

For example: The kitchens should receive deliveries of goods according to the following schedule:

- Daily deliveries, Monday through Saturday
- Bi-weekly deliveries on Wednesdays and Fridays
- Weekly deliveries on Mondays

Please note that these delivery schedules may be subject to change based on the kitchen's needs and any adjustments required by the contract.

Requirements to consider

3.5.1 Delivery Schedule

Deliveries must take place on the agreed day, at the agreed time, and at the location specified by the institution.

3.5.2 Holidays

How the supplier must ensure in accordance with the buyer's requirements the delivery of goods.

3.5.3 Placement

Where the supplier must place the goods when they deliver them

3.5.4 Delivery note

If the suppliers need to hand in a delivery note and what to include in the delivery note

For example:

- Delivery recipient
- Date
- Order number
- User ID, if electronic order has not been received
- Item name and number
- Delivered quantity, deposit, and price per item line

3.6 Delivery assurance

What kind of delivery assurance you need

3.6.1 Compensation

What kind of replacement of goods the supplier must deliver if they don't have a specific good.

For example: If there is occasional need to provide replacement goods, the item must be of equivalent or better quality than the one ordered. This means that if organic whole milk was ordered, it can only be replaced with another organic whole milk. An ordered organic item should never be replaced with a conventional one without kitchen approval, as kitchens allocate based on their organic percentage at the time of ordering, and such substitutions can often impact the kitchen's organic percentage.

The replacement item must be charged at a maximum of the same price as the one ordered. This means that if the replacement item costs more than the ordered item, the replacement should be charged at the same price as the unavailable item. If the replacement item is cheaper, it should be charged at the lower price.

3.7 Sampling

Here you can write if you want the kitchens to have the opportunity to take a sample of the goods.

3.8 Air transportation

You can decide if you want the goods delivered by airplane.

4 General minimum requirements for the products

All information, in content and presentation, must adhere to the current applicable laws. Additionally, product labels must be in (the language you choose)

The Supplier must ensure that a product label is included for all items, indicating whether the product contains allergens.

4.1 Organic certification

Products sold or marketed as organic must be certified and labelled as such on the packaging or label. The responsibility for verifying and documenting the certification rests with the Supplier.

Products originating within the EU must adhere to the standards of the EU's organic labelling.

Products imported from countries outside the EU must comply with the applicable regulations for organic products from "third countries," as specified in Commission Regulation No. 1235/2008, or the currently applicable legislation in the field.

Upon request, the Supplier must be able to provide documentation at the time of delivery for certified products, confirming the accuracy of the Delivery in relation to the provided certification, such as organic labelling.

4.2 Quality

Here you can write the quality you want the goods to have

Requirements to consider

4.3 Trans fat

How much content of industrially produced trans fats in oils and fats you will allow in your goods.

4.4 Palm oil

As part of the offer, the Supplier must develop an action plan for phasing out non-certified palm oil used in food products or intended for use in food preparation. This will be followed up during status meetings.

4.5 Sustainable soya

If you want to support the demand for responsibly produced soy, both in products where soy is directly included and in products where soy is indirectly present.

For example: As part of the offer the Supplier must develop an action plan for phasing out non-certified soy used in food products or intended for use in food preparation. The action plan should include a section on what the Supplier will do to encourage its subcontractors of meat, eggs, dairy products, and farmed fish to exclusively source responsibly produced soy. The action plan will be reviewed during status meetings.

4.6 Fairtrade Certified products

If you want some products labelled with fair trade.

For example, in the categories of coffee & tea, beverages and fruits.

4.7 Sustainable fish

If you want to requested items that are available in MSC/ASC certified quality.

5 General requirements for fresh fruit, vegetables, and potatoes

All fruit and vegetable products must comply with the quality requirements of the EU's general trading standards for fruit and vegetables, including quality and labelling requirements regarding country of origin. Products not covered by the EU's general or specific trading standards must be of "sound, fair commercial quality".

Requirements to consider

5.1 Seasonal description and diversity allocation criterion

For example: The Supplier is expected to offer a wide range of fruits and vegetables available when they are in season. The Ordering Party wishes to emphasize the breadth of the assortment through an annual cycle (make the cycle), which describes - for selected fruits and vegetables - how varieties and origins succeed each other throughout the year. This ensures that citizens have access to meals reflecting a wide diversity, changing varieties throughout the year, with a high sensory eating quality, designated by name and place of origin.

As most fruits and vegetables are seasonal, the Supplier is not bound to deliver all item numbers/products every month of the year. However, the Supplier commits to delivering the specified varieties during their respective seasons throughout the year, even during off-season periods. The Municipality of Copenhagen does not wish to purchase fruits and vegetables grown in heated greenhouses.

5.2 Quality

Write here what kind of quality you want the fruit and vegetables to be.

For example: Vegetables must be fresh, crisp, and free from visible discolorations. If there is a cut surface, it must not be frayed.

The products should be:

- Fresh fruits and vegetables must be whole and clean, without pressure marks, bruises, rot, mold, etc.
- Clean, practically free from visible foreign matter.
- Practically free from pests.
- Practically free from damage caused by pests.
- Free from abnormal external moisture.
- Free from foreign odours and flavours

5.3 Ripeness

The products must be sufficiently developed and ripe. The ripeness of the products should ensure that they can continue their maturation process and reach an appropriate degree of ripeness.

5.4 Tolerance

How big a tolerance is allowed in terms of quantity or weight of products that do not meet the minimum quality requirements in each batch, applicable to appearance or size.

5.5 Labelling of products origin

If you want the full name of the country of origin to be indicated.

For example: According to EU trade standards, labelling must include at least the following information:

- Name and address of the packing company (email address is not sufficient) or the packing company's registration number.
- Country of origin for the product.
- Nature of the product.
- Size (if there are sorting requirements).
- Variety or commercial type (required only for some products, e.g., tomato and apple).

5.6 Products with specific trading standards

If you buy products with a specific trading standard which includes:

- Quality requirements, see above.
- Classification of products ("Class I", "Class II", and possibly "Extra Class").
- Provisions regarding size grading.
- Provisions regarding tolerances.
- Provisions regarding presentation.
- Provisions regarding labelling.

6 Cheese

Write here the requirements for cheese.

For example:

- There must be no discoloration of the product that is not intended.
- For whole cheese, the paraffin must be whole and intact.
- For whole cheese, the cheese must be without cracks.
- The products must not contain artificial colorants.
- Sodium nitrate E51 must not be used in organic cheese production.
- Natamycin must not be used in cheese production.
- The cheese must be made from fresh ingredients.
- The packaging must be approved for cheese packaging.
- There must be no mold in cheese types other than mold cheese.
- There must be no other animals or organisms present that are not intended to be in the product.
- Weight: Drained weight.

7 Coffee and tea

Write here the requirements for coffee and tea.

For example:

For coffee, including instant coffee, the data sheets and/or product labels must include at least the following information:

- Composition
- Roasting level
- Grinding
- Dosage
- Brewing instructions
- Package/case size
- Item number
- Storage requirements
- Sustainable products must be labelled with the Fairtrade label or equivalent.

For tea and chocolate drinks, the data sheets and/or product labels must include at least the following information:

- Composition
- Dosage
- Brewing instructions
- Package/case size
- Item number
- Storage requirements
- Sustainable products must be labelled with the Fairtrade label or equivalent.

8 Meat and cold cuts

Write here the requirements for meat and cold cuts.

For example:

All products in the main product groups "Meat" and "Cold Cuts" must meet the following requirements:

- Products should only be made from fresh, high-quality raw materials with high hygienic standards. The meat should come from healthy, veterinary-controlled animals.
- The slaughter process must meet all modern requirements to ensure good meat quality and hygienic production, including the gentle transport of animals.

- All cuts must be made as "first-generation" cuts from fresh raw materials, taking into account the respective maturation time of the meat. It follows that the meat must not have been marketed as a different cut. If the raw material for steaks and sliced meat has been frozen before cutting, it must be declared on the product.
- Ground meat and portioned meat must be available in the desired quantity in kilograms unless otherwise stated in Annex 2 - Offer List.
- Organic products must not contain nitrites.
- Products must be labelled with the production date and the last use date.
- All cold cuts and other finished products must be delivered with nutritional information on energy-giving substances per 100 g (energy kJ, protein g, carbohydrate g, and fat g).

Packaging

- The transport packaging must be clean and intended for the transport of meat.
- Chilled meat in whole pieces is delivered by agreement and must be available either vacuum-packed or packed in a controlled atmosphere.
- Frozen meat must be delivered vacuum-packed.
- Fresh meat must be delivered in sealed packaging.
- Steaks such as chops, ground beef, and diced or sliced meat must be packaged in a controlled atmosphere.

Documentation

The supplier must be able to provide documentation of the origin of the meat (growth and slaughter country), regardless of cutting or other processing in Denmark, and the meat must be identifiable by traceability and origin labelling in accordance with the applicable legislation at all times.

You can also set requirements for categories within meat and meat products.

For example:

- Beef, veal, and young cattle meat
- Halal meat
- Pork
- Poultry
- Sous-vide products
- Cold cuts

8.1 Cooling

The cooling method must be declared. Poultry that is chilled should be spray- or air-cooled. Frozen poultry can be water-cooled in counter current cooling systems. Fresh, chilled poultry meat must not have been frozen. Frozen poultry must not show signs of freezer burn.

8.2 Hygienic Quality

Chickens and their cuts must be delivered free from salmonella and campylobacter. It is a requirement that chicken products, hens, and eggs in all forms are delivered free from salmonella. As other poultry is not currently systematically tested for salmonella, this is not a requirement for turkeys, ducks, and other free-range poultry. All types of poultry products must at all times comply with legal requirements in this regard.

9 Fish

Write here the requirements for fish.

For example:

To ensure good eating quality, fresh fish must be handled gently from catch to delivery. The fish should not have been subjected to blows, punctures, or pressure.

9.1 Fresh fish should have the following characteristics:

- A shiny surface with shiny intact scales and clear colours.
- The surface should be covered with a thin, transparent layer of slime.
- The eyes should be clear, protruding, and have black pupils.
- The gills should be light to brownish-red.
- The meat should be firm and resilient.
- It should smell fresh (like fresh seaweed) and should not have a significant fishy odour.
- For all products, the distinctive characteristics of the fish species should be characteristic of the product.

9.1.1 To ensure good eating quality and bacteriological stability, the fish should be:

- Processed as soon as possible after catching.
- Cut correctly.
- Properly bled, cleaned, and rinsed.
- Quickly and correctly chilled.

9.1.2 Additional requirements:

- Discoloration must not occur.
- Filleted fish should not have blood spots in the flesh.
- For minced meat of cod and fish mince, it must be stated at the time of delivery which fish species the product is made from, as well as any mixing ratios.
- The fish must not be neutral/pierced marinated.

9.2 Frozen Fish:

Frozen fish must meet the same quality requirements as stated above before freezing.

Freezing should occur immediately after catching.

In addition, the fish should be loose-frozen and separated, without visible damage to the flesh.

Throughout the production process leading up to freezing, the fish must not be exposed to temperatures above 2°C.

In the thawed state, the meat structure should be firm, and the fish should smell fresh. The products are preferably sourced through sustainable fishing, and care should be taken in both catching and production to consider the environment, fish stocks, and animal welfare, while ensuring that the fish species are not on the WWF's list of threatened and soon-to-be-threatened species.

The supplier, in connection with the tender material, must complete the form in Appendix 2.2 - UN Sustainable Development Goals as Guidelines, which should indicate how the Supplier is working on the above, so that the requirement can be followed up at status meetings.

For both fish and shellfish, the weight must be specified in drained weight, i.e., net weight without glazing (without water).

10 Shelf life at time of delivery

Write the criteria for shelf life at time of delivery.

5.3 Framework Agreement

Name of contracting entity

Date [signature date]

Case No. [xxxx-xxxx-xxxx]

The parties

Contract No. [xxxx-xxxx-xxxx]

[Insert name of contracting entity]

[Insert Address]

[Insert zip code and city]

[Insert country]

EAN number: [number]EA

(Hereinafter referred to as "the Contracting Entity")

and

[Insert suppliers Name]

[Insert Address]

[Insert zip code and city]

[Insert country]

CVR number: [number]

(Hereinafter referred to as "the Supplier")

The following Agreement on **Food Type XXX** (hereinafter referred to as the Agreement) has been concluded.

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1 Contractual basis

In addition to this Contract, the contractual basis consists of the following annexes:

- Description of the Contracting Entity
- Supplier's offer
- Declaration of honour

The Supplier's standard terms are not part of the Agreement.

The Agreement may only be amended or derogated if this has been agreed in writing between the Parties.

2 Non-exclusivity

The Agreement grants the Supplier a non-exclusive right to provide the Services covered by the Agreement to the Contracting Entity. Contracting Entities are free to purchase similar Services from third parties.

3 Customers on the Agreement

The Agreement can be used by **Kitchen x, y and z**

4 Agreement period

The Agreement enters into force **on the date. month.20xx** and runs until the **date. month.20xx** when it terminates without further notice.

Orders made before the expiration of the Agreement are binding on the Parties and must be delivered in accordance with the Agreement.

5 Termination

The Agreement may be terminated by either Party until the end of one month with written notice of X months.

6 Contacts

The following contact person has been appointed to oversee the contact regarding the Agreement:

The Supplier's contact person:

Name: **Female or male farmer**

Occupation: **Farmer**

Phone number: **+45 12345678**

Email: **farmer@2fork.dk**

7 Booking and cancellation

The Customer continuously orders the Services covered by the Agreement by electronic ordering via **the Contracting Entity's** purchasing system or by contacting the Supplier directly. The Supplier must be able to receive orders by mail or OIOUBL.

The Customer can cancel a Delivery Agreement in whole or in part until **(insert deadline) free of charge**.

8 Delivery

The Services must be delivered within X Working Days/ x Hours after the Customer places the order.

Delivery must take place at the place specified by the Customer when ordering.

8.1 Packing slip

Goods must be delivered with a delivery note, of which at least the following must be stated:

- Customer's name
- Name of the orderer
- Delivery address
- Content of the delivery
- Backorder information in relation to what was ordered
- Number/quantity of products

The following shall be stated on the delivery note, if possible:

- Purchase order number

9 Prices

The Supplier's prices are stated in the Supplier's offer.

The remuneration is stated in Danish kroner and includes all applicable taxes excluding VAT at the conclusion of the Agreement.

The Supplier is not entitled to additional remuneration unless previously approved by the Customer.

The Supplier's remuneration is adjusted (once a day, once a month, once a year) with the relative development of Index x, from the signature of the Agreement and 1 month onwards and thereafter every 1 month.

Adjustment of remuneration must be submitted by the Supplier to the Contracting Entity and approved by the Contracting Entity before higher prices can be applicable.

10 Invoicing and payment terms

10 1 Invoicing

The fee may be invoiced after adequate delivery and is due **30 Days** after the Supplier's sending of the correct and complete invoice.

In accordance with the Act on Public Payments etc. (Executive Order no. 798 of 28/6 2007), the Supplier must, as amended, make invoicing electronically.

According to Executive Order no. 206 of 11/3 2011 (on electronic settlement with public authorities) and Executive Order no. 354 of 26/3 2010 (on information in and transport of OIOUBL electronic bill for use in electronic settlement with public authorities), the electronic invoice must follow the standards /guidelines in NemHandel, which entails the following:

(3) The invoices must be prepared in the common public format, OIOUBL.

(4) Invoices must be sent via the common public transport standard OIORASP. Invoices must be sent via OIORASP in one of the following ways:

- Via the Supplier's own financial and invoicing system,
- Via NemHandel Invoice Form (for free use on NemHandel Invoice Form | Virk),
- Via the NemHandel mail client (for free use on <http://www.ibiz-center.dk>),
- Via other invoice portals, or
- Via Read-in

Credit notes must also follow the standards/guidelines described above in **NemHandel**.

The Supplier must bear all the costs of electronic invoicing and therefore cannot charge a fee for the transmission of electronic invoices.

The Supplier must ensure that invoices submitted comply with the legislation in force at any given time, e.g. **Executive Order no. 808 of 30/06/2015 (on value added tax (the VAT Order))** – as well as the requirements of the Agreement – in terms of content, design and electronic format.

10.2 Content of invoice

The electronic invoice shall contain, inter alia, the following information:

- Billing date
- The name of the Customer who placed the order.
- Purchase order number (or equivalent) provided this is provided by the Customer. The number must be written in the field on the invoice, where you write the Customer's order reference. The technical term for this field is: <cac:OrderReference> <cbc:ID></cbc:ID>
- The Supplier must always use the information from the specific purchase order (or equivalent) and thus overwrite any existing registered Customer information with the Supplier.
- Delivery address provided by the Customer.
- Delivery costs (including administrative costs, transport costs, salaries, insurance, etc.) must be added to the invoice separately with price excl. VAT.
- EAN number of the Customer: This must always be the EAN number indicated on the order or provided by the Customer.
- User ID must be indicated on the invoice in one of the following two fields: Invoice/AccountingCustomerParty/Party/Contact/ID or Invoice/AccountingCustomerParty/Party/Contact/Name
- CVR/SE number: The CVR/SE number from which the invoice is sent must be in full compliance with the CVR/SE number stated in the Supplier's offer and which appears in the Agreement.
- Prices: Invoice prices must be in Danish kroner excl. VAT, displayed on each line of goods and be completely identical to the prices stated in Appendix 2 of the Agreement (i.e., no discounts and no taxes not included in the net prices, e.g., packaging tax, etc.).
- Item ID: The invoiced item numbers must be completely identical to the item numbers that may be specified in the Agreement.
- Short and precise product description: The line description must be in (insert language) and must make the purchased Service(s) identifiable with the Services specified in the offer.
- Unique item lines: The vendor must not insert additional item lines with amounts because they will cause a variance in the invoice match. However, the Supplier may insert additional lines of text, as instructed by the Contracting Entity.
- All orders must be invoiced individually unless the Contracting Entity has explicitly stated otherwise. No lines of goods from different orders may be mixed on the same invoice. Thus, there must be one price per product line.
- If the Contracting Entity has explicitly allowed several purchases to be invoiced together, the invoice must clearly state what has been purchased, when it was purchased, and which Customer made the purchase.
- Quantity: The invoiced quantity must be broken down piecemeal and indicated in such a way that it is fully consistent with the number of units ordered, i.e., not as the total quantity of orders.

The Customer has the right to reject invoices that are not sent in accordance with the above. The Supplier cannot charge the billing fee.

If the Customer has provided the necessary information for compliance with the requirements, the Supplier cannot claim interest for default for non-payment and/or invoke remedies for breach of Contract.

11 Insurance

The Supplier is obliged to take out and keep the following insurances in force from the entry into force of the Agreement until 10 years after delivery of the last delivery:

- All compulsory insurance, including compulsory workers' compensation insurance
- Commercial and product liability insurance comprising the Services specified in the Agreement, which per insurance year cover at least [•] DKK

The Supplier's insurance shall also cover the Supplier's subcontractors, if any, unless the subcontractors in question have taken out and maintain the required insurance themselves.

The Supplier shall, at the request of the Contracting Entity, prove the existence, extent, and fact that the premiums have been paid without undue delay. At the request of the Contracting Entity, the Supplier shall also state whether claims for the Supplier's liability insurance have been filed and the total sum of these claims.

The Supplier shall immediately notify the Contracting Entity if the Supplier no longer meets the requirements for insurance cover.

12 Liability for damages

The parties shall be liable to each other in accordance with national law inserted here.

The Customer's liability does not apply to indirect losses, including operating losses and lost profits. The Supplier's liability also does not apply to indirect losses, including operating losses and lost profit.

The Supplier shall immediately notify the Contracting Entity in writing of any loss, damage or defect that the Supplier (or any subcontractors) may have caused during the performance of Services under the Contract.

Only the Contracting Entity or the third party selected by the Contracting Entity may conduct claims against the Supplier, which is why the Contracting Entity shall assume the Customer's rights and may assert claims on behalf of the Customer.

If a third party brings a claim against the municipality in respect of loss/damage of any kind resulting from the Supplier's (or its subcontractor's) Services under the Contract, the Supplier must indemnify the municipality from all claims and expenses, including legal costs, interest, etc., that such a claim may entail.

13 Vehicles

13.1 Idling

All drivers of the Supplier shall be made aware of and comply with the Idling Regulations, which stipulate that the engine of a stationary motor vehicle shall not be running longer than necessary and not more than 1 minute. Read more about the rules in the municipality's leaflet here:

[Idling Regulations 1990 \(itera.dk\)](#)

13.2 Euro norm

All vehicles providing Services under the Agreement must be at least Euro norm 6¹¹.

14 Termination of the Agreement

The Contracting Entity may terminate the Agreement if there is a material breach of the Agreement by the Supplier, which includes the following non-exhaustive and non-cumulative cases:

(b) Repeated and material breach of the obligations set out in the Agreement, including delay and failure to remedy.

(c) The Supplier has provided false or misleading information that has influenced the Contracting Entity's decision to enter the Contract.

(d) Failure to comply with applicable Government Regulation, if a final judgment has been made against the Supplier, the Supplier acknowledges the violation, or the Supplier, does not document compliance with the applicable Public Regulation within 20 working days of receiving written notice from the Contracting Entity.

11 [Vehicle emissions standards: Regulations \(dmu.dk\)](#)

(e) The Supplier's termination of the business to which the Agreement relates or the occurrence of other circumstances that seriously jeopardise the proper performance of the Agreement.

(f) If the Supplier or its subcontractors have committed acts that have led to conviction for violation of applicable tax legislation in the area in which the company carries out its profession.

(g) If the Supplier or its subcontractors have received final judgment or have adopted a fine for violation of the anti-money laundering rules within the area in which the company carries out its profession or

(h) Other circumstances which do not independently constitute material breach, but which, by their number or nature, rightly significantly weaken the Contracting Entity's confidence in the Supplier.

Any termination of the Agreement shall be with effect for the future.

15 Confidentiality

The Supplier and the Contracting Entity, including their employees, are obliged to act accordingly with confidentiality in regard to any information which they become aware of in connection with the performance of the Agreement and which is not generally known or generally available. This obligation also exists after the Agreement Period, regardless of the reason for termination.

The obligation of confidentiality gives way to the extent that this results from public regulation.

After a specific assessment, the Contracting Entity may disclose information to other relevant authorities if the disclosure is considered to be of importance to the authorities' activities, just as the Contracting Entity may disclose information to the police if there is suspicion of a criminal offence committed.

15.1 GDPR

The Supplier is also obliged to comply with the personal data legislation in force at any given time, including, among other things, the requirements for logging, deletion and destruction of data, and to ensure confidentiality of personal data in accordance with the legislation in force from time to time. In this context, the Supplier is obliged to sign a data processing agreement if the Contracting Entity so requires.

16 Disputes, applicable law and venue

Any dispute that may arise in connection with the performance of the Agreement shall be resolved in the first instance between the Parties.

If disputes cannot be settled between the Parties, they shall be settled by the ordinary courts. Jurisdiction is the Contracting Entity's domicile.

Unless otherwise stated in the Agreement, the general rules of national law shall apply.

17 Signatures

The Agreement is signed by both Parties, who will then receive a copy of the Agreement.

By signing, the signatories confirm that they are entitled to subscribe for the Contracting Entity or the Supplier.

City, on [date]

For the Contracting Entity

City, on [date]

For the Supplier

[name] [title]

[name] [title]