Annex II

Award of procurement contracts by Russian private beneficiaries

1. General principles

Where implementation of the Programme/project requires the award of a procurement contract by beneficiaries established in the Russian Federation, which are private entities, the following principles shall be complied with:

(a) The contract shall be awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests;

(b) For contracts with a value of more than EUR 60 000, the following rules shall also apply:

(i) an evaluation committee shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published by the beneficiary in advance in the tender documents. The committee must have an odd number of members with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications;

(ii) sufficient transparency, fair competition and adequate *ex-ante* publicity must be ensured;

(iii) equal treatment, proportionality and non-discrimination shall be ensured;

(iv) tender documents must be drafted according to best international practice;

(v) deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;

(vi) candidates or tenderers shall be excluded from participating in a procurement procedure if they fall within one of the situations described in paragraph 2.2 of Article 2 of this Annex. Candidates or tenderers must certify that they are not in one of these situations. In addition, contracts may not be awarded to

candidates or tenderers which, during the procurement procedure fall within one of the situations referred to in paragraph 2.3 of Article 2 of this Annex;

(vii) procurement procedures set out in Article 3 of this Annex shall be followed.

2. Eligibility for contracts

2.1 Rules of nationality and origin

In all cases, the rules of nationality and origin set forth in Article 7 of Annex I (General Conditions) shall apply.

2.2 Grounds for exclusion from participation in procurement

A tenderer shall be excluded from participating in procurement procedures where:

(a) The tenderer is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations of the Russian Federation;

(b) It has been established by a final judgment or a final administrative decision that the tenderer is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;

(c) It has been established by a final judgment or a final administrative decision that the tenderer is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the tenderer belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:

(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;

(ii) entering into agreement with other tenderers with the aim of distorting competition;

(iii) violating intellectual property rights;

(iv) attempting to influence the decision-making process of the contracting authority during the procurement procedure;

(v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;

(d) It has been established by a final judgment that the tenderer is guilty of any of the following:

(i) fraud and corruption as defined in Article 18 of Annex I (General Conditions);

(ii) participation in a criminal organisation;

(iii) money-laundering or terrorist financing;

(iv) terrorist-related offences or offences linked to terrorist activities;

(v) child labour or other forms of trafficking in human beings;

(e) The tenderer has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by the Commission, OLAF or the Court of Auditors;

(f) It has been established by a final judgment or final administrative decision that the tenderer has committed an irregularity.

The beneficiary shall exclude the tenderer where a person who is member of the administrative, management or supervisory body or has power of representation, decision or control on the tenderer is in a situation listed in points c), d), e) or f) of paragraph 2.2 of this Article. This applies also where a natural or legal person that assumes unlimited liability for the debts of that tenderer is in a situation listed in points a) or b) of paragraph 2.2 of this Article.

Point a) of paragraph 2.2 of this Article does not apply to the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities or from liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law of the Russian Federation.

The beneficiary shall not exclude any tenderer where it can demonstrate that adequate measures have been adopted which ensure its reliability, except in the cases listed in point d) of paragraph 2.2 of this Article, where it is indispensable for the continuity of the service for a limited duration and pending the adoption of remedial measures, where the exclusion would be disproportionate.

2.3 Exclusion from award of contracts

A contract for a given procurement procedure shall not be awarded to a tenderer who:

(a) Is in an exclusion situation established in accordance with paragraph 2.2 of this Article;

(b) Has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information;

(c) Was previously involved in the preparation of procurement documents where this entails a distortion of competition that cannot be remedied otherwise.

3. Procurement procedures

3.1 Procurement procedures for service contracts

Service contracts with a value of EUR 300 000 or more shall be awarded by means of an international restricted tender procedure following publication of a procurement notice. The procurement notice shall be published in all appropriate media beyond the programme area, stating the number of candidates which will be invited to submit tenders within a range of four to eight candidates and ensuring genuine competition.

Service contracts with a value of more than EUR 60 000 but less than EUR 300 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three service providers of its choice and negotiate the terms of the contract with one or more of them.

3.2 Procurement procedures for supply contracts

Supply contracts with a value of EUR 300 000 or more shall be awarded by means of an international open tender procedure following publication of a procurement notice, which shall be published in all appropriate media beyond the programme area.

Supply contracts with a value of EUR 100 000 or more but less than EUR 300 000 shall be awarded by means of an open tender procedure published in the programme area. Any eligible tenderer must be provided with the same opportunities as local firms.

Supply contracts with a value of more than EUR 60 000 but less than EUR 100 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three suppliers of its choice and negotiate the terms of the contract with one or more of them.

3.3 Procurement procedures for works contracts

Works contracts with a value of EUR 5 000 000 or more shall be awarded by means of an international open tender procedure, or in view of the specific characteristics of certain works by means of a restricted tender procedure, following

publication of a procurement notice which shall be published in all appropriate media beyond the programme area.

Work contracts with a value of EUR 300 000 or more but less than EUR 5 000 000 shall be awarded by means of an open tender procedure published in the programme area. Any eligible tenderer must be provided with the same opportunities as local firms.

Work contracts with a value of more than EUR 60 000 but less than EUR 300 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three contractors of its choice and shall negotiate the terms of the contract with one or more of them.

3.4 Low-value contracts

A low value contract not exceeding EUR 60 000 may be awarded in accordance with the national rules of the Russian Federation applicable to the beneficiary, complying with the rules of nationality and origin set out in paragraph 2.1 of Article 2 of this Annex. In absence of such national rules of the Russian Federation, the negotiated procedure may be used.

3.5 Use of Negotiated Procedure

Regardless of the value of the contract, the beneficiary may decide to use negotiated procedure on the basis of a single tender in the following cases:

(a) In case of service contracts:

i) where strictly necessary, for reasons of extreme urgency brought about by events which the beneficiary could not have foreseen and are not attributable to it, making impossible to comply with the ordinary time limits for the procedures;

ii) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature (ie. services directly linked to the statutory mission of the body) or designed to provide assistance to people in the social field;

iii) for the extension of an ongoing contract through the repetition of similar services entrusted to the original contractor, provided that the initial contract had been awarded following publication of a contract notice, and the latter referred to the possibility of using the negotiated procedure for new services for the project as well as the relevant estimated cost;

iv) where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the beneficiary may negotiate with one or more tenderers of its choice from among those that took part in the invitation to tender procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and that the principle of fair competition is observed;

v) where the contract consists of the acquisition of a plan or design selected by a jury following a design contest and must, under the rules applying, be awarded to the winner or to one of the winners, in which case, all successful candidates shall be invited to participate in the negotiations;

vi) where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider, with no reasonable alternative or substitute existing, and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement;

vii) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the Russian Federation so requires, provided the essential interests concerned cannot be guaranteed by other measures (eg. requirements to protect confidential information in the procurement procedure);

viii) where a new contract has to be concluded after early termination of an existing contract;

ix) for legal services such as: representation and advice related to arbitration, conciliation or judicial proceedings; arbitration and conciliation services; document certification and authentication services which must be provided by notaries;

x) for financial services and loans;

xi) for the purchase of electronic communication services;

xii) where a service contract is to be implemented by an international organisation which cannot participate in competitive procedures according to its statute or act of establishment.

(b) In case of supply contracts:

i) where strictly necessary, for reasons of extreme urgency brought about by events which the beneficiary could not have foreseen and are not attributable to it, making impossible to comply with the ordinary time limits for the procedures;

ii) where the supplies can only be provided by a single supplier because:

1) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

2) competition is absent for technical reasons;

3) the protection of exclusive rights including intellectual property rights must be ensured (e.g., where performance of the contract is exclusively reserved for the holders of patents or licences to use patents).

The exceptions in points 2) and 3) of point (ii) of paragraph 3.5 of this Article shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement;

iii) for additional deliveries by the original supplier intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the beneficiary to acquire supplies having different technical characteristics which would result in

either incompatibility or disproportionate technical difficulties in operation and maintenance;

iv) where the tender procedure has been unsuccessful, i.e. where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and the principle of equal treatment is observed;

v) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or where the protection of the essential interests of the European Union or the Russian Federation so requires, provided the essential interests concerned cannot be guaranteed by other measures (such as requirements to protect the confidential nature of information which the beneficiary makes available in the procurement procedure);

vi) for contracts in respect of supplies quoted and purchased on a commodity market;

vii) for contracts in respect of purchases of supplies on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under national law;

viii) where a new contract has to be concluded after early termination of an existing contract;

ix) where the products are manufactured purely for the purpose of research, experimentation, study or development; however such contracts shall not include quantity production to establish commercial viability or to recover research and development costs;

x) for the purchase of public communication networks.

(c) In case of work contracts:

i) where strictly necessary, for reasons of extreme urgency brought about by events which the beneficiary could not have foreseen and are not attributable to it, making impossible to comply with the ordinary time limits for the procedures;

ii) for new works consisting in the repetition of similar works entrusted to the original contractor, provided that the initial contract had been awarded after publication of a contract notice which referred to the possibility of using the negotiated procedure for the new works, their extent, the conditions under which they would be awarded, as well as their estimated cost;

iii) where the tender procedure has been unsuccessful, that is to say where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and the principle of equal treatment is observed;

iv) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the Russian Federation so requires, provided the essential interests concerned cannot be guaranteed by other measures (such as requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure);

v) for the purchase of public communication networks;

vi) for the renting of buildings already constructed, after prospecting the local market;

vii) where a new contract has to be concluded after early termination of an existing contract;

viii) where the works can only be provided by a single tenderer for any of the following reasons:

1) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

2) competition is absent for technical reasons;

3) the protection of exclusive rights including intellectual property rights must be ensured (e.g., where performance of the contract is exclusively reserved for the holders of patents or licences to use patents).

The exceptions in the points 2) and 3) of point (viii) of paragraph 3.5 of this Article shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.

For all procedures, a negotiation report must be produced, explaining how participant(s) in the negotiations were chosen, how the price was set and the grounds for the award decision.

Eligibility rules under Article 2 of this Annex shall be duly complied with.