

European Union Satellite Centre



Procurement Manual

FOREWORD

The purpose of this Procurement Manual is to provide guidance on applicable procurement procedures to the staff of the European Union Satellite Centre (SatCen) dealing with procurement procedures.

The policies and principles set herein will ensure that SatCen achieves the best value for money and carries out a competitive procurement process in an objective and transparent manner (unless there are justifiably exceptional circumstances).

Due to the number and variety of the procurement contracts involved, this Procurement Manual cannot cover all specific questions that may arise in the procurement process. The overarching procurement principles of *equal treatment*, *non-discrimination*, *proportionality* and *transparency* must always guide procurement implementation.

This Procurement Manual is a 'living' document and therefore subject to revisions and improvements. Comments and proposals for amendments are welcome and can be sent to the SatCen Legal Service by emailing procurement.satcen@satcen.europa.eu.

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1. GLOSSARY OF TERMS

Application: the request to participate in a procurement procedure (the first step in two-step procedures)

Authorizing Officer: the Director of the SatCen or his/her representative

Award notice: an advertisement published in the OJ to inform interested parties that a contract has been or is to be awarded

Building contract: cover the purchase, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other immovable property

Call for tenders: a public procurement procedure

Candidates: any economic operator submitting an application in a two-step procedure (restricted or negotiated procedure)

Contractor: a tenderer who has entered into a contract with the SatCen

Economic operator: a natural or legal person acting within the relevant commercial market (also mentioned in parts of the Procurement Manual as a 'provider') offering to execute works, supply products and provide services, respectively (covers 'contractors', 'suppliers' and 'service providers')

European Union Satellite Centre: an agency of the European Union supporting the decision-making of the European Union in relation to the Common Foreign and Security Policy (CFSP), and the Common Security and Defence Policy (CSDP) in particular, by providing products and services resulting from the exploitation of relevant space assets and collateral data, including satellite imagery and aerial imagery, and related services

Evaluation Committee: the committee appointed by the Authorising Officer or his/her representative to evaluate admitted tenders in response to the invitation to tender

FLEXI system: the internal SatCen's system for registering purchases

Framework contract: a contract concluded between one or more contracting authorities (e.g., SatCen) and one or more economic operators in order to establish the basic terms for a series of specific contracts to be carried out over a given period, particularly regarding the duration, subject, price and implementing conditions, and the quantities envisaged

High-value contract: a contract with a value equal to or above €139,000 for services and supplies, €214,000 for other services and supplies and €5,350,000 for works (as mentioned in Article 4 of Directive 2014/24/EC, as amended by Commission Delegated Regulation (EU) 2019/1828 of 30 October 2019)

Initiator: the SatCen staff member who has the right and authorization from the relevant Division to initiate and lead the public procurement process, draft the technical tender documents and, if applicable, evaluate the tenders received

Low-value contract: a contract with a value above €15,000 to € 60,000

Middle-value contract: a contract with a value between €60,000 and the high-value contract threshold

One-step procurement procedure: procurement procedure taking place in one single step allowing all interested economic operators to tender. The concerned procedures are the open tender procedure and the negotiated procedure

Opening Committee: the committee appointed by the Authorising Officer or his/her representative to decide on the admissibility of tenders received

Potential tenderer/bidder: an economic operator with the potential to submit a tender via the SatCen's procurement procedures

PP plan: an annual public procurement plan of the SatCen

Procurement Office: the dedicated unit within the Legal Service for managing public procurement processes of the SatCen

Procurement Officer: the dedicated Legal Service staff member for managing public procurement processes of the SatCen

Procurement Manual: the procurement procedures of the SatCen

Public contract: a contract concluded in writing by the SatCen in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services

Service contracts: contracts for all intellectual and non-intellectual services, other than those covered by supply contracts, works contracts and buildings contracts

Subcontractor: a natural or legal person that has entered into legal commitments with a Contractor in order to perform part of the supplies, services or works under a public contract, without having any direct legal commitment with the SatCen

Supply contracts: contracts for the acquisition of products by various means (purchase, leasing, rental or hire purchase, with or without the option to buy); the delivery of products may also include siting, installation and maintenance

Tenderer: an economic operator that has submitted a tender

Two-steps procurement procedure: procurement procedure taking place in two steps allowing the SatCen to select in a first step the economic operators from which it wishes to receive tenders in a second step. The concerned procedure is the restricted procedure

Very-low-value contract: a contract with a value not exceeding €15,000

Works contracts: contracts for either the execution or both the execution and design of works or the realization, by whatever means, of a work corresponding to the requirements specified by the SatCen; a work means the outcome of building or civil engineering works taken as a whole, which is sufficient by itself to fulfil an economic or technical function

2. ABBREVIATIONS

CEI: call for expression of interest

EOI: expression of interest

EU: European Union

FR: Financial Regulation

MEAT: most economically advantageous tender

OJ(EU): Official Journal (of the European Union)

RtL: Request to Launch

SatCen: European Union Satellite Centre

TFEU: Treaty on the Functioning of the European Union

VFM: value for money

3. INTRODUCTION

3.1. About the Procurement Manual

This Procurement Manual is applicable only to the contracts for services, supplies and works concluded by the SatCen on its own account.

It does not cover contracts such as:

- the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon
- arbitration and conciliation services
- legal services for the representation of SatCen in arbitration, conciliation or judicial proceedings
- employment of staff
- purchases under already existing contracts and framework agreements
- purchases under the joint interinstitutional procurement procedure proposed and carried out by the DGs of the European Commission or other EU Agencies
- the implementation of a cooperation between the SatCen and another contracting authority (including intergovernmental organizations), where such cooperation aims at the provision of public services and is governed solely by considerations relating to the public interest.
- contracts having no pecuniary¹ interest

This Procurement Manual lays down the public procurement rules and principles and the types of contracts. This legal framework is complemented with internal documents, including the Procurement practical guidelines defining processes and workflows.

3.2. Internal complementary documents

- Procurement practical guidelines
- Template of public procurement plan (PP plan)
- Declaration of absence of conflict of interest and confidentiality (*SatCen staff/external experts*)
- Non-Disclosure Undertaking (*economic operators*)
- Forms for drafting tender specifications, conditions for request to participate and justification reports
- Template of invitation to tender
- Template of contract / framework contract
- Template of purchase order

¹ Monetary/financial.

- Decision of appointment of Opening Board and Evaluation Committee
- Outline of the public opening session
- Record of opening of tenders
- Template of Evaluation Report
- Award decision template
- Form for the publication of the annual list of contractors
- Ex ante publicity notice for the negotiated procedure

4. PROCUREMENT RULES

4.1. Overview

4.1.1. Principles

All procurement procedures conducted by the SatCen must comply with the general procurement principles of *transparency*, *proportionality*, *equal treatment* and *non-discrimination*, as described in the EU Treaty.

Transparency

SatCen's procurement procedures must be transparent, while contract opportunities above certain thresholds should generally be publicized.

Proportionality

The tendering documentation must not contain requirements that are unnecessary for the procurement in question. The requirements made by the SatCen must be related and in reasonable proportion to what is being procured.

Equal treatment

Tenderers and tender applicants are treated equally. Information must be the same and available to everyone at the same time.

Non-discrimination

The SatCen shall not discriminate against economic operators having their main offices or headquarters in the EU or the European Economic Area and procurement documentation may not contain any discriminatory requirements. In the case of Copernicus projects, procurement shall be open to economic operators from third party countries participating in Copernicus, in accordance with Article 26 of [Regulation \(EU\) No. 377/2014](#).

The procurement process must be predictable and open. The enquiry documentation must be clear and unambiguous and contain all the requirements about what is being procured. Similarly, the SatCen must not deviate from the requirements that have been set.

The basic rule for SatCen public procurement is to ensure competition between economic operators. The SatCen will secure the best conditions in terms of price and quality, as well as ensure that the procedure is transparent and that all economic operators are treated equally.

Due to the specificities of SatCen activities, the SatCen can approach an operator of choice without launching a competitive procedure in specific and clearly defined situations as indicated hereafter.

4.1.2. Ethical standards

SatCen staff

Spending public money carries responsibilities and duties and all staff and/or external experts (where relevant) should ensure ethical behaviour. Staff and/or external experts (where relevant) involved in procurement processes must be objective, respect the confidentiality of the procurement process and avoid situations involving conflicts of interest, as defined in the Practical Guide on the Code of Conduct, Prevention of Conflicts of Interest and Anti-fraud Measures.

Where personal interests may conflict, the SatCen staff member and/or external experts (where relevant) should withdraw from the procurement. It would be appropriate to discuss concerns with a head of the relevant Division at an early stage.

SatCen staff and/or external experts (where relevant) involved in public procurement processes, such as the preparation of terms of references, technical specifications and selection and award criteria, as well as the evaluation of tenders, shall sign a Declaration of absence of conflict of interest and confidentiality prior to involvement in procurement processes.

Economic operators

Any attempt by a tenderer to secure confidential information, conclude illegal competition agreements with the competitors or influence the Evaluation Committee or the SatCen during the procedure for examining, clarifying, assessing and comparing tenders or proposals will lead to the tender being rejected.

A tenderer awarded a contract **above very-low value** is required to sign a Declaration of absence of conflict of interest and confidentiality.

The contractor must at all times act impartially and as an honest adviser, pursuant to the code of ethics of their profession. The contractor must refrain from making any public declarations concerning the project or services without the SatCen's prior permission. The prior written permission does not commit the SatCen in any way.

The contractor and the contractor's staff must refrain from engaging in any activity or receiving any benefit, which may conflict with their obligations towards the SatCen.

The contractor and the contractor's staff are bound by the rules of professional secrecy throughout the period covered by the contract and once it is completed. All reports and documents received or drawn up by the contractor during the execution of the contract are confidential, unless otherwise provided for in the contract.

The SatCen reserves the right to suspend or cancel a contract, if corrupt practices of any type are discovered at any stage of the contract awarding procedure. Pursuant to this provision, corrupt practice is understood to be any proposal to provide or consent to offering anyone an illegal payment, a gift, a gratuity or commission by way of an incentive or a reward for completing or refraining from activities relating to the award of the contract.

Contracting parties, having paid any unusual business expenses in the context of contracts with the SatCen, are likely to see their contracts terminated.

Failure to comply with one or more ethical clauses may result in the tenderer or contracting party being excluded from other SatCen contracts. The person or company in question must be notified of the situation in writing.

The successful tenderer undertakes to provide the SatCen, when asked to do so, with all the supporting documents concerning the contract execution conditions. The SatCen may make any *in situ* inspections of the documents it believes are necessary to gather evidence concerning suspected unusual business expenses.

4.1.3. Duty of discretion

All SatCen's staff members and Directors are strictly committed to remain discreet and not to supply information or details on any ongoing call for tenders that could be of more benefit to some tenderers than to others and thus breach the principle of equal treatment.

If SatCen's staff members or Directors are enquired by the representatives of potential tenderers or candidates about the status or details of an ongoing call for tenders, they must abstain from providing any information and refer such representatives to the SatCen's Procurement Office.

SatCen's staff members and Directors may attend events (meetings, conferences, workshops, fairs, etc.) where representatives of potential tenderers or candidates are also present, provided that the agenda of such events is not directly related to the subject matter of an ongoing call for tenders and no information or details on the ongoing call for tenders is disclosed.

4.1.4. Legal framework

The SatCen is not covered by the EU public procurement directives (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU), which are applicable only to 'contracting authorities of Member States'; thus, procurement processes are regulated by internal procedures, which are in line with the principles indicated in the aforementioned directives.

The procurement procedures are governed by the following provisions:

1. Council Decision 2014/401/CFSP of 26 June 2014 on the establishment of the SatCen
2. SatCen Financial Rules;
3. This Procurement Manual

The procurement procedures under EU-funded programmes (e.g., Copernicus) are governed by the following provisions:

1. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (hereinafter FR)
2. Regulation (EU) No. 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme and repealing Regulation (EU) No. 911/2010
3. *Mutatis mutandis* Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

With respect to operational procurement outside EU-funded programmes (e.g., Copernicus), the SatCen is not obliged to apply FR directly, although this Procurement Manual incorporates major principles and rules of the FR.

In the case of operational procurement and the need for some practical guidance, information from the FR could be gathered, but it does not oblige the SatCen to apply the FR directly in case of conflicting norms with this Procurement Manual.

In addition to the above-mentioned legislation, it should be noted that principles arising from the TFEU, such as transparency, non-discrimination, equal treatment and proportionality, as well as the respective case law from the Court of Justice of the EU on these principles, are binding to the SatCen.

4.1.5. Responsibilities

The procurement of goods, services and works at SatCen is governed by the principles of accountability and responsibility.

The Authorising Officer is the only accountable person for the SatCen's procurement procedures.

The Procurement Officer is responsible for the overall compliance of SatCen's procurement procedures with public procurement rules and principles.

The Heads of the Divisions and Initiators are responsible for the appropriateness, technical requirements and prices of the goods, services and works being purchased.

The Head of Finance is responsible for availability of funds necessary for the launch of a procurement procedure and for making the payments during the whole duration of the awarded contract, including possible renewals.

4.1.6. Data protection

Throughout the procurement process and for the purpose of preparing contracts, the SatCen applies the principles of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, Personal data shall be processed by the parties solely for the purpose of the procurement process and the performance and the management of the contract, without prejudice to the SatCen's right of possible transmission of data to internal audit services or any other Court for the purposes of safeguarding the financial interests of the SatCen.

All requests on this issue by either tenderer or contractor shall be addressed to the following point of contact: dpo@satcen.europa.eu.

4.2. Organs, responsibilities and functions

The competent organs in contract and tendering matters of the SatCen are:

Organ	Role
<ul style="list-style-type: none"> • SatCen Divisions 	<ul style="list-style-type: none"> - Preparation of the annual public procurement plan
<ul style="list-style-type: none"> • Procurement Officer 	<ul style="list-style-type: none"> - Directing, planning and management of the procurement operations of the SatCen - Management of the SatCen's procurement section of the website - Aggregation and management of the annual public procurement plan - Providing appropriate reporting information regarding procurement-related matters - Consulting the SatCen's Divisions with respect to public procurement procedures - Propose revision and update of this Procurement Manual

Organ	Role
	<ul style="list-style-type: none"> - Management of the procurement procedures above €15,000 - Ex ante publication of the procurement procedures above €15,000 - Oversee and review the preparation of responses to audit observations, reports and management letters relating to procurement activities - Oversee staff training needs with respect to public procurement
<ul style="list-style-type: none"> • Authorizing Officer or his/her representative 	<ul style="list-style-type: none"> - Approval of Requests to Launch - Signing the Invitations to Tender - Signing the contract award decisions - Approval of Opening/Evaluation Committees - Signing the contracts
<ul style="list-style-type: none"> • Initiator 	<ul style="list-style-type: none"> - The identification of the need - Initiation of the procurement process (Request to Launch) - Filing the required information with respect to the specific procurement on the FLEXI system - Drafting technical specifications and technical tender documents (where applicable) - Management of the procurement procedures below €15,000
<ul style="list-style-type: none"> • Opening Committee 	<ul style="list-style-type: none"> - Opening of tenders above €139,000
<ul style="list-style-type: none"> • Evaluation Committee 	<ul style="list-style-type: none"> - Evaluation of tenders above €139,000 and when considered necessary
<ul style="list-style-type: none"> • Contract Manager 	<ul style="list-style-type: none"> - Coordination of the supplier/service provider/works contractor

Organ	Role
	<ul style="list-style-type: none"> - Management of the contract and its terms - Confirmation that goods/services have been received or works done
<ul style="list-style-type: none"> • Finance Division 	<ul style="list-style-type: none"> - Determines the availability and commitment of funds for any procurement procedure - Collaborates in the evaluation of the financial capacity of tenderers/candidates

Only those SatCen staff members who have duly received a delegation of signature authority may enter into legally binding financial commitments on behalf of the SatCen. As a general rule, **the Authorizing Officer is the Director of the SatCen**, who has the legal Signature Authority, unless he/she delegates this authority to any other relevant staff member.

Staff members designated to any of the above-mentioned roles must have the requisite qualifications and experience to carry out the functions assigned to them and provide consistency in the application of the SatCen’s regulations, rules, policies and procedures. In cases where staff are involved in the preparation of terms of references, technical specifications and selection/award criteria, as well as the evaluation of tenders, the relevant declarations have to be signed before exercising the relevant task, as indicated in the [Principles and ethical standards in procurement](#) section of this Procurement Manual.

4.3. Planning and reporting

4.3.1. Planning

Planning and preparation are vital in all procurements, particularly those advertised in the OJEU where the exercise will take several months.

It is a basic principle of public procurement that a competitive process should be used, unless there are justifiably exceptional circumstances. The type of competitive process can vary depending on the value and characteristic of the public contract to be awarded.

Each Division is required to identify its yearly purchasing needs in the annual public procurement plan (PP plan) using the template provided as internal complementary document.

With a view to avoiding bad estimations of the value of the contract and avoiding any lack of resources for protracted procedures, the annual PP plan is to be prepared **by 31 January**.

Each SatCen Division having procurement needs is obliged to send the pre-filled annual PP plan **by 20 December** of each year by email (procurement.satcen@satcen.europa.eu) to the Procurement Office. The Procurement Office will then aggregate the annual needs of the separate Divisions for inclusion in the single final annual PP plan, as well as manage and oversee any amendments (if needed) to it.

NB:

In order for it to be considered sufficiently detailed, the annual PP plan must indicate:

- the indicative budget reserved for the procurements during the year
- the indicative number and type of contracts envisaged and their subject in generic terms
- the indicative timeframe for launching the procurement procedures

If sufficient details of the contract in question are not provided in the annual PP plan, or if the need for the contract only becomes apparent later, the PP plan must be amended before the actual launch of the specific tender.

It has to be stressed that the value of the public contract is not only the price of the single contract, but the **aggregated value of contracts of the same type**.

In essence, in determining whether the threshold is likely to be reached, the SatCen needs to aggregate the estimated value of all anticipated separate contracts for supplies or services of the same type meeting the requirement.

It is strictly forbidden to split up contracts that are to be considered as one single work, supply or service contract in order to avoid the mandatory publications under an open/restricted procedure or in order to stay under the authorised thresholds of a negotiated procedure.

As a general rule, **aggregate values** may be calculated by one of the following methods:

- the estimated value of separate contracts for meeting a single requirement
- the total value of supplies and services purchased during the last financial year
- the estimated total value of all contracts/orders expected to be placed in the next financial year, or during the term of the contract, if that is longer
- where contracts have no definite duration, calculate by the monthly value for 48 months

In the case of **works contracts**, account shall be taken not only of the value of the works, but also of the estimated total value of the supplies and services needed to carry out the works, which should be made available to the contractor by the SatCen.

For **framework contracts**, the value to be taken into account shall be the maximum value of all the contracts envisaged during the total duration of the framework contract.

Where the SatCen provides for payments to candidates or tenderers, it shall take them into account when calculating the estimated value of the contract.

For **service contracts**, account shall be taken of the following:

- (a) in the case of insurance services, the premium payable and other forms of remuneration
- (b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration
- (c) in the case of design contracts, the fees, commissions payable and other forms of remuneration

NB:

It should also consider whether the contract stands on its own or covers a product or service, which forms part (with others) of a technical or financial whole (e.g., a conference).

In the case of various services, which must be ordered when organizing contracts made up of a set of homogeneous products or services serving a similar purpose, whose combined value is such that few operators would be able to provide them all in their entirety, the contract should be split into lots, so that any interested operator can tender for one or more lots. Dividing a contract into lots increases competition. Indeed, in the case of high-value contracts, competition can only be achieved by splitting the contract, since only a small number of operators would be able to offer all the products or services requested.

Splitting into lots is also appropriate when a contract, which constitutes a single technical or financial Division, is made up of a variety of products or services offered by companies operating in different sectors of the economy.

Similarly, there is the question of whether the purchase of a product would also involve a need for services (e.g., maintenance).

In all the above cases, it is necessary to take account of the whole picture when deciding on the contract, particularly its estimated value.

The relevant SatCen Division shall do the preliminary estimation of the value of a contract based on the total amount payable, including any form of options and any renewal. Since the aggregated [PP plan](#) might indicate that other Divisions are

planning to buy services, supplies or works of the same type (meeting the same requirements), the **Initiator shall consult the Procurement Office during the preparatory meeting or, at the latest, before the actual launch of the procurement procedure**, with respect to the aggregated value of the planned contract, and decide the relevant procurement procedure, respectively.

4.3.2. Reporting

The Procurement Officer shall maintain a record of numbers, values and categories of contracts awarded.

Accordingly, the Initiators of the relevant processes managed by them shall submit the procurement process documentation through the FLEXI system.

To that effect, the Procurement Officer shall be able to provide to the Head of Legal Services (upon request) a list of contracts awarded during the previous quarter or over a longer period.

4.3.3. Preliminary market analysis

Before launching a procurement procedure, the Initiator may conduct a preliminary market analysis with a view to preparing the procedure and gaining prior knowledge and understanding of the market.

The main purpose of the preliminary market analysis is to allow the SatCen to:

- develop general market knowledge (established market - market in development phase - existence of sufficient suppliers to ensure effective competition);
- assess the capability of the market to deliver what is required, within the required time-limits and on the required scale, and consequently the feasibility of the procurement;
- gain knowledge of the terms and conditions usually applied to contracts in the relevant market and identify potential market constraints;
- refine and further clarifying requirements and specifications;
- make a correct estimate of the contract value;
- define appropriate selection and award criteria;
- gain understanding of potential risks of contract performance;

The most commonly used methods for market analysis are searches based on Internet, mail and phone. Other sources of information include catalogues, press publications (specialized journals, magazines, newsletters, etc.), trade associations/organizations and/or chambers of Commerce or market studies prepared by consultancy companies.

When necessary, other more active market prospecting activities may include participation in conferences, fairs or seminars or seeking advice from independent experts, specialised bodies or economic operators

When consulting economic operators, particular care must be taken not to impair fair competition by providing such economic operators with early knowledge of a planned procurement procedure. In this regard, the Initiator shall explicitly indicate that the consultation is not a call for tenders and refrain from giving any information as to when and where the future call for tenders will be published.

In any case, all actions linked to the preliminary market analysis will have to be properly documented in writing for each procurement file, in order to ensure transparency and auditability.

4.4. Procurement procedures

4.4.1. Which procurement procedure should be applied?

Estimated value of contract		Type of procedure
Services or supplies	Works	Minimum procedure applicable (see important notes below)
1	< €1,000	Simple payment of costs against invoices
2	Very-low-value contracts €1,000 - €15,000	Negotiated procedure with at least two candidates
3	Low-value contracts > €15,000 - € 60,000	Negotiated procedure with at least three candidates , without a contract notice in the OJ, but with ex ante publicity on the SatCen website Exceptional negotiated procedure*
4	Medium-value contracts	Procedures following a CEI (list of preselected candidates or list of vendors), with at least five candidates , without a contract notice in the OJ, but with ex ante publicity on the SatCen website Negotiated procedure with at least five candidates , without a contract notice in OJ, but with ex ante publicity on the SatCen website Exceptional negotiated procedure*
	> €60,000 to < €139,000 (a) < €214,000 (b)	
5	High-value contracts	Open or restricted procedure with publication of a contract notice in the OJ Exceptional negotiated procedure*
	≥ €139,000 (a) ≥ €214,000 (b)	

*Contracts in exceptional cases as listed in Point 11 of Annex I to the FR and in the [Exceptional negotiated procedure](#) section.

(a) Service contracts and supply contracts, where those contracts involve products covered by Annex III of [Directive 2014/24/EC](#)²

(b) Service contracts and supply contracts, where those contracts involve products not covered by Annex III of [Directive 2014/24/EC](#)

² It is not likely that the SatCen will be purchasing products listed in this annex, for example: salt, sulphur, earths and stone; plastering materials: lime and cement; metallic ores; slag and ash; mineral fuels, oils and products of their distillation; bituminous substances; and mineral waxes.

NB:

- Use of the open or restricted procedure with the publication of a contract notice in the OJ is always an option. The other procedures constitute the minimum to be followed in each case.
- The estimated value or type of contract must not be established in such a way as to evade the procedure, which would apply if that value or type were defined correctly.
- In the case of middle-value contracts below the Directive 2014/24/EC threshold³, procedures following a CEI should be negotiated (with three or five candidates depending on the value) or, in exceptional cases, exceptional negotiated procedures without a contract notice published in the OJ are also an option.
- If there are doubts concerning the estimated value of the contract or if the value is close to a threshold, it is advised to use a procedure appropriate to a higher level.
- In the case of buildings contracts, the negotiated procedure without prior publication of a contract notice (whatever the estimated value of the contract) after prospecting the local market (Point 11.1. (g) of Annex I to the FR) should be used.

4.4.2. Open or restricted procedure with the publication of a contract notice in the Official Journal

Open procedure

In an **open** procedure, **any economic operator**, either a natural or a legal person, may submit a tender, provided that the eligibility criteria defined in the Tender Specifications are met.

Open procedures are only accessible to economic operators established in the EU or the EEA, unless otherwise decided by the SatCen on a case-by-case basis.

A contract notice describing the characteristics of the contract is published in the S series of the OJ. This notice gives details of the particular institution launching the procedure, the subject of the procurement, the organization of the procedure, the methods of assessing tenders (exclusion, selection and award criteria), the method of receiving tender documents, the deadline for submitting tenders and the date of public opening. It also gives information about the minimum economic, financial, technical and professional capabilities required by the selection criteria and the admissibility of variant solutions, if any apply. Full information about the subject of the procurement, conditions and procedure is given in the tender documents, which are made available via the Internet.

³ Further details are given in the table in the [Which procurement procedure should be applied?](#) section (see the high-value contracts threshold).

Tenders are submitted in envelopes⁴ and opened by the Opening Committee in public.

The Evaluation Committee assesses all tenders, applying the exclusion, selection and award criteria separately. It prepares the evaluation report, including its recommendations. On this basis, the Authorizing Officer or his/her representative makes the award decision and the SatCen sends notification to all the tenderers.

The Opening and Evaluation Committees may comprise the same persons. However, the Authorizing Officer or his/her representative may decide that the exclusion and selection criteria are to be assessed by other appropriate means, for instance, by certain individuals or ad hoc groups.

At the same time as the notification of the award of the contract, the SatCen asks the winning tenderer for evidence that it meets the exclusion criteria. Following verification of that evidence and after waiting for possible comments/complaints from other tenderers (**10 calendar days** after electronic dispatch of the notification of the award decision), the SatCen signs the contract with the winning tenderer. If the SatCen receives comments/complaints from other tenderers within the aforementioned 10 calendar days, this standstill period is stalled until the response to the tenderer is sent and the remainder of the standstill period is calculated. **Within the next 30 calendar days**, the SatCen sends the contract award notice to the Publications Office.

Restricted procedure

A contract notice is published in the OJ describing the characteristics of the contract and indicating the criteria, which will be used for selecting candidates. This procedure is organized in **two steps**: in the first, only the exclusion and selection criteria are assessed, while, in the second, the award criteria are evaluated. Any interested economic operator may ask to take part in this procedure, but **only those invited can submit** a tender to be evaluated. At the same time, the others are notified that they have not been selected. The SatCen selects **at least five candidates** with the required capabilities⁵, who then have to submit a tender from the date when the invitation was sent.

The candidates are simultaneously provided with the tender documents, which must give full information about the subject of the procurement, award criteria, conditions and award procedure.

Tenders are submitted in envelopes⁶ and opened by the Opening Committee. The opening is not public. The Evaluation Committee assesses all tenders, applying the award criteria only. It prepares the evaluation report, including its recommendations. On this basis, the Authorizing Officer or his/her representative

⁴ Physical or electronic.

⁵ Provided a sufficient number of candidates satisfy the selection criteria.

⁶ Physical or electronic.

takes the award decision and the Procurement Officer sends notification to all the tenderers.

The Opening and Evaluation Committees may comprise the same persons. However, the Authorizing Officer or his/her representative may decide that the exclusion and selection criteria are to be assessed during the first step by other appropriate means, for instance, by (an) individual(s) or ad hoc groups.

At the same time as the notification of the award of the contract, the SatCen asks the winning tenderer for evidence that it meets the exclusion criteria. Following verification of that evidence and after waiting for possible comments/complaints from other tenderers (**10 calendar days** after electronic dispatch of the notification of the award decision), the SatCen signs the contract with the winning tenderer. If the SatCen receives comments/complaints from other tenderers within the aforementioned 10 calendar days, this standstill period is stalled until the response to the tenderer is sent and the remainder of the standstill period is calculated. **Within the next 30 calendar days**, the SatCen sends the contract award notice to the Publications Office.

NB:

A restricted procedure is recommended:

- if the number of expected tenders is so large that the practical management of the procurement procedure could be adversely affected
- if the SatCen wishes to limit circulation of the tender documents (e.g., for security or confidentiality reasons)
- if a site visit is necessary for economic operators to submit a tender

Open procedure with publication of a contract notice in the Official Journal

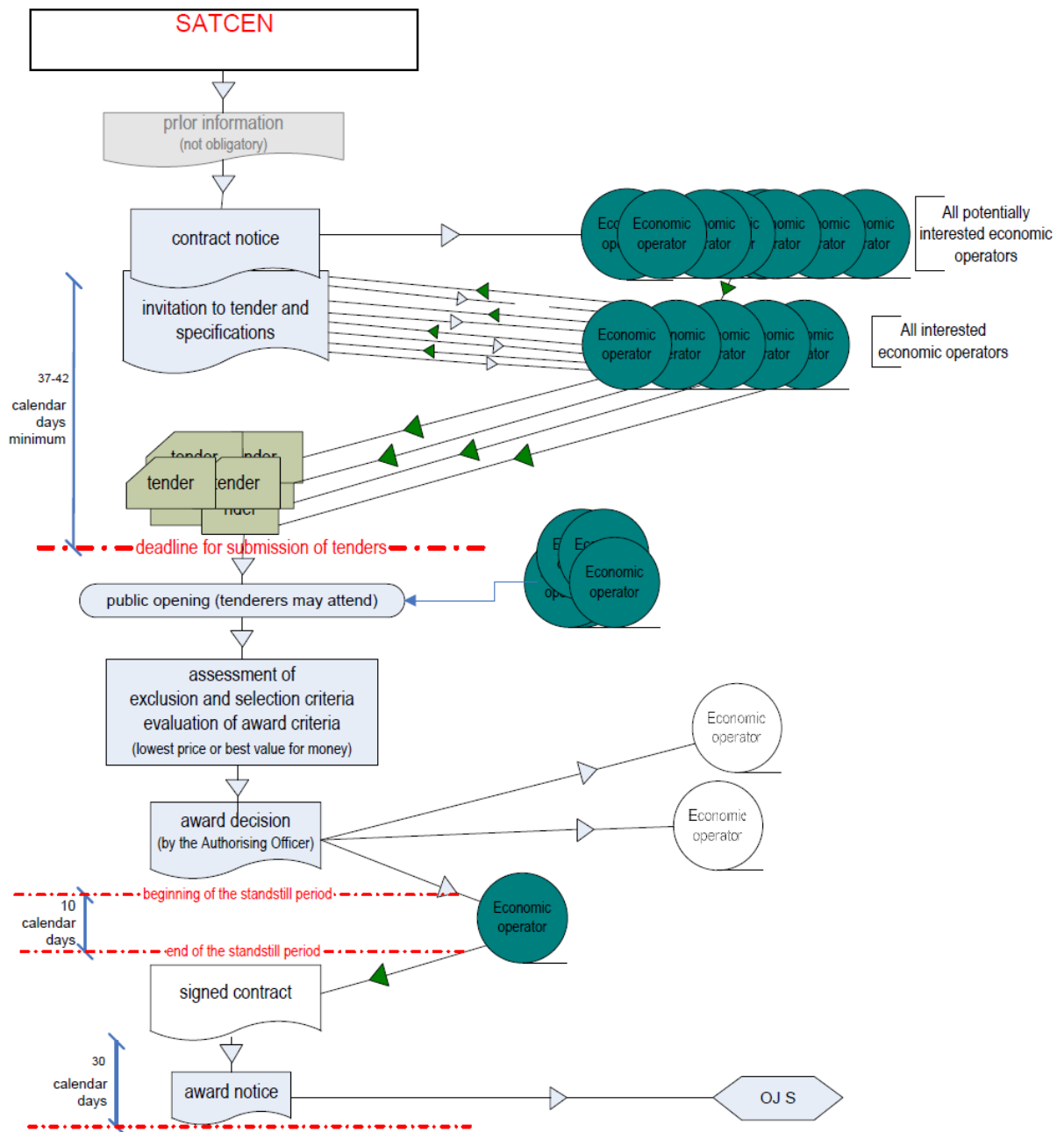


Figure 1. Open procedure with publication of a contract notice in the OJ

Restricted procedure with publication of a contract notice in the Official Journal

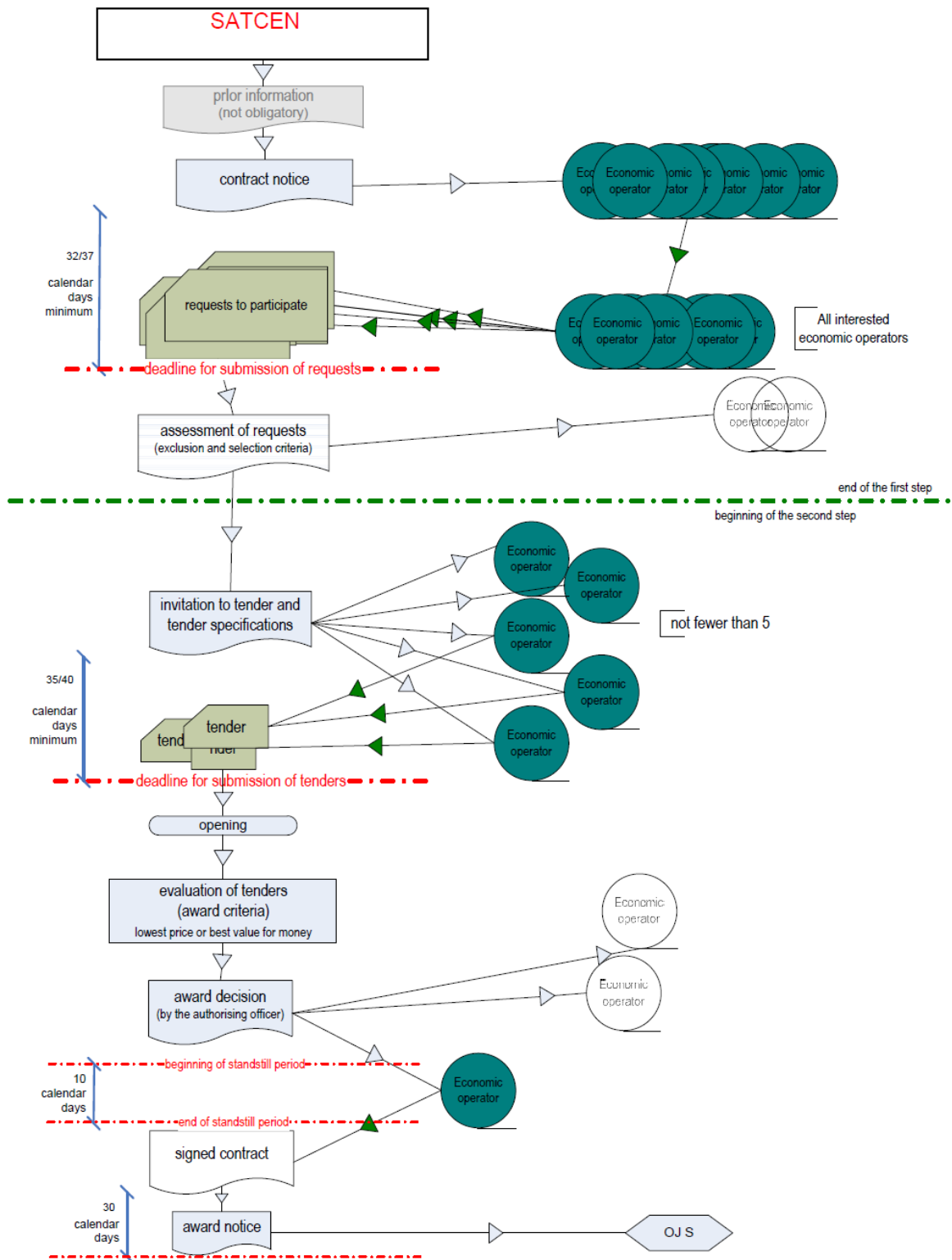


Figure 2. Restricted procedure with publication of a contract notice in the OJ

Minimum time limits

Means	Open procedure	Restricted procedure	
	Tenders	Applications	Tenders
Ordinary	42	37	40
Electronic	37	32	35

NB:

- The time limits given above constitute a minimum. The actual time limits must be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract. Longer deadlines mean wider competition and better-quality tenders.
- Time limits run from the date of dispatch. If the last day of a minimum time limit falls on a holiday, a Saturday or a Sunday, the period to be taken into account must include the next working day.
- In the restricted procedure, the time limits for the two phases must not be aggregated. The two phases are separated by the receipt and processing of applications, the selection of the candidates, and the organization of the dispatch of the call for tenders.
- The time limits for the receipt of tenders may be shortened by five days if the SatCen has technical means by which tenders may be electronically submitted and accepted.
- **In urgent cases**, the time limit for the receipt of requests to participate or tenders in open procedures shall not be less than **15 calendar days from** the date on which the **contract notice was dispatched**, while the time limit for the receipt of tenders for restricted procedures shall not be less than **10 calendar days from the date of dispatch** of the invitation to tender.

4.4.3. Procedure following a call for expression of interest

A CEI serves to invite economic operators to put themselves forward to be included either on a list of preselected candidates or on a list of vendors. It can be seen as a way of generating shortlists, which may be used on many occasions for

many different procurement procedures. It must be prepared and put into action in line with the principles of public procurement.

NB:

- In practical terms, it is only worth using a CEI when a **series of similar contracts are planned**. If only a few contracts are planned, it will generally be more efficient for the SatCen to use either an open, restricted procedure or negotiated procedure (when possible).
- Given the period of validity of the list resulting from a CEI and the fact that various fields may be covered by a single list, it is a good idea, prior to publication, to analyse the various services or types of contract, which will be awarded on the basis of the CEI, in order to decide whether or not to draw up sublists. Using sublists avoids the problem of consulting firms, whose interest or capacity is limited to a general or parallel field, which has no direct link with the subject of a particular contract.

The two different procurement procedures following a CEI (a list of preselected candidates and a list of vendors) are explained in turn below. The SatCen may use a CEI to do either of the following:

- (a) to **preselect candidates** to be invited to submit tenders in response to future restricted invitations to tender

NB:

- In the case of the **preselection of candidates**, the list of preselected candidates is established following the evaluation of exclusion and selection criteria. All candidates who are not in an exclusion situation and who meet the selection criteria are included on the list or sublist(s). Whenever a contract is to be awarded, the SatCen invites all the candidates on the relevant sublist to tender.
- The SatCen notifies candidates that they have been included on the list, generally within 15 days of the evaluation. Unsuccessful candidates should be informed by the SatCen within the same time limit as preselected candidates.
- There must be a **minimum of five candidates** on a given list or sublist to be able to use it, provided that a sufficient number of candidates satisfy the selection criteria. It is recommended to wait a reasonable time before using the list, in order to ensure genuine competition between the economic operators.

(b) **to collect a list of vendors** to be invited to submit requests to participate or tenders

NB:

- From a practical point of view, this procedural alternative shall be used more often by the SatCen due to its easier administrative management.
- Regarding the **collection of a list of vendors** during the **first phase**, the CEI only includes the subject matters of future procurements as sublists, not exclusion, selection or award criteria. Therefore, any economic operators can register on the sublist of their choice without having to put together an application. The registration system, including acknowledgement of inclusion on the list, can be automated (when the system is available).
- Whenever a contract is to be awarded in respect of a topic covered by the list of vendors, the SatCen will invite all the vendors on the relevant sublist to tender during the **second phase** (there must be a **minimum of five economic operators** on that sublist to be able to use it).

When it is decided to follow the CEI (with **preselection of candidates**) procedure regarding procurement, the SatCen will publish a notice for a CEI in the OJEU. **The list** drawn up following a CEI shall be valid for no more than **four years** from the date when the mentioned notice is issued.

Any interested economic operator may express interest at any time during the period of validity of the list, with the exception of the last three months of that period.

When it is decided to follow the CEI (with **collection of a list of vendors**) procedure regarding procurement, the SatCen will publish a notice for a CEI in the SatCen website.

Where a contract is to be awarded, the SatCen shall invite all candidates or vendors entered onto the relevant list or sublist to do either of the following:

- (a) to submit a tender in the case of the **preselection of candidates**
- (b) to submit, in the case of **collection of a list of vendors**, either of the following:
 - (i) tenders including documents relating to exclusion and selection criteria
 - (ii) documents relating to exclusion and selection criteria and, in a second step, tenders, for those fulfilling these criteria

List of pre-selected candidates

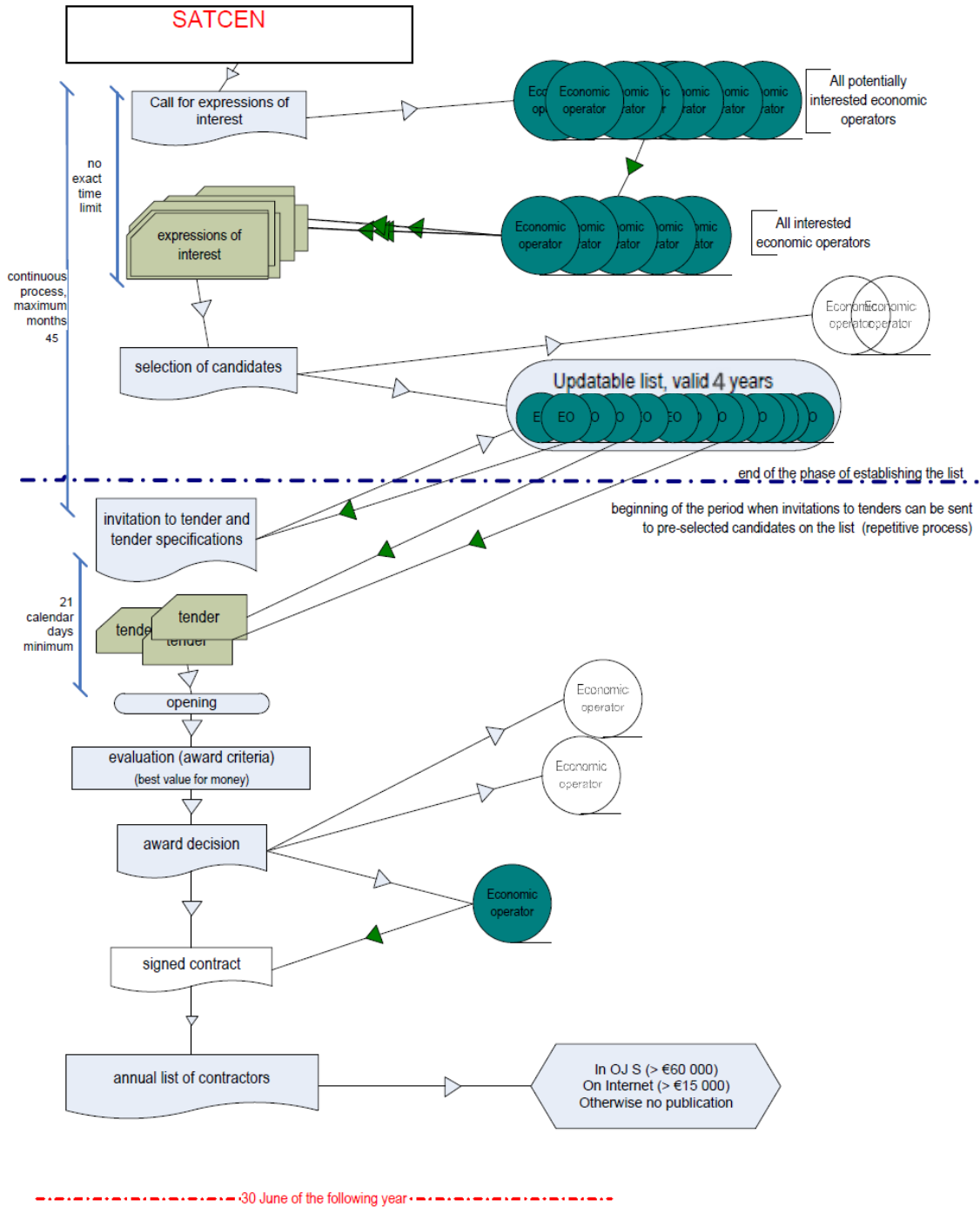


Figure No.3. Procedure following a call for expression of interest (the pre-selection of candidates)

List of vendors

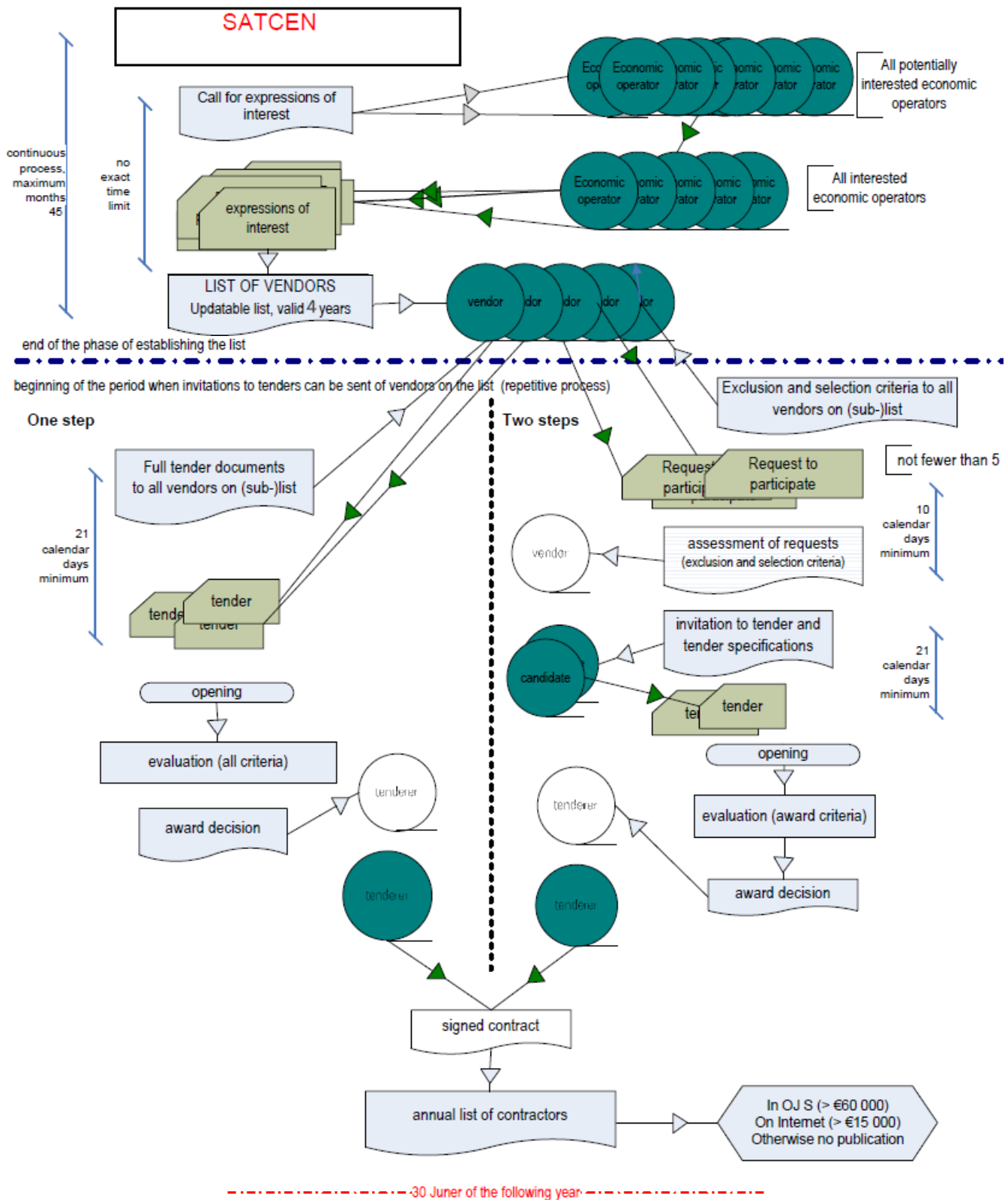


Figure No.4. Procedure following a CEI (list of pre-selected vendors)

Minimum time limits

The time limits given above constitute a minimum. The actual time limit must be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract and the need to visit the site or consult documents on the spot.

Term	One step Tender	Two step	
		Step 1 Request to participate	Step 2 Tender
Calendar days	21	10	21

4.4.4. Negotiated procedure for middle- and low-value contracts

This procedure is to be used for **middle-value** contracts **above €60,000 and below the Directive 2014/24/EC threshold⁷** and **low-value** contracts **not exceeding €60,000⁸**.

In the case of repetitive purchases over a financial year, the procedure must be chosen in view of the total annual value of similar contracts. The thresholds do not apply per contractor or per contract, only per subject matter of the purchases.

In the case of **low- and middle-value contracts**, the Ex ante publicity notice for the negotiated procedure shall be published on the SatCen website before the actual invitation to tender, giving proportional time for the market to react, but not less than **10 working days**.

In negotiated procedures, the SatCen selects candidates⁹ to whom it sends the tender documents (invitation to tender, tender specifications and draft contract).

⁷ Below €139,000 for services and supplies, and €5,350,000 for works; further details given in the table in the [Which procurement procedure should be applied?](#) section (see high-value contracts threshold).

⁸ See detailed overview of the procedural requirements for low-value contracts in the table below (Figure 6).

⁹ Candidates may be selected from an ongoing list of vendors or a list of preselected candidates with the same subject matter as the purchase in hand (see procedures following a CEI), from an Internet search, or from among economic operators who have shown an interest in the call during the period of ex ante publicity. It is good practice to document the reason for the choice of candidates (note to the file), in particular, in terms of whether the chosen candidates meet the intended selection criteria.

The procedure must be carried out in writing and fully documented (opening, evaluation report and negotiation) for audit purposes.

The SatCen negotiates either the quality of the tender or the offered price, or both, if it deems that they can be improved on in order to obtain better quality or a lower price. The tender documents cannot be negotiated.

The SatCen must invite a minimum number of candidates to tender depending on the value of the contract:

- €60,001 - €139,000: at least **five candidates** to be invited (after ex ante publicity).

- €15,000.01 - €60,000: at least **three candidates** to be invited (after ex ante publicity).

- €1,000.01 - €15,000: at least **two candidates** to be invited

- €0.01 - €1,000: no procurement procedure (simply **paid against invoice**)

The procedure is still valid if not all invited candidates submit a tender, as long as at least one tender meets all criteria and can lead to a contract signature.

NB:

- Where the number of candidates meeting the selection criteria is below the minimum number specified, the SatCen may continue the procedure by inviting candidates with the required capacities.
- The SatCen will ensure equal treatment regarding all tenderers during all negotiations.
- A negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the procurement documents. The SatCen may indicate whether it will use that option or not in the procurement documents.

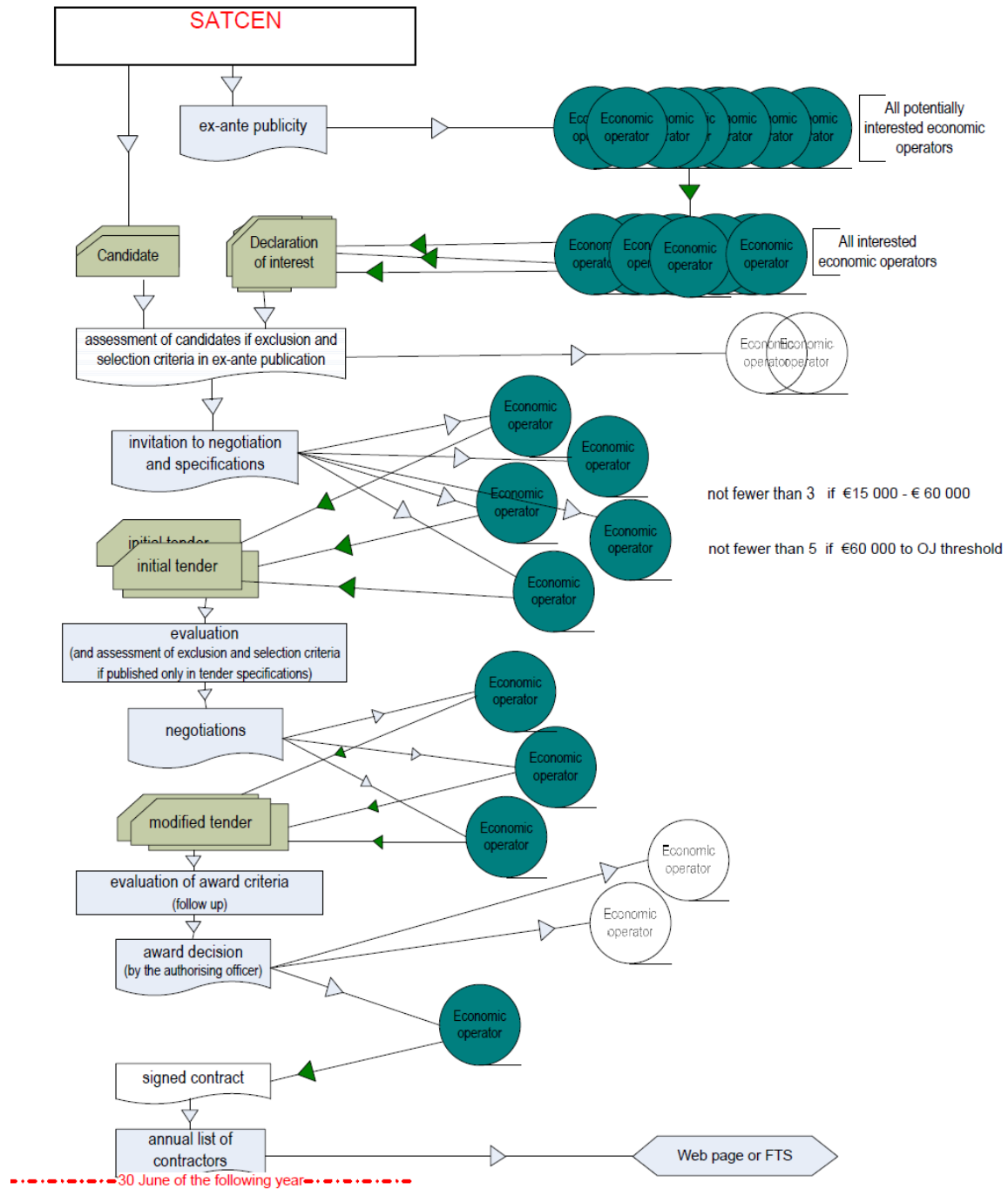


Figure 5. Negotiated procedure for middle- and low-value contracts

Contract value	Ex-ante publicity and selection of candidates	Number of candidates	Contents of tender documents	Dispatch of tender documents by email	Submission of tenders by email	Opening Committee/Evaluation Committee	Evidence of compliance with exclusion criteria	Evidence of compliance with Selection criteria	Possibility to negotiate	Award decision (formal document)	Information to all tenderers	Model contract	Pots-award publicity
€60,001 – €139,000	Publication SatCen website (may invite other candidates of choice) or use pre-selected list of vendors following CEI (call for Eol)	Min. 5	Full or simplified ITT depending on complexity	Yes	Yes if confidentiality may be maintained	Not obligatory, may be required by complexity	ESPD or Declaration of Honour (proofs requested in case of doubt)	Not obligatory (proofs requested in case of doubt and pre-financing)	Yes	Yes	Yes	Contract depending on complexity	Annual list of contractors on SatCen website
€15,001-€60,000	Publication SatCen website (may invite other candidates of choice) or use pre-selected list of vendors following CEI (call for Eol)	Min. 3	Full or simplified ITT depending on complexity	Yes	Yes, if confidentiality may be maintained	Not obligatory, may be required by complexity	ESPD or Declaration of Honour (proofs requested in case of doubt)	Not obligatory	Yes	Yes	Yes	Contract depending on complexity	Annual list of contractors on SatCen website
€1,000 - €15,000	Chosen by Initiator with justification	Min. 2	Simplified	Yes	Yes	Not obligatory	No (but declaration or proofs requested in case of doubt)	No (but no pre-financing)	Yes	Yes	Yes	Purchase order ¹⁰ or contract depending on complexity	No

¹⁰ Purchase orders should not be used for complex projects e.g. they if include purchase of intellectual property rights



≤€1,000	Chosen by Initiator	Min. 1	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
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Figure 6. Overview of the middle-, low- and very-low-value contracts

4.4.5. Exceptional negotiated procedure without prior publication of a contract notice

In an exceptional negotiated procedure, the SatCen may consult invited economic operators and negotiate the terms of the received tenders. The exceptional negotiated procedure may be used for procurements in the cases exhaustively listed below, regardless of the estimated value of the contract. The procedure should be used only when duly justified; the reasons must be set out in the decision awarding the contract or, in the case of low-value contracts, set out in the FLEXI system.

Exceptional negotiated procedure can be used in the following cases¹¹:

(a) Where no tender, or no suitable tender, or no request to participate or no suitable request to participate has been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered

NB:

A tender shall be considered unsuitable if:

- it does not relate to the subject matter of the contract and a request to participate
- the economic operator is in an exclusion situation or does not meet the selection criteria
- the economic operator was previously involved in the preparation of procurement documents, thereby entailing a distortion of competition that cannot be remedied otherwise
- it does not comply with the minimum requirements specified in the procurement documents
- it does not comply with the requirements for submission
- the economic operator has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information
- the price exceeds the maximum budget as determined and documented prior to the launching of the procurement procedure
- it fails to meet the minimum quality levels for award criteria

Number of candidates:

¹¹ The standstill period is not applicable, except in case (b), where a tender can only be provided by a single economic operator.

- 1) There is **no minimum number of candidates** to be invited, but an optional invitation to negotiations could be sent to three or more candidates.
- 2) In case this procedure is to be applied after an unsuccessful open procedure or restricted procedure, and the SatCen identified tenderers satisfying the selection criteria, the SatCen must include, within the negotiated procedure, **all tenderers** who satisfied exclusion and selection criteria, except those who submitted a tender, which was declared to be abnormally low during the previous procedure.

If tenders are found to be irregular or unacceptable because of errors made in the tender documents, or if substantial alterations need to be made to the tender specifications, a new open or restricted procedure must be organized.

(b) Where the works, supplies or services can only be provided by a single economic operator and for any of the following reasons:

- (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance
- (ii) competition is absent for technical reasons¹²
- (iii) the protection of exclusive rights, including intellectual property rights, must be ensured¹³

NB:

This is limited to exceptional cases, where only **one candidate** is available. This condition is met only in the case of products for which there is no competition on the market at all (monopoly), independently from the SatCen's purchasing habits. **The standstill period applies (in the case of high-value contracts).**

(c) Insofar as is strictly necessary where, for reasons of **extreme urgency** brought about by unforeseeable events, it is impossible to comply with the time limits laid down by alternative procedures and where the justification of such extreme urgency is not attributable to the SatCen

NB:

An "unforeseeable event" refers to an occurrence, which is absolutely atypical within the context of normal economic and social life, such as an earthquake,

¹² This shall only apply where no reasonable alternative or substitute exists and where the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.

¹³ The same as per footnote 2.

flooding or terrorist attack. In situations like these, the SatCen has to act promptly and efficiently from the moment the unforeseeable event happens.

There is **no minimum number of candidates** to be invited, but an optional invitation to negotiations could be sent to three or more candidates.

(d) Where a service contract follows a design contest and is to be awarded to the winner or one of the winners; in the latter case, all winners must be invited to participate in the negotiations

NB:

All candidates shall be invited to negotiations following the design contest.

(e) For new services or works comprising the repetition of similar services or works entrusted to the economic operator to which SatCen awarded an original contract, provided that these services or works are in conformity with a basic project for which the original contract was awarded after the publication of a contract notice

NB:

The basic project shall indicate the extent of possible new services or works and the conditions under which they will be awarded. As soon as the basic project is put out to tender, the possible use of the negotiated procedure shall be disclosed, with the total estimated amount for the subsequent services or works taken into consideration when applying the Directive 2014/24/EC threshold referred to in the table in the [Which procurement procedure to apply?](#) section (see “high-value contracts”).

This procedure may only be used during the performance of the original contract and, at the latest, during the three years following its signature.

(f) For supply contracts:

(i) for additional deliveries which are 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 SatCen to acquire supplies having different technical characteristics, which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts may not exceed three years

(ii) 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

(iii) for purchases of supplies on particularly advantageous terms, from either an economic operator, 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

(g) For building contracts, after prospecting the local market

NB:

All candidates after prospecting the local market shall be invited to negotiations.

(h) For contracts for any of the following:

(i) legal representation by a professional lawyer within the meaning of Article 1 of [Council Directive 77/249/EEC](#) in arbitration, conciliation or judicial proceedings

(ii) legal advice given in the preparation of the proceedings referred to above or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of [Council Directive 77/249/EEC](#)

(iii) for arbitration and conciliation services

(iv) document certification and authentication services, which must be provided by notaries

NB:

A minimum of one candidate shall be invited to negotiations.

(i) 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 when the protection of the essential interests of the EU so requires, provided the essential interests concerned cannot be guaranteed by other measures; these measures may consist of requirements to protect the confidential nature of information, which the SatCen makes available in the procurement procedure

NB:

A minimum of one candidate shall be invited to negotiations.

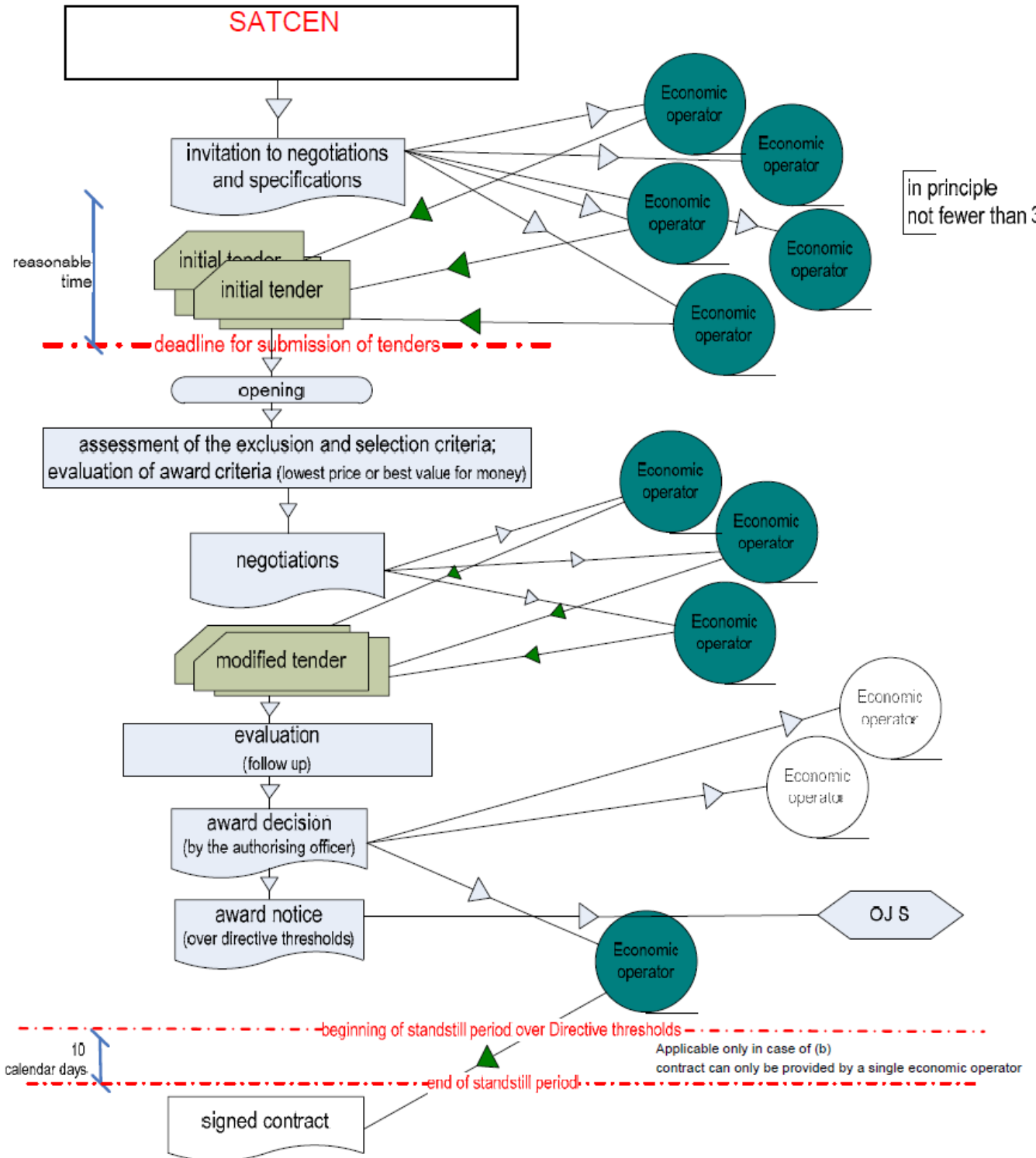
(j) For financial services in connection with the central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism

(k) Loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments

(l) For the purchase of public communication networks and electronic communications services within the meaning of [Directive 2002/21/EC](#) of the European Parliament and of the Council

(m) Services provided by an international organization, where it cannot participate in competitive procedures according to its statute or act of establishment

Figure 7. Exceptional negotiated procedure



4.5. Stages in procurement processes

4.5.1. Assessment of purchasing needs and preparatory meeting

The first step in the pre-contract process is the identification of the need to buy. Needs are identified by the specific SatCen Division. The Initiator starts the internal approval process prior to the actual procurement process.

If applicable, a preliminary market analysis should be conducted by the Initiator with the assistance of the Procurement Office.

Prior to launching a procurement procedure, the Initiator should hold a preparatory meeting with the Procurement Office in order to define the type of procedure, the type of contract and the timeline.

See the Procurement practical guidelines.

4.5.2. Preparation of the Request to Launch and tender documents

The first phase in the procurement procedure is the preparation of the RtL and the tender documents. Once they are ready, the call for tenders can be launched.

In all procedures of a value above €15,000 (including exceptional negotiated procedure without prior publication of a contract notice), the RtL, accompanied by the three main tender documents –(i) invitation to tender/negotiate; (ii) tender specifications; and (iii) draft contract/purchase order- constitute the cornerstone of competitive tendering, which is the rule for public procurement.

The RtL is a formal request to launch a procurement procedure, to be completed and approved internally, that serves the following purposes;

- validation by the Head of Division of the identified purchasing needs and requirements
- confirmation by the Finance Division of the budgetary availability for the procurement
- legal validation by the Head of Administration/Legal of the procurement procedure and the tender documents
- authorization to launch the procurement procedure by the Authorizing Officer
- recording purposes

The tender documents are designed to achieve a number of complementary objectives:

- to lay down the conditions governing the submission of tenders

- to provide interested parties with an exact definition of the characteristics of the product or service required by the SatCen
- to establish all the parameters (supply or service content, conditions, criteria etc.) on the basis of which the SatCen will award the contract
- to describe the financial and contractual terms on which it is prepared to acquire them

All the other stages in the procedure follow on from it. The contract notice published in the OJ, where this is required, as well as the ex-ante notice published on the SatCen website, must be entirely consistent with these documents. Once this notice has been published, the SatCen can expect to receive applications or tenders to which it will have to reply within strict deadlines. Tenders must be received, opened and evaluated and the contract awarded in accordance with the arrangements set out in these documents.

See the forms available for completion as internal documents complementary to this Procurement Manual.

In the case of low-value contracts, the content of the three tender documents may be simplified.

With respect to **tender specifications**, see the practical recommendations on how to describe services/supplies or works in the Procurement practical guidelines.

The tender specifications also include **exclusion criteria, selection criteria and award criteria**:

a) The **exclusion criteria** must be included in the tender specifications, except in restricted procedures, in which cases they appear only in the call for expressions of interest or in the corresponding contract notice and will already have been checked before the tender specifications are sent out.

The only criteria which should be applied are set out in Articles 136 and 141 FR, with nothing added, deleted or altered.

Candidates and tenderers must provide a **ESPD or Declaration of Honour**, duly signed and dated, stating that they are not in one of the exclusion situations. This same declaration **may** also be requested from subcontractors.

The SatCen does not require the above mentioned declarations for the **very-low contracts**.

In case of **middle and low-value contracts**, the SatCen may not require documentary evidence from the candidates or tenderers (proofs requested only in case of doubt).

In case of **high value contracts**, the SatCen requires documentary evidence from the potentially winning tenderer.

The SatCen waives the obligation for a candidate or tenderer to submit documentary evidence, if such evidence has already been submitted for another procurement procedure and provided the documents were issued not more than one year earlier and are still valid. In such cases, the candidate or tenderer must declare on his honour that the documentary evidence has already been provided in a previous procurement procedure, provide reference to that procedure, and confirm that there has been no change in the situation. The above-mentioned information must be included in the tender specifications.

NB: the SatCen shall establish a **central database** containing details of candidates and tenderers, who are in one of the situations described in this section. The sole purpose of the database shall be to ensure, in compliance with Community rules on the processing of personal data.

b) The **selection criteria** may be included in the tender specifications in order to reduce the participants list and select the most relevant economic operator for the assignment.

For middle- and **low-value contracts** the SatCen may, depending on its assessment of the risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers.

The selection criteria focuses on three main areas of economic operators: economic and financial standing; technical capacity and capability; suitability.

For further guidance, see the Procurement practical guidelines.

c) The **award criteria** are used are to determine the winning tender.

The SatCen base the award of contracts on the most economically advantageous tender, which shall consist in one of three award methods: lowest price, lowest cost or best price-quality ratio.

For further guidance, see the Procurement practical guidelines.

With respect to **draft contract**, it shall at least specify:

- (a) the penalties for failure to comply with its clauses;
- (b) the details which must be contained in invoices or in the relevant supporting documents;
- (c) the law applicable to the contract.

The SatCen may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors.

NB:

The SatCen ensures that such percentages are proportionate to the objective and value of the contract, taking into account the nature of the sector of activity concerned, and in particular, the competitive conditions and industrial potential observed.

If the tenderer indicates in its tender that it intends not to sub-contract any share of the contract or to subcontract a share inferior to the minimum of the range, it shall provide the reasons therefore to the SatCen.

A written contract must be drawn up for each public contract awarded by the SatCen, except for payment of costs against invoices where expenditure is less than €1,000. A purchase order, which is a simplified contractual document, can be used for contracts of low complexity (including subscriptions and licences).

For further guidance, see the Procurement practical guidelines.

4.5.3. Ex ante publication

In all procedures requiring publication of a contract notice in the OJ (open and restricted procedures), the procedure is launched at the moment of dispatch of the contract notice to the Publications Office. For procurement procedures with other forms of publicity (e.g., on the SatCen's website), such publication marks the launch of the procedure. In the case of procedures without a contract notice, the procedure is launched by the dispatch of the invitation to tender to potential tenderers.

Except in the case of secret contracts and also as otherwise provided herein for those contracts related to defence, all **high-value contracts** exceeding the thresholds provided for in Directive 2004/18/EC shall be **published in the OJEU**, by means of a contract notice. In the case of **high-value contracts**, the SatCen **may** publish the **prior information notice**¹⁴, either in the OJEU or on its buyer profile.

With respect to **middle- and low-value contracts**, except in the case of secret contracts and also as otherwise provided herein for those contracts related to defence, the SatCen is obliged to conduct **ex ante publication** of the intended procedures, meaning that information shall be available on the **SatCen website** prior to the actual dispatch of the invitation to tender.

¹⁴ It enables operators to make preparations (for example, by collating the necessary documentation and planning how to free up sufficient resources), so that they are ready to produce a tender as soon as the contract notice is published. This represents, therefore, an additional way of increasing competition.

With respect to **middle- and low-value contracts procured** following a CIE, the call should be sent out by electronic means via <https://simap.ted.europa.eu/lt>. After the publication in the OJ, the CEI may be published on the SatCen website.

See the forms available for completion.

4.5.4. Submission of application/tender

Submitting an application/tender in response to a procurement procedure launched by the SatCen shall be deemed to imply that candidates/tenderers:

- accept all the terms and conditions as stipulated in the procurement documents
- waive their own terms of business, such that any resultant contractual relationship shall be governed exclusively by the terms of the tender

The SatCen disregards any qualification, disclaimer or intention to the contrary contained in applications/tenders and rejects such applications/tenders without further evaluation, on the grounds that they do not comply with the tender specifications.

Unless the procurement documents stipulate a different time period, tenderers shall be bound by their tender for 90 days from the deadline for the submission of tenders.

Economic operators may consider two ways of collaborating within a procurement procedure: either as joint partners or through subcontracting. Unless stated otherwise in the contract notice and/or the procurement documents, both a consortium of candidates/tenderers and subcontracting are allowed in response to a procurement procedure. Candidates/tenders may even combine both approaches.

In any case, an application/tender must specify clearly whether each company involved is acting as a partner in a consortium or as a subcontractor.

Candidates/tenderers who wish to submit an offer are invited to send it to the SatCen, duly signed by their authorized representative.

Applications/tenders can be submitted in three different ways:

- a) by post/hand/courier (high-value contracts)
- b) through the e-procurement platform (when this is available)
- c) by email (for all applications and tenders for middle- and low-value contracts)

4.5.5. Opening of tenders

In the case of **low-value contracts**, the Initiator opens the tenders, unless otherwise decided by the Director or his/her delegate.

In the case of **middle-value contracts**, an Opening Committee may be formed, depending on the complexity of the contract.

In the case of **high-value contracts**, an Opening Committee must be formed.

The Opening Committee responsible for the opening of tenders shall be established in the following cases:

- a) for each high value contract
- b) other cases where the Director or his/her delegate sees it fit

The Opening Committee shall comprise at least **two persons** representing at least one staff member from the Division initiating the procurement and the Procurement Officer.

Outside experts may assist the Opening Committee. Observers may be invited to attend the opening session.

The Opening Committee will be appointed following a formal decision of the Authorizing Officer.

The Opening Session of the tenders received in Open Procedures is public. Tenderers or their representatives are allowed to attend the session as specified in the invitation to tender.

A record of the opening shall be drawn up.

4.5.6. Evaluation of tenders

4.5.6.1. Evaluation process

In the case of **low-value contracts**, the Initiator evaluates the tenders, unless otherwise decided by the Director or his/her representative.

In the case of **middle-value contracts**, an Evaluation Committee may be formed, depending on the complexity, relevance and sensitivity of the contract.

In the case of **high-value contracts**, an Evaluation Committee must be formed.

The Opening and Evaluation Committees may comprise the same persons.

The Evaluation Committee responsible for the evaluation of tenders shall be established in the following cases:

- a) for each high-value contract
- b) other cases where the Director or his/her delegate sees it fit

The Evaluation Committee shall comprise at least **three persons** representing at least one staff member from the Division initiating the procurement and the Procurement Officer.

Outside experts may assist the Evaluation Committee. Observers may be invited to attend meetings of the Evaluation Committee.

Participants to the Evaluation Committee will be duty-bound not to disclose any information concerning the proceedings of the committee and the evaluation to persons not involved in the evaluation, as well as ensure that all evaluation documents, including tenders, are safe from disclosure.

The Evaluation Committee will be appointed following a formal decision of the Authorizing Officer.

All tenders, which, after opening, are found to be in order, are evaluated exclusively on the exclusion, selection and award criteria, as set out in the specifications and, where appropriate, in the contract notice, with nothing added, removed or altered.

4.5.6.2. Abnormally low tenders

If, for a given contract, the price or cost proposed in a tender appears to be abnormally low, the SatCen shall request in writing details of the constituent elements of the price or cost, which it considers relevant and shall give the tenderer the opportunity to present its observations.

The SatCen may, in particular, take into consideration observations relating to:

- (a) the economics of the manufacturing process, of the provision of services or of the construction method;
- (b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- (c) the originality of the tender;
- (d) compliance of the tenderer with applicable obligations in the fields of environmental, social and labour law;
- (e) compliance of subcontractors with applicable obligations in the fields of environmental, social and labour law;
- (f) the possibility of the tenderer obtaining state aid in compliance with applicable rules.

The SatCen may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

The SatCen shall reject the tender, where it has established that the tender is abnormally low because it does not comply with applicable obligations in the fields of environmental, social and labour law.

Where the SatCen establishes that a tender is abnormally low because the tenderer has obtained state aid, it may reject the tender on that sole ground only if the tenderer is unable to prove, within a sufficient time limit fixed by the SatCen, that the aid in question was compatible with the TFEU.

4.5.7. Evaluation Report and Award decision

After the evaluation has been completed for contracts worth **more than €15,000**, the Initiator or the Evaluation Committee (if appointed) will draw up the Evaluation Report as the record of the evaluation.

The evaluation report must contain at least the following information:

- the subject and value of the contract, the framework contract or the dynamic purchasing system
- the names of candidates or tenderers excluded and the reasons why
- the names of the candidates or tenderers considered and the reasons for being chosen
- the grounds for the rejection of abnormally low tenders
- the names of the candidates or the contractor proposed and the reasons for this choice with reference to the selection or award criteria, as originally stipulated and, if known, the proportion of the (framework) contract, which the contractor intends to subcontract
- whether the SatCen has decided not to conclude the contract and the reasons why

After the evaluation has been completed for contracts **not exceeding €15,000** (very-low-value contracts), the Initiator writes up the reasoning of the **decision in the FLEXI system** as the record of the evaluation.

Once the evaluation has been completed for contracts **exceeding €15,000**, the Authorising Officer takes the decision to award the contract to the successful tenderer and earmarks the budget for the contract duration.

See the model forms available for completion.

NB:

The SatCen may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation. The decision must be substantiated and brought to the attention of the candidates or tenderers.

4.5.8. Rejection of tenders**4.5.8.1. Grounds for the rejection of tenders in the opening phase**

In the opening phase tenders are to be considered irregular and therefore rejected if they do not comply with the requirements for submission (e.g. late submission, and tenders received in a non-sealed envelope).

In a procedure in two steps, any tender from a tenderer who has not been invited to submit a tender must be rejected.

The following (non-exhaustive) list cannot be considered grounds for rejection:

- the tender was sent in a single envelope rather than the two envelopes required, provided the envelope is sealed (the confidentiality of the tender has been preserved);
- only one copy of the tender was sent, instead of the three (or more) required;
- the tender combines the technical part and the financial part or has not used the requested standard presentation;
- certain parts of the tender are clearly missing or the tender is clearly totally unrealistic;
- the tenderer does not have access to the market;
- If the tenderer has failed to sign the tender, the signature can be requested subsequently.

4.5.8.2. Grounds for the rejection of tenders in the evaluation phase

In the evaluation phase, tenders must be rejected in the following cases:

Unsuitable tender

- the tender is irrelevant to the subject of the contract;
- the tenderer is in an exclusion situation under Article 136(1) FR;
- the tenderer does not meet the selection criteria.

Irregular tender

- the tender does not comply with the minimum requirements specified in the procurement documents (this includes the case of incomplete tender); in case of negotiated procedure, the tender may still be negotiated to bring it in line with minimum requirements;
- the tenderer has misrepresented or failed to supply the information required as a condition to participate in the procurement procedure;
- the tenderer was previously involved in the preparation of the procurement documents where this entails distortion of competition that cannot be remedied otherwise. Prior to such exclusion, the economic operator must be given the opportunity to prove that its prior involvement is not capable of distorting competition.
- the price of the tender is abnormally low.

Unacceptable tender

- the price of the tender exceeds the maximum amount set in the procurement documents or the contracting authority's maximum budget as determined and documented internally prior to the launching of the procedure;
- the tender fails to meet the minimum quality levels for award criteria; in case of negotiated procedure, the tender may still be negotiated to bring it in line with minimum levels of quality.

Tenders may be rejected if tenderers do not accept the terms of contract or other conditions contained in the procurement documents and seek to impose their own, but only after the SatCen has contacted them in writing to warn them that this is a ground for rejection.

A tender which does not fall under any of the above defined grounds for rejection is admissible, i.e. it is ranked according to the formula announced in the procurement documents.

Tenders cannot be rejected if:

- missing information or documents relating to the exclusion or selection criteria can be requested, or obvious clerical errors can be corrected without going beyond the contacts authorised;
- they contain the information requested, but not on the standard form(s);
- the price exceeds the estimated amount indicated, without being of a significantly different magnitude;
- they are submitted as the basic tender, complying with the tender specifications, together with unauthorised variants (which must be rejected).

4.5.8.3. Procedure for rejection

As a rule, any decision of rejection from procurement must be proportional to the seriousness of the ground of rejection and to the remedial measures available (e.g. eliminating a tender because a document is missing would be disproportionate).

Prior to taking a decision on rejection, it is compulsory for the SatCen to contact the tenderer to ask for missing information or documents (e.g. CVs, financial statements...) or for confirmation or clarifications of any situation or fact that may lead to a rejection of the tender. If the SatCen decides to reject on the grounds of selection without having contacted the tenderer, such a decision must duly justify it in the procurement file.

The SatCen will inform the tenderer of its intention to reject the tender by means of a rejection letter. Such a letter will state the ground(s) for the rejection of the tender and the means of redress available for challenging the decision to reject.

The tenderer will have the opportunity to submit observations, including possible remedial measures, within the time limit stated in the rejection letter. Failing that, the rejection decision becomes firm the day after the time limit for submitting observations has elapsed.

If the tenderer submits observations, the SatCen must notify the tenderer in writing either of the withdrawal of its intention to reject the tender or of its final decision to reject.

4.5.9. Signing contract

High-value contracts can only be signed after a 10-day standstill period has elapsed, counting from the day after simultaneous dispatch of the notification of the result of the procedure to the successful and unsuccessful tenderers.

The standstill period does not apply in the following cases:

- low and middle value contracts;
- any procedure where only one tender has been submitted;
- negotiated procedures without prior publication of a contract notice, except for high-value contracts awarded in accordance with Section 4.4.5, point (b), of this Procurement Manual.

The signatures on the contract mark the end of the tendering procedure and the beginning of contract execution. Signatures confirm the agreement of the parties with regard to the content of the contract, including reference to other documents (annexed or not). This is why a contract **must be signed by an Authorized Officer** or his/her representative.

4.5.10. Ex post publication

As a general rule, the SatCen assures transparency concerning the concluded procurement procedures and notifies the market and the general public of the contracts signed during the year, depending on the contract value.

Once the contract has been awarded, publication of certain information may be dropped where it has been declared secret, where the performance of the contract must be accompanied by special security measures or where the protection of the essential interests of the EU, or the beneficiary country, so requires, and where the publication of the award notice is deemed not to be appropriate, would be contrary to the public interest or to the interest of the SatCen, would harm the legitimate business interests or could distort fair competition.

Information about **high-value contracts** shall be published by the contract **award notice** sent to the OJ. The contract award notice shall be sent **within 30 days** after the contract is signed.

The list of **middle- and low-value contracts** shall be published **on the SatCen website** just once per year in the aggregated [list](#) of contractors covering the calendar year **prior to 30 June**.

See the [forms available](#) for completion.

4.5.11. Managing contracts

Each signed contract has to be allocated a Contract Manager, who is in charge of the management of the performance of the contract.

For more details with respect to the responsibilities of the Contract Manager, see the Procurement practical guidelines.

Modifications

Any amendment to the initial contract shall not modify substantially the conditions of the initial procurement procedure. In other words, the amendment may not provide for changes, which would dramatically alter the economy of the contract or its object. Amendments causing substantial modification of the contract require a new award decision based on a new duly justified procurement procedure.

Therefore, a highly rigorous approach is required when evaluating the necessity and legitimacy of concluding an amendment to the contract.

Amendments must be signed by duly competent persons. Such amendments may take two forms:

- a formal amendment signed by both parties
- an exchange of letters with an acknowledgement of receipt

Only **minor aspects of the contract may be altered**. Major aspects, such as a change in the nature of the products or a change in the quantity to be delivered, shall follow a new procurement procedure and the award of a new contract.

A contract or a specific contract under a framework **contract may be modified without a new procurement procedure** in any of the following cases:

(a) For additional works, supplies or services by the original contractor, which have become necessary and were not included in the initial procurement, provided the following conditions are all met:

(i) a change of contractor cannot be made for technical reasons linked to interchangeability or interoperability requirements with existing equipment, services or installations

(ii) a change of contractor would cause substantial duplication of costs for the SatCen

(iii) any increase in price, including the net cumulative value of successive modifications, does not exceed 50% of the initial contract value

(b) Where the following conditions are both met:

(i) the need for modification has been brought about by circumstances, which the SatCen could not foresee

(ii) any increase in price does not exceed 50% of the initial contract value

(c) Where the value of the modification is below both the following thresholds:

(i) the thresholds of the high-value contract

(ii) 20% of the initial contract value for public service and supply contracts and 25% of the initial contract value for public works contracts

(d) Where the minimum requirements of the initial procurement procedure are not altered. In such a scenario, any ensuing modification of value shall comply with the conditions set out under point (c) above, unless such modification of value results from the strict application of the procurement documents or contractual arrangements.

For further information, see the Procurement practical guidelines.

5. COMPLAINTS PROCEDURES

Economic operators/tenderers may ask for more detailed reasons for the SatCen's decisions made during the procurement procedures. Those who believe that they have been harmed in their interests and fair competition has not been respected due to an error or irregularity may write the complaint to the Authorising Officer of the SatCen with a request to investigate their complaint. This request must be received within 10 working days from the day the economic operator/tenderer was informed of the decision taken by the SatCen in application of this Procurement Manual.

The complaint shall be investigated and answered within 10 working days (unless additional documents might be needed for the complaint procedure) by the Legal

Service staff member that has not been involved in procurement procedure as the Initiator and/or Opening/Evaluation Committee member.

All interested economic operators will be informed of the results of the investigation of the complaint within 10 working days from the closure of the investigation.

6. FRAMEWORK CONTRACTS

In the case of repetitive purchases for a precisely defined subject, but where exact quantities and delivery times cannot be indicated in advance, the SatCen shall use framework contracts.

Framework contracts are treated like any other procurement contracts with regard to the award procedure, including the publicity arrangements. The renewed competition should guarantee the necessary flexibility and compliance with the general principles, in particular, equality of treatment. For these reasons, the duration of framework contracts should be limited and not exceed four years, except where duly justified by the SatCen.

NB:

The SatCen may also conclude multiple framework contracts, which are separate, albeit identical, contracts concluded with a number of suppliers or service providers.

The maximum number of operators with whom the SatCen intends to conclude contracts must be indicated in the specification. When a framework contract is concluded with more than one economic operator, the number of economic operators must be at least three, provided that there are enough economic operators satisfying the selection criteria and/or eligible tenders satisfying the award criteria.

Specific contracts, based on framework contracts concluded with a number of economic operators, are awarded in accordance with the following arrangements:

a) By application of the terms laid out in the framework contract **without reopening competition**. One method of doing this is by the “cascading” method, i.e., by first contacting the economic operator whose tender for the award of the framework contract was considered the best, only approaching the second if the first is not capable of or interested in supplying the goods, services or works in question.

b) **Reopening the competition** in a situation where not all the terms are laid down in the framework contract, with the parties again competing on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, on the basis of other terms referred to in the specification for the framework contract. For every specific contract to be awarded in accordance with the arrangements in b), the SatCen must consult, in writing, with the economic operators capable of performing the contract and fixing a time limit, which is sufficiently long to allow tenders to be submitted.

7. E-PROCUREMENT

In line with the commitment to increase further transparency and equal treatment in procurement procedures, as well as facilitate access to the documentation related to calls for tenders, following a testing phase, the SatCen will make use of the e-procurement platform.

More information about the platform can be found via the following link: <https://etendering.ted.europa.eu/general/page.html?name=home>

When the electronic submissions are available, the tools used and their technical characteristics shall typically be non-discriminatory in nature, available and interoperable with the information and communication technology products in general use.

The information relating to the specifications required for the presentation of tenders, including encryption, shall be made available to the tenderers free of charge.

Consequently, the full documentation (technical specifications, contractual documentation, annexes, answers to question raised by economical operators) regarding calls for tender, as published by the SatCen, will be available through the electronic link.

For additional dissemination purposes, the SatCen will publish contract notices in the OJEU, and invitations to tender/negotiate and CEIs on the SatCen website.

8. E-INVICES

The SatCen accepts invoices submitted via electronic means to initiate the payment process. Invoices and/or payment requests may be submitted, along with all contractually required documents, to the following email address: finance.invoices@satcen.europa.eu. In the absence of full documentation as detailed in the contract, the payment will not be initiated and processed, i.e., it will be suspended and/or rejected depending on the nature of the missing information. You will, in the case of rejection or suspension of your invoice/payment request, be informed without delay. If invoices and/or payment requests are sent via electronic means, the contractor shall refrain from submitting the same invoice/payment request as a hard (paper) copy as well. The SatCen shall make the payment within the contractually agreed time frame, starting from the date on which the contractor receives acknowledgment of the receipt of the submitted invoice. The aforementioned email address (finance.invoices@satcen.europa.eu) may only be used for the purpose of sending invoices and/or payment requests.

9. GREEN PROCUREMENT

SatCen may take into account the application of the environmental aspects in procurement processes, where possible. The practical guidelines recommended by the A handbook on green public procurement - *Buying green!* may be applied.

These environmental aspects can be taken into account at various levels of the procurement procedure:

- at the stage of determining the subject of the procurement;
- in the technical specifications, by reference to:
 - European standards and European technical approvals (the reference to these standards or approvals cannot be used to distort competition);
 - common technical specifications where they exist;
 - international standards or other technical references worked out by the European standardisation bodies or their national equivalents;
- at the stage of checking the exclusion criteria: economic operators can be eliminated if they committed an act contrary to the environmental regulations;
- at the stage of selection of candidates:
 - the personnel's experience in environmental management or professional qualifications can be used as an indicator of professional technical capability;
- at the stage of the award decision:
 - environmental performance can serve as one of the evaluation criteria;
- at the implementation stage:
 - the project can be monitored to check if the implementing conditions (e.g. energy consumption or waste disposal) stated in the technical specifications or tender are observed.