

ñ

EXEMPTIONS TO COMPETITIVE BIDDING

In accordance with the [AM Item 10.2, Paragraph 5.3](#), competition may be waived and proposed contracts or purchase orders negotiated directly **only** if justified under the following circumstances. No other reasons as the ones listed below can be invoked as justification for a waiver for competitive bidding. **In all cases, the retained justification must be supported in writing together with relevant documentation and approved at the appropriate authority level.**

Waiver Conditions

Guidance for Applying

(i) When there is no competitive marketplace for the requirement, such as where monopoly exists, where prices are fixed by legislation or regulatory bodies, or where the requirement involves proprietary product or service;

§ *Prices or rates are fixed by national legislation or regulatory bodies, e.g. in cases of state monopoly or tariffs. In order to justify fixed prices or rates, the name of the regulatory body or law that controls rates or established prices must be indicated in each request for award and current price/rate schedule to be provided.*

§ *Proprietary product or service refers to situations where only one source can reasonably meet the needs of UNESCO, in situations where: proprietary items subject to legal restrictions (i.e. patent and copyrights) is to be procured.*

§ *The goods or services are available from a particular contractor, or a particular contractor has exclusive rights in respect of the goods or services and no alternative or substitute exists.*

Justification required: Evidence of thorough market knowledge, explanations as to why other potential sources do not exist and reasonableness of costs (e.g. comparison with previous contract prices). Advertisement of the case is a good way to support this waiver condition.

(ii)

When there has been a previous determination with regard to an identical procurement activity, or there is a need to standardize the requirement following recent procurement activity

§ *Previous determination means that what needs to be purchased is determined by a previous purchase, e.g. there is no other choice but to obtain the goods or services from the entity that was contracted for the previous purchase (e.g. a piece of equipment was previously purchased and components that can only be obtained from the manufacturer now needs to be replaced; complex services were purchased from a vendor and additional services requiring specific knowledge related to previous.*

§ *Standardization shall be acceptable when goods, equipment or technology already purchased from a supplier or contractor, determines that additional supplies must be procured from that supplier or contractor, or because of the need for compatibility with existing goods, equipment or technology. The effectiveness of the original procurement in meeting the needs of UNESCO, the limited size of the proposed procurement in relation to the original contract, the reasonableness of the price and*

the unsuitability of alternatives to the goods in question shall always be taken into account and justified.

§ *Branding (i.e. basing the standardization on a specific branded product or service) is not necessarily a justification for exceptions. A competitive process should be undertaken if multiple sources of supply exist.*

Justification required: explanation of the previous determination or as to why standardization is required and reasonableness of costs (e.g. comparison with previous purchase prices, comparison with prices of equipment from other suppliers equivalent in performance, etc.) - For high value and complex procurement cases evaluation of adequacy of need for continuity of work should be conducted by an external independent expert.

(iii) When the proposed contract is the result of cooperation with other organizations of the United Nations system, including the World Bank Group;
§ *Cooperation with a UN Agency or public international organization, such as the Development Bank, in respect of procurement activities, including those for a government, which is also a recipient of UNESCO assistance, may be authorized in appropriate cases. In these cases, UNESCO may in its action rely on the correctness and outcome of the procurement procedures of the entity concerned.*

Justification required: Evidence that the other organization of the United Nations system or a World Bank Group has awarded a contract to an entity and the same prices and conditions are being extended by the contracted entity to UNESCO. For goods where the price fluctuates rapidly (raw material, some IT equipment, etc.) the competitiveness of the price must always be properly justified.

Justification required: Provide evidence of such market conditions. Value for money has to be ascertained.

(iv) When, within a period of six months, a formal solicitation has not produced satisfactory results;

Often relates to a situation where under LIC/LNC, in spite of special efforts made in market research/sourcing and identification of needs with sufficient lead-time given for bidders to respond only one offer is received.

- If the procurement need has been advertised a waiver is not required.

Justification required: detailed summary of the previous competitive bidding process, its relevant dates, its outcome, reasonableness of costs and prevalent market rates in the area.

(v)

When offers for identical requirements have been obtained competitively, in accordance with rules set out in this Item, within a twelve month period, and the prices and conditions offered remain competitive;

Justification required: detailed summary of the use of a previous formal method of solicitation and its outcome, reasonableness of costs and prevalent market rates in the area. For goods where the price fluctuates rapidly (raw material, some IT equipment, etc.) the competitiveness of the price must always be properly justified.

(vi) When the proposed contract is for the purchase or lease of real property and market conditions do not allow for effective competition;

Justification required: Provide evidence of such market conditions. Value for money has to be ascertained.

(vii) When the exigencies of the requirement (e.g. emergency situations or *force majeure*) do not permit the delay attendant upon the issuance of the solicitations documents;

The exigencies of service must be beyond the control of UNESCO i.e. emergency situations or situations of force majeure, or other urgencies which are not due to lack of planning or slow administrative process within UNESCO, its beneficiaries or partners.

Justification required: explanation as to how exceptions to the use of formal method of solicitation will meet the schedule and of the adverse impact the UNESCO operation/program would suffer if the delivery schedule were modified to permit the use of formal methods of solicitation, confirmation of reasonableness of costs through comparing prices with previous purchase prices, etc. justification for selecting this particular supplier as opposed to any other. This ground cannot be invoked where the exigency is due to a lack of planning or slow administrative process within UNESCO.

(viii) When the proposed contract relates to obtaining services that cannot be objectively evaluated and where the requirement is such that the criteria for the evaluation of the competitiveness of bids or proposals are difficult to establish.

Services of specific individuals not available through personnel or consultant contracts, including, for instance, a contract for professional services entered into with a company due to availability of a specific expert working in a firm/entity. In this case an individual shall be internationally recognized as having exceptional or unique expertise, knowledge and skills and/or where the individual has specialist knowledge and/or skill that is rare and difficult to establish.

Services of specific firm/entity to obtain, for example, cutting-edge technology, art work or film or other new methodologies and as such there is no possibility of reliable comparison.

Justification required: explanation as to why this specific company is the most suitable to carry out the services and reasonableness of costs.

Annex III - How to assess 'price reasonableness' to get value for money?

Definition: best value for money (BVFM) = optimization of whole-life costs and quality needed to meet the user's requirements, while taking into consideration potential risk factors and resources available

⇒ Although price is not a unique determinative of the BVFM, 'price reasonableness' needs to be effectively demonstrated:

❑ Gather price/ cost information:

- ✓ **By looking at detailed 'budget' breakdown** (e.g. equipment, travel, personnel costs, management fees, miscellaneous) and its assessment
- ✓ **By looking at « whole life costs »** (e.g. not only acquisition cost but also cost of maintenance / running costs, disposal/replacement costs where relevant)
- ✓ **Local rates** (depending on rarity/ accessibility of the good/ service; ICSC local scales DSA/ meals/ accommodation)
- ✓ **Online free of charge quotation** (insurance, bank services, travel, procurement)
- ✓ **Previous bids, quotes or contracts**
- ✓ **Daily rates for personnel costs** (e.g. divide the contract amount by its duration & compare local market standards)
- ✓ **Consultants/ Personnel costs: UN rates, national salary indexes**, consider seniority
- ✓ **Statistics** on average salaries, inflation index (FMI world book, UIS on-line access statistics)

 Price assessment is a tool to support value for money, feasible in 90% of waiver cases (*)

❑ Assess the price reasonableness, including when price comparison is not feasible:

- ✓ **Benchmark with UN colleagues, UNESCO staff in field offices & your professional network**
- ✓ **A « peer review »** by another colleague to guarantee objectivity / common sense
- ✓ **Empiric analysis** based on your experience however supported by documented facts



❑ Demonstrate your efforts for price negotiation:

- ✓ Especially in case of waiver!
- ✓ Written request to the foreseen contractor for a **discount** even in case of monopolistic position or standardized product (« ristourne fidélité », business volume).

Need to challenge the supplier vs « accepting the business proposal as is », especially in case of waiver!

(*) As per our compliance reviews