

ETF PUBLIC PROCUREMENT

*Guidelines for ETF public
procurement*



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1. Introduction

This document provides general information on tendering procedures organised by the ETF as well as guidance and instruction for participating in those procedures. It is not designed however, to address the specific circumstances of any particular individual or entity.

The tendering procedures to which these guidelines apply are the means by which the ETF procures the services or supplies it requires to implement its work programme, maintain the day-to-day functioning of its internal services, maintenance of its premises, etc.

These guidelines complement the tender dossier for each specific tendering procedure. The tender dossier describes the service or supply that the ETF intends to procure, the timetable for the procedure, what the participating tenderers are required to provide and the resulting contractual terms.

In the case of any inconsistency between these guidelines and the specific tender dossier, the tender dossier prevails.

The ETF publishes information related to all its tendering procedures on its website: <http://www.etf.europa.eu/tenders>.

1.1 Types of tendering procedure

The ETF may use any one of four types of procurement or tendering procedure: a) negotiated, b) open, c) restricted and d) restricted with a call for expression of interest.

The type of procedure used is selected in accordance with the minimum and maximum values of the resulting contract. The two types most commonly used by the ETF are the negotiated procedure and the open procedure. The most significant difference between these procedures is the way in which potential tenderers are invited to participate.

The **negotiated procedure** can be used when the resulting contract is estimated to have a value of less than €60,000.

In this type of procedure, the ETF draws up a shortlist of potential tenderers, based on their field of activity and the ETF's needs. The shortlisted candidates are invited to tender and only offers received from these candidates are evaluated.

The **open procedure** is most frequently used when the resulting contract is estimated to have a value of at least €60,000, but it can also be used for contracts below that value.

All ETF open procedures are published in the Official Journal of the European Communities, through a contract notice. Each procedure is subsequently posted on the

ETF's website with the tender dossier comprising the specifications and the draft contract.

The ETF does not draw up a shortlist or send specific invitation letters to potential tenderers. Participation in this procedure is open on equal terms to all interested entities as described in the section on 'participants in ETF tendering procedures' below.

The **restricted procedure** is similar to the open procedure but is organised in two phases:

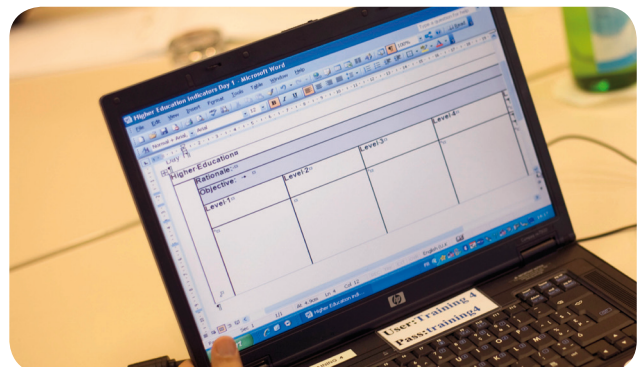
- In the first phase, a call for expression of interest is published in the Official Journal of the European Communities and on the ETF website, the expressions of interest received are assessed against the exclusion and selection criteria and a shortlist of five to 20 candidates is drawn up.
- In the second phase, the shortlisted candidates are invited to tender and only offers received from these candidates are evaluated.

A **call for expression of interest** is used to draw up a long-list of potential candidates for potential contracts. At a second stage, when the ETF intends to award a specific contract, candidates on the list can be invited to submit a tender. The call for expression of interest remains open for a limited period (maximum three years) and any entity can apply to be included in the list at any time during this period.

1.2 Participants in ETF tendering procedures

Participation in ETF tendering procedures is open on equal terms to all economic operators (natural and legal persons) in the EU, the EEA, an ETF partner country or any other country covered by the WTO Government Procurement Agreement (GPA). Further information on the GPA and the parties covered can be found on the WTO website: http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm#parties.

In the case of negotiated procedures, this also applies to the potential tenderers shortlisted by the ETF.



2. Preparing tenders

Before starting to prepare a tender, the specific tender dossier and these Guidelines for ETF public procurement are essential reading material. Tenderers are asked to confirm that they have read and understood these documents before submitting tenders.

Tenders must be prepared in one of the official languages of the European Union. Please note that the ETF's working language is English.

The tender must include the required **supporting documentation (regarding the company)** and the **technical and financial proposal (offer)** as described in the tender dossier.

2.1 Supporting documentation

To be eligible for evaluation, a full set of supporting documents to be assessed by the evaluation committee must be submitted. All standard documents and forms mentioned can be found on the ETF website and links are provided at the end of these guidelines.



The required supporting documents are:

- *The declaration on exclusion criteria*
- *Selection documentation proving that the tenderer has the technical and professional, and/or economic and financial capacities to perform and administer the contract effectively*
- *Standard forms: 'Legal Entity' and 'Financial Identification Form'*

2.2 Your offer

In most ETF tenders, an offer containing both a technical proposal and a financial proposal will be requested. The offer received from the successful tenderer will become an integral part of the awarded contract.

i) Technical proposal

The technical proposal should describe the tenderer's service(s) or supply(s) offered to the ETF, in line with the requirements of the terms of reference contained in Part A of the tender dossier.

The technical proposal must demonstrate an understanding of the tender specifications and must be presented clearly and concisely. The technical proposal should be prepared in line with the award criteria against which it will be evaluated.

ii) Financial proposal

The financial proposal is the price(s) offered for the requested service(s) or supply(s). The financial proposal must be presented in the format found in the tender dossier and all prices must be quoted in Euro.

Where a maximum budget is mentioned in the tender specifications, financial proposals exceeding this amount will be rejected.

The tenderer is responsible for the proper application of the rules on taxes, duties, charges (including VAT) at the place where he is taxable. In general, prices must be quoted free of all duties, taxes and other charges (including VAT) as the ETF is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Communities. For tenderers to which this exemption does not apply, the offer should clearly state the basic price exclusive of tax and the corresponding tax separately. In such cases, the total price inclusive of tax will be evaluated.

3. Contacting the ETF about tenders

3.1 Written clarifications before the submission date

The ETF may provide additional information on request solely for the purpose of clarifying any element of the tender specifications.

Requests for clarification must be sent in writing, addressed to the FINCOP Procurement Team by fax (+39 0116302200) or email address:

fincop.procurement@etf.europa.eu. Your message or request must clearly state the Call for Tender (CFT) reference number or the title of the tender.

The request for clarification must be submitted before the deadline specified in the timetable in the tender dossier. Provided the request is received within the deadline, the ETF will reply in writing to the tenderer within six calendar days from the date of the request.

If the ETF discovers an error, a lack of precision, an omission or any other type of clerical error in the contract notice, invitation letter or tender dossier, all tenderers will be informed.

Any additional information will be sent simultaneously to all tenderers shortlisted (negotiated procedure) or posted on the ETF website (open procedure).

In the case of open tenders, tenderers should regularly check the ETF website for clarifications.

3.2 Written clarifications after the opening of the tender

If the ETF requires clarification on any element of a tender submitted, tenderers may be contacted in writing before the evaluation is completed. Such requests for clarification should not lead to any alteration of the terms of your offer submitted to the ETF.



4. Submitting your tender

The steps to be taken before the tender is submitted are clearly explained in the tender dossier (in the checklist and the timetable) and in the accompanying invitation letter:

4.1 The checklist

The checklist in the tender dossier clearly explains the requirements for submitting the tender. It should also be completed and attached to the other documents being submitted. The checklist must be signed by a person empowered to represent the tenderer and entitled to sign the contract in case of award.

4.2 Required number of copies

The number of copies required is clearly stated in the checklist.

As a general rule, when the procedure allows only for delivery in person or by mail (see below) the ETF requires one signed original offer (technical proposal and financial proposal) and three copies of the technical proposal.

4.3 Sealing the tender

Where stipulated in the checklist, tenders must be sealed in three inner envelopes contained within one outer envelope or parcel.



The **three inner envelopes** are:

- **Envelope A** containing the supporting documentation: one signed original of each document
- **Envelope B** containing the technical proposal: one signed original (unbound, not stapled and clearly marked as “Original”) and three copies (bound and each marked as “Copy”)
- **Envelope C** containing the financial proposal: one signed original

The **outer envelope or parcel** must be sealed with adhesive tape and signed across the seal. The following information should be clearly stated:

- the reference number of the Call for Tender (CFT/XX/ETF/XXXX);
- the title of the tender;
- the name of the tenderer;
- the indication: “Offer - Not to be opened by the internal mail service”;
- the ETF address for submission of offers;
- a clear postmark showing the date.

4.4 Deadline and delivery

The deadline for submitting your tender is indicated in the invitation letter and in the timetable in the tender dossier.

Tenders submitted after the deadline will not be eligible.

Depending on what is specified in the invitation letter and the tender dossier checklist, tenders may be delivered in person or by mail or, in some cases, by fax.

Delivery in person can be made by the tenderer, or an authorised representative. In this case, the tender must be delivered to an ETF staff member at the ETF’s premises no later than 17.00 hrs local time on the date of the submission deadline. A receipt must be issued by the ETF stating the time and date of delivery.

Delivery by mail can be made using a recognised postal or courier service. Tenders delivered by mail must be clearly **postmarked** no later than the date of the submission deadline.

Tenders must be addressed to:
FINCOP Procurement Team
ETF
Villa Gualino
Viale Settimio Severo, 65
I – 10133 Torino

5. Other considerations

5.1 Appeal process

Tenderers may lodge an appeal against the contract award decision. This must be done within two months of receipt of the notification letter (see point 7). The court responsible for hearing appeal procedures is the Court of First Instance:

Court of First Instance of the Court of Justice of the European Communities (Luxembourg)

E-mail: CFI.Registry@curia.europa.eu

Tel. +352 4303-1

Fax +352 4303-2100

<http://curia.europa.eu>.

5.2 Environmentally-friendly tender submission

The ETF aims to minimise the environmental impact of all its activities, including those carried out under contract. Tenderers are therefore asked to take this into account in their technical proposals. In addition, tenders should be submitted in an environmentally-friendly way by:

- choosing a simple and clear structure (list of contents and consecutive page numbering);
- using double-sided printing;
- avoiding plastic folders or binders;
- avoiding attachments (brochures, booklets, etc) which are not required in the technical specifications.

5.3 ETF privacy policy

In all tendering procedures, data will be processed in accordance with the ETF privacy policy and related privacy statement available on the ETF website: www.etf.europa.eu/tender-documents.

5.4 Expenses related to the preparation and submission of tenders

The ETF will not reimburse expenses incurred in the preparation and submission of tenders, including expenses related to site visits, attending clarification meetings or opening sessions and interviews.

5.5 Guarantees

The ETF may require a pre-financing guarantee or a performance guarantee from the winning tenderer. When such a guarantee is requested, the specific conditions related to its provision are included in the draft contract. The costs of any such guarantee shall be borne by the contractor.

5.6 Lots

When a procurement procedure is divided into lots, this is explicitly mentioned in the contract notice and the tender dossier. In the case of lots, unless otherwise stated in the tendering specifications, tenderers may submit tenders for one lot only, a combination, or all of them.

Each individual lot is evaluated independently of the other lots.

5.7 No obligation to award

The ETF has no obligation to award a contract as a result of a tendering procedure.

The ETF shall not be liable for any compensation with respect to tenderers whose offers have not been accepted, nor shall the ETF be liable when deciding not to award the contract or to cancel the procedure at any time before the award.

5.8 Preparing a tender with other economic operators

Unless otherwise stated in the contract notice and/or the tender dossier, both **subcontracting** and **joint tenders** are allowed.

Tenderers planning to prepare offers with another economic operator(s) should contact the ETF for specific guidelines on how to prepare the tender and what exclusion and selection criteria are applicable to the other economic operator(s).

i. Subcontracting

Subcontracting is when the contractor enters into a legal commitment (subcontracts) with one or more economic operator(s) in order to deliver part of the work, service or supply described in the tender dossier.

During contract performance, the ETF will have no direct legal commitment towards such subcontractor(s) and only the main contractor is liable to the ETF for the performance of the contract as a whole.

In case the contractor proposes to subcontract a part of the service/supply after contract signature i.e. not envisaged at the time of the tendering procedure, or to replace a subcontractor named in the original offer, a written request should be sent to the ETF stating the estimated value or percentage of the total service/supply the contractor proposes to subcontract. The request to subcontract or change subcontractor will be assessed by the ETF and contractors may proceed with the arrangement only once they have received written confirmation from the ETF.

ii. Joint tenders

A joint tender is an offer submitted by a group of two or more tenderers. If awarded the contract, all tenderers in the group will have an equal standing towards the ETF in executing the contract and each member of the group will assume joint liability for the performance of the contract as a whole.

5.9 Variants

Variants are departures from any technical or financial requirement of the tender, or from any contractual condition, described in the tender dossier.

Unless otherwise stated in the contract notice and/or the tender dossier, variants are not permitted.

The ETF will disregard any variants described in a tender, and reserves the right to reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

5.10 Validity of the offer

Tenderers are bound by their offers for a period of 90 days following the closing date for submission of offers. The successful tenderer must maintain its offer for a further 60 days from the date of notification of the award.



6. Tender opening and evaluation

The opening of tenders, assessment of supporting documentation and evaluation of offers are carried out by members of the **opening and evaluation committee(s)**. Upon completion and careful recording of each of these three steps, it is the committee's role to provide an opinion to the ETF manager responsible on which eligible offer represents the 'best value for money' and should be considered for contract.

Each member of the committee(s) signs a declaration of absence of conflict of interest and of confidentiality.

6.1 Opening

The tender opening session will take place at the ETF's premises on the date indicated in the timetable in the tender dossier.

The opening committee will check whether each tender received is compliant with the following requirements:

- Included in the shortlist (not applicable for open tenders);
- Submitted within the deadline specified in the tender dossier;
- In a securely sealed envelope (not applicable if the tender can be submitted by fax);
- Written in an EU language;
- Signed;
- Made up of a technical and financial proposal, and supporting documentation;
- Submitted in the required number of copies.

For open tenders only:

Tenderers wishing to attend the opening session, should notify the ETF two days in advance by fax addressed to the FINCOP Procurement Team, fax +39 011 630 22 04.

A maximum of one representative per tenderer may attend the opening session as an observer.

6.2 Assessment

Tenders complying with the formal requirements checked during the opening session will be assessed to ensure that there are no grounds for exclusion of the tenderer and that they have the capacity to perform the contract.

i. Exclusion

Tenderers are requested to provide a completed and signed declaration on exclusion criteria. In the absence of the signed declaration or in case tenderers are later found to be in any of the situations listed in the declaration, they will be excluded from the tendering procedure.

The ETF may ask tenderers to provide additional documentation to support their declaration on exclusion criteria at any time.

Tenderers will be excluded if:

(a) They are bankrupt or being wound up, are having their affairs administered by the courts; have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters; or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) They have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;

(c) They have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

(d) They have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) They have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

(f) Following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Additional documentation to support the declaration on exclusion criteria

To demonstrate that the tenderer is not in one of the situations described in points (a), (b) or (e), the ETF will

accept a recent extract from the judicial record or a recent equivalent issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

To demonstrate that the tenderer is not in one of the situations described in point (d), the ETF will accept a recent certificate issued by the competent authority of the country concerned. Where no such certificate is issued in the country concerned, it may be replaced by a declaration made by the tenderer before a judicial or administrative authority, a notary or a qualified professional body in the country of origin or provenance.

The ETF may also undertake the necessary investigations to verify compliance with points (c) and (f) above.

Finally, the contract will not be awarded to tenderers who, during the procurement procedure are subject to a conflict of interest or are guilty of misrepresentation in the information provided to the ETF for the purposes of their participation in the tender.

ii. Capacity to perform the contract

Provided there are no grounds for exclusion of the tenderer, the tenderer's capacity to perform the contract is assessed based on their proven:

- technical and professional capacity;
- economic and financial capacity.

The documents required to prove these capacities are stated in the tender dossier.

The documents provided by tenderers to prove that they meet the selection criteria will be used solely to assess

their capacity to perform the contract and will not be considered when offers are evaluated against the award criteria.

6.3 Evaluation

In case there are no grounds for exclusion and the tenderer's capacity to perform the contract is demonstrated during the previous phase, the evaluation committee will evaluate their offer against the award criteria stated in the tender dossier. No criteria other than those stated will be used.

Depending on the nature of the purchase, the award criteria are established on the basis of one of the following two principles:

■ Best value for money

The 'best value for money' principle takes into account the combination of two main elements: technical quality of the offer and the price i.e. best price-quality ratio. The technical quality of offers is evaluated against one or more technical award criteria stated in the tender dossier. The technical award criteria are established taking into account the terms of reference and the technical proposal.

The weighting applied to each of the technical award criteria and to the price is stated in the tender dossier.

The formula used by the ETF to calculate which offer represents the best value for money incorporates the score for technical quality and the price:

$$\left\{ \begin{array}{l} \text{Score} \\ \text{for} \\ \text{tender A} \end{array} \right\} = \sum \text{all} \left\{ \begin{array}{l} \text{Total of} \\ \text{score for} \\ \text{technical} \\ \text{award} \\ \text{criteria of} \\ \text{tender A} \end{array} \right\} \times \left\{ \begin{array}{l} \text{Weighting} \\ \text{for} \\ \text{technical} \\ \text{award} \\ \text{criteria} \end{array} \right\} + \frac{\text{Cheapest price}}{\text{Price of tender A}} \times \left\{ \begin{array}{l} \text{Price} \\ \text{weighting} \end{array} \right\}$$

where \sum is the sum

The total score for technical award criteria is calculated as follows:

Each member of the evaluation committee gives a score between 0 (for the lowest quality) and 10 (for the best quality). An average between the given scores is given which is divided by 10. The result is the total score for the technical award criteria.

The weighting given to each criteria is expressed in absolute values (between 1-100).

The formula gives a total final score out of 100. The offer receiving the highest score as a result of the evaluation, provided it reaches any minimum thresholds specified in the tender dossier, will be recommended for contract.

The tender dossier may state minimum quality thresholds for the score obtained against each of the technical criteria and/or the total score obtained against all technical criteria; offers scoring below such thresholds will be eliminated.

■ **Lowest price**

In this case, only the financial award criteria is used which implies the award of the contract to the lowest price(s) offered.

i. Interviews

If interviews are included as a means of evaluating offers, the conditions (e.g. invitation to interview may be subject

to minimum threshold score on one or more technical award criteria), will be indicated in the tender dossier. Potential dates will also be mentioned in the timetable in the tender dossier. All costs relating to attending interview(s) will be covered by the tenderer.

ii. Central exclusion database

Before the decision to award a contract is taken, the ETF consults the central database set up and operated by the European Commission in compliance with EU rules on the protection of personal data.

The database contains information on candidates and tenderers for which serious grounds for exclusion are found or who have been declared to be in serious breach of their obligations under contracts covered by the EU budget.

In case the proposed contractor is included in the database, the ETF may decide not to award the contract.



7. Notification of results

7.1 Informing tenderers

When the ETF has signed the contract award decision, a notification letter will be sent simultaneously to all tenderers. The letters to unsuccessful tenderers will state the name of the tenderer to whom the contract has been awarded and the grounds on which the decision was taken.

Contract award however, will not be complete until the contract has been signed by both the successful tenderer and the ETF.

Tenderers wishing to request additional information on the outcomes of the evaluation may do so in writing to the FINCOP Procurement Team, by fax: 00390116302204 or email fincop.procurement@etf.europa.eu. The request must clearly state the Call for Tender (CFT) reference number.

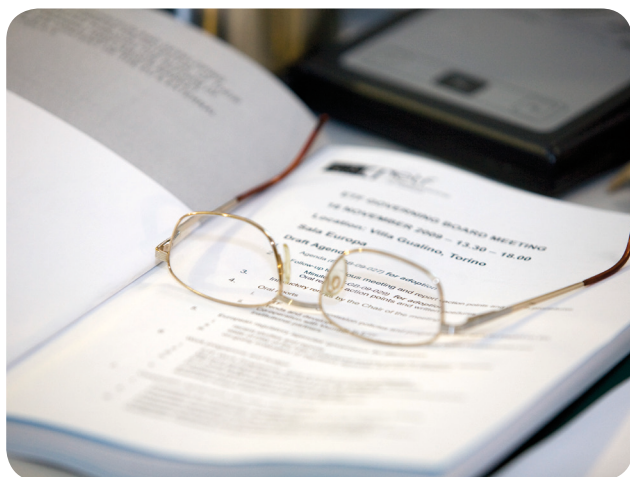
The ETF may provide details taken from the signed evaluation record such as total scores awarded and a summary of the comments of the evaluation committee on the quality of the offer received from the tenderer requesting additional information. The ETF will not disclose any information affecting the commercial interests of other tenderers.

The ETF may suspend the contract award for additional examination if this is justified by requests and/or comments received by the unsuccessful tenderers.

In case of high value supply and service contracts (above €125,000), the ETF will sign a contract only after the standstill period of 14 calendar days has elapsed. Any contract signed before the end of this standstill period shall be null and void.

7.2 Informing the public

The ETF regularly publishes information on contracts awarded, the values and the names of the contractors.



8. Contract award

The contract awarded will comprise the draft contract from the tender dossier, the terms of reference and the successful tenderer's offer. Together they will constitute the contractual conditions under which the service/supply will be delivered. The main types of contract used by ETF are listed below.

8.1 Fixed value service / supply contract

The fixed value service contract is used when the volume and timing of delivery of the service(s) or supply(s) is defined in the tender dossier. The fixed value of the contract will be the price quoted by the successful tenderer in their financial proposal.

8.2 Framework contract

The framework contract is used when the volume and timing of the delivery of the services/supplies are not yet defined in the tender dossier. The framework contract is of fixed duration but with no fixed value, apart from a maximum for the whole duration of the contract.

The framework contract forms the basis for possible future purchases of services/supplies by the ETF. It contains, among others, a description of the scope of services/supplies that the ETF can purchase, methodology, timing and prices as quoted by the successful tenderer in their financial proposal. The framework contract itself is not an order for services/supplies and does not constitute a financial commitment. Specific services/supplies are requested by the ETF through 'order forms' describing the volume, timing and resulting value.

The framework contract can be 'simple' or 'multiple':

- A tendering procedure resulting in a simple framework contract means that the ETF will award one contract to the tenderer with the highest score as a result of the evaluation.
- A tendering procedure resulting in multiple framework contracts, means that the ETF will award more than one contract to the tenderers with the highest scores as a result of the evaluation. Multiple framework contracts can be competing or cascading.

The type of framework contract to be awarded will be clearly stated in the tender dossier.

8.3 Order forms

A simplified contract or 'order form' can be used in cases of simple or low-value services/supplies where the terms of reference and successful offer are sufficient as the terms for the delivery of the service/supply.

9. Legal basis

These are the main legal provisions applicable to calls for tender issued by the ETF for the supply of services, goods and works.

ETF procurement procedures are governed by the following provisions:

Part 1, Title 5 of **Council Regulation (EC, Euratom) No 1605/2002** of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended;

Part 1, Title 5 of **Commission Regulation (EC, Euratom) No 2342/2002** of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended;

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

The **World Trade Organisation's Agreement on Government Procurement (GPA)**, which the European Community joined following Council Decision of 16 November 1987 concerning the conclusion of the Protocol amending the GATT Agreement on Government Procurement.

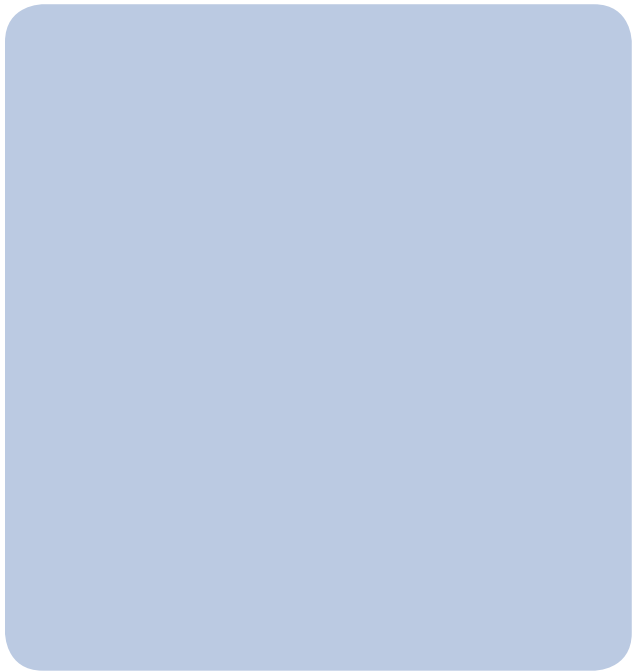
The principles arising from the jurisprudence of the **European Court of Justice** in the Public Procurement field.

10. Forms

The following forms can be accessed via the ETF website: **www.etf.europa.eu/tender-documents**:

- Declaration on exclusion criteria
- Legal Entity Form
- Financial Identification Form
- Europass CV





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