



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL HUMANITARIAN AID AND CIVIL PROTECTION - ECHO
 ECHO.C - Resources, Partnerships and Operational Support
C/3 - Finance, Legal Affairs and Partner Support

VERSION: APRIL 2014

HUMANITARIAN PROCUREMENT CENTRES'

CHARTER

I. INTRODUCTION

In the Principles and Procedures applicable to Procurement Contracts annexed to the Framework Partnership Agreement with NGOs, 2014 (hereinafter "ECHO's Principles and Procedures for Procurement") the Commission, recognising the distinctive requirements of humanitarian aid, identifies the mandatory principles governing the award of all contracts, introduces a number of special provisions in order to ensure the quality of supplies and establishes flexible procedures, including the use of Humanitarian Procurement Centres (hereinafter "**HPCs**"), in order to facilitate the procurement process for its humanitarian aid Partners¹ (hereinafter "**ECHO's Partners**"). ECHO's Principles and Procedures for Procurement is a text which is contractually binding upon all ECHO's NGO Partners and its contents is also reflected in this Charter.

The Commission introduced the concept of HPCs as one of the options available to Humanitarian Organisations to ease the procedural burdens on ECHO's Partners when procuring in humanitarian aid context and in order to enhance the effectiveness of humanitarian actions. Accordingly, ECHO's Partners can award contracts to HPCs on the basis of a negotiated procedure with a single offer regardless the value.

This Humanitarian Procurement Centres' Charter (hereafter the "**HPC Charter**") seeks to define the common standards of safe, transparent, efficient and ethical procurement and sound financial management shared by the Commission and those HPCs recognised by the Directorate-General for Humanitarian Aid and Civil Protection of the European Commission (hereinafter "**DG ECHO**").

¹ The Commission works with about 200 Partners including non-governmental organisations, United Nations agencies and international organisations such as the International Committee of the Red Cross and the International Federation of the Red Cross and the Red Crescent Societies. More information and Partner lists are available at: http://ec.europa.eu/echo/partners/humanitarian_aid/partners_en.htm

The signature of this Charter is a necessary precondition for the recognition of an HPC by the Commission. DG ECHO maintains a Register of suitably qualified HPCs, recognised in accordance with set procedures and criteria. However, serious or repetitive breaches of contractual obligations towards ECHO's Partners or of the commitments entered into in this Charter may be sufficient ground for losing the recognition as an HPC.

Article 1. Conditions for recognition as an HPC

- a) In order to be recognised as an HPC, the candidate organisation must be a non-profit organisation specialising in the procurement of supplies or services necessary for the delivery of humanitarian aid or the provision of related technical assistance, supply purchasing or logistics services. An HPC may either be an independent entity or a specialised supply or procurement department of a non-governmental organisation or an international organisation, provided that it has the appropriate levels of specialisation and discretion in procurement decisions.
- b) The criteria for recognition as an HPC include, among others, appropriate legal personality and registration, non-profit nature, a non-discriminatory sales and fair pricing methodology and policy (including all overheads and mark-ups), expertise in procurement and related activities, well-documented and fair procurement procedures and quality assurance provisions, and an adequate financial and administrative capacity.
- c) HPCs play an important role in the global humanitarian aid effort, and as such conduct themselves with high levels of integrity, transparency and respect of the Articles of this Charter.

II. MANDATORY PRINCIPLES

Article 2. Scope

The following principles are obligatory for HPCs and are to be considered applicable to all their relations with tenderers and bidders as well as to HPC's internal rules for the recruitment of staff and other employment practices. The HPC's internal manuals and procurement procedures shall embody and guarantee compliance with the Mandatory Principles.

Article 3. Principle of Ethical Procurement

- a) HPCs, tenderers, candidates and contractors must observe and uphold ethical standards in the procurement and execution of contracts. Minimum ethical standards include the avoidance of child labour, and the respect of basic social rights and working conditions based on international labour standards.
- b) Where possible, the ethical standards shall also include environmental considerations and the avoidance by contractors of any connection with a party to a conflict, involvement in the supply or transport of illicit arms and/or land-mines, or involvement in the unethical exploitation of natural resources, in particular sensitive commodities such as precious metals, stones and rare earths.

c) The HPC may conduct on-site visits or use equivalent methods to ensure compliance of tenderers and contractors with this principle.

d) Tools and mechanisms will be implemented in order to prevent and detect unethical practices. The HPC will take prompt action in cases of substantiated allegations and cases of unethical behaviour.

e) The HPC will reject any proposal put forward by tenderers or candidates, or, where applicable, terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices. To this end it shall introduce corresponding provisions in its internal procurement procedures and guidelines for tender documents as well as in its standard tender and contractual documents to this effect.

Article 4. Principle of Sound Financial Management

The HPC shall ensure that contracts are awarded to the tenderer or candidate offering the best value for money, namely the tender or offer providing the best price-quality ratio available in the quantity and within the time frames require.

Article 5. Principles of Equal Treatment and Non-Discrimination

a) The HPC commits to offer equal access to its services to all ECHO's Partners. Any differences in prices and services offered must be objectively justifiable.

b) The HPC shall ensure, within the applicable procurement procedure, that no discrimination or unjustified differentiation is made between legal or natural persons, regardless of the origin of the supplies or the nationality of the tenderer or candidate.

c) The HPC must provide a reasonable justification when treating tenderers, candidates and/or suppliers differently, depending on the specific needs and circumstances assessed on a case by case basis.

Article 6. Principle of Transparency and Right of Access

a) The principle of transparency requires that all information linked to a procurement procedure is shared or published in an open and appropriate way to enable genuine competition, and to avoid any unfair treatment between candidates or tenderers with regard to access to information. Furthermore, the HPC's procurement decisions must be clearly justified and documented to enable a potential check that the procedures were conducted in keeping with the Mandatory Principles.

b) The right of access requires that the HPC grants the Commission or any organisation or person mandated by it, the European Anti-Fraud Office (OLAF) and the European Court of Auditors full and on-the-spot access to premises and documents, including procurement documents, decisions and supporting evidence, regardless of whether these belong to the HPC or any of its contractors. To this effect the HPC shall ensure that it or any person so mandated is granted the requisite rights to audit its contractors and suppliers. In this context, the HPC shall provide, upon request, complete information on the procurement procedures, documents, evaluations, award recommendations and contracts. The HPC shall abstain from any obstructive practice, which could hamper such right of access.

c) The HPC shall immediately inform the Commission in writing in the event of it becoming aware of any confirmed case of corrupt, fraudulent, collusive or coercive practice or established breach of the present rules, or of a conflict of interest.

Article 7. Principle of Proportionality

The award of procurement contracts to suppliers will be carried out on the basis of clear and appropriate rules and procedures that are applied consistently to all potential bidders. Those procedures should be established having due regard to the amount of the contract and the provisions set out in Article 3.5 of ECHO's Principles and Procedures for Procurement.

Article 8. Principle of Avoiding Conflicts of Interest

a) The HPC shall take all necessary measures to prevent in the procurement procedures any conflict of interest and shall ensure that members of any evaluation committee are aware of their duties of disclosure related to this principle. A conflict of interest shall be deemed to include any situation where the impartial and objective implementation of a procurement process is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest with another party or person.

b) The HPC's standards and policies should address the treatment of unethical personal financial gain and acceptance of large or otherwise inappropriate gifts.

Article 9. Principle of Due Diligence

a) The HPC shall follow up on the timely delivery and satisfactory quality of the received supplies, works or services. Where delivery is late, or where the quality or quantity falls below what was agreed with the contractor, the HPC shall take remedial measures, in order to mitigate any negative consequences for the clients and to ensure sound financial management.

b) Where the HPC subcontracts procurement or other services or use a buying agent on its behalf, the HPC shall maintain full responsibility for the regularity of these procedures, and shall exercise due diligence to ensure full compliance with the rules and procedures established herein.

III. SPECIAL PROVISIONS FOR THE PROCUREMENT OF FOOD AND MEDICAL SUPPLIES

Article 10. Compliance with international standards and quality control

HPCs will include in the technical specifications of tender procedures references to the relevant international standards and a quality control in all procurement processes. To this end HPCs will incorporate in their internal procedures and contractual instruments the necessary provisions in order to ensure the quality of the supplies delivered or services rendered and the remedial actions in case of failure.

Article 11. Specific requirements for the procurement of medical supplies and devices

a) "Medical Supplies" shall include all medicines and other medical products, in particular those included on the national essential medical supplies list, national essential medicines list

and on the World Health Organisation's (hereinafter referred to as the 'WHO') list of essential medicines, proprietary medicines or generics, medical devices and therapeutic food to address acute malnutrition. They shall not include veterinary products.

b) In compliance with the 'do no harm' principle, HPCs' procurement procedures shall ensure that pharmaceutical products do not place patients at risk due to inadequate safety, quality or efficacy. Irrespective of the value of the contract to be awarded, every activity in the procurement process should be carried out according to the World Health Organisation's standards and norms relating to the quality assurance of pharmaceutical products.

c) HPCs will purchase medical products (pharmaceuticals, medical equipment and/or devices) on the basis of a pre-qualification of manufacturers and suppliers who comply with international guidelines and standards. To this effect, HPCs will systematically ask pharmaceutical manufacturers to provide it with a proof of conformity with the World Health Organisation's Good Manufacturing Practices as well as with other applicable international standards and guidelines. Similarly, HPCs will systematically ask suppliers of medical products to provide it with a proof of conformity with the World Health Organisation's Good Distribution and Storage Practices as well as with other applicable international standards and guidelines.

d) HPCs will have the required human resources with the adequate professional qualifications to verify the compliance of suppliers with the above mentioned procedures, with due regard to Article 4.2 of ECHO's Principles and Procedures for Procurement.

Article 12. Veterinary medicines

The procurement of veterinary medicines, while not subject to the above-mentioned quality requirements, shall nonetheless be procured by the HPC with due respect of the applicable best veterinary practices in the field and, where possible, in consultation with an appropriately qualified animal health expert.

Article 13. Destruction of Medical Supplies, Medical Devices and Veterinary Medicines

When procuring medical supplies, medical devices, or veterinary medicines, the HPC shall ensure that adequate provisions are in place to ensure respect of internationally recognised best practices in the destruction of any contract-related supplies that are recalled or expired.

Article 14. Specific requirement for the procurement of food

a) "Food Supplies" shall include bulk consumable commodities, such as mixed foods, ready-to-use foods, fortified foods with added vitamins and minerals, and supplementary foods to address moderate malnutrition. They shall not include seeds for agricultural purposes.

b) When procuring food supplies, the HPC shall ensure that they:

(i) comply with any quality standards laid down either in the Codex Alimentarius standards or, where applicable, in the domestic legislation of the country of origin and/or the country of destination, whichever has the higher quality standard; and

(ii) as much as possible, match the nutritional habits of the beneficiary population.

c) The HPC shall obtain evidence based on local/regional market analysis that local/regional procurement would not induce market distortions which could adversely affect vulnerable populations.

IV. FINANCIAL AND ADMINISTRATIVE PROVISIONS

Article 15. Duty of faithful cooperation and information

a) In line with the spirit of this Charter, HPCs commit to engage in a regular exchange of information together, with DG ECHO and where appropriate with ECHO's Partners, both on a bilateral and on a collective basis.

In particular:

i) DG ECHO will maintain a regular dialogue with all HPCs and its Partners in order to enhance the global procurement process where possible;

ii) Once a year a meeting with all HPCs will be organised to discuss issues of mutual interest.

b) Whenever the HPC becomes aware that irregularities and illegal activities - such as fraud, corruption, counterfeiting and falsification – has taken place, in particular within an EU funded action, it shall immediately inform the relevant authority, such as WHO, the National Authority in the place of establishment of the HPC, the National Authority of the country of destination and/or the Humanitarian Organisation to which the goods were delivered.

c) HPCs shall inform DG ECHO whenever it becomes aware of any irregularity and or illegal activity undertaken by any client that is an ECHO Partner

d) HPCs shall inform DG ECHO of any change in its procedures or structures which might call into question the continued fulfilment of the conditions for recognition as an HPC.

Article 16. Supervisory powers of DG ECHO

a) In order to ensure the fulfilment of the recognition criteria and other obligations of this Charter, DG ECHO will assess the procedures on procurement and internal control as well as the financial viability of the candidate HPC. The initial assessment will often take the form of an on-site examination. Where appropriate, however, DG ECHO may use any relevant and sufficiently recent information already on record to support the application filed by those HPCs, such as the "pillars review" of International Organisations and United Nations agencies.

b) The HPC recognises the entitlement of DG ECHO to carry out on-site examinations in accordance with the methodology published on DG ECHO's web-site. On-site HPC Examination will assess the following: financial viability, administrative capacity, organisational changes, respect of correct procedures, non-discriminatory sales policy, non-profit nature, fair pricing policy and quality of supplies. The on-site examinations will verify that the HPC's internal manuals and procurement procedures embody and guarantee the compliance with the Mandatory Principles.

c) DG ECHO will periodically assess the compliance of the recognised HPCs with the above-mentioned obligations, procedures and financial viability on the basis of on-site examinations.

d) DG ECHO may request the submission by the HPC of documents or information considered important, in particular which bear a link to an EU-Funded Action. When making such requests DG ECHO shall keep in mind the HPC's resources in terms of capacity required in handling these requests and the need to maintain the effective and efficient operation of the HPC.

Article 17. Fair pricing policy

HPCs will not aim to obtain financial benefits resulting from their activities. The organisation's price setting mechanisms must enable the organisation to recover its costs without generating profits. Any possible surpluses should be reinvested in the HPC's organisation itself in order to increase the operational, technical and financial capacity of the organisation, respecting the principle of transparency, and shall not be transferred to other actions, departments, products (i.e. no cross-subsidisation is permitted) or organisations.

HPCs may use mark-ups for their price setting to ensure that all the costs of the organisation are covered with the sales prices invoiced to their clients. The HPC shall ensure compliance with the principle of sound financial management. Mark-ups should reflect the real handling costs of the products sold. This can be done by grouping similar products into categories each having its own specific mark-up.

HPCs should ensure that their price setting mechanism is transparent and ensures equal treatment of clients. The mechanism needs to be written and verifiable by DG ECHO to demonstrate compliance with these principles.

HPCs will provide detailed invoices identifying the different costs charged, the mark-ups applied and, when relevant, added value services, transport, insurance, etc.

V. APPLICATION AND ENFORCEMENT OF THE HPC CHARTER

Article 18. Recognition as an HPC

a) Only candidate entities which have been positively assessed as complying with the criteria and obligations herein will be invited to sign the HPC Charter. HPC recognition will only be granted upon the signature of the HPC Charter and it will become effective upon the inclusion in the HPC Register.

b) DG ECHO's recognition of an entity as an HPC demonstrates that ECHO is satisfied that the HPC has in place adequate procedures and structures to procure and store (where applicable) products according to the appropriate standards. This, however, does not entail any certification of quality nor can it be presented as a system of preferred vendors. HPCs will avoid any misrepresentation to third parties of the status or scope of the recognition as HPC.

b) This Charter defines a number of obligations and enforceable commitments of the signatory organisations but does not intend to govern the contractual relations between HPCs and Humanitarian Organisations. Relations between HPC and client Humanitarian Organisations will be governed by the contracts signed by them and not by the Charter.

Breaches of contractual obligations should be addressed on the basis of the relevant provisions of those contracts.

Article 19. Inclusion in HPC Register

A list of organisations recognised by DG ECHO as HPCs is available on ECHO's website² in the form of an online HPC Register indicating the goods and services which they supply.

The HPC shall grant DG ECHO the right to publish information concerning the HPC, included contact details, products and services offered. The HPC shall provide DG ECHO with the information to be included in the HPC Register and shall update that information promptly where changes have occurred.

Any personal data received by DG ECHO in this respect shall be processed by the Commission pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed under the responsibility of the data controller, solely for the purposes of the recognition, supervision and examination of the HPC without prejudice to a possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.

If HPC recognition should be terminated in accordance with Article 20 herein, the name and details of the HPC shall be removed from the HPC Register and ECHO's Partners shall be provided with the updated Register accordingly.

Article 20. Grounds for termination of recognition as an HPC

a) HPC recognition shall be withdrawn by DG ECHO if an HPC:

- i. commits serious or repetitive breaches of its contractual obligations towards ECHO's Partners, particularly if this contradicts the commitments towards safe and efficient procurement made by HPCs in the HPC Charter; or
- ii. fails to comply with the Mandatory Principles of procurement herein, particularly in case of corrupt, fraudulent collusive or coercive practices; or
- iii. no longer complies with the eligibility criteria, definition and characteristics of an HPC.

b) In case DG ECHO withdraws its recognition of an HPC, by cancelling its entry in the HPC online registry, this shall be done after having given the concerned HPC the opportunity to present its observations and, notwithstanding Article 22, without the requirement to resort to arbitration.

c) Documents related to any dispute, recognition or withdrawal of recognition procedure shall be treated as confidential by both Parties and, without prejudice to Article 6.b) of the HPC Charter, both commit to grant third parties access to any related document, information or

² http://ec.europa.eu/echo/about/actors/procurement_en.htm

other material only after having received the written authorisation of the other Party. This obligation remains valid for a period of five years.

Article 21. Interpretation of the HPC Charter

- a) This HPC Charter shall be interpreted in light of the definitions and provisions in ECHO's Principles and Procedures for Procurement.
- b) Nothing in this HPC Charter shall be interpreted to constitute a waiver of any privileges or immunities accorded to any HPC by its constituent documents or international law.

Article 22. Dispute settlement

- a) The affected parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or fulfilment of the HPC Charter.
- b) If such dispute cannot be settled amicably, pursuant to Article 272 of the Treaty on the Functioning of the European Union the general Court or, on appeal, the Court of Justice of the European Union shall have sole jurisdiction to hear the dispute between DG ECHO and the HPC concerning the interpretation, application or validity of the HPC Charter.
- c) As concerns HPCs forming part of an International Organisation or the United Nations HPCs, any affected party may refer the matter to arbitration for dispute settlement as stated in the existing agreements between such organisation and the European Commission.

By signing this Charter the HPC:

- commits to the obligations established herein;
- attests that the documents and information provided to DG ECHO for the assessment and recognition as an HPC are complete and truthful and do not include any misrepresentation of the information required.

For the Humanitarian Procurement Centre

name

Signature:

Done at:

Date:

References:

A) Principles and Procedures applicable to Procurement Contracts annexed to the Framework Partnership Agreement, 2014

http://ec.europa.eu/echo/files/partners/humanitarian_aid/fpa/2014/FPA_Principles_Procedures_en.pdf

B) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

http://ec.europa.eu/budget/biblio/documents/regulations/regulations_en.cfm

C) Consolidated version of the Treaty on the Functioning of the European Union

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>