

FPA Watch Group
Meeting with ECHO on Procurement
ECHO, Brussels, 15 March 2005
12.00 – 17.30

VOICE Minutes

NOTE: these minutes had been sent for approval to ECHO. On basis of this document -and the debate that took place in the meeting -, ECHO 4 drafted a document entitled “*FPA Annex V – Procedures for the award of contracts. Some issues of concern to ECHO NGO partners*”, as reference document on a number of procurement related issues. ECHO 4 NGO sector should be contacted in order to attain a copy of this document.

1) Opening of the Meeting (Pablo Ibañez, ECHO 4)

Martine Fouwels will be the main contact person for procurement.

The main objective of the meeting is to share Annex V in order for NGOs and ECHO to exchange concerning the challenges of the FPA’s procurement procedures.

2) Introduction (Samantha Chaitkin, VOICE)

Presentation of the WG document sent to ECHO concerning procurement and Annex V. One reason for this very detailed document was to give to ECHO a model of what the WG would like to see from ECHO: written documents to share the difficulties and to start a concrete and regular co-operation. The insertion of problems and connected examples had also the purpose to help ECHO to understand better which are the main problematic areas.

The problems can be grouped into three main areas:

- **Transparency, communication and clarification:** often interpretations of Annex V are bilateral (between the NGO and the ECHO Desk or Field Officer), not shared with the other partners of ECHO.
There is a general concern about the different interpretations circulating and coming from the Field Officers.
There is a general deficiency of official mails targeting and reaching all the partners. A formalization of the process would clarify the communication between ECHO and the partners. The WG asks for written and public answers, in order to have general interpretations valid for different partners and also for ECHO staff. As a first step, the WG would like ECHO’s approval of the minutes of the present meeting.
- **Possible changes to the documents:** the aspects of Annex V that are still possible to change, given Annex V revision and IRFR (Implementing Rules of the Financial Regulation) revision processes;

- **Working together with ECHO:** It would be useful to start a regular working relationship, especially between the Task Force and ECHO 4, in order to help one another deal with the existing and forthcoming problems or concerns.

3) NGOs' internal procurement guidelines, Self-assessment Checklist

Before any discussion about Annex V, NGOs have to ensure that they have procurement procedures, codify procurement practices and provide training on this issue in the field.

According to ECHO's most recent assessment, 80% of ECHO partners do not have acceptable procurement rules so far. The principles that have to be taken into internal rules are: transparency (based on ex ante and especially ex post publications); proportionality; equal treatment; and non discrimination among donors.

Article 1.3 (General Principles) applies to all partners and ECHO must be always informed even if it is not directly involved. EuropeAid has a different system (Annex IV) and is not comparable to Annex V of the FPA (e.g. ECHO offers many more single quote possibilities). The general principles, the internal control mechanism and highest ethical standards are not negotiable and ECHO does not have the power to negotiate on them.

Points that have to be clarified:

Art. 238 (Financial Regulation):

States that FR procedures do not apply to procurement for humanitarian aid projects. Annex V rules have the same status as the IRFR. In other words, Annex V is in accordance and actually is the financial regulation for humanitarian projects.

Each NGO partner must have a single internal set of procurement rules for humanitarian projects that are in conformity with the principles of the Financial Regulation and of the EC (which are also in line with international standards). This does not imply that NGOs should have a separate set of internal rules just for ECHO projects or that specific ECHO rules have to be incorporated.

Self-assessment Checklist: ECHO considers this to be a fair system to check the NGO's internal rules and an opportunity to highlight problems. If the NGOs do not send the checklist ECHO reserves the right to suspend the partnership.

The Watch Group's perspective is that, as written in the letter that came with the checklist, the checklist is intended as an evaluation tool. Confusion was caused when it was sent because NGOs were expecting instead to receive a support document to help ensure they were making appropriate modifications to their internal rules. It seems that due to technical problems, several NGO Partners present at the meeting did not receive the checklist and accompanying letter at all. Partners were further disappointed by the format of the checklist, which does not leave space for comments but only a yes or no response, and by its language, which asks for guarantees which are difficult to give, rather than expectations in good faith.

4) Information to be provided on procurement at different stages of a project

PROPOSAL STAGE

Points 6 and 10 of the Single form (corresponding to Article 11 of the General Conditions): in the proposal NGOs have to write which procedures might be subject to change or uncertainty; in case NGOs have a doubt, a derogation is needed. ECHO cannot grant a derogation without a request and justification by the partner. It is therefore up to the partner to introduce an “article 9” in the proposal and if ECHO’s authorizing officer does not object, the NGO can consider the derogation as accepted. At this point, ECHO carries the burden of proof for the derogation.

In the proposal the NGO has also to provide a list of what is dedicated and not dedicated, justifying its interpretation.

Information that has to be provided in the proposal:

- WHAT the NGO is going to buy;
- The AMOUNT estimated;
- The projected PROCEDURE.

INTERIM REPORT

The information provided in this document has to be up-to-date, asking for authorization if the NGO plans to modify something for which authorization would be needed.

ECHO cannot grant any derogations without a request and a justification coming from the partner.

FINAL REPORT

ECHO services, including ECHO 6-Audit, reserve the right to request complementary information at any time in the project cycle.

A list of contracting procedures will be asked for all contracts above € 200 (according to Commission standards). This means that contracts¹ under this value (€ 200) do not have to be reported. This request will be clarified in the guidelines.

At the moment ECHO is negotiating to obtain a threshold of € 10.000.

A table in electronic form for the list of contracts is expected to be made available by ECHO 6.

5) Specific questions of interpretation of Annex V

The WG asked for communications to be official and in writing, as well as for a more regular collaboration with ECHO.

It was also asked to clarify the status of the guidelines, being still a pending issue.

ECHO explained that **ex- post publication in the FPA** was established to avoid a lot of the ex-ante publication as required in the FR.

¹ A “Contract” is a legal and financial commitment (i.e. contracts, invoice, purchase order, etc.); it has the same meaning as “marché” (in the French text).

Proposal from ECHO: an “annual report” on procurement to be put on the NGO website. This document would have the amount of purchases, etc. and the main purpose would be to increase public accountability.

NGOs are invited to think about this possibility.

The WG proposed that Art. 3.7 of Annex V be changed. ECHO is not sure this is possible, and would need a very good proposal in order to suggest a “winning” alternative to the relevant EC services. NGOs are invited to consider alternatives that ECHO could argue for. At the moment if, for whatever reason, NGOs do not want to publish, they must ask ECHO for a derogation (see Art. 3.8).

Dedicated and non-dedicated supplies:

The discussion about what is dedicated and what is not has to be done on a case-by-case basis with the Desk Officer. It is for the partner to argue its case for dedicated/non-dedicated according to 1.1.10; the NGO could show examples of past experience to the Desk or field officer for support. The Desk Officer, however, has the last word on this kind of decision (being an operational decision, ECHO 4 is not informed and cannot get involved) and may not accept the partner’s arguments. For the partner’s own legal security, a list of dedicated supplies should be attached at the proposal; if the ECHO desk does not object to the list, this means that the list is accepted. The decision taken by the Desk is not negotiable.

It is important to understand that even if an item is very important and useful, it is not necessarily a dedicated supply. For example, a generator is not dedicated, but it may (or may not) be considered dedicated if it is needed in order to set up a health center.

In the proposal NGOs are also invited to suggest their own strategy (i.e. if the NGO is working for the first time in a country it can decide to have different suppliers).

Splitting of contracts:

The French “marché” is equivalent to the English “contract”, implying both legal and financial commitments. ECHO will give a definition and clarification of this term in the glossary and/or guidelines.

If the decision to make different contracts happens from the outset (at the proposal stage), it is not a problem, while if it happens later, negotiations may be necessary. Therefore, the partner should absolutely not improvise on deciding which procedures should be used.

Framework Contracts:

ECHO specified that framework contracts may be used only for supplies and not for services (note: this is contrary to EuropeAid procedures). Procurement services cannot be managed by a service contract. NGOs are encouraged to use more framework contracts and restricted tender procedures. But they should not try to use a restricted procedure for services because this could look like an attempt to do a framework contract for services.

In case of framework contracts there are 2 possibilities:

- 1) the NGO calls for manifestations of interest and keeps a list valid for 4 years inviting only the people mentioned in the list;

- 2) the NGO signs a framework contract and the company will supply this specific item for the next 4 years (in this case a tender is no longer necessary).

The main difference between a restricted procedure and negotiated procedure is that for the former the NGO starts with an open procedure. It is not true that a negotiated procedure goes faster. If the NGO runs an open procedure to sign a framework contract, every other procedure, including a negotiated procedure, is already covered and accepted.

The areas of insurance and international transport/travel (for goods and persons) are two sectors for discussion where ECHO is trying to find other solutions.

As for the framework contract, the **list of manifestations of interest** is valid for a period of four years.

Nationality rule and rule of origin:

A revision of these rules is supposed to start. At the moment, they only apply in case of tendering. Any time the NGO does a single quote, there is no tendering, therefore the rules of nationality and origin do not apply.

At the moment, whenever there are emergency or primary emergency operations it is implicit that rules of origin and nationality do not apply.

It is also possible to ask in the proposal for a derogation on nationality and origin based on technical specifications. In case of doubt, the partner should ask for a derogation from these rules; ECHO is likely to accept it.

6) Legal developments

The “Fast Track revision” of the Implementing Rules of the Financial Regulation (IRFR) is delayed, and therefore not yet complete. Instead, the changes ECHO is waiting for will most probably come through only with the revision of the Financial Regulation.

ECHO is trying to revise Annex V as soon as possible, and it would also like to modify the FPA. Hopefully, the timing will coincide with the annual assessment. It will require a new signing of the FPA. This should not be seen as an opportunity for ECHO to cancel partnerships: there are various bases for the cancellation of partnerships that could take place at other moments.

Where there is space for changes, ECHO foresees a consultation with the Watch Group. Examples of the more structural changes include ex-post publication, threshold increases, and the question of “financial leasing” (see Annex V 1.1.3) which was not previously eligible. A draft with planned modifications will be sent to the WG asking for comments before Summer 2005.

7) Humanitarian Procurement Centers (HPCs)

ECHO cannot use any system – such as a public list – that could damage fair competition. Another technical solution is needed. Consequently ECHO invites ideas and suggestions about how the list can be publicized.

There is now a procedure (mainly a questionnaire) for recognition of HPCs that ECHO is now formalizing internally. This procedure has the objective of assessing the HPC.

Some bodies are seen as *prima facie* HPCs, subject to verification by external auditors. At the moment the following are the centers under consideration: MSF Transfer, MSF Logistique, CHMP, IDA, Asramis (DRC), UNICEF supply division, Red Cross Federation. ECHO has no problem to certify to auditors that these qualify as HPCs.

The NGO should ask ECHO well before it plans a project if X entity can be considered a valid HPC. The HPC will have the responsibility for procurement, but the NGO should make sure it has a very good contract with the HPC in order to be able to avoid additional responsibility.

8) Conclusions

The following action points were decided:

- Martine Fouwels will be the contact person for the approval of the minutes.
- Further consultations between ECHO and the TF/WG will be planned.
- The Watch Group will soon receive a letter of response to the letter concerning the Checklist.

April 2005

List of Participants

FPAWG:

Action Contre la Faim	Miriam Cue
ADRA	Mike Perekrestenko
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CARE International	Jerome Lebouc
CARE Nederland	Jan Rodenburg
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CISP	Riccardo Stefanori
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DanChurchAid	Carsten Strandlod; Angela Macher
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Red Cross	Susanne Klitgaard, Danish RC; Domitille Cadet, Thierry Bandiera, French RC
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World Vision Germany	Sabine Verderber
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ECHO 4:

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Apologies:

Concern (Brid Barrett), Mission East (Mags Bird)