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Common Service for External Relations

MANUAL OF INSTRUCTIONS

(As adopted by the Commission in its meeting on 10/11/1999)

**CONTRACTS FOR WORKS, SUPPLIES AND
SERVICES CONCLUDED FOR THE PURPOSES
OF COMMUNITY COOPERATION WITH THIRD
COUNTRIES**

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PART I: BASIC RULES GOVERNING ALL CONTRACTS

1. LEGAL BASIS

Where contracts for services, supplies and works financed by the Community in the course of cooperation with third countries are awarded by a contracting authority of the recipient country or by the Commission for and on behalf of the recipient, award procedures are governed by the following legal framework:

- the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, as last amended by Council Regulation (EC) No 2458/98 of 23 November 1998, and in particular Title IX thereof;
- the general regulations for works, supply and service contracts financed by the European Development Fund adopted by Decision No 3/90 of 29 March 1990 of the ACP-EEC Council of Ministers;
- regulations and other specific instruments relating to the various cooperation programmes.

This Manual sets out simplified measures for the administration of the contracts referred to above. The aim is to phase them in as smoothly as possible. The Manual does not cover contracts for which the Commission is acting as contracting authority on its own behalf.

This manual contains a series of contract-award instructions to be followed by Commission departments when negotiating financing agreements and/or contracts, save where the rules and regulations (particularly those covering each individual cooperation programme) provide otherwise. The Commission must take the necessary action to ensure that the contracting authorities adhere to the terms of this Manual.

2. ELIGIBILITY FOR CONTRACTS

The provisions governing who may participate in invitations to tender and contracts are termed "eligibility criteria". Hence the rule on the nationality of natural and legal persons and the origin of supplies.

2.1. The rule on nationality and origin

- (a) Contracts are open on equal terms to all natural and legal persons of the Member States and the countries and territories of the regions covered and/or allowed by the Regulation or other instruments governing the programme under which a given contract is being financed.

This nationality rule also applies to the consultants proposed by suppliers of services taking part in invitations to tender or service contracts financed by the Community.

For the purposes of verifying compliance with the nationality rule, the tender dossier requires tenderers to state the country of which they are nationals by presenting the documents usual under that country's law.

- (b) All supplies purchased under a supply contract must originate in the Community or an "eligible" country as defined in (a). The same goes for supplies and equipment purchased by a contractor for works or service contracts if the supplies and equipment are destined to become the property of the project once the contract is completed.

In his tender, a tenderer must state the origin of supplies. Contractors must present an origin certificate to the contracting authority when bringing supplies into the recipient country,

when provisional acceptance of the supplies takes place or when the first invoice is presented. Which of these options is to apply will be specified in the contract concerned.

Origin certificates must be made out by the competent authorities of the supplies' or supplier's country of origin and comply with the international agreements to which that country is a signatory.

It is up to the recipient country's contracting authority to check that there is an origin certificate. Where there are serious doubts about origin, it will be for the Commission's departments in Brussels to decide on the course of action.

2.2. Exceptions to the rule on nationality and origin

Exceptions to the rule on nationality and origin may be made in some cases. They are decided on a case-by-case basis once a derogation has been granted by the Commission.

- (a) With regard to nationality, the Commission may exceptionally allow nationals of countries other than those stipulated in the applicable Regulation to participate in tenders and contracts, on a case-by-case basis.
- (b) With regard to the origin of supplies, the same exception applies as under (a). Note, however, that the frequently used argument that a product of ineligible origin is cheaper than the Community or local product does not automatically constitute grounds for awarding a derogation.

2.3. Grounds for exclusion from participation in contracts

Natural or legal persons are not entitled to participate in competitive tendering or be awarded contracts where:

- (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 or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) - they are the subject of proceedings for a declaration of bankruptcy, for winding-up, for administration by the courts, for an arrangement with creditors or for any similar procedure provided for in national legislation or regulations;
- (c) - they have been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- (d) - they are guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (e) - they have not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country where they are established;
- (f) - they have not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country where they are established;
- (g) - they are guilty of serious misrepresentation in supplying the information required by the contracting authorities as a condition of participation in an invitation to tender or contract;
- (h) - they have been declared to be in serious breach of contract for failure to comply with obligations in connection with another contract with the same contracting authority or another contract financed with Community funds;

- (i) - they are in one of the situations allowing exclusion referred to in the Ethics Clauses (section 7) in connection with the tender or contract.

Candidates (in the first stage of a restricted invitation to tender) must supply with their applications a sworn statement that they do not fall into any of the categories listed above.

Tenderers (in the second stage of a restricted invitation to tender or in the single stage of an open invitation to tender) must supply with their tenders the proof usual under the law of the country where they are established that they do not fall into categories (a), (b), (c), (e) or (f) listed above. The date on the evidence or documents provided must be no earlier than 180 days before the deadline for submission of tenders. Tenderers must, in addition, provide a sworn statement that their situations have not altered in the period that has elapsed since the evidence in question was drawn up.

3. PROCEDURES FOR THE AWARD OF CONTRACTS

The basic principle governing the award of contracts is competitive tendering. The purpose is twofold: (i) to ensure the transparency of operations and (ii) to obtain the desired quality of services, supplies or works at the best possible price. The Regulations applicable oblige the Commission and the recipient to guarantee the widest possible participation, on equal terms, in invitations to tender and contracts financed by the Community.

There are several different procedures for awarding contracts, each allowing for a different degree of competition.

3.1. Open procedure

The open procedure involves an open invitation to take part in competitive tendering. The contract is given maximum publicity through the publication of a notice in the Official Journal of the European Communities, on the Internet and in any other appropriate media.

Under the open procedure, any natural or legal person wishing to tender receives, upon request, the tender dossier (which may have to be paid for), in accordance with the procedures laid down in the procurement notice. When the tenders received are examined, the contract is awarded by conducting the selection procedure (i.e. verification of the eligibility and of the financial, economic, technical and professional standing of tenderers) and the award procedure (i.e. comparison of tenders), in accordance with section 4 ("Selection and award criteria"). No negotiation is allowed.

3.2. Restricted procedure

Under the restricted procedure, the contracting authority invites a limited number of candidates to tender. Before launching an invitation to tender, it will draw up a restricted list of candidates selected as a result of their qualifications on the basis of a published procurement notice.

The selection procedure, by which the long list (all candidates responding to the published notice) is cut down to a shortlist, involves examining responses to, in most cases, a procurement notice published in the Official Journal of the European Communities, on the Internet and in any other appropriate media.

In the second stage of the procedure, the contracting authority invites tenders from shortlisted candidates, sending them the tender dossier. The successful tenderer is chosen by the award procedure once the tenders have been analysed (see section 4, "Selection and award criteria"). No negotiation is allowed.

3.3. Simplified procedure

Under the simplified procedure, the contracting authority consults candidates of its choice and establishes contract conditions with them on the basis of the specifications. At the end of the procedure, the contracting authority selects the most economically advantageous tender.

3.4. Framework contracts

Under the framework contract arrangements, the Commission launches a restricted invitation to tender, selects the candidates, examines the framework bids made, and draws up a list of potential contractors on whom it can call to supply consultants for specific assignments in the areas of specialisation put out to tender.

For each individual contract (assignment), the contracting authority invites the contractors on the list to submit a bid within the bounds of their framework contracts. It then selects the most economically advantageous tender.

3.5. Direct labour operations (programme estimate)

In the case of direct labour operations, the project is executed by the public authorities in the recipient state concerned (direct labour) or by the person responsible for executing the operation. The Community's involvement is limited to financing temporary and additional costs, e.g. the purchase of supplies or materials needed for the project.

3.6. Tendering arrangements

The arrangements for competitive tendering and publicising contracts for works, supplies and services depend on the contract value. They are set out in Annex I.

In the case of hybrid contracts covering a combination of works, supplies or services, the contracting authority, in agreement with the Commission, determines the award procedure to be used. This will depend on which of the components (works, supplies or services) predominates, an assessment which will be made on the basis of its value and strategic importance relative to the contract as a whole.

No contract may be split simply to evade compliance with the rules set out in this Manual. If there is any doubt about how to estimate the value of the contract, the contracting authority must consult the Commission on the matter before embarking on the procurement procedure.

Whatever the procedure used, the contracting authority must ensure that conditions are such as to allow fair competition. Wherever there is an obvious and significant disparity between the prices proposed and the services offered by a tenderer, or a significant disparity in the prices proposed by the various tenderers (especially in cases in which publicly-owned companies, non-profit associations or non-governmental organisations are taking part in an invitation to tender alongside private companies), the contracting authority must carry out checks and request any additional information necessary. The contracting authority must keep such additional information confidential. Tenderers must routinely state that their financial bids cover all their costs, including overheads.

4. SELECTION AND AWARD CRITERIA

Whether contracts are awarded by open or restricted procedure, the following operations are always performed:

- (a) Selection procedure based on selection criteria published in the procurement notice:
 - verification of the eligibility of tenderers or candidates as laid down in section 2 "Eligibility for contracts";
 - verification of the financial and economic standing of tenderers or candidates;

- verification of the technical and professional capacities of tenderers, candidates and their managerial staff.

The procurement notice or the tender dossier must specify the reference criteria for these checks.

- (b) Comparison of tenders on the basis of the award criteria stipulated in the procurement notice or tender dossier, using price and other pre-established criteria enabling the most economically advantageous tender to be identified.

Under the open procedure, both (a) and (b) are carried out when tenders are examined.

Under the restricted procedure, (a) is carried out during the first stage, when candidatures are examined (drawing-up of a shortlist), and (b) during the second stage (invitation to tender), when tenders are examined.

5. INVITATION TO TENDER WITH “SUSPENSION CLAUSE”

In exceptional and duly justified cases, invitations to tender may be published with a suspension clause. This means that an invitation to tender is issued before a financing decision is issued or a financing agreement signed between the Commission and the recipient; the award of that contract is therefore subject to the conclusion of the financing agreement and the provision of funding.

Because of its implications, the existence of a suspension clause must be explicitly mentioned in the procurement notice.

The invitation to tender will invariably be annulled if the Commission’s decision-making procedure is not completed or the financing agreement is not signed.

6. ANNULMENT OF AWARD PROCEDURES

If a contract award procedure is annulled, all tenderers must be notified in writing and as soon as possible of the reasons for the annulment. Annulment may occur where:

- (a) the invitation to tender has remained unsuccessful, i.e. no qualitatively or financially worthwhile tender has been received or there is no response at all;
- (b) the economic or technical data of the project have been fundamentally altered;
- (c) exceptional circumstances or *force majeure* render normal performance of the contract impossible;
- (d) where all technically admissible tenders exceed the financial resources available;
- (e) where there have been serious irregularities in the procedure, in particular where these have prevented normal competition.

After annulling a tendering procedure, the contracting authority may decide:

- to issue a new invitation to tender;
- to open negotiations with one or more tenderers who comply with the selection criteria and have submitted technically admissible tenders, provided that the original terms of the contract have not been substantially altered;
- not to award the contract.

Whatever the case, the final decision is taken by the contracting authority (with the agreement of the Commission in the case of contracts awarded by the recipient).

7. ETHICS CLAUSES

Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties.

Without the contracting authority's prior written authorisation, a contractor and his staff or any other company with which the contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the contractor.

When putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project. Should such a situation arise during performance of the contract, the contractor must immediately inform the contracting authority.

The contractor must at all times act honourably and impartially in accordance with the code of conduct of his profession. He must refrain from making public statements about the project or services without the contracting authority's prior approval. He may not commit the contracting authority in any way without its prior written consent.

For the duration of the contract, the contractor and his staff must respect human rights and undertake not to violate the political, cultural and religious mores of the recipient state.

The contractor may accept no payment connected with the contract other than that provided for therein. The contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the contracting authority.

The contractor and his staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the contractor are confidential.

The contract shall govern the contracting parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

The contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the supplier ceases to be independent, the contracting authority may, regardless of injury, terminate the contract without further notice and without the supplier having any claim to compensation.

The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the contracting authority.

More specifically, all tender dossiers and contracts for works, supplies and services must include a clause stipulating that bids will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to extraordinary overheads.

Such extraordinary overheads are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a

recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

The contractor undertakes to supply the Commission on request with supporting evidence regarding the conditions in which the contract is being executed. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected extraordinary overheads.

Contractors found to have paid extraordinary overheads on projects funded by the Community are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving Community funds.

Failure to comply with one or more of the ethics clauses may result in the exclusion of the candidate, tenderer or contractor from other Community contracts and in penalties. The individual or company in question must be informed of the fact in writing.

8. APPEALS

Tenderers believing themselves the victims of an error or irregularity during the award process may petition the contracting authority directly (informing the Commission, where the latter is not itself the contracting authority). The contracting authority must reply within 90 days of receipt of the complaint.

Where informed of such a complaint, the Commission must communicate its opinion to the contracting authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the contracting authority.

If the above procedure fails, the tenderer may have recourse to:

- procedures established under the recipient's national legislation in the case of a contract for which the contracting authority is the recipient, or
- procedures established under Community legislation in the case of a contract for which the Commission is the contracting authority.

European citizens also have the right to complain to the European Ombudsman, who investigates complaints of maladministration by the European Community institutions.

Should a contracting authority fail to adhere to the contract award procedures provided for in this Manual, the Commission reserves the right to suspend, withhold or recover funding for the contracts under suspicion.

PART II: SPECIFIC RULES GOVERNING SERVICE CONTRACTS

9. INTRODUCTION

Technical and economic support in the course of cooperation policy involves recourse to outside know-how on the basis of service contracts, most of them for studies or technical assistance.

Study contracts include studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies, evaluations and audits.

Study contracts generally specify an outcome, i.e. the contractor must provide a given product: the technical and operational means by which he achieves the specified outcome are irrelevant. These are, therefore, lump-sum contracts and the contractor will be paid only if the specified outcome is achieved.

Technical assistance contracts are used where a service provider is called on to play an advisory role, to manage or supervise a project, to provide the consultants specified in the contract or to procure works, supplies or services for and on behalf of the contracting authority.

Technical assistance contracts often only specify the means, i.e. the contractor is responsible for performing the tasks entrusted to him in the terms of reference and ensuring the quality of the services provided. Payment for these contracts is dictated by the resources and services actually provided. The contractor does, however, have a duty of care under the contract: he must warn the contracting authority in good time of anything that might affect the proper execution of the project.

Some service contracts may, however, combine both types, specifying both the means and the outcome.

The contracting authority, which is always specified in the procurement notice, is the authority empowered to conclude the contract. Service contracts are concluded by the authority appointed in a financing agreement, i.e.:

- (a) either the Commission acting on its own behalf or the recipient's behalf (in the case of centralised contracts);
- (b) or the recipient, i.e. the government or a public entity of the recipient country with legal personality with which the Commission draws up a financing agreement (in the case of decentralised contracts).

In the latter case, the Commission and the recipient, in close consultation with each other, will draw up short lists. Before the procedure is launched, the recipient must submit tender dossiers to the Commission for approval. On the basis of decisions thus approved, and in close consultation with the Commission, it is responsible for issuing invitations to tender, receiving tenders, chairing tender-examination sessions and deciding on the results of invitations to tender. The recipient then submits the result of this examination and the contract award proposal to the Commission for approval. Once the award is approved, it will sign the contracts and notify the Commission accordingly. The Commission will normally be represented when tenders are opened and evaluated and must always be formally invited.

Audit and evaluation contracts and framework contracts are always concluded by the Commission for and on behalf of the recipient.

“Service provider” describes any natural or legal person offering services. A service provider who has applied to take part in a restricted or simplified procedure is termed a “candidate”; a service provider submitting a bid is termed a “tenderer”.

10. AWARD PROCEDURES

10.1. Contracts of € 200 000 or more

10.1.1. Restricted procedure

As a rule all service contracts worth € 200 000 or more have to be awarded by restricted invitation to tender following publication of an indicative notice (contract forecast) and a procurement notice as laid down in section 11.1, "Publicity".

10.1.2. Negotiated procedure

With the prior agreement of the Commission, service contracts may, however, be awarded using a negotiated procedure in the following cases:

- (a) Where unforeseeable events oblige the contracting authority to act with an urgency incompatible with the periods laid down for the restricted or simplified procedures described in sections 11 and 12.2. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.
 - (b) Where services are being provided by public entities or non-profit institutions or associations; non-profit institutions or associations cannot automatically be presumed to be contractors with no profit motive, and cannot therefore always be dealt with through a negotiated procedure - the latter is admissible only where the aim of the contract is not motivated by economic or commercial considerations, and would include cases in which the operation was institutional in nature or sought, for example, to provide individuals with social assistance.
 - (c) In the case of contracts extending activities already under way; there are two scenarios for this:
 - supplementary services not included in the main contract but which, because of unforeseen circumstances, are necessary to perform the contract. This provision is subject to the following conditions: (i) the supplementary services must be technically or economically inseparable from the main contract without causing major inconvenience to the contracting authority, and (ii) the estimated cost must not exceed 50% of the value of the main contract;
 - further services repeat services performed by the supplier under an earlier contract. This provision is subject to two conditions: (i) the earlier contract must have been awarded after publication of a procurement notice and (ii) the possibility of further services being procured by negotiated procedure and their estimated cost must have been clearly indicated in the notice published for the earlier service contract. Such further services could, for example, include the second phase of a study or operation. The contract can be extended only once, with its maximum value and duration not exceeding that of the earlier contract.
 - (d) Where the invitation to tender has remained unsuccessful, i.e. where no qualitatively or financially worthwhile tender has been received; in such cases, after annulling the invitation to tender, the contracting authority may negotiate with one or more tenderers of its choice provided that the initial terms of contract are not substantially altered (see section 6, "Annulment of award procedures"). If the Commission is not itself the contracting authority, its approval must be sought first.
 - (e) Where the contract concerned follows a design competition and must, under the rules applying, be awarded to the or a winner. In the latter case, all winners must be invited to participate in the negotiations.
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10.2. Contracts under € 200 000

10.2.1. Framework contracts and simplified procedure

Contracts of a value of under € 200 000 may be awarded either under the framework contract procedure or under a simplified procedure involving at least three candidates. This does not apply to cases in which section 10.1.2 provides for the negotiated procedure.

11. RESTRICTED INVITATIONS TO TENDER (FOR CONTRACTS OF € 200 000 OR MORE)

11.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, the Commission must publish indicative notices (contract forecasts) and procurement notices for all service contracts of € 200 000 or over.

11.1.1. Publication of indicative notices (contract forecasts)

Once a year, the Commission must publish forecasts of service contracts to be awarded by invitation to tender for the twelve months following publication and, once every three months, any amendments to the above forecasts.

The indicative notices must give a brief indication of the subject, content and value of the contracts concerned. Given that they are forecasts, publication does not bind the Commission to finance the contracts proposed, and suppliers are not expected to submit expressions of interest at that stage.

The indicative notices are published in the Official Journal of the European Communities, on the Internet and in any other appropriate media.

11.1.2. Publication of procurement notices for service contracts

In addition to forecasts, all service contracts of € 200 000 or more must also be the subject of a restricted invitation to tender procurement notice published in the Official Journal of the European Communities, on the Internet and in any other appropriate media. A minimum of 30 days must be allowed to elapse between the publication of the indicative notice and the procurement notice.

The notice must state clearly, precisely, and completely what the subject of the contract is, and who the contracting authority is. It must specify the maximum budget available for the intended operation and the forecast timetable of activities. It must provide would-be service providers with the information they need to determine their capacity to fulfil the contract in question. The time allowed for candidates to submit their bids must be sufficient to permit proper competition. The minimum deadline for submitting bids is 30 days from the date of the notice's publication in the Official Journal of the European Communities and on the Internet. The actual deadline will be determined by the contract's size and complexity.

Locally-published procurement notices must be identical to those published in the Official Journal and on the Internet and appear at the same time. The Commission is responsible for publication in the Official Journal of the European Communities and on the Internet, while the recipient must see to any local publication.

11.2. Establishment of shortlists

Would-be service providers must accompany their candidatures (individually or as part of a consortium) with the information required in the notice so that their capacity to fulfil the contract in question can be assessed. The selection procedure involves:

- eliminating candidates who are ineligible (see section 2, "Eligibility for contracts") or fall into one of the situations described in section 7, "Ethics clauses";
- checking that the candidates' financial situation (financial and economic standing) is sound, as backed up, for example, by balance sheets and turnover for the previous three years;
- verifying the candidates' technical and professional capabilities, backed up (i) where applicable, by the candidates' average annual staffing levels and the size and professional experience of their management and (ii) by the references to the main services supplied in the field in question over the previous years.

After examination of the responses to the procurement notice, the service providers offering the best guarantees for the satisfactory performance of the contract will be shortlisted. The shortlist should contain a minimum of four candidates and a maximum of eight. Every procurement notice should specify a maximum and minimum number of candidates to be shortlisted.

Once a shortlist has been approved by the Commission (for centralised contracts) or the recipient and the Commission together (for decentralised contracts), shortlisted suppliers or consortia may no longer form alliances or subcontract to each other for the contract in question.

The contracting authority may allow subcontracting with other suppliers provided that the tenderer's bid clearly provides for it, that the subcontractor complies with the eligibility conditions set out in section 2, "Eligibility for contracts" and section 7, "Ethics clauses" and that subcontracting does not account for an excessive proportion of the bid. The tender dossier must stipulate what the proportion is.

Candidates not selected will be informed of that fact. Candidates who are selected will receive a letter of invitation to tender and the tender dossier. At the same time, the final list will be posted on the Internet.

11.3. Drafting and contents of the tender dossier

It is vital that tender documents be carefully drafted not only for the sound functioning of the award procedure but for the proper execution of the contract.

These documents must contain all the provisions and information that candidates invited to tender need to present their bids: the procedures to follow, the documents to provide, cases of inadmissibility, award criteria and their weightings, stipulations regarding subcontracting, etc.

The contracting authority is responsible for drawing up these documents. The contracting authority will send only the shortlisted candidates a letter of invitation to tender accompanied by a tender dossier comprising the following documents:

- instructions to tenderers, which must include: (i) the type of contract, (ii) the tender evaluation criteria and their weightings, (iii) whether interviews are possible and when they are likely to be held, (iv) whether variants are allowed, (v) whether, and in what proportion, subcontracting is permitted, (vi) the maximum budget available for the contract and (vii) the currency in which the contract is denominated;
- the shortlist of candidates (stipulating that they cannot form alliances);
- the general conditions for service contracts;
- special conditions, which amplify, supplement or derogate from the general conditions and, where they conflict, override them
- terms of reference, with a forecast schedule for the contract and forecast dates from which the main consultants must be available;
- price schedule (for completion by the tenderer);
- tender form;
- contract form;

- guarantee form from a bank or similar institution for payment of advances.

11.4. Award criteria

The criteria for the award of the contract serve to identify the most economically advantageous tender. These criteria cover both the technical quality and price of the tender.

The technical criteria allow the quality of technical bids to be assessed. The two main types of technical criteria are the methodology and the curriculum vitae (CV) of the consultants proposed. The technical criteria may be divided into subcriteria. The methodology, for example, may be examined in the light of the terms of reference, the work schedule, the appropriateness of the resources to the tasks, the support proposed for consultants in the field etc. CVs may be awarded points for such criteria as qualifications, professional experience, geographical experience, language skills, etc.

Each criterion is allotted a number of points out of 100 distributed between the different subcriteria. Their respective weightings depend on the nature of the services required and are determined on a case-by-case basis in the tender dossier.

The points must be related as closely as possible to the terms of reference describing the services to be provided and refer to parameters that are easy to identify in the tenders and, if possible, quantifiable.

The tender dossier must contain details of the technical evaluation grid, with its criteria and subcriteria and their weightings.

11.5. Additional information during the procedure

The tender dossier should be clear enough to prevent candidates invited to tender from having to request additional information during the procedure. If the contracting authority, either on its own initiative or in response to the request of a candidate, provides additional information on the tender dossier, it must send such information in writing to all other candidates at the same time.

Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

11.6. Deadline for the submission of tenders

Tenders must reach the contracting authority at the address and, at the very latest, the date and time indicated in the letter of invitation to tender. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive bidding. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders.

The minimum period between the dispatch of the letter of invitation to tender and the deadline for receipt of tenders is 50 days. However, in urgent cases, with prior authorisation from the Commission, periods may be shorter.

11.7. Period during which tenders are binding

Tenderers are bound by their tenders for the period specified in the letter of invitation to tender. This period must be sufficient to allow the contracting authority to examine tenders, approve the proposal of award, notify the successful tenderer and conclude the contract. In practice, the period of validity of tenders is generally 90 calendar days from the deadline for the submission of tenders.

In exceptional cases, before the period of validity expires, the contracting authority may ask tenderers to extend the period for a specific number of days, which may not exceed 40.

The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

11.8. Submission of tenders

Tenders must be submitted in accordance with the double envelope system, i.e. in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words "Envelope A - technical bid" and the other "Envelope B - price bid".

Any infringement of these rules (e.g. unsealed envelopes or references to price in the technical bid) is to be considered a breach of the rules, and will lead to rejection of the tender.

This system enables the technical bid and the price bid to be evaluated successively and separately: it ensures that the technical quality of a tender is considered independently of the price.

The outer envelope should carry:

- (a) the address for submission of tenders specified in the tender dossier;
- (b) the reference of the invitation to tender to which the tenderer is responding;
- (c) where applicable, the numbers of the lots tendered for;
- (d) the words "not to be opened before the tender-opening session" in the language of the tender dossier.

11.9. Opening of tenders

On receiving tenders, the contracting authority must register them and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened.

Tenders are opened and evaluated by a committee made up of an odd number of members (at least three) possessing the technical and administrative capacities necessary to give an informed opinion on the tenders. The members of the committee must sign a declaration of impartiality.

In the case of centralised contracts, Financial Control is routinely invited to attend the committee meetings.

In the case of decentralised contracts, the Commission is usually represented by the Commission delegation accredited to the country concerned, acting as an observer. The Commission representative receives copies of the tenders received.

Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

Initially only the technical bids are opened. The sealed envelopes containing the price bids are retained by the contracting authority once signed by members of the committee.

The committee checks the compliance of tenders with the instructions given in the tender dossier. Any formal errors or major restrictions affecting performance of the contract or distorting competition result in the rejection of the tender concerned.

Minutes are taken of the tender-opening session and signed by all members of the evaluation committee. They must state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers who submitted tenders within the stipulated deadline;
- whether tenders were submitted using the double-envelope system;

- whether the originals of the tenders were duly signed, and whether technical bids were sent in the requisite number of copies;
- the names of any tenderers whose bids were found to be inadmissible at the opening session;
- the names of any tenderers who withdrew their bids.

11.10. Evaluation of tenders

11.10.1. Evaluation of technical bids

Before tenders are opened, the chairman of the committee checks that all members are familiar with the technical evaluation grid set out in the tender dossier to make sure that tenders are evaluated consistently by the different members of the committee.

The committee then opens the technical bids, the price bids remaining sealed. The committee's members receive copies of the technical bids. When evaluating technical bids, each member awards each bid a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, subcriteria and weightings) laid down in the tender dossier (see section 11.4 "Award criteria"). In no circumstances may the committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.

In practice, it is recommended that tenders be scored for a given criterion one after another, rather than scoring each tender for all criteria before moving on to the next. Where the content of a tender is incomplete or deviates substantially from one or more of the technical award criteria laid down in the tender dossier, the tender is automatically rejected and no points awarded.

If the tender dossier expressly permits variants, such variants are scored separately.

On completion of the technical evaluation, the points awarded by each member are compared at the committee's session. Besides the numerical score, a member must explain the reasons for his choice and defend his scores before the committee. The committee discusses each technical bid and each member awards it a final score. The aggregate final score is the arithmetic average of the individual scores.

If interviews were provided for in the tender dossier, the committee may, after writing up its provisional conclusions and before definitively concluding its evaluation of the technical bids, decide to interview the key members of the team of consultants proposed in technically admissible bids. In this case the consultants are interviewed by the committee, preferably collectively in the case of a team, at intervals close enough to permit comparison. Interviews must follow a standard format agreed beforehand by the committee and applied to all consultants or teams called to interview. Tenderers must be given at least ten days' advance notice of the date and time of the interview. Where a tenderer is prevented from attending an interview by *force majeure*, he is given another appointment.

On completion of these interviews, the evaluation committee, without modifying either the composition or the weighting of the criteria laid down in the technical evaluation grid, decides whether it is necessary to adjust the scores of the consultants who have been interviewed. Any adjustments must be substantiated.

This procedure entails considerable costs both for tenderers and the contracting authority and should therefore be used with restraint. It must be recorded in a report, which may lead to revision of the initial technical evaluation of the tender. If the contracting authority is the recipient, the need for interviews must be accepted by the Commission. The indicative timetable for these interviews must be given in the tender dossier.

Once the committee has established each technical bid's final score (the arithmetic average of the scores awarded by each member), any bid falling short of the 80-point threshold is automatically rejected. If no bid achieves 80 points or more, the invitation to tender is annulled.

The committee considers only bids that have obtained at least 80 points. Of these bids, the best technical bid is then awarded 100 points. The others receive points calculated using the following formula:

Points = (initial score of the bid in question/initial score of the best technical bid) x 100.

11.10.2. Evaluation of price bids

Upon completion of the technical evaluation, the envelopes containing the prices for technically admissible bids are opened and signed by the committee at the session. At the session, the committee checks that the bids contain no arithmetic errors. Any arithmetic errors are corrected without prejudice to the tenderer.

Comparison of the bids takes account of all contract expenses (fees, direct or lump-sum costs, etc.) with the exception of expenses repayable on presentation of proof of payment. The tender dossier, which includes a price schedule, requires the tenderer to classify these costs. The committee must nevertheless check the conformity of this classification and correct it where necessary. Fees are set by the tenderer alone.

Bids exceeding the maximum budget allocated for the contract are eliminated.

The lowest bid receives 100 points. The others are awarded points by means of the following formula:

Points = (lowest bid/bid being considered) x 100.

11.11. Award of the contract

11.11.1. Choice of contractor

The most economically advantageous tender is established by weighing technical quality against price on an 80/20 basis. This is done by multiplying:

- the scores awarded to the technical bids by 0.80
- the scores awarded to the financial bids by 0.20.

The resulting technical and financial scores are then added together, and the contract is awarded to the tender achieving the highest score.

The entire procedure (technical and price evaluation) is recorded in minutes to be signed by all members of the committee and approved, in the case of centralised contracts, by the Commission or, in that of decentralised contracts, by the recipient. In the latter case, the recipient submits the result of the examination and a proposal of award to the Commission for approval.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain his tender (availability of consultants) if the evaluation procedure takes too long.

The entire tender procedure, from the drawing-up of the shortlist to the notification of the successful tenderer, is strictly confidential. The committee's decisions are collective and its deliberations must remain secret. The committee members are bound to secrecy.

The evaluation reports and minutes, in particular, are for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the recipient, the Commission and

the supervisory authorities (Financial Control, the Court of Auditors etc.). Minutes concerning selection and the award of centralised contracts must be sent to Financial Control.

11.11.2. Notification of award of contract

After the Commission has given its official approval and before the period of validity of tenders expires, the contracting authority notifies the successful tenderer in writing that his tender has been accepted. It must also send the other candidates a standard letter informing them that their tenders have been unsuccessful. This letter states any shortcomings in the addressee's tender, the detailed score achieved by that tender and the aggregate scores achieved by the other tenderers.

Where a contract is awarded under a financing agreement, the contracting authority must not notify the successful tenderer unless the agreement has been concluded (see section 5 "Invitations to tender with suspension clauses").

Once the contract has been signed, the Commission publishes the results of the invitation to tender (post-award notice) in the Official Journal, on the Internet and in any other appropriate media. Post-award notices must state the number of tenders received, the date of award of the contract, the name and address of the successful tenderer and the contract price.

11.11.3. Signing of the contract

Once signed by the contracting authority the contract is sent to the successful tenderer, who must countersign and return it within 30 days of receipt.

The contract must be dated. It cannot cover earlier services or enter into force before the date on which it is signed. The parties are bound by the contract from the moment it is signed. Hence the importance of carefully selecting the date.

11.12. Approval of consultants

Where the Commission concludes a contract, it is required to notify the recipient, through the Delegation accredited to the country concerned, of the name of the successful tenderer and obtain its approval of the consultants proposed. Such a request is not a request for approval of the Commission's evaluation.

The recipient may not withhold its approval unless it submits duly substantiated and justified objections to the proposed consultants in writing to the Commission Delegation within 30 days of the date of the request for approval.

11.13. Provision and replacement of consultants

Where the tender procedure involves the provision of technical assistance staff, the contractor is bound to provide the staff specified in the tender. This specification may take various forms. Whatever the form, the key staff (head of project, long-term consultants, project administrator, accountant, etc.) to be provided by the contractor must be identified and named in the contract.

Should a company and/or proposed consultants deliberately conceal the fact that all or some of the team proposed in their bid are unavailable from the date specified in the tender dossier for the start of the assignment, they may be excluded from the invitation to tender by the committee. Should the contracting authority and the Commission learn that such facts have been concealed after the contract has been awarded, they may decide either to annul the award of the contract and recommence the invitation to tender or to award the contract to the bid awarded second place by the committee. Such behaviour may lead to a tenderer's exclusion from other Community contracts.

However, the contract must not only identify the key staff to be provided but specify the qualifications and experience required of them. This is important if the contractor wishes to replace staff after the contract has been signed and concluded. This situation may arise before performance of the contract

has even begun or while it is in progress. In both cases, the contractor must first obtain the contracting authority's written approval by substantiating his request for replacement. The contracting authority has 30 days from the date of receipt of the request in which to reply.

The contractor must, on his own initiative, propose a replacement where:

- (a) a member of staff dies, falls ill or suffers an accident;
- (b) it becomes necessary to replace a member of staff for any other reasons beyond the contractor's control (e.g. resignation etc.).

In the course of performance, the contracting authority may also submit a substantiated written request for a replacement where it considers a member of staff incompetent or unsuitable for the purposes of the contract

Where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and his remuneration may in no circumstances exceed that of the consultant replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the contracting authority may either terminate the contract, if it feels that its performance is jeopardised, or, if it feels that this is not the case, accept the replacement, in which case the latter's fees are to be negotiated downwards to reflect the proper level of remuneration.

Any additional expenses resulting from the replacement of staff are borne by the contractor. Where a consultant is not replaced immediately and some time elapses before the new consultant takes up his functions, the contracting authority may ask the contractor to assign a temporary consultant to the project pending the new consultant's arrival or to take other steps to bridge the gap. Whatever the case may be, the contracting authority will make no payment for the period of absence of the consultant or his replacement (whether temporary or permanent).

12. PROCEDURES FOR THE AWARD OF CONTRACTS UNDER € 200 000

12.1. Framework contract

For service contracts under € 200 000 and with a performance period of under 12 months, the contracting authority may opt to use framework contracts.

Under this procedure, the Commission, acting for and on behalf of all the recipients, uses a restricted invitation to tender (see section 11 above) with lots covering several different areas of technical specialisation to draw up lists of potential service providers valid for three to five years. This saves having to draw up a shortlist of service providers for each ensuing contract.

For the purposes of specific contracts under € 200 000 and with a performance period of under 12 months, the Commission, acting for and on behalf of the recipient, sends the profile(s) of the consultant(s) required to three service providers bound by a framework contract and figuring on the shortlist for the lot relating to the requisite area of specialisation.

The three companies approached have eight days in which to propose consultants matching the profile sought at a rate within the bracket agreed when the framework contract was concluded. The Commission chooses the most economically advantageous bid and notifies the chosen contractor.

To ensure fair competition between companies shortlisted for each lot of the framework contract, the Commission should make sure that it consults them in rotation.

12.2. Simplified procedure

If recourse to the framework contract is unsuccessful or not possible, the contracting authority may award a contract under € 200 000 by simplified procedure, without publication.

The contracting authority draws up a list of at least three service providers of its choice, drawing in particular on data in the Commission's databases of consultants and consultancy firms (currently FIBU and CCR, one day to be replaced by a single database set up by the SCR). The candidates are sent a letter of invitation to tender accompanied by a tender dossier.

Tenders must reach the contracting authority at the address given in the letter of invitation to tender and by the date and time specified. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender in which to submit their tenders.

Tenders must be sent in two envelopes, one containing the technical bid and the other the price bid.

Tenders are opened and evaluated by a committee possessing the requisite technical and administrative capacities. The members of the committee must sign a declaration of impartiality. After evaluating the bids, the committee identifies the most economically advantageous bid on the basis of technical quality and price. If the contracting authority receives fewer than three admissible bids, the procedure must be annulled and started again.

However the contracting authority may place orders for services of a value of € 5000 or less on the basis of a single quote.

PART III: SPECIFIC RULES GOVERNING SUPPLY CONTRACTS

13. INTRODUCTION

Supply contracts involve the design, manufacture, delivery, assembly and commissioning of goods together with any other tasks specified in the contract, e.g. maintenance, repairs, training and after-sales services.

“Supplier” describes any natural or legal person furnishing supplies. A supplier submitting a bid is known as a “tenderer” and one applying to take part in a simplified procedure as a “candidate”.

The contracting authority, which is always specified in the procurement notice, is the authority empowered to conclude the contract. Supply contracts are generally concluded by the recipient with which the Commission draws up a financing agreement (decentralised contracts).

The recipient submits tender dossiers to the Commission for approval before issuing them. On the basis of decisions thus approved and in close consultation with the Commission, it is responsible for issuing invitations to tender, receiving tenders, chairing tender-examination sessions and deciding on the results of invitations to tender. The recipient then submits the result of this examination and the proposal of award to the Commission for approval. Once the award is approved, the recipient signs the contracts and notifies the Commission accordingly. The Commission is normally represented when tenders are opened and evaluated and must always be formally invited.

14. AWARD PROCEDURES

14.1. Contracts of € 150 000 or more

14.1.1. Open procedure

As a rule, supply contracts are the subject of an international open invitation to tender following publication of a procurement notice. The Commission may, on behalf of the recipient, award framework contracts for repeat purchases of a given item or category of items.

14.1.2. Negotiated procedure

However, the recipient may, with the agreement of the Commission, award supply contracts by negotiated procedure in the following circumstances:

- (a) Where unforeseeable events oblige the contracting authority to act with an urgency incompatible with the periods laid down for the open or simplified procedures described in sections 15, 16 and 17. The circumstances invoked to justify the overriding urgency must in no way be attributable to the contracting authority.
- (b) Where the nature or particular characteristics of the supplies warrant, e.g. where performance of the contract is exclusively reserved for the holders of patents or licences to use patents.
- (c) For additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the recipient to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance.
- (d) Where an invitation to tender has been unsuccessful, i.e. where no qualitatively or financially worthwhile tender has been received. In such cases, after annulling the invitation to tender, the recipient may, with the prior approval of the Commission, negotiate directly with one or more suppliers chosen by it from among those that took part in the invitation to tender, provided that the initial terms of the contract are not substantially altered (see section 6 “Annulment of the award procedures”).

14.2. Contracts over € 30 000 and under € 150 000

14.2.1. Open procedure with local publication

In this case, supply contracts are awarded by an open procedure in which the procurement notice is published only in the recipient country. The Commission publishes the references of such invitations to tender (dossier number, country, contracting authority and type of contract) on the Internet with the address of the Delegation from which firms can obtain further information.

14.2.2. Negotiated procedure

With the Commission's agreement, the recipient may award supply contracts by negotiated procedure in the circumstances provided for in section 14.1.2.

14.3. Contracts under € 30 000

14.3.1. Simplified procedure

Supply contracts under € 30 000 are awarded by simplified procedure. Three suppliers must be consulted, but no procurement notice need be published. However, the contracting authority may place orders for supplies of a value of € 5 000 or less on the basis of a single quote.

15. INTERNATIONAL OPEN INVITATION TO TENDER (FOR CONTRACTS OF € 150 000 OR MORE)

15.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, a procurement notice must be published for every open invitation to tender.

15.1.1. Publication of procurement notices for supplies

The procurement notice is published in the Official Journal of the European Communities, on the Internet and in any other appropriate media. The Commission is responsible for publication in the Official Journal of the European Communities and on the Internet, while the recipient must see to local publication.

The notice must identify clearly, precisely, and completely the contracting authority and the subject of the contract. Locally published procurement notices must be identical to those published on the Internet and appear at the same time.

The tender dossier for the contract in question is sent to would-be suppliers in the recipient country or Europe by the recipient or the Commission (delegations, offices in the Member States or headquarters).

15.2. Drafting and contents of the tender dossier

It is vital that tender documents be carefully drafted not only for the sound functioning of the award procedure but for the proper execution of the contract.

These documents must contain all the provisions and information that tenderers need to present their bids: the procedures to follow, the documents to provide, cases of inadmissibility, award criteria, etc.

Responsibility in this regard generally falls to the recipient, which must submit the tender dossier to the Commission for approval prior to issue. The dossier must contain the following documents:

- instructions to tenderers, which must include: (i) the contract award criteria, (ii) whether variants are authorised and (iii) the currency of the bid;

- the general conditions for supply contracts;
- special conditions, which amplify, supplement or derogate from the general conditions and, where they conflict, override them;
- technical annexes, containing plans, technical specifications and provisional timetable for performance;
- price schedule (for completion by the tenderer);
- tender form;
- contract form.
- guarantee forms from a bank or similar institution for:
 - the tender (1-2% of the budget available for the contract),
 - the payment of advances,
 - performance (10% of the amount of the contract).

Unless warranted by the nature of the contract, technical specifications mentioning products of a given brand or origin and thereby favouring or excluding certain products are prohibited. However, where products cannot be described in a sufficiently clear or intelligible manner, they may be named as long as they are followed by the words “or equivalent”.

15.3. Selection and award criteria

The selection criteria concern the tenderer's capacity to execute similar contracts. In certain cases, where the contract includes works or installation services, the tender dossier may include selection criteria concerning the tenderer's technical capabilities.

The award criteria applied to technically admissible tenders are price and, where proposals are requested for after-sales services and/or training, the quality of such proposals.

15.4. Additional information during the procedure

The tender dossier should be clear enough to prevent contractors from having to request additional information during the procedure. If the contracting authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all tenderers at the same time.

If it proves impossible to identify potential tenderers in the case of an open invitation to tender, a notice setting out the changes to the tender dossier must be published as laid down in section 15.1.1 (“Publication of procurement notices for supply”). The deadline for the submission of tenders may be extended to allow tenderers to take account of the change.

Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

15.5. Deadline for the submission of tenders

Tenders must reach the contracting authority at the address and, at the very latest, the date and time indicated in the tender dossier. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive bidding. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders.

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders must not be less than 90 days. In certain exceptional cases, and with the prior authorisation of the Commission, periods may be shorter.

15.6. Period during which tenders are binding

Tenderers are bound by their tenders for the period specified in the tender dossier. This period must be sufficient to allow the contracting authority to examine the tenders, approve the proposal of award, notify the successful tenderer and conclude the contract. In practice, the period of validity of tenders is generally 90 calendar days from the deadline for the submission of tenders.

In exceptional cases, before the period of validity expires, the contracting authority may ask tenderers to extend the period for a specific number of days, which may not exceed 40.

The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

15.7. Submission of tenders

Technical and financial bids must be placed in separate sealed envelopes within a package or outer envelope bearing:

- (a) the address for submission of tenders indicated in the tender dossier;
- (b) the reference of the invitation to tender to which the tenderer is responding;
- (c) where applicable, the numbers of the lots tendered for;
- (d) the words "not to be opened before the tender-opening session" written in the language of the tender dossier.

15.8. Opening of tenders

On receiving tenders, the contracting authority must register them and provide a receipt for those delivered by hand. Envelopes must remain sealed and be kept in a safe place until they are opened.

Tenders are opened and evaluated by a committee made up of an odd number of members (at least three) possessing the technical and administrative capacities necessary to give an informed opinion on bids. The members must sign a declaration of impartiality.

The evaluation committee opens the tenders in public at the place and time fixed in the tender dossier. The following are announced at the tender-opening session: the names of the tenderers, the prices bid, the provision of the requisite tender guarantee and any other formality which the contracting authority thinks appropriate.

The Delegation must be automatically informed. It is represented as an observer at the tender-opening session and receives a copy of each tender.

Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

The purpose of the tender-opening session is to check that the tenders are complete, that the requisite tender guarantee has been provided, that the documents have been duly signed and that everything is generally in order.

Minutes are taken of the tender-opening session. They are signed by all members of the evaluation committee and state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers who have replied within the deadline;

- whether bids have been submitted in sealed envelopes;
- whether tenders have been duly signed and the requisite number of copies sent;
- the tender prices;
- the names of tenderers whose tenders were found to be inadmissible at the opening session;
- the names of any tenderers who withdrew their bids;
- any declarations made by the tenderers.

15.9. Evaluation of tenders

Before conducting a detailed evaluation of the tenders, the contracting authority checks that they comply with the essential requirements of the tender dossier.

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the tender dossier, limit the rights of the contracting authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

Tenders which do not comply with the tender dossier must be rejected by the contracting authority and may not subsequently be made to comply by undergoing corrections or having discrepancies or restrictions removed.

Having evaluated the tenders, the committee rules on the technical admissibility of each tender, classifying it as technically admissible or inadmissible. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed during the technical evaluation.

Once the technical evaluation has been completed, the committee checks that the bids contain no arithmetic errors. Any errors are corrected without prejudice to the tenderer.

15.10. Award of the contract

15.10.1. Choice of contractor

(a) Price is the sole criterion for awarding supply contracts not involving after-sales services. All inadmissible offers having already been eliminated, the contract is awarded to the tenderer submitting the lowest admissible bid.

(b) Where a supply contract includes services such as after-sales and/or training, the technical evaluation must take account of the quality of such services. All inadmissible offers having already been eliminated, the contract is awarded to the bid that is most economically advantageous in terms of the technical quality of the services offered and the price proposed.

In either case, if the tender selected exceeds the budget allocated for the contract, the provisions of section 14.2.2(d) apply.

The entire evaluation procedure must be recorded in minutes to be signed by all the members of the committee. This report must state why tenders were deemed technically inadmissible and how they fell short of the technical specifications laid down. The recipient then transmits the evaluation report and the proposal of award to the Commission for approval.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain his tender if the evaluation procedure takes too long.

The entire tender procedure up to the notification of the successful tenderer is strictly confidential. The committee's decisions are collective and its deliberations must remain secret. The members of the committee are bound to secrecy.

The evaluation reports and minutes, in particular, are for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the recipient, the Commission and the supervisory authorities (Financial Control, the Court of Auditors, etc.).

15.10.2. Notification of award of contract

After the Commission has given its official approval and before the period of validity expires, the contracting authority notifies the successful tenderer in writing that his tender has been accepted. It must also send the other tenderers a standard letter informing them that their tenders have been unsuccessful. This letter states whether tenders were technically admissible and indicates any technical shortcomings.

Where a contract is awarded under a financing agreement, the contracting authority must not notify the successful tenderer unless the agreement has been concluded (see section 5 "Invitations to tender with suspension clause").

Once the contract has been signed, the Commission publishes the results of the invitation to tender (post-award notice) in the Official Journal, on the Internet and in any other appropriate media. Post-award notices must state the number of tenders received, the date of award of the contract, the name and address of the successful tenderer and the contract price.

15.10.3. Signing of the contract

Once signed by the contracting authority the contract is sent to the successful tenderer, who must countersign it within 30 days of receipt and return it with the performance guarantee.

The contract must be dated. It cannot cover earlier services or enter into force before the date on which it is signed by the parties. The parties are bound by the contract from the moment it is signed, hence the importance of carefully selecting the date.

16. LOCALLY PUBLISHED OPEN INVITATION TO TENDER (FOR CONTRACTS OVER € 30 000 AND UNDER € 150 000)

In this case, the procurement notice is published only in the recipient country. The Commission publishes the references of such invitations to tender (dossier number, country, contracting authority and type of contract) on the Internet with the address of the Delegation from which firms can obtain further information.

Note that a locally published open invitation to tender must provide other eligible suppliers with the same opportunities as local firms. No conditions seeking to restrict the participation of other eligible suppliers are allowed (e.g. obliging such firms to be registered in the recipient country or to have won contracts there in the past).

In this procedure, there must be a minimum of 30 days between the date of publication of the procurement notice in the local press and the deadline for receipt of tenders.

The measures applicable to an open procedure, as described in section 15, apply by analogy to the open procedure with local publication.

17. SIMPLIFIED PROCEDURE (FOR CONTRACTS UNDER € 30 000)

The contracting authority may award contracts under € 30 000 by simplified procedure, without publication. It must consult at least three firms of its choosing.

The contracting authority draws up a list of at least three firms. The candidates receive a letter of invitation to tender accompanied by the relevant technical specifications. No tender guarantee is required in this case.

Tenders must reach the contracting authority at the address, and, at the very latest, the date and time indicated in the letter of invitation to tender.

The contracting authority has an evaluation report drawn up on the tenders received, stating the technical admissibility and contractual terms of the tenders. If the contracting authority receives fewer than three admissible bids, the procedure must be annulled and started again.

However, the contracting authority may place orders for supplies of a value of € 5 000 or less on the basis of a single quote.

PART IV: SPECIFIC RULES GOVERNING WORKS CONTRACTS

18. INTRODUCTION

Works contracts are concluded between a contractor and a contracting authority for the execution of works or the building of a structure.

“Contractor” describes any natural or legal person carrying out the works. A contractor submitting a bid is known as a “tenderer” and one invited to take part in a restricted invitation to tender or simplified procedure as a “candidate”.

The contracting authority, which is always specified in the procurement notice, is the authority empowered to conclude the contract. Works contracts are usually concluded by the recipient, with which the Commission draws up a financing agreement (decentralised contracts).

The recipient must submit tender dossiers to the Commission for approval before issuing them. On the basis of decisions thus approved and in close consultation with the Commission, it is responsible for issuing invitations to tender, receiving tenders, chairing tender-examination sessions and deciding on the results of invitations to tender. The recipient then submits the result of this examination and the proposal of award to the Commission for approval. Once the award is approved, it will sign contracts, riders and estimates and notify the Commission accordingly. The Commission is normally represented when tenders are opened and evaluated and must always be formally invited.

19. AWARD PROCEDURES

19.1. Contracts of € 5 million or more

19.1.1. Open procedure

The general rule for the award of works contracts is the international open invitation to tender following publication of a procurement notice.

19.1.2. Restricted procedure

In certain exceptional cases justified by the peculiarities of certain works, and with the prior authorisation of the Commission, a restricted invitation to tender may be used. In this case, the publication of the procurement notice remains mandatory (what is termed “prequalification”) to ensure the widest possible participation.

19.1.3. Negotiated procedure

With the prior agreement of the Commission, works contracts may also be awarded by negotiated procedure. This may be done in the following circumstances:

- (a) Where unforeseeable events oblige the contracting authority to act with an urgency incompatible with the periods laid down for the open, restricted or simplified procedures described in sections 20, 21, 22 and 23. The circumstances invoked to justify the overriding urgency must in no way be attributable to the contracting authority.
- (b) For additional works not included in the first contract but which have, through unforeseen circumstances, become necessary for the carrying-out of the works described therein, provided that the award is made to the contractor already carrying out such work:
 - where such works cannot be technically or economically separated from the main contract without major inconvenience to the recipient;
 - where such works, although separable from the execution of the original contract, are absolutely necessary to its completion.

However, the aggregate cost of contracts awarded for additional works must not exceed 50% of the amount of the main contract.

- (c) Where the invitation to tender has been unsuccessful, i.e. where no qualitatively or financially worthwhile tender has been received. In such cases, after annulling the invitation to tender, the recipient may, with the prior approval of the Commission, negotiate directly with one or more tenderers chosen by it from among those that took part in the invitation to tender, provided that the initial terms of the contract are not substantially altered (see section 6 "Annulment of award procedures").

19.2. Contracts over € 300 000 and under € 5 million

19.2.1. Open procedure with local publication

Such contracts are awarded after an open invitation to tender published locally, a procedure in which the procurement notice is published only in the recipient country. The Commission publishes the references of such invitations to tender (dossier number, country, contracting authority and type of contract) on the Internet with the address of the Delegation from which firms can obtain further information.

19.2.2. Negotiated procedure

With the agreement of the Commission, the recipient may also award works contracts by negotiated procedure in the circumstances set out in section 19.1.3.

19.3. Contracts under € 300 000

19.3.1. Simplified procedure

Works contracts under € 300 000 are awarded by simplified procedure. Three contractors must be consulted, but no procurement notice need be published.

20. INTERNATIONAL OPEN INVITATION TO TENDER (FOR CONTRACTS OF € 5 MILLION OR MORE)

20.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, a procurement notice must be published for every open invitations to tender.

20.1.1. Publication of procurement notices for works

The procurement notice is published in the Official Journal of the European Communities, on the Internet and in any other appropriate media. The Commission is responsible for publication in Europe while the recipient must see to local publication.

The notice must identify clearly, precisely, and completely the contracting authority and the subject of the contract. Locally published procurement notices must be identical to those published in the Official Journal of the European Communities and on the Internet and appear at the same time.

The contracting authority must send tender dossiers to would-be tenderers. Because of their size and printing costs, tender dossiers for works contracts are usually sent out for a flat fee by the consultancy firm responsible for compiling them. The consultancy firm in question must sign an undertaking of secrecy.

The tender dossier will also be available for consultation at the premises of the recipient and the Commission (delegation, offices in the Member States or headquarters).

20.2. Drafting and contents of the tender dossier

It is vital that tender documents be carefully drafted not only for the sound functioning of the award procedure but for the proper execution of the contract.

These documents must contain all the provisions and information that tenderers need to present their bids: the procedures to follow, the documents to provide, cases of inadmissibility, award criteria, etc.

Responsibility in this regard generally falls to the recipient, which must submit the tender dossier to the Commission for approval prior to issue. The tender dossier must contain the following documents:

- instructions to tenderers, which must include: (i) the selection and award criteria, (ii) whether variants are allowed and (iii) the currency of the bid;
- the general conditions for works contracts;
- special conditions, which amplify, supplement or derogate from the general conditions and, where they conflict, override them;
- technical annexes, containing plans, technical specifications and provisional timetable for performance;
- price schedule (for completion by the tenderer) and breakdown;
- tender form;
- contract form.
- guarantee forms from a bank or similar institution for:
 - the tender (1-2% of the budget available for the contract),
 - the payment of advances,
 - performance (10% of the amount of the contract).

20.3. Selection and award criteria

The selection criteria concern the tenderer's capacity to execute similar contracts, with particular reference to works executed in recent years.

Following selection and the elimination of all inadmissible offers, the sole criterion for award is the tender price.

20.4. Additional information during the procedure

The tender dossier should be clear enough to prevent contractors from having to request additional information during the procedure. If the contracting authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all tenderers at the same time.

If it proves impossible to identify potential tenderers in the case of an open procedure, a notice setting out the changes to the tender dossier must be published as laid down in section 20.1.1 ("Publication of procurement notices for works"). The deadline for the submission of tenders may be extended to allow tenderers to take account of the change.

Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

20.5. Deadline for submission of tenders

Tenders must reach the contracting authority at the address and, at the very latest, the date and time indicated in the tender dossier. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive bidding. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders.

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 90 days. In certain exceptional cases, and with the prior authorisation of the Commission, periods may be shorter.

20.6. Period during which tenders are binding

Tenderers are bound by their tenders for the period specified in the tender dossier. This period must be sufficient to allow the contracting authority to examine the tenders, approve the proposal of award, notify the successful tenderer and conclude the contract. In practice, the period of validity of tenders is generally 90 calendar days from the deadline for the submission of tenders.

In exceptional cases, before the period of validity expires, the contracting authority may ask tenderers to extend the period for a specific number of days, which may not exceed 40.

The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

20.7. Submission of tenders

Technical and financial bids must be placed in separate sealed envelopes within a package or outer envelope bearing:

- (a) the address for submission of tenders indicated in the tender dossier;
- (b) the reference of the invitation to tender to which the tenderer is responding;
- (c) where applicable, the numbers of the lots tendered for;
- (d) the words "not to be opened before the tender-opening session" written in the language of the tender dossier.

20.8. Opening of tenders

On receiving tenders, the contracting authority must register them and provide receipt of delivery for those delivered by hand. Envelopes must remain sealed and be kept in a safe place until they are opened.

Tenders are opened and evaluated by a committee made up of an odd number of members (at least three) possessing the technical and administrative capacities necessary to give an informed opinion on bids. The members must sign a declaration of impartiality.

The evaluation committee opens the tenders in public at the place and time fixed in the tender dossier. The following are announced at the tender-opening session: the names of the tenderers, the price bids made, the provision of the tender guarantee required and any other formality which the contracting authority thinks appropriate.

The Delegation must be automatically informed. It is represented as an observer at the tender-opening session and receives a copy of each tender.

Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

The purpose of the tender-opening session is to check that the tenders are complete, that the requisite tender guarantee has been provided, that the documents have been duly signed and that everything is generally in order.

Minutes are taken of the tender-opening session. They are signed by all members of the evaluation committee and state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers who have replied within the deadline;
- whether bids have been submitted in sealed envelopes;
- whether tenders have been duly signed and the requisite number of copies sent;
- the tender prices;
- the names of tenderers whose tenders were found to be inadmissible at the opening session;
- the names of any tenderers who withdrew their bids;
- any declarations made by the tenderers.

20.9. Evaluation of tenders

Before conducting a detailed evaluation of the tenders, the contracting authority checks that they comply with the essential requirements of the tender dossier.

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which would affect the scope, quality or implementation of the contract, differ widely from the terms of the tender dossier, limit the rights of the contracting authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

Tenders which do not comply with the tender dossier must be rejected by the contracting authority and may not subsequently be made to comply by undergoing corrections or having discrepancies or restrictions removed.

Having evaluated the tenders, the committee rules on the technical admissibility of each tender, classifying it as technically admissible or inadmissible.

Once the technical evaluation has been completed, the committee checks that the bids contain no arithmetic errors; any errors are corrected without prejudice to the tenderer.

20.10. Award of the contract

20.10.1. Choice of contractor

The successful tenderer is the one submitting the "most economically advantageous" tender, i.e. the lowest bid classified as "technically admissible" during technical evaluation. This must be declared the successful tender if it is equal to or lower than the budget allocated for the contract.

If the chosen tender exceeds the budget allocated for the contract, the provisions set out in section 19.1.3(c) apply.

The entire evaluation procedure must be recorded in minutes to be signed by all the members of the committee. This report must state why tenders were deemed technically inadmissible and how they fell short of the technical specifications laid down. The recipient then transmits the evaluation report and the proposal of award to the Commission for approval.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain his tender if the evaluation procedure takes too long.

The entire tender procedure up to the notification of the successful tenderer is strictly confidential. The committee's decisions are collective and its deliberations must remain secret. The members of the committee are bound to secrecy.

The evaluation reports and minutes, in particular, are for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the recipient, the Commission and the supervisory authorities (Financial Control, the Court of Auditors, etc.).

20.10.2. Notification of award of contract

After the Commission has given its official approval and before the period of validity of tenders expires, the contracting authority notifies the successful tenderer in writing that his tender has been accepted. It must also send the other tenderers a standard letter informing them that their tenders have been unsuccessful. This letter states whether tenders were technically admissible and indicates any technical shortcomings.

Where a contract is awarded under a financing agreement, the contracting authority must not notify the successful tenderer unless the agreement has been concluded (see section 5 "Invitations to tender with suspension clause).

Once the contract has been signed, the Commission publishes the results of the invitation to tender (post-award notice) in the Official Journal, on the Internet and in any other appropriate media. Post-award notices must state the number of tenders received, the date of award of the contract, the name and address of the successful tenderer and the contract price.

20.10.3. Signing of the contract

Once signed by the contracting authority the contract is sent to the successful tenderer, who must countersign it within 30 days of receipt and return it with the performance guarantee.

The contract must be dated. It cannot cover earlier services nor enter into force before the date on which it is signed by the parties. The parties are bound by the contract from the moment it is signed, hence the importance of carefully selecting the date.

21. RESTRICTED INVITATION TO TENDER (FOR CONTRACTS OF € 5 MILLION OR MORE)

In certain exceptional cases justified by the peculiarities of certain works, and with the prior authorisation of the Commission, a restricted invitation to tender may be used. In this case, publication of the procurement notice in the Official Journal of the European Communities, on the Internet and in any other appropriate media remains mandatory (what is termed "prequalification").

On the basis of the outcome of the prequalification procedure, the contracting authority draws up a list of firms that will be invited to tender after obtaining the Commission's approval.

The contracting authority sends a letter of invitation to tender accompanied by the tender dossier only to the candidates on the shortlist.

In this procedure, there must be a minimum of 60 days between the date of dispatch of the letters of invitation to tender and the deadline for receipt of tenders.

The measures applicable to an open procedure, as described in section 20, apply by analogy to the restricted procedure for works contracts.

22. LOCALLY PUBLISHED OPEN INVITATION TO TENDER (FOR CONTRACTS OVER € 300 000 AND UNDER € 5 MILLION)

In this case, the procurement notice is published only in the recipient country, unless the Commission is acting as contracting authority for and on behalf of the recipient. The Commission publishes the references of such invitations to tender (dossier number, country, contracting authority and type of contract) on the Internet with the address of the Delegation from which firms can obtain further information.

Note that a locally published open invitation to tender must provide other eligible suppliers with the same opportunities as local firms. No conditions seeking to restrict the participation of other eligible suppliers are allowed (e.g. obliging such firms to be registered in the recipient country or to have won contracts there in the past).

In this procedure, there must be a minimum of 60 days between the date of publication of the procurement notice in the local press and the deadline for receipt of tenders.

The measures applicable to an open procedure, as described in section 20, apply by analogy to the open procedure with local publication.

23. SIMPLIFIED PROCEDURE (FOR CONTRACTS UNDER € 300 000)

The contracting authority may award contracts under € 300 000 by simplified procedure, without publication. It must consult at least three firms of its choosing.

The contracting authority draws up a list of at least three firms. The candidates receive a letter of invitation to tender accompanied by the relevant technical specifications.

Tenders must reach the contracting authority at the address, and, at the very latest, the date and time indicated in the letter of invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender in which to submit their tenders.

Tenders are opened and evaluated by an evaluation committee possessing the requisite technical and administrative capacities. Bids are evaluated as they would be in an open invitation to tender. If the contracting authority receives fewer than three admissible bids, the procedure must be annulled and started again.

However, the contracting authority may place orders for works of a value of € 5 000 or less on the basis of a single quote.

ANNEXES

ANNEX I

COMPETITION RULES

SERVICES	SUPPLIES	WORKS
<p>$x \geq \text{€ } 200\,000$</p> <p>International restricted invitation to tender. 4 to 8 service providers invited.</p>	<p>$x \geq \text{€ } 150\,000$</p> <p>International open invitation to tender.</p>	<p>$x \geq \text{€ } 5\,000\,000$</p> <p>1. International open invitation to tender. 2. International restricted invitation to tender (exceptional cases).</p>
	<p>$\leq \text{€ } 30\,000$ $x < \text{€ } 150\,000$</p> <p>Local open invitation to tender.</p>	<p>$\text{€ } 300\,000 \leq x < \text{€ } 5\,000\,000$</p> <p>Local open invitation to tender.</p>
<p>$x < \text{€ } 200\,000$</p> <p>1. Framework contract, or 2. Simplified procedure with consultation of at least 3 service providers. 3. $x \leq \text{€ } 5,000$: a single quote.</p>	<p>$x < \text{€ } 30\,000$</p> <p>1. Simplified procedure with consultation of at least 3 suppliers. 2. $x \leq \text{€ } 5,000$: a single quote.</p>	<p>$x < \text{€ } 300,000$</p> <p>1. Simplified procedure with consultation of at least 3 contractors. 2. $x \leq \text{€ } 5,000$: a single quote.</p>

ANNEX 2

DEFINITIONS

Commission: The Commission of the European Communities.

Contracting authority: The Commission, the State or the public or private legal person concluding the contract, as provided for in the Financing Agreement.

Study contract: A service contract between a service provider and the contracting authority concerning, for example, identification and preparatory studies for projects, feasibility studies, economic and market studies, technical studies, evaluations and audits.

Technical assistance contract: A contract between a service provider and the contracting authority under which the service provider exercises an advisory role, directs or supervises a project, provides the consultants stipulated in the contract or acts as a procurement agent.

Supply contract: A contract between a supplier and the contracting authority for the purchase, lease, hire or hire-purchase, with or without an option to buy, of goods. It may also cover such tasks as installation, servicing, repairs, training and after-sales service.

Works contract: A contract between a construction firm and the contracting authority for the execution of works or the building of a structure.

Hybrid contract: A contract between the contracting authority and a service provider, supplier or construction firm covering two or more of the following: works, supplies and services.

Framework contract: A fixed-term contract for the provision of an undetermined volume of a specific category of services or supplies.

Candidate: Any natural or legal person or group thereof applying to take part in a restricted procedure.

Tenderer: Any natural or legal person or group thereof submitting a bid with a view to concluding a contract.

Contractor: The tenderer selected at the end of the procedure for the award of the contract.

Procurement agent: A company procuring goods, services or works on behalf of the contracting authority.

Open procedure: Procedure in which any natural or legal person or group thereof may submit a bid in response to a procurement notice.

Restricted procedure: Procedure in which, after publication of a procurement notice, only candidates invited by the contracting authority may submit a bid.

Simplified procedure: Procedure without prior publication of a procurement notice, in which only candidates invited by the contracting authority may submit bids (see section 3.3 of the Manual).

Negotiated procedure: Procedure without prior publication of a procurement notice, in which the contracting authority consults the candidate or candidates of its choice and negotiates the terms of the contract with one or more of them (see sections 10.12, 14.1.2 and 19.1.3 of the Manual).

Direct labour operations: Contracts executed by public or public-private agencies or services of the recipient country, where that country's administration possesses qualified managers.

Relevant media: Publication in the Official Journal of the European Communities and on the Internet is obligatory for all contracts covered by this Manual. Publication in the press of recipient countries and, if need be, specialised publications may be necessary or advisable.

Tender dossier: The dossier compiled by the contracting authority and containing all the documents needed to prepare and submit a tender.

General conditions: The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts.

Special conditions: The special conditions laid down by the contracting authority as an integral part of the tender dossier, including amendments to the general conditions, clauses specific to the contract and the terms of reference (for a service contract) or technical specifications (for a supply or works contract).

Terms of reference: The document drawn up by the contracting authority setting out its requirements and/or objectives in respect of the provision of services, specifying, where relevant, the methods and resources to be used and/or results to be attained.

Evaluation committee: A committee made up of an odd number of members (at least three) possessing the technical and administrative capacities necessary to give an informed opinion on bids.

Day: Calendar day.

Period: A period begins the day after the act or event chosen as its starting point. Where the last day of a period is not a working day, the period expires at the end of the next working day.

Conflict of interests: Any event influencing the capacity of a candidate, tenderer or contractor to give an objective and impartial professional opinion, or preventing it, at any moment, from giving priority to the interests of the contracting authority. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, tenderer or contractor. These restrictions also apply to subcontractor and employees of the candidate, tenderer or contractor.

Most economically advantageous bid: The best bid by the criteria laid down for the contract in question, e.g. quality, technical properties, aesthetic and functional qualities, after-sales service and technical assistance, delivery date or performance period, the price or lowest price. These criteria must be published in the procurement notice or stated in the tender dossier.

Breakdown of lump-sum price: A heading-by-heading list of the rates and costs making up the lump-sum.

ANNEX 3

REGULATIONS

- 1) Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security (OJ L 166 of 5/7/96).
- 2) Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America (OJ L 52 of 27/2/92).
- 3) Council Regulation (EC) No 443/97 of 3 March 1997 on operations to aid uprooted people in Asian and Latin American developing countries (OJ L 68 of 8/3/97).
- 4) Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries (OJ L 306 of 28/11/96).
- 5) Council Regulation (EC) No 2259/96 of 22 November 1996 on development cooperation with South Africa (OJ L 306 of 28/11/96).
- 6) Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (Meda) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (OJ L 189 of 30/7/96).
- 7) Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories (OJ L 182 of 16/7/94).
- 8) Council Regulation (EEC) No 3906/89 of December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic (OJ L 375 of 23/12/89).
- 9) Council Regulation (EEC) No 2698/90 of 17 September 1990 amending Regulation (EEC) No 3906/89 in order to extend economic aid to other countries of Central and Eastern Europe (OJ L 257 of 21/9/90) (Bulgaria, Romania, Czechoslovakia, Yugoslavia, German Democratic Republic).
- 10) Council Regulation (EEC) No 3800/91 of 23 December 1991 amending Regulation (EEC) No 3906/89 in order to extend economic aid to include other countries in central and eastern Europe (OJ L 357 of 28/12/91) (adding Albania, Estonia, Lithuania, Latvia, deleting the German Democratic Republic).

- 11) Council Regulation (EEC) No 2334/92 of 7 August 1992 amending Regulation (EEC) No 3906/89 in order to extend economic aid to include Slovenia (OJ L 227 of 11/8/92).
- 12) Council Regulation (EEC) No 1764/93 of 30 June 1993 amending Regulation (EEC) No 3906/89 on economic aid for certain countries of central and eastern Europe (OJ L 162 of 3/7/93) (Czech and Slovak Republics).
- 13) Council Regulation (EC) No 1366/95 of 12 June 1995 amending Regulation (EEC) No 3906/89 in order to extend economic aid to Croatia (OJ L 133 of 17/6/95).
- 14) Council Regulation (EC) No 463/96 of 11 March 1996 amending Regulation (EEC) No 3906/89 with a view to extending economic assistance to the former Yugoslav Republic of Macedonia (OJ L 65 of 15/3/96).
- 15) Council Regulation (EC) No 753/96 of 22 April 1996 amending Regulation (EEC) No 3906/89 with a view to extending economic aid to Bosnia and Herzegovina (OJ L 103 of 26/4/96).
- 16) Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships (OJ L 85 of 20/3/98).
- 17) Council Regulation (Euratom, EC) No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia (OJ L 165 of 4/7/96).
- 18) Council Regulation (EC) No 1628/96 of 25 July 1996 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia (OJ L 204 of 14/8/96) modified by Regulation (EC) No 851/98 (OJ L 122 of 24/4/98).
- 19) Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to developing countries (OJ L 213 of 30/7/98).
- 20) Council Regulation (EC) No 722/97 of 22 April 1997 on environmental measures in developing countries in the context of sustainable development (OJ L 108 of 25/4/97).
- 21) Council Regulation (EC) No 3062/95 of 20 December 1995 on operations to promote tropical forests (OJ L 327 of 30/12/95).

- 22) Council Regulation (EC) No 2046/97 of 13 October 1997 on north-south cooperation in the campaign against drugs and drug addiction (OJ L 287 of 21/10/97).
- 23) Council Regulation (EC) No 550/97 of 24 March 1997 on HIV/AIDS-related operations in developing countries (OJ L 85 of 27/3/97).
- 24) Council Regulation (EC) No 1484/97 of 22 July 1997 on aid for population policies and programmes in developing countries (OJ L 202 of 30/7/97).
- 25) Council Regulation (EC) No 1659/98 of 17 July 1998 on decentralised cooperation (OJ L 213 of 30/7/98).