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MANUAL OF INSTRUCTIONS

**SERVICE, SUPPLY AND WORKS CONTRACTS
CONCLUDED WITHIN THE FRAMEWORK OF
COMMUNITY COOPERATION FOR THIRD COUNTRIES**

(presented by the Commission)

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PART I

COMMON MEASURES APPLICABLE TO ALL THE CONTRACTS

I. LEGAL BASIS

The legal basis governing the procedures for the award of service, supply and works contracts financed by the Community and concluded within the framework of Community cooperation for third countries when the awarding authority is a contracting authority of a beneficiary country or the Commission acting in the name of and on behalf of the beneficiary, is constituted by:

- the Financial Regulation of 21 December 1977, applicable to the general budget of the European Communities, amended by Council Regulation 2548/98 on 23 November 1998, and in particular Title IX;
- the General Regulation concerning works, supplies and services contracts financed by the European Development Fund adopted by Decision N° 3/90 of the ACP-EEC Council of Ministers, on 29 March 1990;
- the Regulations and other specific instruments concerning the various programmes of cooperation.

This Manual sets out simplified measures for the management of the below mentioned contracts and will be applied gradually as far as possible in a uniform way except for those contracts where the Commission is the contracting authority in its own name and for its own account.

This Manual is a Manual of Instructions which the services of the Commission shall follow within the negotiations of financing agreements and/or contracts, insofar as they concern the award of contracts, except where legislative provisions to the contrary - notably provisions contained in the legislation for each particular cooperation programme - exist. The Commission will take the necessary steps to ensure that the contracting authorities adhere to the measures contained in the present Manual.

2. ELIGIBILITY FOR CONTRACTS

The provisions defining who may participate in invitations to tender and in contracts are termed "eligibility criteria". They cover the nationality of the natural and legal persons and the origin of supplies.

2.1 The rule of nationality and of the origin

- (a) The participation in the contracts is 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 authorised by the Regulation or other specific instruments applicable to the programme for which the contract is financed.

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

In order to verify compliance with the rule of nationality, the tender dossier requires the tenderers to indicate the country to which they are national by presenting the document 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 point (a). The same goes for the supplies and equipment purchased by the contractor for works or service contracts if they are to become the property of the project at the end of the implementation of the contract.

In his tender the tenderer must indicate the origin of supplies. He must present the certificate of origin to the contracting authority either when the supplies arrive in the recipient country, or at their provisional acceptance, or when he submits the first invoice. The choice will be stated in the contract, on a case by case basis.

The certificate of origin must be made out by the authority designated for this purpose in the country of origin of the supplies or of the supplier and comply with the international agreements to which that country is signatory.

It is for the recipient country's contracting administration to verify the existence of a certificate of origin. Where there are serious doubts about the origin, it will be for the Commission's departments to decide about the question.

2.2 Exceptions to the rule of nationality and of origin

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

- (a) As regards nationality, the participation in the invitations to tender and in contracts by nationals of countries other than the countries concerned by the applicable Regulation, may be authorised in exceptional circumstances by the central services of the Commission, on a case-by-case basis.
- (b) With regard to the origin of the supplies, the same exception applies as under (a). In this respect, note, that the frequently used argument that the 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 cannot take part in competition nor be contractor if they:

- (a) are bankrupt or being wound up, their affairs are being administrated by the court, they are entered into an arrangement with creditors, they have suspended business activities or are in any analogue situation arising from a similar procedure under national laws or and regulations;
- (b) are subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding-up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws or regulations;
- (c) have been convicted of an offence concerning professional conduct by a judgement which has the force of "res judicata";
- (d) have been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (e) 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) have not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country where they are established;
- (g) are guilty of serious misrepresentation in supplying the information required by the contracting authorities for their participation in an invitation to tender;
- (h) within the framework of another contract concluded with the same contracting authority, or within the framework of another contract financed from the Community funds, were declared serious at fault of implementation owing to a breach of their contractual obligations;
- (i) are, within the framework of the call for tenders or the contract concerned, in a situation of conflict of interests as foreseen in point 7 "Ethical clauses".

Candidates (first phase of the restricted procedure) must present, in support of their application, a sworn statement showing that they do not fall into any of the situations provided for in the items listed above.

Tenderers (second phase of restricted procedure or sole phase of open procedure) must present, in support of their offers, the proof required under the law of the country where they are established, to show that they do not fall into any of the situations provided for in items (a), (b), (c), (e) and (f) above. This evidence or these documents must carry a date which cannot be more than 180 days in relation to the deadline for the submission of the tender. In addition, a sworn statement must be enclosed stating that the situations described in these documents have not changed since then.

3. PROCEDURES FOR THE AWARD OF CONTRACTS

The basic principle for the award of contracts is the invitation to tender. The purpose has a dual objective: (i) to ensure the transparency of the operations and, (ii) to obtain the required quality of the services, supplies or works at the best price conditions. The provisions of the relevant Regulations oblige the Commission and the recipient to guarantee as wide a participation as possible, on equal terms, in invitations to tender and contracts financed by the Community.

There are 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 tender. In this case, the greatest publicity is given to the contract, through the publication of a procurement notice in the Official Journal of the EC, on the Internet and in all other suitable media.

In the open procedure, any natural or legal persons wishing to tender receive, upon their request, the tender dossier (which may have to be paid for), in accordance with the procedures laid down in the procurement notice. The choice of the contractor is made, at the time of the evaluation of the tenders, by means of the selection procedure (i.e., verification of the eligibility and of the economic, technical and professional standing of tenderers) and by means of the award procedure (i.e., adjudication of the tenders which will lead to the selection of the contractor) as foreseen in point 4, "Selection and award criteria for the contracts". Negotiations are not permitted.

3.2 Restricted procedure

In the restricted procedure, the contracting authority invites a limited number of candidates to take part in the call for tender. Before sending the invitation to tender, it draws up a shortlist of candidates selected on the basis of their qualifications, based on the publication of a procurement notice.

The selection procedure, by which the long list (all potential candidates) is cut down to the shortlist, is carried out when examining the received expressions of interest, generally, following the publication of a procurement notice in the Official Journal of the EC, on the Internet and in all other suitable media.

In a second phase, the contracting authority invites tenders from shortlisted candidates, who then receive the tender dossier. The successful tenderer is chosen by the award procedure, when tenders are examined (see point 4, "Selection and award criteria for the contracts"). Negotiations are not permitted.

3.3 Simplified procedure

In the simplified procedure, the contracting authority consults candidates of its choice and fixes the terms of the contract with them on the basis of specifications. At the end of this procedure, the contracting authority retains the economically most advantageous offer.

3.4 Framework contract

In this procedure, the Commission issues a restricted invitation to tender, selects the candidates and on the basis of received framework-tenders, draws up a list of potential contractors who can be solicited to provide consultants for specific missions in each of the fields of expertise put out for competition.

For each specific contract (mission), the contracting authority invites contractors retained on the list to present a proposal within the limits of their framework contract. The economically most advantageous proposal is retained.

3.5 Direct labour (work programmes)

In the case of direct labour operations, the project is executed by the public bodies in the recipient state concerned (administrative control) or by the person responsible for executing the operation. The Community intervenes only to finance temporary and additional expenditure, e.g., the purchase of supplies or materials needed for the project.

3.6 Rules for competition

The arrangements for competitive tendering and the publishing of the contracts for services, supplies and works, which depend on the contract value, are given in Annex 1.

In the case of mixed contracts consisting of differing proportions of services, supplies and works, the applicable tendering procedure is decided by the contracting authority in agreement with the Commission, considering the prevailing part of services, supplies or works required, evaluated according to their value and the strategic importance within the contract in question.

No contract may be split simply to evade compliance with the measures foreseen in this Manual. If the contracting authority has doubts when calculating the estimated value of a contract, it will refer to the Commission's services before the launching of the contract procedures.

In all procedures, the contracting authority must verify that the conditions of fair competition are properly respected. In the event that there is an obvious and significant disparity between the prices quoted and the services offered, or a significant disparity compared with the prices quoted by other tenderers, notably when public bodies, non-profit organisations or non-government organisations participate in a tender alongside private companies, the contracting authority must investigate and call for additional information. Such information remains confidential to the contracting authority. As a general rule, all tenderers are obliged to declare that the financial proposal reflects a complete cost accounting, including apportioned overheads.

4. SELECTION AND AWARD CRITERIA FOR THE CONTRACTS

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 point 2, "Eligibility for contracts";
 - verification checking of the economic and financial standing of tenderers or candidates;
 - verification of the professional and technical capacity of tenderers or candidates and the firms management.

The procurement notice or the tender dossier shall state the reference or references which have been chosen for the above verifications.

- (b) Comparison of tenders on the basis of the award criteria indicated in the procurement notice or in the tender documents on the basis of the price and other pre-defined criteria enabling the economically most advantageous tender to be identified.

In open procedure, operations (a) and (b) both take place when tenders are examined.

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

5. INVITATION TO TENDER WITH "SUSPENSIVE CLAUSE"

In exceptional and duly justified cases, invitations to tender may be published with a "suspensive clause". This means that an invitation to tender is issued before the financing decision or the signature of the financing agreement between the Commission and the recipient and that the award of the contract is subject to the conclusion of the financing agreement and therefore, to the allocation of the corresponding funds.

In view of the possible consequences of the suspensive clause, the reference to the existence of this clause must explicitly be mentioned in the procurement notice.

In all the cases, the call for tenders will have to be cancelled if the Commission's decision-making procedure is not completed or the financing agreement is not signed.

6. CANCELLATION OF THE PROCEDURE FOR THE AWARD OF CONTRACTS

In the event of a cancellation of the procedure for the award of contracts, all the tenderers are informed of the reasons in writing, as soon as possible. Cancellation may occur where:

- (a) the invitation to tender was unsuccessful, i.e., when no tender received deserves to be retained at the qualitative and/or financial level, or when there were no submissions;
- (b) the technical or economic data of the project have been fundamentally altered;
- (c) exceptional circumstances, or force majeure, render normal implementation of the project impossible;
- (d) all technical acceptable tenders exceed the financial resources available;
- (e) there were serious irregularities in the procedure, in particular where these have prevented normal competition.

After the cancellation of the procedure, the contracting authority may decide:

- either to launch a new invitation to tender;
- or open negotiations with the tenderer or the tenderers who meet the selection criteria and who submitted technically appropriate tenders, and provided that the initial conditions of the contract have not been substantially modified;
- or to award no contract.

Whatever the case, the final decision is taken by the contracting authority with the agreement of the Commission when the Commission is not the Contracting Authority.

7. ETHICS CLAUSES

Any attempt by a candidate or a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the contracting authority during the process of examination, clarification, evaluation and award of the contracts will result in the rejection of its candidature or tender and could lead to administrative penalties.

Without prior and written authorisation from the contracting authority, the contractor and his staff and 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 the other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the contractor.

The candidate or tenderer is required to declare that there is no potential conflict of interests or any relation with other tenderers or other parties in the project at the time of the submission of his candidature or his tender. If at any moment during the implementation of the contract such a situation arises, the contractor has the obligation to inform the contracting authority immediately.

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

Throughout the contract, the contractor and his staff must respect human rights and undertake not to collide with the political, cultural and religious mores of the recipient country.

The remuneration of the contractor under the contract constitutes his only remuneration within the framework of the contract. The contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations towards the contracting authority.

The contractor and his staff are obliged to maintain professional secrecy throughout the contract and after its completion. All the reports and documents collected or brought to their attention during the performance of the contract are confidential.

All reports and documents, generated, collected or brought to the attention of the contractor and his staff during the performance of the contract may be used by the parties to the agreement, as defined in the contract.

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

The Commission reserves the right to suspend or cancel the financing of the project 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 this situation. Within the meaning of this paragraph, "corrupt practices" are constituted by any proposal or agreement to offer an illicit payment, gift, gratuity or commission to any person as an inducement or reward for performing or forbearing to perform any act relating to the contract.

In particular, all tender and contract dossiers for the provision of services, works or supplies must include a specific clause stating that any offer or contract shown to have resulted in the payment of unusual commercial costs, will be rejected or cancelled with immediate effect.

Such unusual commercial costs relate to all commissions which are not specified in the main transaction or which do not arise from a proper contract with regard to this transaction, commissions paid where there is no real or legitimate service involved, commissions paid in a tax haven, or commissions paid to a beneficiary who is not clearly identified or to a company which appears to be a front for another company.

Upon request, the winner of the contract undertakes to provide to the Commission all written evidence necessary to show that it fulfils the conditions of the contract. Where there is suspicion of payment of unusual commercial costs, the Commission has the right to examine all the evidence it deems necessary to establish its case, at the premises of the contractor.

Those winners of contracts who are found guilty of directly or indirectly making unusual commercial payments in projects financed by the Commission, risk the termination of their contract as well as permanent exclusion from Community financed projects, depending on the gravity of the charges brought against them.

Breach of one or more of these ethical clauses may result in the exclusion of the candidate, tenderer or contractor from other Community contracts and expose him to penalties. The individual or the company concerned must be informed of this in writing.

8. APPEALS

Tenderers believing themselves injured from an error or an irregularity in the selection or the award procedure may approach the contracting authority informing the Commission, for information, when the Commission is not the contracting authority. The contracting authority shall reply within 90 days as from the date of receipt of the complaint.

When informed of a complaint, the Commission transmits its opinion to the contracting authority and tries to arrive, if possible, at an amicable solution between the parties concerned.

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

- the procedures established in accordance with the national legislation of the recipient in the case of a contract for which the contracting authority is the recipient, or
- the procedures established in accordance with the 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 concerning instances of maladministration by the institutions of the European Community.

If a contracting authority does not respect the procurement measures foreseen in this Manual, the Commission reserves the right to suspend, refuse or recuperate the financing of the contracts concerned.

PART II

**SPECIFIC MEASURES APPLICABLE TO
SERVICE CONTRACTS**

9. INTRODUCTION

Technical and economic cooperation under this 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 supplier 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 supplier will be paid only if the specified outcome is achieved.

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

Technical assistance contracts generally only specify the means, i.e., the supplier 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 supplier 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 services contracts may, however, combine both types, specifying both the means and the outcome.

The contracting authority, which is always defined in the procurement notice, is the authority empowered to conclude the contract. Service contracts are concluded by the authority specified in the financing agreements. This authority is:

- (a) either the Commission, acting on behalf of the recipient (centralised contracts);
- (b) or the recipient himself, i.e., the government or a public body of the recipient country, having the legal personality with which the Commission draws up a financing agreement (decentralised contracts).

In the latter case, the Commission and the recipient in close consultation draw up the shortlists. The recipient submits tender dossiers to the Commission for approval before the launching of the procedure. On the basis of the decisions thus approved and in close consultation with the Commission, the recipient issues the tenders, receives the tenders, chairs tender-evaluation sessions and draws the conclusions from the tenders. The recipient then transmits the result of this evaluation and the contract award proposal to the Commission for agreement. Once this agreement is received, he signs the contracts and notifies the Commission. The Commission will, as a general rule, be represented when tenders are opened and evaluated, and must always be formally invited.

Audit and evaluation contracts, as well as framework contracts, are concluded solely by the Commission, acting on behalf of the recipient.

The service provider is any natural or legal person, including a public body, which offers services. The service provider who has requested an invitation to participate in a restricted or simplified procedure is known as a candidate. The service provider who submits a tender is known as a tenderer.

10. PRINCIPLES GOVERNING THE PROCEDURES FOR THE AWARD OF CONTRACTS

10.1 Contracts of a value equal to or higher than euros 200,000

10.1.1 Restricted procedure

The general rule for the award of service contracts is the restricted invitation to tender. In general, all service contracts of a value equal to or higher than euros 200,000, must be subject to a restricted tender after publication of a pre-information notice (contract forecast) and a procurement notice as foreseen in point 11.1 "Advertising of contracts".

10.1.2 Negotiated procedure

However, service contracts may be awarded following a negotiated procedure, after prior agreement of the Commission, in the following cases:

- (a) When, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the restricted or simplified procedures referred to at points 11 and 12.2 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities.
- (b) When the supply of services is entrusted to public bodies, or to non-profit institutions or associations. Because non-profit institution or association cannot always be regarded non-profit suppliers, they should not automatically be contracted through a negotiated procedure. The negotiated procedure is only acceptable when the purpose of the contract has no overriding economic or commercial considerations, in particular whenever the envisaged action is institutional or, for example, of assistance to the population in the social field.

(c) For the extension of services already in progress. There are two scenarios for this:

Supplementary services not included in the main contract, but which, because of unforeseen circumstances, become 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 creating a major inconvenience to the contracting authority, and (ii) the cumulated cost of such services does not exceed 50% of the value of the main contract.

Additional services repeat services performed by the supplier under the main contract. This provision is subject to two conditions: (i) the first service 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 were clearly indicated in the publication of the procurement notice for the first services. The new services constitute, for example, the 2nd phase of a study or of an operation. Within this framework, only one extension of the contract is possible and only up to 100% of the original contract value and duration.

(d) When the invitation to tender remained unsuccessful, i.e., no tender was received which for qualitative and/or financial reasons could be retained. In this case, after cancellation of the call for tender, the contracting authority may negotiate with one or more tenderers of its choice, on condition that they participated in the call for tender, in as far as the initial conditions of the contract are not substantially modified (see point 6 "Cancellation of the procedure for the award of contracts"). If the contracting authority is not the Commission, the latter has to give its prior agreement before the contracting authority starts the negotiations.

(e) Where the contract concerned follows a design contest and must, under the applicable measures, be awarded to the successful candidate or to one of the successful candidates. In the latter case, all successful candidates shall be invited to participate in the negotiations.

10.2 Contracts of a value lower than euros 200,000

10.2.1 Framework contract and simplified procedure

Contracts of a value lower than euros 200,000 can be the subject either of a framework contract procedure, or of a simplified procedure with a minimum of 3 candidates, save for those cases where the negotiated procedure is followed according to point 10.1.2.

11. RESTRICTED INVITATION TO TENDER (APPLICABLE FOR CONTRACTS OF A VALUE EQUAL TO OR HIGHER THAN EUROS 200,000)

11.1 Advertising of contracts

In order to ensure the widest possible participation in competitive tendering and suitable transparency, the Commission has to publish pre-information notices (contract forecasts), and procurement notices for all service contracts with a value equal to or higher than euros 200,000.

11.1.1 Publication of pre-information notices (contract forecasts)

The Commission is required to publish once a year forecasts of service contracts to be awarded after invitations to tender for the twelve months following publication and, once every three months, any update to the above forecasts.

The pre-information 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. Service providers shall not at this stage submit expressions of interest.

The pre-information notices shall be published in the Official Journal of the EC, on the Internet and in all other suitable media.

11.1.2 Publication of procurement notices for service contracts

In addition to the publication of the pre-information notices, all service contracts of a value equal to or higher than euros 200,000 are the subject of a specific procurement notice, restricted procedure, published in the Official Journal of the EC, on the Internet and in all other suitable media. There must be a deadline of a minimum of 30 days between the publication of the pre-information notice and the procurement notice.

The text of the specific procurement notice must state clearly, precisely and completely the contracting authority and the subject of the contract. The maximum budget available for the intended operation must be included as well as the provisional timetable for implementation. 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 expressions of interest must be sufficient to permit proper competition. The minimum period for submitting expressions of interest is 30 days from the date of the notice's publication in the Official Journal of the EC and on the Internet. This period depends on the size and the complexity of the contract.

If the procurement notice is also published locally, it has to be identical to that published in the Official Journal of the EC and on Internet and it has to be published simultaneously. The publication in the Official Journal of the EC and on the Internet is ensured by the Commission. The possible local publication is ensured by the recipient.

11.2 Establishing shortlists

Would-be service providers, be it as individuals or as member of a consortium, must accompany their candidature with the information required in the notice so that their capacities to take to fulfil the contract in question can be assessed. The selection procedure involves:

- eliminating candidates who are ineligible (see point 2, "Eligibility for contracts") or fall into one of the situations of exclusion described in point 7, "Ethical Clauses".
- verifying the candidates' financial solidity and strength (financial and economic standing), as supported for instance by balance sheets and the turnover for the previous three years or other means.
- verifying the candidates' technical and professional capability, backed up in particular (i) (where applicable) by the candidates' annual average staffing levels and the importance and professional experience of their management and (ii) by references to the main services supplied in the field in question during 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 number of candidates to be shortlisted must be a minimum of four and a maximum of eight. Each call for expressions of interest, however, shall stipulate the minimum number and the maximum number of candidates which can be shortlisted.

Once a shortlist has been approved either by the Commission (centralised contracts) or by the recipient and the Commission (decentralised contracts) the shortlisted companies or consortia can neither join together nor enter into sub-contractual relationships amongst themselves.

The contracting authority may allow subcontracting with other companies provided that the tenderer in his tender clearly states that the subcontractor is eligible as provided for in point 2 "Eligibility for Contracts" and according to the conditions in point 7, "Ethical clauses" and finally, that subcontracting does not represent an excessive proportion of tender. This proportion must be defined in the tender dossier.

All unsuccessful candidates will be notified of the outcome of the selection procedure. Those candidates shortlisted will receive the letter of invitation to tender accompanied by tender dossier. The final shortlist will be published simultaneously on 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 with their tenders: the procedures to follow, the documents to provide, cases of inadmissibility, award criteria and their weightings, conditions for subcontracting, etc.

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

- Instructions to tenderers, including: (i) the type of contract (ii) the award criteria and their weightings, (iii) the possibility of interviews and the timetable for this, (iv) whether variant solutions are permitted, (v) the proportion of sub-contracting which may be permitted, (vi) the maximum budget available for the contract and (vii) the currency of tenders.
- The shortlist of candidates selected (mentioning the ban on association).
- General conditions for service contracts.
- Special conditions which amplify, supplement or derogate from the general conditions. In the event of contradiction, the special conditions override the general conditions.
- Terms of reference indicating the provisional timetable of the project and the provisional dates from which key experts must be available.
- Price schedule (for completion by the tenderer).
- Tender form.
- Contract form.
- Bank or other such institution guarantee forms for the payment of advances.

11.4 Award criteria

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

The technical criteria allow the quality of technical bids to be assessed. The two main types of technical criteria are methodology and the appraisal of the CVs (curriculum vitae) of the consultants proposed. The technical criteria may be divided into sub-criteria. Methodology, for example, may be examined in the light of the terms of reference, the optimum use of the technical and professional resources available in the recipient country, the work schedule, the appropriateness of the resources to the tasks, in the support proposed for the 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 sub-criteria. Their respective weightings depend on the nature of the services required. They 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 which are easy to identify in tenders and, if possible, quantifiable.

The technical evaluation grid giving the various criteria and sub-criteria and mentioning their weighting must appear in the tender documents.

11.5 Additional information during the procedure

The tender dossier should be sufficiently clear to prevent service providers invited to tender from having to request additional information during the procedure. If the contracting authority, either on its own initiative or in answer to the request of a tenderer, provides additional information on the contract, this information must simultaneously be sent in writing, by the contracting authority, to all other candidates invited to tender.

Tenderers may present their written questions at the latest 21 days before the deadline for submission of tenders. The contracting authority shall supply the answers to such questions to all candidates no later than 11 days before the final date fixed for the receipt of tenders.

11.6 Time limit 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. Only a reasonable time limit for submission of tenders can guarantee quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders.

The shortlisted candidates must be given at least 50 days to submit their offers, from the day the letter of invitation to tender is sent. However, in certain exceptional cases and with the prior authorisation of the Commission, the deadline may vary.

11.7 Period during which tenders are binding

Tenderers remain 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 award and conclude the contract. The period of validity of tenders is fixed at 90 days from the deadline for the submission of tenders.

In exceptional cases, before the period of validity expires, the contracting authority may ask the tenderers to extend the period for a specific number of days a maximum of 40 days.

In addition, the tenderer whose tender is retained must maintain the validity of his tender for 60 additional days as from the date of notification of the award of the contract.

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 measures (for example unsealed envelopes or references to an element of prices in the technical bid) constitutes an element of nonconformity and gives rise to the rejection of 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 proposed price.

The outer parcel will indicate:

- a) the address indicated in the tender documents for the submission of tenders,
- b) the reference to the call for tender to which the tenderer responds,
- c) if necessary, the numbers of the tendered lots,
- d) the indication "Not to open before the opening session of tenders", written in the language of the tender documents.

11.9 Opening of tenders

On receipt of the tenders the contracting authority shall register the receipt of tenders and shall issue a receipt for the tenders delivered by hand. The envelopes containing tenders must remain sealed and held in a safe place until their opening.

Tenders are opened and evaluated by a committee which must be composed of an odd number of members, minimum three members, each of whom must have the necessary technical and administrative expertise to assess the tenders. The members of the committee must sign a declaration of impartiality.

In the cases of centralised contracts, Financial Control is systematically invited to the meetings of the evaluation committee.

In the case of decentralised contracts, the Commission is, as a general rule, represented in the observer capacity, by the delegation of the Commission accredited to the country concerned. The Commission representative receives a copy of received tenders.

Only tenders received no later than the date and time indicated in the tender dossier are taken into consideration for the evaluation.

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

The committee checks the conformity of tenders with the instructions given in the tender dossier. Any formal errors or major reservations which affect the performance of the contract or distort competition lead to the rejection of tenders concerned.

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

- the date, the time and place of the session;
- persons present at the session;
- the names of the tenderers who submitted tenders within the time limit;
- if tenders were submitted according to the system of the double envelope;
- if the originals of tenders were duly signed and if the required number of copies of technical tenders were sent;
- the names of any tenderers whose tenders were rejected for reason of non-compliance as noted during the opening session;
- the names of the tenderers who withdrew their tenders.

11.10 Evaluation of tenders

11.10.1 Evaluation of technical bids

Before the opening of tenders, the president of the committee makes sure that all the members of the committee have taken note of the technical evaluation grid specified in the tender dossier in order that all members of the committee will evaluate the tenders in a coherent way.

The committee then opens the technical bids, the price bids remaining sealed. The committee's technical members receive copy of the technical bids. When evaluating the technical bids, each member of the committee awards each bid a score out of a maximum of 100 points, in accordance with the technical evaluation grid (giving the exact technical criteria, the technical sub-criteria and their weighting) stipulated in the tender dossier (see point 11.4. "Award Criteria"). Under no circumstances may either the committee or

its members modify the technical evaluation grid which was communicated to the tenderers in the tender documents.

In practice, it is recommended that tenders be scored for a given criterion one after another, rather than scoring each tender after the other for all the criteria. Where 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 are awarded.

If variants are expressly permitted in the tender dossier, such variants should be scored separately.

Once the technical evaluation work is finished, the committee compares the points awarded by each member. In addition to giving his numerical score, the member must give reasons for his choice, and justify his scores to the committee. The committee discusses, and each member gives a final score to each technical bid. The final score is the average of the individual scores.

If interviews were envisaged in the tender dossier, the committee may interview the key members of the team of consultants proposed in the technically acceptable bids, after having established its written provisional conclusions and before concluding the evaluation of technical definitively. In this case, the consultants are interviewed by the committee, preferably collectively in the case of a team, and at intervals close enough to allow for comparisons. Interviews are conducted according to a standard model agreed beforehand by the committee and applied to all consultants or teams called to interview. The date and time of the interview shall be communicated to the tenderer at least ten days in advance. In case of force majeure on the side of the tenderer, a new date and time for the interview will be communicated to the tenderer.

At the end of these interviews, the evaluation committee, without modifying the composition or weighting of the criteria included in the technical evaluation grid, decides whether it is necessary to adjust the marks allocated to the experts who have been interviewed. These changes must be justified.

The scale of this procedure must remain within certain limits, because it entails considerable costs to the tenderers and to the contracting authority. A report is drawn up for the procedures, which may lead to a revision of the conclusions of the initial technical scores which were made on the basis of tender on file. If the contracting authority is the recipient, the Commission must agree on the need for interviews. The indicative timetable for these interviews must be given in the tender dossier.

Once the committee has made its final score for each technical bid, resulting from the arithmetic mean of the scores awarded by each technical member, tenders which did not receive the minimum score of 80 points are automatically eliminated. If no offer scores the minimum of 80 points, the tender procedure is deemed to have been unsuccessful.

The committee considers only tenders which obtained at least 80 points. Among these tenders, the best technical tender then receives 100 points. Other tenders receive points calculated according to the following equation:

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

11.10.2 Evaluation of price bids

Upon completion of the technical evaluation, the price bids of tenders which were not eliminated at the technical level are opened and countersigned by the members during the session. At the session, the committee must check that the bids do not contain arithmetical errors. Any errors are corrected without prejudice to the tenderer.

Comparison of the bids takes account of all contract costs (fees, direct or lump-sum costs, etc.), with the exception of costs repayable on presentation of supporting documents. The classification of these costs by the tenderer is required by the conditions of contract which includes a price schedule. The committee must nevertheless check the conformity of this classification and correct it where necessary. Fees are to be determined by the tenderer only.

Tenders exceeding the maximum budget allocated to the contract are eliminated.

The least expensive tender receives 100 points. Other tenders receive points calculated according to the following equation:

Points = (least expensive prices/prices tender of tender in question) x 100.

11.11 Award of the contract

11.11.1 Choice of service provider

The selection of the most economically advantageous tender is obtained by giving an 80/20 weighting to the technical quality and the price. To this end:

- the scores awarded to the technical bids are multiplied by a factor of 0.80
- the scores awarded to the financial bids are multiplied by a factor of 0.20

The bid receiving the greatest number of points as a result of the addition of the technical and price points is awarded the contract.

The entire procedure (technical and price evaluation) must be set down in a written record to be signed by all members of the committee and approved, either by the Commission (centralised contracts), or by the recipient (decentralised contracts). In the latter case, the recipient forwards to the Commission, for approval, the results of the evaluation of bids and a contract award proposal which the Commission approves or rejects.

The entire evaluation procedure, including the notification of the award of the contract to the successful tenderer, must be completed while the tenders are still valid. It is

important to bear in mind that the successful tenderer might no longer be in a position to confirm his tender (availability of consultants) if the evaluation procedure takes too long.

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

The evaluation reports and written records, in particular, are for official use only and may be communicated to neither the tenderers nor to any party other than the competent services of the recipient, of the Commission and to the supervisory authorities (Financial Control, Court of Auditors, etc.). Financial Control is systematically recipient of the minutes of selection and of award of the centralised contracts.

11.11.2 Notification of award of contract

Upon formal agreement of the Commission and before the period of validity expires, the contracting authority informs the successful tenderer, in writing, that his tender has been accepted. Moreover, it informs the other tenderers that their tenders were not accepted, by means of a standard letter. This letter indicates to the company the possible weaknesses in its tender and gives the detailed score of the company, together with the total score of each of the other tenderers.

Where a contract is awarded under a financing agreement, the contracting authority may not notify the successful tenderer unless the financing agreement has been concluded (see point 5: "Invitation to tender with suspensive clause").

Once the contract has been signed, the Commission publishes the result of the invitation to tenders (post-information notices) in the Official Journal, on Internet and in all other suitable media. The post-information notices have to indicate the number of received tenders, the date of the award of contract, the name and the address the contractor as well as the contract price.

11.11.3 Signing of the contract

Once the contract is signed by the contracting authority, the contract is sent to the successful tender who must countersign it within 30 days after reception and return it.

The contract must be dated. It cannot cover earlier services nor enter into force before the date of its signing by the parties. The parties are bound by the contract from the moment it is signed. Hence the importance of carefully fixing the date.

11.12 Approval of consultants

Where the Commission concludes the contract, it is required to inform the recipient, through the Delegation accredited to that country, of the name of the successful tenderer and the consultants proposed for its information and approval. Such a request is not a request for approval of the evaluation carried out by the Commission.

The recipient may not refuse approval unless it substantiates its objections to the experts in question in writing to the Delegation of the Commission, within a maximum of 30 days from the date of request for approval.

11.13 Provision and replacement of staff

Where the contract covers the provision of technical assistance staff, the contractor is bound to provide the staff specified in its tender. This specification may take various forms. The key staff (director of the project, long-term staff, administrator of the project, accountant, etc.) to be provided by the contractor are identified and named in the contract.

In the event that the company and/or proposed consultants deliberately conceal in their tenders the fact that all or part of the proposed key staff is not available on account of existing commitments lasting beyond the date from which the experts should be available, as specified in the tender dossier, the committee will be able to exclude them from the tender. In the event the contracting authority and the Commission learn that such facts have been concealed after the award of the contract, they may decide to cancel the award of the contract and either recommence the invitation to tender or to award the contract to the tender placed in second position by the committee. Such behaviour may result in the exclusion of the tenderer concerned from becoming a service provider in other Community contracts.

However, the contract must not only identify the key staff to be provided, but also their qualifications and experience. This is important if the contractor should wish to replace this personnel after the contract has been signed and concluded. This situation may arise even before performance of the contract has begun or while in progress. In both cases, the contractor must first seek the written agreement of the contracting authority, following the justification that he presents in support of this request for replacement. The contracting authority has 30 days from the date of the receipt of the request in which to give an answer.

The contractor must on his own initiative propose such a replacement in the following cases:

- (a) In the event of deaths, in the event of illness or in the event of accident of a member of staff.
- (b) If it becomes necessary to replace a member of staff for any other reasons beyond the contractor's control (e.g. resignation, etc.).

Moreover, in the course of performance, and on the basis of a written and justified request, the contracting authority can ask for a replacement if it considers that a member of staff is inefficient or does not perform his duties under the contract.

Where a member of staff must be replaced, the replacement must possess at least equivalent qualifications and experience, and the remuneration to be paid to the replacement cannot exceed that received by the member of staff who has been replaced.

Where the contractor is unable to provide a replacement with equivalent qualifications and/or experience, the contracting authority may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.

Additional costs incurred by the replacement of staff are the responsibility of the contractor. Where the consultant is not replaced immediately and it is some time before the new consultant takes up his functions, the contracting authority may ask the contractor to assign to the project a temporary consultant pending the arrival of the new consultant, or to take other measures to compensate for the temporary absence of the missing consultant. Whatever the case may be, the contracting authority makes no payment for the period of the consultant's/his replacement's absence.

12. AWARD OF CONTRACT FOR A VALUE LOWER THAN EUROS 200,000

12.1 Framework contract

For services contracts of a value lower than euros 200,000 and a duration of performance less than 12 months, the contracting authority can also choose to follow the system of framework contracts.

In the case of framework contracts, the Commission acting on behalf of all the recipients draws up, after a restricted invitation to tender (see previous point 11), lists of potential service providers, with a validity of 3 to 5 years, divided between several lots according to various technical sectors. It is therefore not necessary to draw up a short list each time the need for a specific contract arises.

When a specific contract - of a value lower than euros 200,000 and whose duration is less than 12 months - is presented, the Commission acting on behalf of the recipient concerned, addresses the profile of the consultants sought to 3 service providers who have a framework contract according to the list for the lot covering the field of required expertise.

Within 8 days, the three companies which have been contacted must propose consultants corresponding to the profile sought, at a fee level falling inside the margin offered at the time of the conclusion of the framework contract. The Commission departments choose the economically most advantageous tender and notify the selected contractor of its decision.

In order to assure equal competition between the companies retained for each lot of the framework contract, the Commission departments will address the companies included on the list corresponding to each lot on a roll-over basis.

12.2 Simplified procedure

Within the framework of a contract lower than euros 200,000, the contracting authority can award the contract by simplified procedure, without publication, provided recourse to the framework contract is either unsuccessful or impossible.

The contracting authority draws up the list of a minimum of 3 service providers, making use, in particular, of information available in the Commission's databases on consultants and consultancy firms (currently FIBU and JRC, in the future, a single database to be established by the SCR). The candidates selected receive a letter of invitation to tender with the tender dossier.

Submissions must reach the contracting authority at the address and at the latest on the date and time indicated in the invitation to tender. A minimum of 30 days must be given to the candidates selected as from the date of sending the letter of invitation.

Tenders must be submitted according to the double envelope system, one containing the technical bid, the other giving the price bid.

The tenders are opened and evaluated by a committee which must possess the necessary technical and administrative expertise. The members of the committee must sign a declaration of impartiality. After evaluation of tenders, the committee determines which is the most economically advantageous tender according to technical quality and to the tender price. If the contracting authority does not receive at least 3 valid offers, the tender is cancelled and must be reissued.

However, in the case of an order for services equal or inferior to 5,000 euros, the contracting authority can proceed directly on the basis of a single offer.

PART III

**SPECIFIC MEASURES APPLICABLE TO
SUPPLY CONTRACTS**

13. INTRODUCTION

Supply contracts concern the design, manufacture, delivery, assembly and commissioning of goods as well as all the other possible tasks envisaged in the contract such as maintenance, repairs, training, after-sales service, etc.

The supplier is any natural or legal person furnishing supplies. A supplier submitting a tender is known as a tenderer; and one invited to take part in a simplified procedure is a candidate.

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

The recipient submits the tender dossiers to the Commission for approval before their issue. On the basis of the decisions thus approved and in close consultation with the Commission, the recipient issues invitations to tender, receives tenders, chairs tender examination sessions and decides on the results of the invitations to tender. The recipient then submits the result of this examination and the contract award proposal to the Commission for agreement. Once the award is approved, it signs the contracts and notifies the Commission of them. The Commission must always be formally invited, and in general represented, when tenders are opened and evaluated.

14. PRINCIPLES GOVERNING THE PROCEDURES FOR THE AWARD OF CONTRACTS

14.1 Contracts of a value equal to or higher than euros 150,000

14.1.1 Open procedure

The general rule for the award of supply contracts is the open international invitation to tender following the publication of a procurement notice. The Commission acting on behalf of the recipient may also make use of a framework contract in case of repetitive acquisition of certain identical supplies.

14.1.2 Negotiated procedure

However, a negotiated procedure may be followed for supply contracts with the prior agreement of the Commission, in the following cases:

- (a) When, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open or simplified procedures referred to at points 15, 16 and 17 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities.

- (b) When the nature or particular characteristics of certain supplies so warrant, e.g., where the execution of the contract is exclusively reserved for holders of patents or licences to use.
- (c) For additional deliveries by the original supplier intended either as a partial replacement of supplies or installations, or as the extension of existing supplies or installations where a change of supplier would oblige the recipient to acquire material having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance.
- (d) When a public invitation to tender has been unsuccessful, i.e., where no qualitatively or financially worthwhile tender has been received. In this case, after cancellation of the invitation to tender, the recipient may, with the prior approval of the Commission, negotiate directly with the tenderers of its choice, who have participated in the invitation to tender, provided that the initial terms of the contract are not substantially modified (see point 6, "Cancellation of the procedure for the award of contracts").

14.2 Contracts of a value equal to or higher than euros 30,000 and lower than euros 150,000

14.2.1 Open procedure published locally

In this case, the measure is the award of contracts by public invitation to tender published locally (procedure where the supply procurement notice is published exclusively in the beneficiary country). In addition, the Commission publishes on the Internet the reference for these invitations to tender (file number, country, contracting authority and type of contract) with the address of the delegation where the companies can obtain further information.

14.2.2 Negotiated procedure

Moreover, the recipient, with the prior approval of the Commission, can award the supply contracts by resorting to a negotiated procedure in the situations provided for in point 14.1.2.

14.3 Contracts of a value lower than euros 30,000

14.3.1 Simplified procedure

The measure for the award of supply contracts for a value lower than euros 30,000 is the simplified procedure with 3 suppliers, without publication of a procurement notice. However, for an order of supplies equal or inferior to 5,000 euros, the contracting authority can proceed directly on the basis of a single offer.

15. OPEN INTERNATIONAL INVITATION TO TENDER (APPLICABLE FOR CONTRACTS OF A VALUE EQUAL TO OR HIGHER THAN EUROS 150,000)

15.1 Advertising contracts

In order to ensure the widest possible participation in invitations to tender as well as suitable transparency, open calls for tenders must be the subject of the publication of a procurement notice and of a post-information notice.

15.1.1 Publication of procurement notices for supply contracts

The procurement notice is published in the Official Journal of the EC, on the Internet and in all other suitable media. The publication in the Official Journal of the EC and on Internet is ensured by the Commission. The local publication is ensured by the recipient.

The notice must state clearly, precisely, and completely the contracting authority and the subject of the contract. If the procurement notice is also published locally, it must be identical to that published on Internet and appear at the same time.

The recipient and the Commission departments (delegations, the Commission's information offices in the Member States, Head Office) send to interested suppliers, in the beneficiary country and in Europe, the tender dossier for the contract in question.

15.2 Drafting and contents of the tender dossier

It is vital that tender dossiers be drafted carefully, 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 the candidates invited to tender need to present their tenders: procedures to be followed, documents to provide, cases of inadmissibility, award criteria, etc.

The responsibility for the development of the tender dossier falls, in general, to the recipient. It submits the tender dossier to the Commission for approval prior to issue. The file must contain the following documents:

- Instructions to the tenderers which must include, amongst others, (i) the selection and award criteria of the contract, (ii) whether variant solutions are permitted and (iii) the currency of tenders.
- General conditions for supply contracts.
- Special conditions which amplify, supplement or derogate from the general conditions. In the event of contradiction, the special conditions override the general conditions.
- Technical annex containing the possible plans, the technical data and the provisional timetable for the implementation of the contract.
- Price schedule (for completion by the tenderer).
- Tender form.
- Contract form.

- Banking (or other such institution) guarantee forms, for:
 - the tender (1% - 2% of the budget available for the contract),
 - the payments of advances, and,
 - the proper performance (10% of the value of the contract).

Unless warranted by the nature of the contract, technical specifications mentioning certain products of a given brand or origin and thereby favouring or excluding certain other products are prohibited. However, where products cannot be described in a sufficiently clear or intelligible manner, they may be identified by their commercial name, provided that it is envisaged that the equivalent supplies are also permitted.

15.3 Selection and award criteria

The selection criteria cover the capacity of the tenderer to carry out similar contracts. Thus, in certain cases, when the contract includes works or installation service components, the tender dossier can envisage selection criteria covering the tenderer's technical capability.

The award criteria, applicable to the technically acceptable offers, are the price of the tender and, in case after-sales service and/or training are required, the quality of these proposals.

15.4 Additional information during the procedure

The tender dossier must be sufficiently clear to prevent interested parties as far as possible from having to request additional information during the procedure. If the contracting authority, of its own initiative or in answer to the request of a tenderer, provides additional information on the tender dossier, it must simultaneously send this written information to all other tenderers.

If it proves impossible to identify the potential candidates or 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 point 15.1.1 "Publication of the supply procurement notices". The time limit for the submission of tenders may be extended to allow candidates to take account of the change.

Tenderers must present their written questions at the latest 21 days before the time limit for submission of tenders. The contracting authority shall supply the answers to such questions to all tenderers no later than 11 days before the final date fixed for the receipt of tenders.

15.5 Time limit 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. Only a reasonable time limit for the submission of tenders can guarantee quality of the tenders and allow truly competitive tendering. 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 fixed for receipt of tenders is 60 days. However, in certain exceptional cases and with the prior authorisation of the Commission, the deadline may vary.

15.6 Period during which tenders are binding

Tenderers remain bound by their tenders for the period specified by the tender dossier. This period must be sufficient to allow the contracting authority to examine the tenders, approve the proposal of award, notification of the award and the conclusion of the contract. The period of validity of tenders is fixed at 90 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, not exceeding 40 days.

In addition, the tenderer whose tender is retained must maintain the validity of his tender for 60 additional days from the date of notification of the award of the contract.

15.7 Submission of tenders

Each technical and financial bid must be placed inside a parcel or inside an outer envelope in a sealed single envelope bearing:

- a) the address for the 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 lots tendered for,
- d) the indication "Not to be opened before the tender opening session", written in the language of the tender dossier.

15.8 Opening of tenders

On receipt of the offers, the contracting authority must register the offers and provide a receipt for offers which have been hand delivered. Envelopes must remain sealed and held in safe place until they are opened.

Tenders are opened and evaluated by a committee which must be composed of an odd number of members, minimum three members, each of whom must have the necessary

technical and administrative expertise to assess the tenders. The members of the committee must sign a declaration of impartiality.

The tenders are opened in public by the evaluation committee on the date and at the time fixed in the tender dossier. The following will be announced at the public tender-opening session: the tenderers' names, the price bids made, the provision of the necessary tender guarantee, and any other formality which the contracting authority thinks appropriate.

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

Only tenders in envelopes received, at the latest, by the date and time specified in the tender dossier are considered at the time of the evaluation.

The aim of the opening of tenders is to verify that tenders are complete, if the necessary tender guarantee were provided, if documents were duly signed, and if tenders are, generally, in order.

A written record will be made of the tender-opening session. This will be countersigned by all the members of the evaluation committee and will state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers who have replied within the deadline;
- whether tenders were submitted in sealed envelopes, whether the originals of tenders were duly signed and the required number of copies of tenders were sent;
- the tender prices;
- the names of tenderers whose tenders were rejected as not complying with the requirements and which were noted during the opening session;
- the names of any tenderers who withdrew their tenders;
- any declarations made by tenderers.

15.9 Evaluation of tenders

Before conducting a detailed evaluation of tenders, the contracting authority checks if the tender is in conformity, in principle, with the requirements of the tender dossier.

A tender is deemed to comply if it respects 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 or which, in a substantial way, differ from the terms of the tender dossier, limit the rights of the contracting authority or the tenderer's obligations under the contract or distort the competition situation 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.

At the end of the evaluation of tenders, the evaluation committee adopts a judgement on the technical conformity of each tender and classifies tenders as technically admissible or not technically admissible. Where there are contracts which include after-sales services and/or training, the technical quality of these services is also evaluated at the technical evaluation of the offers.

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

15.10 Award of the contract

15.10.1 Choice of successful tenderer

(a) In the case of a supply contract without after-sales service, the only award criterion is the price. After all non-admissible tenders have already been eliminated, it is the least expensive admissible tender which is chosen, and the tenderer of this tender who is awarded the contract.

(b) In the case of a supply contract involving services such as after-sales service and/or training, the technical evaluation must take account of the quality of these services. After all non-admissible tenders have already been eliminated, it is the economically most advantageous tender which is chosen taking into account the technical quality of the services offered and taking into account the proposed price.

In both cases, if the selected tender exceeds the maximum budget allocated to the contract the arrangement foreseen in point 14.1.2 (d) shall apply.

The entire evaluation procedure must be set down in a written record to be signed by all the members of the evaluation committee. This report must give the reasons for exclusion of tenders deemed technically inadmissible and state in what respects they failed to comply with the required technical specifications. The beneficiary submits the results of the examination of the offers to the Commission for approval, together with a proposal for the winning tenderer, which the Commission accepts or rejects.

The entire evaluation procedure including notification of the successful tenderers must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might no longer be in a position to confirm his tender if the evaluation procedure takes too long.

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

The evaluation reports and written records, in particular, are for official use only and may be divulged neither to the tenderers, nor to any party other than the competent services of the recipient, of the Commission and the supervisory authorities (Financial Control, Court of Auditors, etc.).

15.10.2 Notification of the award of contract

After the Commission has given its approval and before the period of validity expires, the contracting authority informs the successful tenderer, in writing, that his tender has been accepted. It must also inform the other tenderers that their tenders were not retained by standard letter which states whether or not their offer was technically acceptable and indicates the relative technical weaknesses of their tender.

Where a contract is awarded under a financing agreement, the contracting authority may not notify the award of the contract unless the financing agreement has been concluded, (see point 5: "Invitation to tender with suspensive clause").

Once the contract has been signed, the Commission publishes the result of the invitation to tender (post-information notices) in the Official Journal, on Internet and in all other suitable media. The post-information notices must indicate the number of tenders received, the date of award of the contract, the name and the address the successful tenderer as well as the contract price.

15.10.3 Signing of the contract

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

The contract must be dated and may not cover earlier services, nor enter into force before the date of its signature by the parties. The signature of the contract constitutes the stage from which the signatory parties are bound for the performance of the contract, hence, the importance of carefully fixing the date.

16. THE OPEN INVITATION TO TENDER PUBLISHED LOCALLY (APPLICABLE FOR CONTRACTS OF A VALUE EQUAL TO OR HIGHER THAN EUROS 30,000 AND LOWER THAN EUROS 150,000)

When an invitation to tender is published locally, the supply procurement notice is published exclusively in the recipient's country. In addition, the Commission publishes on Internet the reference of the invitations to tender (file number, country, contracting authority and type of contract) with the address of the delegation where the companies can obtain further information.

It is important to point out that an open invitation to tender published locally must provide for the participation of other eligible suppliers in the same way as from local suppliers. Any condition aiming to restrict the participation of other eligible suppliers is prohibited (e.g., obligation for the latter to be registered in the beneficiary country, already having obtained contracts locally, etc.)

In this procedure, the minimum period between the date of publication of the procurement notice the local press and the deadline fixed for the receipt of tenders is set at 30 days.

The applicable measures within the framework of an open procedure, as set out in point 15, apply by analogy in the open procedure with a local publication.

17. SIMPLIFIED PROCEDURE (APPLICABLE FOR THE CONTRACTS OF A VALUE LOWER THAN EUROS 30,000)

For all the contracts of a value lower than euros 30,000, the contracting authority can award the contract by simplified procedure, without publication, after consultation of a minimum of 3 suppliers of its choice.

The contracting authority draws up the list of a minimum of 3 suppliers. The selected candidates receive a request for tenders on the basis of technical specifications which are also communicated to them. Tender guarantees are not requested in the invitation to tender dossier.

Tenders have to reach the contracting authority at the address and at the latest the date and time indicated in the request.

The contracting authority draws up an evaluation report of received tenders, specifying their technical conformity and the contractual conditions contained in the tenders. If the contracting authority does not receive at least 3 valid offers, the tender is cancelled and must be reissued.

However, in the case of an order for supplies equal or inferior to 5,000 euros, the contracting authority can proceed directly on the basis of a single offer.

PART IV

**SPECIFIC MEASURES APPLICABLE TO
WORKS CONTRACTS**

18. INTRODUCTION

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

The contractor is any natural or legal person who carries out work. A contractor submitting a tender is known as a tenderer, and one invited to take part in a restricted invitation to tender or a simplified procedure is known as a candidate.

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

The recipient submits the tender dossiers to the Commission for approval before their issue. On the basis of the decisions thus approved and in close consultation with the Commission, the recipient issues the invitations to tender, receives the tenders, chairs their examination and decides the results of the invitation to tender. The recipient then submits for approval the result of the examination and the contract award proposal to the Commission. Once the award is approved, it signs the contracts and notifies the Commission accordingly. The Commission must always be formally invited and will in general be represented at the time of the opening and at the time of the examination of tenders.

19. PRINCIPLES GOVERNING THE PROCEDURES FOR THE AWARD OF CONTRACTS

19.1 Contracts of a value equal to or higher than euros 5,000,000

19.1.1 Open procedure

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

19.1.2 Restricted procedure

In exceptional cases and after the agreement of the Commission, in view of the characteristic of certain works, a restricted invitation to tender procedure is possible. In this case, the publication of the constructional works procurement notice remains obligatory (preselection procedure) to allow for as wide a participation as possible.

19.1.3 Negotiated procedure

With the agreement of the Commission, works contracts may be awarded following a negotiated procedure, in the following cases:

(a) When, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or simplified procedures referred to at points 20, 21, 22 and 23 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities.

(b) For additional works, not included in the first contract, but which became necessary following through unforeseen circumstances for the carrying-out of the works, provided that the award is made to the contractor carrying out such works and only:

- where such works could not be technically or economically separated from the main contract without major inconvenience to the recipient,

- where such works, though they are separable from the execution of the original contract, are strictly necessary for the completion of the contract.

The aggregated amount of contracts awarded for additional works must not exceed 50% of the value of the main contract.

(c) Where the open invitation to tender has been unsuccessful, i.e., where no qualitatively or financially worthwhile tender has been received. In this case, after cancellation of the invitation to tender, the recipient may with the prior approval of the Commission, start direct negotiations with the contractors of its choice, who have already participated in the invitation to tender, provided the initial terms of the contract are not substantially modified (see point 6, "Cancellation of the procedure for the award of contracts").

19.2 Contracts of a value equal to or higher than euros 300,000 and less than euros 5,000,000

19.2.1 Open procedure published locally

The measure is the award of contracts after open invitation to tender published locally (procedure where the works procurement notice is published exclusively in the beneficiary country). In addition, the Commission publishes on Internet the reference of the tenders (file number, country, contracting authority and type of contract) with the address of the delegation where the companies can obtain further information.

19.2.2 Negotiated procedure

The recipient, with the approval of the Commission, can award the works contracts by resorting to the negotiated procedure in the situations provided for in item 19.1.3.

19.3 Contracts of a value lower than euros 300,000

19.3.1 Simplified procedure

The measure for the award of work contracts of a value less than euros 300,000 is the simplified procedure with 3 contractors, without publication of a procurement notice.

20. OPEN INTERNATIONAL TENDER (APPLICABLE FOR THE CONTRACTS OF A VALUE EQUAL TO OR HIGHER THAN EUROS 5,000,000)

20.1 Advertising of the contracts

In order to ensure the widest possible participation in invitations to tender as well as suitable transparency, open tenders must be the subject of the international publication of a procurement notice and of a post-information notice.

20.1.1 Publication of procurement notices for works contracts

The procurement notice is published in the Official Journal of the EC, on the Internet and in all other suitable media. The publication in the Official Journal of the EC and on Internet is ensured by the Commission. The local publication is ensured by the recipient.

The notice must state clearly, precisely and completely the contracting authority and subject of the contract. If the procurement notice is also published locally, it has to be identical to that published in the Official Journal of the EC and on Internet and must be published simultaneously.

The tender dossiers must be sent to interested contractors by the contracting authority. Normally, owing to their size and the cost of their reproduction, the tender dossiers for the works contracts are distributed against payment of a flat-rate sum by the consulting firms responsible for their drafting. It is mandatory for the firm who has been assigned to this task to sign a promise of confidentiality.

In addition, the tender dossiers are available for consultation at the recipient and at the Commission departments (delegation, the Commission's information offices in the Member States, Head Office).

20.2 Drafting and contents of the tender dossiers

It is vital that tender dossiers be carefully drafted not only for the sound functioning of the award procedure, but also 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 tenders: procedures to be followed, documents to provide, cases of inadmissibility, evaluation criteria, etc.

Responsibility in this regard falls, in general, to the recipient. It submits to the Commission for approval the tender dossier prior to issue. The tender dossiers comprise the following documents:

- Instructions to tenderers which must stipulate, inter alia, (i) the selection and award criteria of the contract, (ii) whether variant solutions are permitted and (iii) the currency of tenders.
- General conditions for the works contracts.
- Special conditions which amplify, supplement or derogate from the general conditions. In the event of contradiction, the special conditions override the general conditions.
- Technical annexes containing the plans and the technical data and the provisional timetable for the implementation of the contract.
- Price schedule (for completion by the tenderer) and the breakdown of prices.
- Tender form.
- Contract form.
- Bank (or other such institution) guarantee forms, for:
 - the tender (1% - 2% of the budget available for the contract),
 - the payments of advances, and,
 - the proper performance (10% of the value of the contract).

20.3 Selection and award criteria

The selection criteria cover the capacity of the tenderer to carry out similar contracts, in particular by reference to works carried out during the last years.

The selection thus being made and since inadmissible tenders have already been eliminated, the only award criterion for contract is the tender price.

20.4 Additional information during the procedure

The tender dossier should be sufficiently clear to prevent candidates as far as possible from having to request additional information during the procedure. If the contracting authority, on its own initiative or in answer to the request of a tenderer, provides additional information on the tender dossier, it communicates this in writing and simultaneously to all the other tenderers.

If it proves impossible to identify the potential candidates or tenderers in the case of an open invitation to tender, a notice setting out the changes to the tender dossier must be published as foreseen in point 20.1.1 "Publication of the works procurement notices. The time limit for the submission of tenders may be extended to allow candidates to take account of such a change.

Tenderers may present their written questions at the latest 21 days before the deadline for submission of tenders. The contracting authority shall supply the answers to such questions to all candidates no later than 11 days before the final date fixed for the receipt of tenders.

20.5 Time limit for submission of tenders

Tenders must reach the contracting authority at the address, and at the latest, the date and time indicated in the tender dossier. The time limit for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. 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 the receipt of tenders is 90 days. However, in certain exceptional cases and with the prior authorisation of the Commission, the deadline may vary.

20.6 Period during which the tenders are binding

Tenderers are bound by their tenders for the period specified by the tender dossier. This period must be sufficient to allow the contracting authority to examine the tenders, approve the proposal of award, the notification of award and the conclusion of the contract. The period of validity of tenders is 90 days from the deadline fixed 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 not exceeding 40 days.

Moreover, the tenderer whose tender is retained has to maintain the validity of his tender for 60 additional days from the date of notification of the award of the contract.

20.7 Submission of tenders

Each technical and financial bid has to be placed, inside a parcel or inside an outer envelope, in a sealed single envelope bearing:

- a) the address for submission of tenders as indicated in the tender dossier,
- b) the reference of the invitation to tender to which the tender is responding,
- c) where appropriate, the numbers of the lots tendered for,
- d) the indication "Not to be opened before the tender-opening session", written in the language of the tender dossier.

20.8. Opening of tenders

On receipt of the offers, the contracting authority must register the offers and provide a receipt for all offers delivered by hand. The envelopes containing the tenders must remain sealed and be held in a safe place until they are opened.

Tenders are opened and evaluated by a committee which must be composed of an odd number of members, minimum three members, each of whom must have the necessary technical and administrative expertise to assess the tenders. The members of the committee must sign a declaration of impartiality.

The tenders will be opened in public by the evaluation committee at the place and time fixed in the tender dossier. At the time of the public opening of tenders, the tenderers' names, the proposed prices, the existence of the necessary tender guarantee and any other formality that the contracting authority considers appropriate must be announced. Only tenders contained in the envelopes received, at the latest, by the date and time specified in the tender dossier are considered for examination.

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

Only tenders contained in the envelopes received, at the latest, by the date and time specified in the tender dossier are considered for examination.

The aim of the opening of tenders is to check that tenders are complete, whether the necessary tender guarantees were provided, whether documents were duly signed and if tenders in general are in order.

A written record will be made of the tender-opening session. This will be countersigned by all the members of the evaluation committee in which it is indicated:

- the date, the time and the place of the session;
- the persons present;
- the names of the tenderers who have replied within the deadline;
- whether tenders were indeed submitted in a sealed envelope, if the originals of tenders were duly signed and if the required number of copies of tenders were sent;
- the tender prices;

- the names of tenderers whose tenders were rejected as not complying with the requirements and which were noted during the opening session;
- the name of the tenderers who withdrew their tenders;
- any declaration made by the tenderers.

20.9 Evaluation of tenders

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

A tender is deemed to comply if it respects all the conditions, procedures and specifications in the tender dossier, without departing from or attaching restrictions. Substantial departures or restrictions are those which affect the scope, quality or implementation of the contract or which, in a substantial way, depart from the tender dossier or limit the rights of the contracting authority or the obligations of the tenderer under the contract and affect the competition situation for tenderers whose tenders do comply.

Tenders which do not conform with the tender dossier must be rejected by the contracting authority and may not subsequently be made to comply by corrections or by the removal of the deviations or restrictions.

At the end of the evaluation of tenders, the evaluation committee adopts a judgement on the technical conformity of each tender and classifies tenders as technically admissible or not technically admissible.

Once the technical evaluation has been completed, the evaluation committee checks that the price bids do not contain arithmetical errors. Any errors are corrected without penalty for the tenderer.

20.10 Award of contract

20.10.1 Choice of contractor

The choice of the successful tenderer corresponds to the tender which is economically most advantageous. The tenderer of this tender is declared the successful tenderer, provided this tender is lower or equal to the maximum budget allocated to the contract.

If the selected tender exceeds the maximum budget allocated to the contract the arrangement foreseen in point 19.1.3 (c) shall apply.

The entire evaluation procedure must be set out in a written record to be signed by all the evaluation committee members. This report must give the reasons for exclusion of tenders technically inadmissible and state in what respect they failed to comply with the required technical specifications. The recipient must transmit the evaluation report as well as the proposal for award of the contract to the Commission for approval.

The entire evaluation procedure, including the notification of the award of contract has to be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer may no longer be in a position to confirm his tender if the evaluation procedure takes too long.

The entire tender up to the notification to the contractor is strictly confidential. The decisions of the evaluation committee are collective and its deliberations are secret. The evaluation committee members are bound to secrecy.

The evaluation reports and written records, in particular, are for official use only and may be divulged neither to tenderers, nor to any party other than the competent services of the recipient, of the Commission and to the supervisory authorities (Financial Control, Court of Auditors, etc.).

20.10.2 Notification of the award of contract

After the Commission has given its approval and before the period of validity expires, the contracting authority informs the successful tenderer, in writing, that his tender has been accepted. Moreover, it informs the other tenderers that their tenders were not accepted by way of standard letter which states whether or not their offer was technically acceptable and indicates the relative technical weaknesses of their tender.

When a contract is awarded under a financing agreement, the contracting authority may not notify the award of the contract unless the financing agreement has been concluded, (see point 5: "Invitation to tender with suspensive clause").

Once the contract has been signed, the Commission publishes the result of the invitation to tender (post-information notices) in the Official Journal, on Internet and in all other suitable media. The post-information notices have to indicate the number of received tenders, the date of the award of the contract, the name and the address the successful tenderers as well as 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 accompanied by the performance guarantee.

The contract must be dated and may not cover earlier services, nor enter into force before the date of its signature by the parties. The signature of the contract constitutes the stage from which the signatory parties are bound for the performance of the contract, hence, the importance of carefully fixing the date.

21. RESTRICTED INVITATION TO TENDER (APPLICABLE FOR CONTRACTS OF A VALUE EQUAL TO OR HIGHER THAN EUROS 5,000,000)

In exceptional cases and after the agreement of the Commission, in view of the characteristic of certain works, a restricted invitation to tender procedure is possible. In this case, the publication of the works procurement notice, in the Official Journal of the EC, on the Internet and in all other suitable media, is obligatory (preselection procedure).

On the basis of the selection carried out at the end of this preselection procedure, and with the agreement of the Commission, a list of companies which will be invited to tender is drawn up by the contracting authority.

The contracting authority sends the invitation to be tendered with the tender documents only to the candidates selected on the shortlist.

The minimum period for receipt of tenders may not be less than 60 days as from the date of sending off the invitation letter to tender.

The applicable measures within the framework of an open procedure, as foreseen as in point 20, apply by analogy to the restricted procedure for works contracts.

22. OPEN INVITATION TO TENDER PUBLISHED LOCALLY (APPLICABLE FOR CONTRACTS OF A VALUE EQUAL TO OR HIGHER THAN EUROS 300,000 AND LESS THAN EUROS 5,000,000)

In the case of an invitation to tender published locally, the works procurement notice is published exclusively in the recipient's country, save where the Commission is the contracting authority acting on behalf of the recipient. In addition, the Commission publishes on Internet the reference of the tenders (file number, country, contracting authority and type of contract) with the address of the delegation where the companies can obtain further information.

It is important to point out that an open invitation to tender published locally has to guarantee the participation of other eligible contractors in the same way as for the local companies. Any condition aiming to restrict the participation of other eligible contractors is prohibited (ex: obligation for the latter to be registered in the beneficiary country, already having obtained contracts locally, etc.)

In this procedure, the minimum period between the date of publication of the procurement notice in the local press and the deadline for the receipt of tenders is fixed at 60 days.

The applicable measures within the framework of an open procedure, as foreseen as in point 20, apply by analogy in the open procedure with a local publication.

23. SIMPLIFIED PROCEDURE (APPLICABLE FOR CONTRACTS OF A VALUE LOWER THAN EUROS 300,000)

For all the contracts of a value lower than euros 300,000, the contracting authority can award the contract by simplified procedure, without publication, after consultation of a minimum of 3 contractors of its choice.

The contracting authority draws up the list of a minimum of 3 contractors. The candidates selected receive a letter of invitation to submit a tender on the basis of specifications.

Tenders have to reach the contracting authority at the address, and at the latest, the date and time indicated in the invitation to tender. A minimum 30 day period from the date of sending off the invitation letter has to be given to the selected candidates.

The opening and the evaluation of tenders are made by an evaluation committee empowered with the necessary technical and administrative expertise. The evaluation is made in the same way as in the case of an open invitation to tender. If the contracting authority does not receive at least 3 valid offers, the tender is cancelled and must be reissued.

However, in the case of an order for works equal or inferior to 5,000 euros, the contracting authority can proceed directly on the basis of a single offer.

ANNEXES

**ANNEX 1
COMPETITION RULES**

SERVICES	SUPPLIES	WORKS
<p style="text-align: center;">$x \geq 200,000 \text{ €}$ Restricted international tender. 4 to 8 service providers invited.</p>	<p style="text-align: center;">$x \geq 150,000 \text{ €}$ Open international tender.</p>	<p style="text-align: center;">$x \geq 5,000,000 \text{ €}$ 1. Open international tender. 2. Restricted international tender (special case).</p>
	<p style="text-align: center;">$30,000 \text{ €} \leq x < 150,000 \text{ €}$ Open local tender.</p>	<p style="text-align: center;">$300,000 \text{ €} \leq x < 5,000,000 \text{ €}$ Open local tender.</p>
<p style="text-align: center;">$x < 200,000 \text{ €}$ 1. Framework contract, or 2. Simplified procedure after consultation with at least 3 service providers. 3. $x \leq 5,000 \text{ €}$: one single offer.</p>	<p style="text-align: center;">$x < 30,000 \text{ €}$ 1. Simplified procedure after consultation with at least 3 suppliers. 2. $x \leq 5,000 \text{ €}$: one single offer.</p>	<p style="text-align: center;">$x < 300,000 \text{ €}$ 1. Simplified procedure after consultation with at least 3 contractors. 2. $x \leq 5,000 \text{ €}$: one single offer.</p>

ANNEX 2

DEFINITIONS

Commission: The Commission of the European Communities

Contracting Authority: The Commission, or the State, or the legal person governed by public or private law which concludes the contract as set out in the Financing Agreement.

Study contract: A service contract concluded between a supplier and the Contracting Authority including studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies, evaluations and audits.

Technical assistance contract: A service contract concluded between a supplier and the Contracting Authority when the supplier is called on to play an advisory role, to manage or supervise a project, to provide the consultants specified in the contract, or to perform as a procurement agent.

Supply contract: A contract concluded between a supplier and the Contracting Authority for the purchase, lease, rental or hire-purchase, with or without options to buy, of goods, with the possible inclusion of other possible tasks such as commissioning and installation, maintenance, repairs, training, after-sales service, etc.

Works contract: A contract concluded between a contractor and the Contracting Authority for the execution of works or the building of a structure.

Mixed contract: A contract concluded between a supplier and the Contracting Authority which at the same time comprises at least two different types of input, i.e., works, supply or services.

Framework contract: A contract awarded for an unspecified volume of homogenous services or supplies over a definite period of time.

Candidate: Any natural or legal person or group of such persons who submits a request to participate in a restricted tender.

Tenderer: Any natural or legal person or group of such persons submitting a tender, with a view to concluding a contract.

Successful tenderer: The tenderer selected after a procurement procedure.

Procurement agent: An agent who procures in the name and for the account of the Contracting Authority goods, services or works.

Open procedure: The procedure in which all natural or legal persons or group of such persons may present an offer following a procurement notice.

Restricted procedures: The procedure in which following a procurement notice, only the candidates invited by the Contracting Authority may present an offer.

Simplified procedure: The procedure in which without a procurement notice only the candidates invited by the Contracting Authority may present an offer (see Manual point 3.3)

Negotiated procedure: The procedure in which without a procurement notice the Contracting Authority consults with the candidate or candidates of his own choice and negotiates the contract conditions with one or several of them (see Manual points 10.1.2, 14.1.2 and 19.1.3).

Direct labour: Contracts performed through public or semi-public agencies or departments of the beneficiary state, when the state has the qualified management staff available in its national departments.

Suitable media: The publication in the Official Journal of the European Communities and on Internet is obligatory in all the cases specified in the Manual. Publication in the journals in the beneficiary country and where necessary other specialized journals may be necessary or recommended as the case may be.

Tender dossier: The document drafted by the Contracting Authority and which contains all necessary documents for the preparation and the presentation of an offer.

General Conditions: The general provisions which contains the contractual clauses of an administrative, financial, legal and technical nature with regard to the execution of the contract.

Special Conditions: The special provisions drafted by the Contracting Authority which form an integral part of the tender dossier and which contains any modifications to the General Conditions, the specific contractual clauses and the Terms of Reference (in a service contract) or the technical specifications (in a supply or works contract).

Terms of Reference: The statement issued by the contracting authority giving the definition of his requirements and/or objectives of the services, including, where applicable, the methods and means to be used and/or results to be achieved.

Evaluation committee: A committee which is composed of an odd number of members, minimum three members, each of whom must have the necessary technical and administrative expertise to assess tenders.

Day: Calendar day.

Time limits: Time limits shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period.

Conflict of interest: Any circumstances which impact upon the candidates', tenderers' or contractors' ability to provide professional, objective, and impartial advice or which prevent the contractor from holding the contracting authority's interests paramount at all times. Any consideration concerning future work opportunities, any conflict with past or present assignments of the candidates, tenderers or contractors, or any conflict with the candidates', tenderers' or contractors' own corporate interests. These limitations apply also to sub-contractors and the staff of the candidates, tenderers or contractors.

Economically most advantageous tender: The tender which is the best taking into consideration various criteria relating to the contract: for example, quality, technical merit, aesthetic and functional characteristics, technical assistance and after-sales service, delivery date, delivery period or period of completion, price; or the lowest price only. The criteria must be published in the procurement notice or in the tender dossier.

Breakdown of the overall price: The itemized list of rates and prices showing the build-up of the price in a lump sum contract.

ANNEX 3

REGULATIONS

- 1) Council Regulation (EC) n° 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) n° 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) n° 443/97 of 3 March 1997 on operations to aid uprooted people in Asian and Latin American developing countries (OJ L 63 of 8/3/97).
- 4) Council Regulation (EC) n° 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) n° 2259/96 of 22 November 1996 on development cooperation with South (OJ L 306 of 28/11/96).
- 6) Council Regulation (EC) n° 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) n° 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) n° 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) n° 2698/90 of 17 September 1990 amending Regulation (EEC) n° 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) n° 3800/91 of 23 December 1991 amending Regulation (EEC) n° 3906/89 in order to extend economic aid to include other countries in central and eastern Europe (OJ L 357 of 28/12/91) (Albania, Estonia, Lithuania, Latvia, less German Democratic Republic).

- 11) Council Regulation (EEC) n° 2334/92 of 7 August 1992 amending Regulation (EEC) n° 3906/89 in order to extend economic aid to include Slovenia (OJ L 227 of 11/8/92).
- 12) Council Regulation (EEC) n° 1764/93 of 30 June 1993 amending Regulation (EEC) n° 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) n° 1366/95 of 12 June 1995 amending Regulation (EEC) n° 3906/89 in order to extend economic aid to Croatia (OJ L 133 of 17/6/95).
- 14) Council Regulation (EC) n° 463/96 of 11 March 1996 amending Regulation (EEC) n° 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) n° 753/96 of 22 April 1996 amending Regulation (EEC) n° 3906/89 with a view to extending economic aid to Bosnia and Herzegovina (OJ L 103 of 26/4/96).
- 16) Council Regulation (EC) n° 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) n° 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) n° 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) n° 851/98 (OJ L 122 of 24/4/98).
- 19) Council Regulation (EC) n° 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) n° 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) n° 3062/95 of 20 December 1995 on operations to promote tropical forests (OJ L 327 of 30/12/95).

- 22) Council Regulation (EC) n° 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) n° 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) n° 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) n° 1659/98 of 17 July 1998 on decentralised cooperation (OJ L 213 of 30/7/98).