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**GENERAL REGULATIONS  
FOR WORKS, SUPPLY AND SERVICE  
CONTRACTS FINANCED BY THE  
EUROPEAN DEVELOPMENT FUND**

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## INTRODUCTION

### ARTICLE 1

#### Conditions

- 1.1 The award of Works, Supply and Service contracts financed from the resources of the Seventh (7th) European Development Fund (EDF) shall be governed by these General Regulations.
- 1.2 The performance of Works, Supply and Service Contracts financed from the resources of the Seventh (7th) European Development Fund (EDF) shall be governed by:-
  - a) the General Conditions applicable to each category of contract financed by the EDF, or
  - b) in the case of co-financed projects and programmes, or where derogation to third parties has been granted, or in accelerated procedures or in other appropriate cases, such other General Conditions as may be agreed by the African, Caribbean and Pacific (ACP) States concerned and the European Economic Community (EEC), i.e.:
    - i) the General Conditions prescribed by the national legislation of the ACP State concerned or its established practices regarding international contracts, or
    - ii) any other international General Conditions for contracts, and
  - c) the Special Conditions.
- 1.3 These General Regulations comprise the principles and conditions for participation in contracts, instructions to tenderers, and the principles and conditions for the award of contracts.
- 1.4 The General Conditions governing a particular category of contract comprise contractual clauses of an administrative, financial, legal and technical nature relating to the performance of contracts.
- 1.5 The Special Conditions applicable to each contract comprise:-
  - a) amendments to the General Conditions;
  - b) special contractual clauses;
  - c) technical specifications; and
  - d) any other matter related to the contract.

## ARTICLE 2

### National Law

In all matters which are not covered by these General Regulations, the national law of the State of the Contracting Authority shall apply.

## DEFINITIONS AND PRINCIPLES

### ARTICLE 3

#### Definitions

3.1 The definitions which shall apply to these General Regulations are the following:

**EBC:** the European Economic Community.

**EDF:** the European Development Fund.

**ACP States:** the African, Caribbean and Pacific States which are signatories to the Convention.

**Commission:** the Commission of the European Communities.

**Delegate:** the representative of the Commission in the ACP States.

**Member States:** the Member States of the European Economic Community.

**Convention:** the relevant Convention between the ACP States and the EEC.

**Contracting Authority:** the State or the legal person governed by public or private law which concludes the contract or on behalf of which the contract is concluded.

**The State of the Contracting Authority:** the ACP State on whose territory the Works, Supply or Service contract is to be executed

**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 an invitation to tender procedure or, in the case of direct agreement contracts, the Tenderer who signs the contract.

**Supervisor:** the government department, legal person governed by public law, or the natural or legal person designated by the Contracting Authority in accordance with the law of the State of the Contracting Authority, who is responsible for directing and/or monitoring the performance of the contract, and to whom the Contracting Authority may delegate rights and/or powers under the contract.

**Supervisor's Representative:** any natural or legal person, designated by the Supervisor as such under the contract and empowered to represent the Supervisor in the performance of his functions, and in exercising such rights and/or powers as have been delegated to him. Accordingly, where functions, rights and/or powers of the Supervisor are delegated to the Supervisor's Representative, references to the Supervisor include the Supervisor's Representative.

**Works:** the temporary and permanent works to be carried out under the contract.

**Supplies:** all items which the Supplier is required to provide to the Contracting Authority, including, where necessary, services such as installation, testing, commissioning, provision of expertise, supervision, maintenance, repair, training and other such obligations connected with the items to be provided under the contract.

**Services:** tasks to be performed by the Consultant under a service contract such as studies, designs, provision of technical assistance and training.

**Plant:** machinery, apparatus, components and all items to be provided or incorporated under the contract.

**Equipment:** appliances and other machinery, and where applicable under the law and/or practice of the State of the Contracting Authority, the temporary structures on the work site, required for carrying out the contract but excluding plant or other items required to form part of permanent Works.

**Bill of Quantities:** the document containing an itemised breakdown of the tasks to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price.

**Price Schedule:** the completed schedule of prices, including the breakdown of the overall price, submitted by the Tenderer with his tender, modified as necessary, and forming a part of the unit price contract.

**Breakdown of the Overall Price:** the itemised list of rates and prices showing the build-up of the price in a lump sum contract, but which does not form part of the contract.

**Tender Price:** the sum stated by the Tenderer in his tender for carrying out the contract.

**Contract Price:** the sum stated in the contract representing the initial estimate payable for carrying out the Works, Supplies or Services, or such other sum as ascertained at the end of the contract as due under the contract.

**Drawings:** drawings provided by the Contracting Authority and/or by the Tenderer in connection with the tender.

**Day:** calendar day.

**Time Limits:** those periods in the contract which 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.

**Writing:** any handwritten, typewritten or printed communication, including telex, cable and facsimile transmission.

**Communications:** certificates, notices, orders and instructions issued under the contract.

**National Currency:** the currency of the State of the Contracting Authority.

**ECU:** European Currency Unit.

**Foreign Currency:** any permissible currency within the meaning of these General Regulations which is not the National Currency, and which has been indicated in the tender.

**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.

**Companies or Firms:** companies or firms constituted under civil or commercial law, including corporations, whether public or otherwise, co-operative societies and other legal persons and partnerships governed by public or private law, save for those which are non-profit making, formed in accordance with the law of a Member States or an ACP State and whose statutory office, central administration or principal place

of business is in a Member State or ACP State; however a company or firm having only its statutory office in a Member State or an ACP State must be engaged in an activity which has an effective and continuous link with the economy of that Member State or ACP State.

- 3.2 The headings and titles in these General Regulations shall not be taken as part thereof or be taken into consideration in the interpretation of these Regulations.
- 3.3 Where the context so permits words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.
- 3.4 Words importing persons or parties shall include firms and companies and any organization having legal capacity.

#### ARTICLE 4

##### Eligibility

- 4.1 Save where a derogation is granted in accordance with the Convention and/or Article 6:-
- a) participation in the invitations to tender and in award of contracts financed by the EDF shall be open on equal terms to:-
    - i) natural persons, companies or firms or public or semi-public agencies of the ACP States and the EEC;
    - ii) cooperative societies and other legal persons governed by public or private law, save for those which are non-profit-making, of the EEC and/or of the ACP States;
    - iii) joint ventures or groupings of ACP and/or EEC companies or firms.
  - b) Supplies must originate in the EEC and/or the ACP States. The concept of origin for the purpose of implementing this article will be assessed by reference to the relevant international agreements.
- 4.2 Natural persons, companies or firms shall not be eligible for the award of contracts where:-
- a) they are bankrupt;
  - b) payments to them have been suspended in accordance with the judgment of a court other than a judgment declaring bankruptcy and resulting, in accordance with their national laws, in the total or partial loss of the right to administer and dispose of their property;



- c) legal proceedings have been instituted against them involving an order suspending payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property;
- d) they have been convicted, by a final judgment, of any crime or offence concerning their professional conduct;
- e) they are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender;
- f) they are in breach of contract on another contract with the Contracting Authority.

4.3 To be eligible for participation in invitations to tender and the award of contracts, Tenderers shall provide evidence satisfactory to the Contracting Authority of their eligibility under Article 4, proof of compliance with the necessary legal, technical and financial requirements and of their capability and adequacy of resources to carry out the contract effectively. To this end all tenders submitted shall include the following information:-

- a) a document, dated less than 90 days previously, drawn up in accordance with the Tenderer's national law or practice certifying that:-
  - he meets the conditions laid down in Article 4.1;
  - none of the situations referred to in Article 4.2 applies to him;
- b) copies of original documents defining the constitution and/or legal status, and establishing the place of registration and/or statutory seat and, if it is different, the place of central administration of the company, firm or partnership or, if a joint venture, of each party thereto constituting the Tenderer;
- c) details of the experience and past performance of the Tenderer (or of each party to a joint venture) on contracts of a similar nature within the past five years, and details of other contracts in hand including details of the actual and effective participation in each such contract;
- d) where applicable, the major items of Equipment proposed for use in carrying out the contract;
- e) the qualifications and experience of key personnel proposed for administration and execution of the contract, both at and away from the place of execution of the contract;

- f) proposals relating to the nature, conditions and modalities of sub-contracting wherever the sub-contracting of any elements of the contract amounting to more than 10% of the Tender Price is envisaged;
- g) reports on the accounting and financial standing of the Tenderer (or of each party to a joint venture) such as profit and loss statements, balance sheets and auditor's reports for the past five years, an estimated financial projection for the next two years, and an authority from the Tenderer (or authorised representative of a joint venture) to seek references from the Tenderer's bankers; and
- h) information regarding any current legal or arbitration proceedings or dispute in which the Tenderer is involved. The information referred to shall be confined to matters of direct interest to the award or performance of the contract.

## ARTICLE 5

### Equality of Participation

The ACP States and the Commission shall take the necessary measures to ensure the widest possible participation on equal terms in invitations to tender for Works, Supply and Service contracts, including, as appropriate, measures to:-

- a) ensure publication of invitations to tender in the Official Journal of the EEC, the Official Journals of all the ACP States and any other appropriate information media;
- b) eliminate discriminatory practices or technical specifications which might stand in the way of widespread participation on equal terms;
- c) encourage co-operation between companies and firms of the Member States and of the ACP States, for example, by means of pre-qualification of joint ventures and consortia between companies and firms of the Member States and the ACP States;
- d) ensure that all the selection criteria are specified in the tender dossier; and
- e) ensure that the tender selected conforms to the requirements of the tender dossier and meets the selection criteria stated therein.

## ARTICLE 6

### Derogation

- 6.1 In order to ensure the optimum cost-effectiveness of the system, natural or legal persons from non-ACP developing countries may be authorised to participate in contracts financed by the EEC at the request of the ACP States concerned.
- 6.2 The ACP States concerned shall, on each occasion, provide the Delegate with the information needed for the EEC to decide on such derogations, particular attention being given to:-
- a) the geographical location of the ACP State concerned;
  - b) the competitiveness of contractors, suppliers and consultants from the EEC and the ACP States;
  - c) the need to avoid excessive increases in the cost of performance of contracts;
  - d) transport difficulties or delays due to delivery times or other similar problems;
  - e) technology that is the most appropriate and best suited to local conditions.
- 6.3 Participation by third countries, which are not parties to the Convention, in contracts financed by the EEC may also be authorised:-
- a) where the EEC participates in the financing of regional or inter-regional schemes involving such countries;
  - b) in the case of co-financed projects and programmes
  - c) in case of emergency assistance.
- 6.4 In exceptional cases and in agreement with the Commission, consultancy firms or experts which are nationals of third countries referred to in Article 6.3 may participate in Service contracts.

## ARTICLE 7

### Competition

- 7.1 Save as otherwise provided in Article 7, Works and Supply contracts financed from the EDF shall be concluded following an open invitation to tender and Service contracts shall be concluded following a restricted invitation to tender.
- 7.2 ACP States may, in accordance with the provisions in Article 7.3, 7.4 and 7.7, and in agreement with the Commission:-

- a) place contracts after restricted invitations to tender following, where applicable, a call for pre-qualification;
- b) conclude contracts by direct agreement;
- c) perform contracts through public or semi-public departments of the ACP States.

7.3 Restricted invitation to tender may be used:-

- a) where the urgency of the situation is established or where the nature, or certain particular characteristics of the contracts so warrant;
- b) for projects or programmes of a highly specialised nature;
- c) for large-scale contracts after pre-qualification;

7.4 Direct agreement contracts may be awarded in the following cases:-

- a) small-scale operations, or in urgent situations or short-term technical cooperation schemes;
- b) emergency assistance;
- c) operations assigned to individual experts;
- d) operations which are complementary to or necessary for the completion of others already in hand;
- e) where the execution of the contract is exclusively reserved for holders of patents or licences to use, process or import the articles concerned;
- f) following an unsuccessful invitation to tender.

7.5 The following procedure shall apply to restricted invitations to tender and direct agreement contracts:-

- a) in the case of Works and Supply contracts, a short-list of prospective Tenderers shall be drawn up by the ACP State concerned in agreement with the Delegate following, where applicable, a call for pre-qualification of tenders;
- b) in the case of Service contracts, the short-list of prospective Tenderers shall be drawn up by the ACP States, in agreement with the Commission, on the basis of the proposals of the ACP State concerned and the proposals submitted by the Commission;

c) in direct agreement contracts, the ACP State shall enter freely into such discussions as it may consider appropriate with the prospective Tenderers whom it has short-listed in accordance with Article 7.5 (a) and (b) and award the contract to the Tenderer whom it has selected.

7.6 For Service Contracts, due account shall be taken of the availability of suitable candidates residing in the ACP State or in the region.

#### **Direct Labour**

7.7 Contracts shall be performed by direct labour through public or semi-public agencies or departments of the ACP State concerned, where the State has the qualified management staff available in its national departments, in cases of emergency assistance, service contracts and all other operations the estimated cost of which is less than ECU 5 million.

7.8 The Community shall contribute to the costs of the department involved by providing the equipment and/or materials that it lacks and/or resources to allow it to acquire additional staff required in the form of experts from within the ACP States concerned or other ACP States. The participation of the Community shall cover only costs incurred by supplementary measures and temporary expenditure relating to execution strictly confined to the requirements of the project in question.

#### **Emergency Assistance Contracts**

7.9 Contracts under emergency assistance shall be undertaken in such a way as to reflect the urgency of the situation. To this end, for all operations relating to emergency assistance, the ACP State may, in agreement with the Delegate, authorize:-

- a) the conclusion of contracts by direct agreement;
- b) the performance of contracts by direct labour;
- c) implementation through specialized agencies;
- d) direct implementation by the Commission.

### **Accelerated Procedure**

- 7.10 With the aim of ensuring the rapid and effective implementation of projects and programmes, an accelerated tendering procedure shall be used except as otherwise indicated by the ACP State concerned, or by the Commission by way of a proposal for the agreement of the ACP State concerned. The accelerated procedure for issuing invitations to tender shall involve shorter Time Limits for tendering and the call for tender is confined to the ACP State concerned and the neighbouring ACP States, in accordance with the rules in force in the ACP State concerned. The accelerated procedure shall apply in the following cases:-
- a) Works Contracts: the estimated cost of which is less than ECU 5 million;
  - b) Emergency assistance: irrespective of the value of the contract.
- 7.11 By way of derogation, the National Authorising Officer, in agreement with the Delegate, may procure Supplies and/or Services of a limited amount where they are available in the ACP States concerned or neighbouring ACP States.
- 7.12 In order to speed up the procedure, the ACP States may request the Commission to negotiate, draw up and conclude Service contracts on their behalf directly or through its relevant agency.

## **ARTICLE 8**

### **Design Competition**

- 8.1 Where the Contracting Authority, for technical, aesthetic or financial reasons, considers it appropriate, an invitation to tender may be issued for participation in a design competition. The design competition shall take place on the basis of a schedule and criteria drawn up by the Contracting Authority. Further, the following shall apply:-
- a) The schedule may make provision for prizes to be awarded for the best proposals. Such prizes shall be specified by the schedule and awarded to the originators of the said proposals in accordance with the order established by the Contracting Authority. The Contracting Authority may withhold prizes if the proposals are not judged satisfactory.
  - b) Unless otherwise stated in the invitation to tender, copyright in the proposals submitted shall belong to the competitors. However, the Contracting Authority may, with the agreement of the competitors, use the proposals for further development.

- 8.2 The Contracting Authority may invite tenders for further investigation, study and design as may be necessary for further development of the project.
- 8.3 Subject to Article 8.1 (b) and 8.2, the Contracting Authority may invite tenders for detailed development of a competitor's design and the preparation of documents to the stage where tenders for supply or construction may be invited.
- 8.4 The Contracting Authority may invite tenders for design and build proposals on a turnkey basis. Such tenders shall be of the lump sum type. Tenders shall be assessed according to their aesthetic, practical, technical and economic merits. No prizes shall be offered.

## ARTICLE 9

### Preference

- 9.1 Measures shall be taken to encourage the widest participation of the natural and legal persons of ACP States in the performance of contracts financed by the EDF in order to permit the optimization of the physical and human resources of those States. To this end:-
- a) For Works contracts of value less than ECU 5 million, Tenderers of the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, shall be accorded 10% price preference where tenders of an equivalent economic, technical and administrative quality are compared;
  - b) For Supply contracts, irrespective of the value of these Supplies, Tenderers of the ACP States who offer supplies of at least 50% in contract value of ACP origin shall be accorded a 15% price preference where tenders of equivalent economic, technical and administrative quality are compared;
  - c) In respect of Service contracts, given the required competence, preference shall be given to experts, institutions or consultancy companies or firms from ACP States, where tenders of equivalent economic and technical quality are compared;
  - d) where sub-contracting is envisaged, preference shall be given by the Successful Tenderer to natural persons, companies and firms of the ACP States capable of performing the contract required on similar terms.
- 9.2 The threshold and the percentages referred to in Article 9.1 may be altered on the basis of the relevant Convention.

## ARTICLE 10

### Types of Contract

10.1 Contracts may be one of the following:-

- a) lump sum contracts, where an all-in price shall cover the whole of the Works, Supplies and Services which are the subject of the contract;
- b) unit-price contracts, where the Works, Supplies and Services shall be broken down on the basis of the Bill of Quantities and the proposed unit prices shall be indicated;
- c) cost-plus contracts, where the Works, Supplies and Services shall be priced on the basis of actual costs with an addition for overheads and profit;
- d) composite contracts, where the prices shall be fixed on the basis of at least two of the methods laid down in Article 10.1;
- e) provisional price contracts, where in the exceptional cases provided in Article 10.2, contracts are awarded without prices being predetermined after consultation and agreement between Contracting Authority and the Tenderer, and paid for in the manner agreed.

10.2 The award of a provisional price contract, may only be made:-

- a) where the contract is of a complex nature or involves new techniques presenting considerable technical hazards which necessitate commencement before all conditions of execution can be determined;
- b) in the event of exceptional and unforeseeable circumstances, such as where the contract is urgent or the nature and means of execution are difficult to determine.

10.3 Except for provisional price contracts, contracts shall be awarded on the basis of predetermined prices. These prices may be lump-sums or unit prices.

10.4 The instructions to Tenderers shall:-

- a) state the type of contract;
- b) for cost-plus contracts, state the rules for calculating the costs, overheads and profit;
- c) for composite contracts, state the methods which are to be used for calculating amounts to be paid under the contract.



## ARTICLE 11

### Technical Specifications and Standards

- 11.1 The technical specifications and methods of testing, checking, acceptance and calculation in each contract, may be defined in order of precedence, by reference to the common standards accepted by the EEC and the ACP State, or the national standards of the ACP State, or of a Member State, or any other standard, including international standards.
- 11.2 Unless it can be justified by the subject of the contract, technical specifications which mention products of a specific make or source, or a particular process, and which therefore favour or eliminate certain products, shall be prohibited. Such prohibition shall cover trade marks, patents or types, or a specific origin or production. However, where products or processes cannot be specified in terms which are sufficiently precise and intelligible, they may be named, provided that the words "or equivalent" are added.

## ARTICLE 12

### Notices and Written Communications

- 12.1 Unless otherwise specified in the Special Conditions, Communications between the Contracting Authority and/or the Supervisor on the one hand, and Tenderers or the Successful Tenderer on the other hand, shall be sent by post, cable, telex, facsimile transmission or personal delivery, to the appropriate addresses designated by these parties for the purpose.
- 12.2 If the sender requires evidence of receipt, he shall state such requirement in his Communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the Communication. In any event, the sender shall take all the necessary measures to ensure receipt of his Communication.

## INVITATION TO TENDER

## ARTICLE 13

### Notice of Invitation to Tender

- 13.1 A Contracting Authority wishing to award a contract by open tendering procedure or by restricted tendering procedure with pre-selection shall make known its intention by means of a notice published by the Commission in the Official Journal of the EEC and in all the Official Journals of the ACP States and any other appropriate information media.

13.2 The Contracting Authority shall submit before issuing invitations to tender the invitation to tender dossier to the Delegate.

13.3 The Delegate shall:-

- a) for accelerated procedures, direct agreement contracts, and contracts for emergency assistance, approve, before the Contracting Authority issues them, the invitation to tender dossier within 30 days of its submission to him by the Contracting Authority;
- b) for all cases other than those mentioned in Article 13.3 (a) above, transmit the invitation to tender dossier to the Commission for approval within 30 days of its submission to him by the Contracting Authority.

13.4 In an open tendering procedure, the notice of invitation to tender shall state:-

- a) the subject, purpose and extent of the contract; if the contract is subdivided into several lots, the order of magnitude of the different lots and the possibility of tendering for one, several or all of the lots; the possibility of submitting variant solutions where authorised; if the notice concerns an invitation to tender for a design-and-build competition, the design criteria and other requirements necessary for Tenderers to understand the scope of the contract and to tender accordingly;
- b) eligibility criteria and any important or unusual tender evaluation criteria (e.g. margin of preference);
- c) the location of the project, the source of financing, the period of performance, and in the case of Supplies contracts, the place of delivery and/or installation;
- d) the Contracting Authority, and the name and address of the department awarding the contract;
- e) the method of tendering, the place where the tender dossier may be inspected and the terms on which it may be acquired;
- f) the period, reckoned from the final date fixed for receipt of tenders, during which Tenderers shall remain bound by their tenders;
- g) the final date and time fixed for receipt of tenders, the address to which they must be sent, the number of copies required and the language in which they must be drawn up;
- h) where appropriate, the place, date and time for the opening of the tenders;

- i) the various guarantees which the Contracting Authority requires, the amount of each guarantee, where appropriate expressed as a percentage of the tender, and the time when such guarantees are to be presented;
  - j) the address of the departments from which tenderers may obtain any further information.
- 13.5 In a restricted tendering procedure with pre-selection, the notice shall state in particular:-
- a) the method of tendering and the information referred to in Article 13.4(a), (b), (c), (d) and (g);
  - b) the terms on which the tender dossier may be acquired;
  - c) where appropriate, the final date for the issue of invitations to tender by the Contracting Authority;
  - d) the information to be given in the request to participate, in the form of statements and documents concerning the applicant's standing and ability which the Contracting Authority requires in accordance with Article 4 together with the economic and technical conditions each applicant must fulfil if he wishes to be considered for selection.

#### ARTICLE 14

##### Pre-selection of Tenderers

- 14.1 In a restricted tender with pre-selection, a short-list of prospective Tenderers shall be drawn up in accordance with Article 14.2 following, where applicable, a call for pre-qualification after publication of the notice referred to in Article 13.1.
- 14.2 The short-list shall be drawn up, inter alia, in accordance with the provisions of Article 7.5 and the necessary qualifications to perform the intended project, in particular the provisions of Article 4.
- 14.3 The Contracting Authority shall select the prospective Tenderers on the basis of the information given by them in the request made pursuant to Article 13.5 (d). The prospective Tenderers selected shall receive an invitation to tender stating in particular the following:-
- a) the information given in Article 13.4 (e), (f) (g), (h), (i), and (j)
  - b) a reference to the notice mentioned in Article 13.5;
  - c) any amendments, as referred to in Article 18.

## ARTICLE 15

### Direct Agreement Contracts

- 15.1 For direct agreement contracts, the Works, Supplies or Services which are to be the subject of the contract shall be defined after negotiations between the Contracting Authority and the Tenderer.
- 15.2 Where the procedure by direct agreement is applied, the candidate shall be chosen by the ACP State on the basis of a short list drawn-up in accordance with Articles 4.4 and 7.5.
- 15.3 On completion of the negotiations, the Contracting Authority shall draw up and notify the text of the contract in accordance with Article 38.
- 15.4 The Contracting Authority and the Tenderer shall agree on a date which shall be deemed to be the date of the conclusion of the contract. This date shall be set out in the text of the contract.

## TENDER DOSSIER

## ARTICLE 16

### Contents of Tender Dossier

- 16.1 The invitation to tender dossier shall contain details of the way in which tenders are to be presented and the criteria for selection of the successful tender. In addition to the invitation to tender, the tender dossier may contain any or all of the following:-
  - a) the instructions to Tenderers;
  - b) the General Conditions applicable to the particular category of contract;
  - c) the Special Conditions for the specific contract;
  - d) the technical specifications and/or Terms of Reference;
  - e) the form for the Breakdown of the Overall Price in the case of lump sum contracts, or the form for the unit Price Schedules and/or the Bill of Quantities in the case of unit price contracts;
  - f) the schedule of requirements or additional information;
  - g) the Drawings;
  - h) the tender form;

- i) the tender guarantee form;
- j) the contract form;
- k) the performance guarantee form; and
- l) a description of the tender evaluation system giving the criteria for evaluation and the weight attached to the individual criteria.

16.2 In addition, and depending on the nature of the contract, the tender dossier shall be accompanied by a "Note of General Information". This Note will be prepared by the Delegate in consultation with the ACP State and subject to the approval by the latter. It will be provided for information only and shall not form part of the contract. It shall include all or part of the following:-

- a) geographical notes on the region in which the place of execution of the contract is located including notes on the climate;
- b) location of the place of execution of the contract, access routes and other infrastructures which may be used in the performance of the contract;
- c) information concerning customs, tax and price laws and regulations;
- d) wage scales and legal or contractual charges payable by employers, including an indication of minimum or normal wage levels laid down by the law of the State of the Contracting Authority or customary in the place where the contract is to be performed, corresponding to the main local categories of labour required for the contract;
- e) information on the exchange control laws and regulations and the monetary and banking system of the State of the Contracting Authority;
- f) any other information relating to the laws and regulations of the State of the Contracting Authority which govern the performance of contracts, including details as to the departments to which application should be made to obtain copies of those laws and regulations.

16.3 The Terms of Reference for Service contracts shall contain in particular:-

- a) a description, which shall be as detailed as possible, of the object of the contract;
- b) factual details, such as data in the possession of the Contracting Authority, restrictions that are binding upon the Contracting Authority in observance of certain technical or other rules, and obligations laid down by the Contracting Authority;

- c) depending on the nature of the contract, preliminary draft studies or implementation schemes, and a draft contract, if available;
  - d) general documentation comprising, in particular, the laws and regulations relating to the technical field covered by the contract, or any other reference enabling access to such laws and regulations.
- 16.4 The Tenderer shall carefully examine all instructions, conditions, forms, terms, specifications and Drawings in the tender dossier. The Tenderer shall be solely responsible for the responses he provides to the requirements in the tender dossier and for any omission or errors in his responses. Failure to furnish all information required by the tender dossier or submission of a tender which is not responsive to the tender dossier in every respect, will be at the Tenderer's own risk and may result in rejection of his tender.

#### ARTICLE 17

##### Clarification of Tender Information

Where, in response to a Tenderer's queries or otherwise, information regarding the contract to be performed or other information which may affect the pricing of the tender is supplied to a Tenderer, such information shall also be issued in writing by the Contracting Authority to the other Tenderers, insofar as these are known, provided that information of a commercial nature relating to the acceptability of variant solutions shall not be issued to the other Tenderers. The Contracting Authority will respond only to those queries or requests for clarification which it receives at least 30 days prior to the deadline for the submission of tenders.

#### ARTICLE 18

##### Amendments to Tender Dossier

Any change made to the tender dossier during the tender period by the Contracting Authority shall be communicated forthwith in writing to all prospective Tenderers who have been provided with the tender documents, together with notice of any extension of the tender period which the Contracting Authority may consider necessary to enable Tenderers to take account of such a change.

## INSTRUCTIONS TO TENDERERS

### ARTICLE 19

#### Language

The tender, contract documents and all correspondence and documents relating to them shall be in the language stated in the instructions to Tenderers.

### ARTICLE 20

#### Contents of the Tender

- 20.1 The tender to be prepared and submitted by the Tenderer shall, in accordance with the requirements stated in the tender dossier, comprise:-
- a) the completed tender form and appendix thereto;
  - b) the tender guarantee;
  - c) the Breakdown of the Overall Price in the case of lump sum contracts, or the unit Price Schedule and/or the Bill of Quantities in the case of unit price contracts;
  - d) schedules of supplementary information;
  - e) the documents providing proof of the standing and ability of the Tenderer referred to in Article 4, save in the event of a restricted tendering procedure with pre-selection;
  - f) the authorised variant solutions, and any other elements required to be submitted in accordance with the instructions to Tenderers embodied in the tender dossier;
  - g) all information necessary to assess the tenders;
  - h) if the instructions to Tenderers specify that an after-sales service is required, a note indicating the means with which the Tenderer shall meet the obligations to provide such a service;
  - i) where appropriate, additional guarantees proposed by the Tenderer concerning, inter alia, the period of performance and the scope of work;
  - j) all information on any sub-contracting envisaged;  
and
  - k) the tender price and the method and the currencies of payment.

20.2 After-sales service shall be required for Supply contracts unless the nature of the Supplies do not justify such service. Where the Contracting Authority requires an after-sales service:-

- a) the Special Conditions shall specify the conditions and modalities of this service and its duration;
- b) the Successful Tenderer shall, unless the nature of the Supplies or relevant conditions do not so justify, establish within the State of the Contracting Authority the required after-sales service.

## ARTICLE 21

### Lots

21.1 In considering how a project may be carried out, account shall be taken of the advantage, for economic and technical reasons, of dividing the project into homogeneous lots which are as large as possible.

21.2 Where a project has been divided into lots, the instructions to Tenderers shall state:-

- a) the number of lots;
- b) the nature, location and size of each lot; and
- c) where appropriate, the minimum and maximum number of lots for which a Tenderer may tender.

21.3 The procedure for submitting a tender shall be as follows:-

- a) a Tenderer may submit a tender for each lot;
- b) unless the instructions to Tenderers provide otherwise, a Tenderer may include in his tender the overall rebate he would grant in the event of amalgamation of some or all of the lots for which he has submitted individual tenders;
- c) unless the instructions to Tenderers state that lots apportioned to the same Tenderer shall form a single contract, each lot shall form a separate contract;
- d) where lots are to be apportioned to different Tenderers, the invitation to tender dossier or the instructions to Tenderers may provide that the Tenderer for a particular lot shall ensure the coordination of the execution of all the lots.



## ARTICLE 22

### Co-operation with Third Parties

- 22.1 In order to enhance the ACP States' capacity to build up their technical skills and to improve the know-how of their consultants, co-operation partnership arrangements shall be encouraged between consultancy firms, consulting engineers, experts and institutions of the EEC and those of the ACP States. To this end, the Commission and the ACP States shall make every effort to:-
- a) encourage by means of temporary associations, sub-contracting or the use of experts who are nationals of the ACP States in teams employed by consultancy firms, consulting engineers or institutions in the EEC;
  - b) inform Tenderers in the tender dossier of the selection criteria and preferences provided for in these General Regulations, particularly those relating to the encouragement of the use of ACP human resources.
- 22.2 The Contracting Authority may, in the invitation to tender or during the negotiation of a contract, propose to prospective Tenderers the assistance of other firms, national experts or consultants to be selected by mutual agreement. This co-operation may take the form either of a joint venture, or of a sub-contract or of on-the-job training of trainees.
- 22.3 When the co-operation takes the form of:-
- a) a joint venture, Article 4.3 (b) shall apply;
  - b) a sub-contract, Article 4.3 (f) shall apply;
  - c) on-the-job training of trainees, the trainees proposed by the Contracting Authority must have basic skills consistent with effective participation in the on-the-job training tasks involved in the performance of the contract. The maximum number of trainees shall be stipulated in the Special Conditions. In the calculation of remuneration or Tender Prices, account shall be taken of any cost borne by the Tenderer as a result of the provision of on-the-job training for trainees. On-the-job training of trainees shall not under any circumstances limit the obligations of the Successful Tenderer with whom the contract is concluded, nor shall it impose any liability whatsoever on the Contracting Authority or the Supervisor.
- 22.4 The parties involved shall undertake to co-operate mutually and shall agree on the procedure for such co-operation and in particular the responsibilities arising from it.

## ARTICLE 23

### Independence of Tenderers

- 23.1 If a Tenderer in the case of Service contracts, has entered into a legal relationship with natural or legal persons who might participate in the carrying out of Works, or the provision of Supplies, which the services are intended to define or prepare, or if he otherwise maintains with them special relations likely to compromise his independence, he shall inform the Contracting Authority thereof in his tender, or at the time of negotiation of the contract, or whenever such circumstances arise before the award of the contract.
- 23.2 If, notwithstanding such information, a contract is concluded with the said Tenderer, the Contracting Authority shall reserve the right to exclude the natural or legal persons concerned from participating in carrying out such Works or providing such Supplies.

## ARTICLE 24

### Pricing of Tenders

- 24.1 The Tenderer shall provide the information required by the tender dossier for the pricing, make the necessary arithmetical calculations, sign the form of tender and attach it to his tender.
- 24.2 The total amount of the tender shall be written in figures and in words. In all cases where there is a discrepancy between a price stated in figures and also in words, the price stated in words shall prevail. Where the instructions to Tenderers so require, the following shall also be written in figures and in words:-
- a) the Breakdown of the Overall Price in the case of lump sum contracts;
  - b) the unit prices for each item in the Bill of Quantities and/or the unit Price Schedule in the case of unit price contracts;
  - c) in the case of a composite contract, the Breakdown of the Overall Price part as well as the Bill of Quantities and/or the Price Schedule for the unit price part.
- 24.3 Prices must correspond to the relative value of each item in relation to the total amount of the tender. Prices should not be of such a nature as to distort the comparison of tenders or to result in interim payments which are disproportionate to the value of the work done.

- 24.4 Tenders shall be expressed in the National Currency of the State of the Contracting Authority. The Tenderer may in addition express the equivalent value of his tender in either ecus or in the currency of the country in which he has his registered place of business. The conversion rate shall be that in force 30 days prior to the latest date fixed for the submission of tenders.
- 24.5 A Tenderer may request in his tender that a justified part, expressed as a percentage of the tender price, be paid directly to him in Foreign Currency. The justification required shall be assessed in the light of the verifiable facts as regards the real origin of the Works, Supplies or Service to be performed and the expenditure to which they give rise.
- 24.6 The price offered by the Tenderer shall take into account the tax arrangements applicable as set out in the Convention.

## ARTICLE 25

### Period of Validity

- 25.1 Tenderers shall remain bound by their tenders for the period prescribed by the Contracting Authority, pursuant to Article 13. Any tender valid for a shorter period may be rejected by the Contracting Authority. The period fixed by the Contracting Authority shall be sufficient to permit evaluation and comparison of tenders, for obtaining all necessary clearances and approvals, and for the notification of the award of contract. The validity period should normally not exceed 120 days from the final date fixed for the submission of tenders but it may vary depending on the nature and complexity of the contract.
- 25.2 In exceptional circumstances, prior to the expiry of the original tender validity period, the Contracting Authority may request the Tenderer for a specified extension in the period of validity. Tenderers agreeing to the request will neither be required nor permitted to modify their tenders, but will be required to extend the validity of their tender guarantees correspondingly. The provisions of Article 26 regarding discharge and forfeiture of the tender guarantee shall continue to apply during the extended period of tender validity.
- 25.3 The Successful Tenderer shall remain bound by his tender for a further period of 60 days following the receipt of the communication notifying him of his selection.

## ARTICLE 26

### Tender Guarantee

- 26.1 Unless otherwise provided in the instructions to Tenderers, Tenderers for Works and Supplies contracts shall, as an earnest of their tenders, provide a guarantee. The tender dossier shall specify the amount of this guarantee which shall not be less than 1% of the amount of the tender, but shall in no case exceed 2%.
- 26.2 The tender guarantee shall be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance or bonding company, an irrevocable letter of credit or a cash deposit made with the Contracting Authority. If the tender guarantee is to be established in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank, insurance or bonding company, approved by the Contracting Authority and established in an ACP or a Member State. The bank guarantee or the bond shall be in strict conformity with the tender guarantee form included in the tender dossier or, in the case of direct agreement contract, in the Special Conditions. Whatever form it takes, the guarantee shall be independent and payable on first demand and valid for at least 60 days beyond the tender validity period.
- 26.3 Any tender not accompanied by an acceptable tender guarantee may be rejected by the Contracting Authority.
- 26.4 The tender guarantees of Tenderers who have not been selected will be released not later than 60 days after the expiration of the tender validity period, as extended where appropriate in accordance with Article 25.2, or upon the award of the contract, whichever is earlier.
- 26.5 The tender guarantee of the Successful Tenderer shall be discharged when the Tenderer has signed the contract and furnished the required performance guarantee, to the satisfaction of the Contracting Authority.
- 26.6 The tender guarantee may be called up without notice:-
- a) if a Tenderer withdraws his tender during the period of tender validity of his tender;
  - b) in the case of the Successful Tenderer, if he fails within the specified Time Limit to sign the contract or furnish the required performance guarantee.

## ARTICLE 27

### Variant Solutions

- 27.1 Unless otherwise stated in the instructions to Tenderers, Tenderers may submit a tender based on a variant solution. The instructions to Tenderers must specify any limitations, design criteria and other requirements applicable to a variant solution. Unless stated otherwise in the instructions to Tenderers, the submission of a tender based on a variant solution is conditional upon the submission of a tender based on the conforming solution.
- 27.2 Variant solutions may not derogate from the requirements of these General Regulations. Tenders based on the tender dossier and those for variant solutions shall be evaluated simultaneously.
- 27.3 The instructions to Tenderers must state whether the Tenderer submitting a variant solution is to be responsible for the design of the variant solution, and if this is the case, must specify procedures, in particular for checking, revision and approval.
- 27.4 The submission of any variant solution shall comprise:
- a) an individual tender for the variant solution;
  - b) a demonstration of the benefit of the variant solution over the conforming solution, including quantifiable justification of any economic advantage;
  - c) a draft of the amendments to the technical provisions of the Special Conditions necessitated by the variant solution;
  - d) the Drawings and specifications provided for in the conforming solution, but not affected by the variant solution;
  - e) the Drawings and specifications affected by the variant solution;
  - f) a technical note on the conception of the variant solution and where appropriate, Drawings and the calculations;
  - g) for lump sum contracts, an itemised Breakdown of the Overall Price as modified by the variant solution;
  - h) for unit-price contracts, a Bill of Quantities and/or a Price Schedule as modified by the variant solution.

## ARTICLE 28

### Pre-tender Visit

- 28.1 The Tenderer is advised to visit and inspect the place where the contract is to be executed and its surroundings and obtain for himself, on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the place where the contract is to be executed shall be borne by the Tenderer.
- 28.2 The Tenderer and any of his personnel or agents will, so far as is practicable, be granted permission by the Contracting Authority to enter the place where the contract is to be executed for the purpose of such inspection, provided that the Tenderer, his personnel or agents will release and indemnify the Contracting Authority and its personnel and agents from and against all liability in respect thereof. Accordingly, the Tenderer will be responsible for any personal injury, whether fatal or otherwise, loss or damage which, but for acting on such permission, would not have arisen.
- 28.3 Without prejudice to the laws and regulations on immigration of the State of the Contracting Authority, the ACP State concerned shall grant an entry permit to any person who substantiates his eligibility in terms of Article 4 as a participant in an invitation to tender, or any agent of such person, for the purpose of carrying out visits enabling him to prepare his tender. This permit shall expire on the day following the end of the tender validity period.

## ARTICLE 29

### Signing of Tenders

- 29.1 The tender shall be signed by the Tenderer or by his duly authorised agent as required by the instructions to Tenderers. It shall be drawn up in a single original bearing the word "original". The number of copies to be supplied by the Tenderer shall be stated in the instructions to Tenderers. Copies shall be signed in the same way as the original and shall bear the word "copy".
- 29.2 A tender submitted by an agent must state the name of the principal on whose behalf he is acting. No agent may represent more than one Tenderer. Agents shall attach to the tender the simple contract or notarial act or deed which empowers them to act on behalf of Tenderers. A signature to a deed must be certified in accordance with the national law of the State of the principal.
- 29.3 If a Tenderer is a joint venture or consortium of two or more persons, the tender must be single with the object of securing a single contract, each person must sign the tender, and all such persons shall be jointly and severally bound by the tender and any resulting contract according to the law of the State of the

Contracting Authority, and shall designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or constitution of the joint venture or consortium shall not be altered without the prior consent in writing of the Contracting Authority.

- 29.4 The tender may be signed by the representative of the joint venture or consortium only if he has been expressly so authorized in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed is attached to the tender. All signatures to the authorizing instrument must be certified in accordance with the national laws and regulations of each of the parties comprising the joint venture or the consortium together with the Powers of Attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 4 as if he, himself, were the Tenderer.
- 29.5 The complete tender shall be without alterations, interlineation or erasures, except those to accord with instructions issued by the Contracting Authority, or necessary to correct errors made by the Tenderer. Alterations and corrections shall be initialled by the person or persons signing the tender.
- 29.6 Except in the case of lots pursuant to Article 21 and variant solutions pursuant to Article 27, only one tender may be submitted by each Tenderer. No Tenderer may participate in the tender of another for the same contract in any capacity whatsoever.

## SUBMISSION OF TENDERS

### ARTICLE 30

#### Time Limit

- 30.1 Tenders must be received by the Contracting Authority at the address and no later than the date and time specified in accordance with Article 13. In determining this date, the Contracting Authority must ensure that adequate time is allowed, taking into account the nature, size, complexity, and location of the intended project and other relevant factors. Such period shall not, however, be less than 90 days for an open invitation to tender.
- 30.2 The Contracting Authority may, at its discretion, extend the deadline referred to in Article 30.1 for the submission of tenders by amending the tender dossier in accordance with Article 18, in which case all previous rights and obligations of the Contracting Authority and Tenderers, subject to the previous deadline, will thereafter be subject to the deadline as extended. Should a Tenderer exercise his right of

withdrawal after receiving notice of the extension, his tender shall be returned to him and his tender guarantee shall be released after the tender opening session.

- 30.3 Any tenders received by the Contracting Authority after the deadline for receipt of tenders prescribed by the Contracting Authority, in accordance with Articles 13.4(g) and 18 shall be rejected and returned to the Tenderer after the tender opening session.

## ARTICLE 31

### Sealing and Marking of Envelopes

- 31.1 The tender, the annexes thereto as stipulated in the instructions to Tenderers and the supporting documents referred to in Article 4 shall be placed in a sealed non - identifiable envelope, bearing only:-
- a) the address designated for submission of tenders in the notice of invitation to tender or in the invitation to tender;
  - b) the reference to the notice of invitation to tender in reply to which the tender is being submitted;
  - c) where appropriate, the numbers of the lots tendered for; and
  - d) the words "not to be opened before the tender opening session" written in the language of the tender dossier.
- 31.2 The instructions to Tenderers shall specify in each case whether the documents relating to the price proposal shall be placed together with the technical proposal in one envelope or in separate envelopes. In the latter case, the price proposal shall be placed in a separate identifiable envelope, bearing the words "Tender Price", which shall be sealed and placed together with the technical proposal in the envelope referred to in Article 31.1.

## ARTICLE 32

### Withdrawals and Amendments

- 32.1 Any Tenderer may modify or withdraw his tender before the deadline referred to in Article 30.3, provided that written notice of such modification or withdrawal is received by the Contracting Authority prior to that deadline.
- 32.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of Article 31. A withdrawal notice may also be sent by personal delivery or by telex, cable, or facsimile transmission but followed by a signed confirmation copy, post marked not later than the



deadline for submission of tenders. Withdrawals will be unconditional and will end further participation in the tendering procedure.

- 32.3 No tender may be modified subsequent to the deadline referred to in Article 30.3, except in accordance with Article 34.1.
- 32.4 No tender may be withdrawn in the interval between the deadline referred to in Article 30.3 and the expiration of the period of tender validity. Withdrawal of a tender during this interval may result in forfeiture of the tender guarantee.

## EXAMINATION OF TENDERS

### ARTICLE 33

#### Opening of Tenders

- 33.1 On receipt of the tenders, the envelopes shall be entered in a special register in the order in which they arrive. The registration number and the date and time of arrival shall be recorded on the envelope. Envelopes remain sealed and be kept in a safe place until they are opened under the conditions set out in Articles 33.2 and 33.3.
- 33.2 At a public tender opening, the Tenderers' names, the Tender Prices, written notifications of tender modifications and withdrawals, the presence of the requisite tender guarantee, and such other details as the Contracting Authority may consider appropriate shall, if any, be announced. In the case of a "two-envelope" system as mentioned in Article 31.2 the announcement shall include the fact that no price envelope has been opened.
- 33.3 Opening and examination of tenders shall comply with the rules of the ACP States concerned and with the Convention, and shall be for the purpose of checking whether the tenders are complete, whether the requisite tender guarantee has been furnished, whether the documents have been properly signed and whether the tenders are generally in order.
- 33.4 The envelopes which bear the words "Tender Price" in accordance with Article 31 shall not be opened until the work of evaluating the tenders, other than the prices, has been completed.
- 33.5 Only the tenders contained in those envelopes which have been received not later than the deadline referred to in Article 30.3 fixed for the receipt of tenders shall be taken into consideration in the evaluation.
- 33.6 The Contracting Authority shall prepare, for its own records, minutes of the tender opening, including the information disclosed to those present in accordance with Article 33.2.

- 33.7 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparison of tenders and recommendations concerning the award of the contract shall not be disclosed to Tenderers or other persons not officially concerned with such process.
- 33.8 Any attempt by a Tenderer to influence the Contracting Authority in the process of examination, clarification, evaluation and comparison of tenders, and in decisions concerning the award of the contract, shall result in the rejection of his tender.
- 33.9 The Delegate shall be present at the opening of tenders, and shall receive a copy of each tender.

#### ARTICLE 34

##### Evaluation of Tenders

- 34.1 To facilitate the examination, evaluation and comparison of tenders, the Contracting Authority may ask each Tenderer individually for clarification of his tender, including breakdowns of unit prices. The request for clarification and the response shall be in writing and communicated by any of the means referred to in Article 12, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Contracting Authority during the evaluation of the tenders pursuant to Article 34.7.
- 34.2 Prior to the detailed evaluation of tenders, the Contracting Authority shall determine whether each tender is substantially responsive to the requirements of the tender dossier.
- 34.3 For the purpose of Article 34, a responsive tender is one which conforms to all the terms, conditions and specifications of the tender dossier without material deviation or reservation. A material deviation or reservation is one which affects the scope, quality or performance of the contract, or which, in any substantial way, is inconsistent with the tender dossier or limits the Contracting Authority's rights or the Tenderer's obligations under the contract, and affects unfairly the competitive position of Tenderers presenting responsive tenders.
- 34.4 If a tender is not responsive to the tender dossier, it shall be rejected by the Contracting Authority, and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation.

- 34.5 Tenders determined to be responsive shall be evaluated technically for conformity with the invitation to tender dossier and the provisions of Article 36, and then ranked on the basis of their technical qualities. The Special Conditions shall, where appropriate, specify the detailed criteria for technical evaluation.
- 34.6 Following the completion of the technical evaluation, tenders which, on the basis of Article 34.5, are technically responsive shall be evaluated financially. Tenders shall be compared in the National Currency.
- 34.7 Tenders determined to be responsive shall be checked by the Contracting Authority for any arithmetic errors in computation and summation. Errors shall be corrected by the Contracting Authority as follows:-
- a) where there is a discrepancy between amounts in figures and also in words, the amount in words shall prevail; and
  - b) except for lump-sum contracts, where there is a discrepancy between the unit price and the total amount derived from the multiplication of the unit price and quantity, the unit price as quoted shall prevail, unless in the opinion of the Contracting Authority there is an obvious error in the unit price, in which event the total amount as quoted shall prevail and the unit price shall be corrected by the Contracting Authority.
- 34.8 The amount stated in the tender, corrected if necessary by the Contracting Authority, in accordance with Article 34.7, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount of the tender, his tender shall be rejected.
- 34.9 After tenders have been evaluated fully in accordance with the provisions of Article 34, responsive tenders shall be grouped into tenders offered by those Tenderers eligible for preference under Article 9 and tenders offered by other Tenderers. For the purposes of further evaluation and comparison of tenders only, the tender prices, corrected where necessary, of the Tenderers not eligible for preference shall be increased by the percentage margin of preference. Further details of the procedures to be used in giving effect to the margin of preference provisions of Article 9 shall be as laid down by the Contracting Authority in the tender dossier.
- 34.10 The evaluation proceedings shall be recorded in properly signed minutes which shall not be made public or communicated to any Tenderer. A copy of these minutes will be sent to the Delegate.

## ARTICLE 35

### Annulment of the Tender Procedure

- 35.1 The Contracting Authority may, prior to awarding the contract, without thereby incurring any liability to the Tenderers, and notwithstanding the stage reached in the procedures leading to the conclusion of the contract:-
- a) either decide to annul the tender procedure in accordance with Article 35.2, or order that the procedure be recommenced, if necessary, using another method; or
  - b) where the project is divided into lots, award only certain of the lots and possibly decide that the others are to be the subject of another tender or other tenders, if necessary, using another method.
- 35.2 The annulment by the Contracting Authority of a tender procedure may take place in the following cases:-
- a) if no tender is responsive to the tender dossier;
  - b) if no tender satisfies the criteria for the award of the contract as set out in Article 36;
  - c) if the economic or technical data of the project have been altered;
  - d) if exceptional circumstances render normal performance of the contract impossible;
  - e) if every tender received exceeds the financial resources earmarked for the contract;
  - f) if the tenders received contain serious irregularities resulting in interference with the normal play of market forces; or
  - g) if there has been no competition.
- 35.3 In the event of annulment of any tender procedure, Tenderers who are still bound by their tenders shall be notified thereof by the Contracting Authority. Such Tenderers shall not be entitled to compensation; they shall be entitled to the immediate release of the tender guarantee.
- 35.4 When the annulment of the tender procedure is caused by circumstances which do not necessitate the opening of tenders, the unopened and sealed envelopes containing the price proposals, where appropriate, and, in any event, the other elements of the tender shall be returned to the Tenderers at the Tenderers' cost.

## AWARD OF CONTRACT

### ARTICLE 36

#### Selection

- 36.1 The Contracting Authority shall award the contract to the Tenderer:
- a) whose tender is found to be responsive to the tender dossier; and
  - b) for Works and Supply contracts, who has offered the most advantageous tender as assessed inter alia on the basis of:-
    - i) the price, the operating and maintenance costs;
    - ii) the qualifications of, and the guarantees offered by the Tenderers, as well as the technical qualities of the tender, including the offer of an after-sales service in the ACP State;
    - iii) the nature of, the conditions and the time limits for performing the contract, and the adaptation to local conditions;
  - c) for Service contracts, who offers the most advantageous tender taking into account, inter alia, the price, the technical value of the tender, the organization and the methodology proposed for the provision of the Services, as well as the competence, independence and availability of the personnel proposed.
- 36.2 Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given to:-
- a) the tenderer of an ACP State; or
  - b) if no such tender is forthcoming, to the tenderer who:-
    - i) permits the best possible use of the physical and human resources of the ACP States; or
    - ii) offers the greatest sub-contracting possibilities to ACP companies, firms or natural persons; or
    - iii) is a consortium of natural persons, companies and firms from ACP and EEC States.
- 36.3 The Contracting Authority shall:-
- a) complete the evaluation of tenders within the tender validity period taking into consideration the period required for the approval of contracts;

- b) transmit the result of the examination of the tenders and a proposal for placing the contract to the Delegate.

36.4 The Delegate shall:-

- a) approve, within 30 days the Contracting Authority's proposal for the placing of the contract for all:-
  - i) direct agreement contracts;
  - ii) service contracts;
  - iii) contracts relating to emergency assistance; and
  - iv) contracts by accelerated procedures, for Works contracts worth less than ECU 5 million and Supply contracts worth less than ECU 1 million;
- b) approve within 30 days the Contracting Authority's proposal for the placing of the contract not covered by Article 36.4 (a) wherever the following conditions are fulfilled: the tender selected is the lowest of those conforming to the requirements of the tender dossier, meets the selection criteria stated therein and does not exceed the sum earmarked for the contract;
- c) where the conditions set out in Article 36.4 (b) are not fulfilled, forward the proposal for the placing of the contract to the Commission which shall decide thereon within 60 days of the receipt by the Delegate. Where the price of the selected tender exceeds the sum earmarked for the contract, the Commission shall, upon giving approval to the award, make the necessary financial commitment.

## ARTICLE 37

### Notification of Award

- 37.1 Prior to the expiration of the period of tender validity, the Contracting Authority shall notify the Successful Tenderer in writing that his tender has been accepted.
- 37.2 Unless otherwise provided in the tender dossier, in the case of Works and Supply contracts, once the Successful Tenderer has furnished a performance guarantee in accordance with the provisions of Article 40, the Contracting Authority shall promptly notify the other Tenderers that their tenders have been unsuccessful, and return their tender guarantees.

- 37.3 The Contracting Authority shall not be obliged to state the reasons for its choice nor enter into any discussion or correspondence with Tenderers on the results of the invitation to tender.
- 37.4 The results of public invitations to tender shall be published in the Official Journal of the EEC and, subject to the practice in the ACP State concerned, in the Official Journal of the State and/or any other appropriate information media.

## ARTICLE 38

### Preparation of Contract Document

- 38.1 After communication of the result of the tender in accordance with Article 37, the contract shall be prepared by the Contracting Authority for submission to the Successful Tenderer for signature. This document shall include at least the following:-
- a) a list of documents comprising the contract specifying the order of precedence of the documents;
  - b) any agreed additions to and derogations from these documents;
  - c) the Contract Price;
  - d) any decisions taken by the Contracting Authority pursuant to Article 34.7.
  - e) the names of the Supervisor and the Supervisor's Representative, if these are not included in the Special Conditions.
- 38.2 The contract document shall be submitted to the Successful Tenderer for signature.

## ARTICLE 39

### Signing of the Contract

- 39.1 Unless otherwise provided in the tender dossier, within 30 days of receipt of the contract document, the Successful Tenderer shall sign the contract. After signature by the Successful Tenderer, the contract document shall be returned to the Contracting Authority or his authorised representative or the competent authority of the ACP State for approval as necessary, and signature.
- 39.2 The Contracting Authority shall not, unless otherwise provided by the tender dossier, sign the contract until the performance guarantee has been established in accordance with Article 40.

- 39.3 By the signature of the Contracting Authority, the contract becomes binding upon both parties and the Successful Tenderer shall be notified of the fact of such signature.
- 39.4 Notwithstanding the provisions of Article 39.1 to 39.3, the Contracting Authority may, depending on the nature of the contract, decide to conclude the contract on the basis of the letter of contract procedure whereby the notification of award of contract shall constitute the conclusion of the contract. In such case, the items listed in Article 38.1 shall be attached to the letter.
- 39.5 In the event of withdrawal by the Successful Tenderer, the Contracting Authority may call up his tender guarantee. In addition, it may approach the other Tenderers according to the order in which their tenders are classified, or may initiate a fresh procedure for the invitation of tenders. If necessary, a contract by direct agreement may be negotiated.

#### ARTICLE 40

##### Performance Guarantee

- 40.1 Unless otherwise provided by the tender dossier, the Successful Tenderer for a Works or Supply contract shall, within 30 days of receipt of the notification of award from the Contracting Authority furnish to the Contracting Authority a performance guarantee in the form specified in the General Conditions.
- 40.2 Failure of the Successful Tenderer to comply with the requirements of Article 40.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender guarantee, in which event the Contracting Authority may proceed in accordance with Article 39.5.

#### GENERAL AND FINAL PROVISIONS

#### ARTICLE 41

##### General and Final Provisions

- 41.1 All documents and proposals submitted by the Contracting Authority to the Commission or the Delegate for agreement or approval in accordance with these General Regulations shall be approved or deemed to be approved within the time limits laid down by these General Regulations, or where no time limit is stated herein, within 30 days.



41.2 These General Regulations and the General Conditions referred to in Article 1.2(a), subject to the provisions of the Convention:

a) shall apply to contracts financed from resources of the 5th and 6th EDF administered by the Commission;

b) may also be applied by a decision of the ACP - EBC Council of Ministers to contracts financed from the resources of EDFs subsequent to the Seventh (7th) EDF.

41.3 Claims accepted for delayed payments shall be borne by the ACP State and by the Commission, each from its own resources, for that part of the delay for which it is responsible.