

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (75) 227 final

Brussels, 28 May 1975

COMMISSION COMMUNICATION TO THE COUNCIL on the
arrangements made to ensure that contracts financed by the
European Development Fund are placed on equal terms

COM (75) 227 final

COMMISSION COMMUNICATION TO THE COUNCIL

on the arrangements made to ensure that contracts financed by the European Development Fund are placed on equal terms

Introduction

The Treaty of Rome, the Association Conventions, the Financial Regulations and the Commission's Implementing Regulations lay down that the principle to be followed for the conclusion of contracts financed by the European Development Fund (EDF) is to issue open international invitations to tender for all works and supply contracts to be carried out for the benefit of the States, Countries and Territories associated with the EEC.

The organization of a competitive procedure was considered of prime importance for carrying out the operations under the best conditions. This choice was dictated first of all by what is common practice throughout the world for public contracts: this practice is based on the fact that competition between a number of interested parties enables the best prices to be obtained. Sound management of public monies, both in the developed and developing countries, requires that projects be executed at the lowest cost. Such a policy was also inspired by the desire to prevent the crystallization of monopoly positions by means of opening up contracts to wider competition among firms. Finally, it was found that competition enabled the recipient countries' efforts to be supplemented by foreign technology in such a way that a fair balance of services is achieved in relation to the capacity of each party.

On various occasions the Member States have expressed their desire to be given the fullest possible information on the trend of results of invitations to tender for projects financed from the Fund's resources.

This desire led them to prescribe a number of initiatives for the Commission to take with this objective in mind.

The first step was taken under Regulation No 5 of the Council of 2 December 1958, Article 20 of which recommended annexing to the annual accounts and balance sheet of the first Fund a summary of the results of the year's invitations to tender.

The Financial Regulation relating to the second Fund, dated 1 June 1964, established more precise information procedures: Article 47(4) of the Regulation requests the Commission to notify the Council every six months of the outcome of the invitations to tender and to inform the Council, if necessary, of the measures it has taken or proposes to take in order to ensure that the principle of equality of terms for participation in invitations to tender is respected.

Article 49(4) of the Financial Regulation relating to the third EDF, dated 26 January 1971, was drawn up with similar terms to the preceding provision. It re-introduced the principle of results being notified on an annual basis and also indicated the extent of the information that the Commission might be required to present to the Council. If the results done - and nothing more - are notified a more detailed examination is sometimes required: it is for this reason that the Commission is called upon to provide in its report information which will enable the Council to assess whether the measures it has taken have had the effect of giving all the firms of the Member States and the Associated States, Countries and Territories equal access to works and supply contracts financed by the Fund.

With this in mind and in response to the interest shown by the Member States, it is intended in this report to take stock in the light of experience gained from three Funds and in as exhaustive a manner as possible, of the results obtained in respect of participation in EDF contracts.

The first considerations by which the Commission was guided were dictated, as has already been stated, by the objective of the "best price" and, as a result, the desire to see that contracts are awarded under the most advantageous economic conditions.

Equally important, moreover, were considerations regarding the question of the balance which could be achieved in the distribution of tenders by nationality. As emphasized in the above-mentioned Article 49 of the 1971 Financial Regulation, the measures taken by the Commission must enable the economic resources of each Member State and of each Associated State, Country and Territory to be used with optimum effectiveness. A satisfactory balance would reflect participation by Europe's wealth as a whole, especially through its contribution of technology, in the development effort of the associated countries: this objective corresponds both to a desire constantly affirmed by the Member States in the way in which they have guided the Community's development policy and to the desire to associate national firms of the countries receiving European aid with the execution of the projects.

For its part, the Commission, as manager of the Fund, has applied itself to using all the means available to it to further the pursuit of these objectives. The account of the measures adopted under the three Funds should enable the efforts made to this end to be assessed and then compared with the results achieved.

The fact remains that achievement of an ideal balance still depends on complex factors. Some of them derive from the continuation of preferential relations which have evolved naturally between Associated States and the former European colonial powers; others have stemmed from recent developments in the international economic situation (in particular currency movements).

Thus, while following its own ideas on this matter, the Commission considers it desirable to open a dialogue with the Member States and the Associated States to examine what remains to be done in order to arrive at a better balance as regards participation, taking account in particular of the above-mentioned factors. Not least among the aims of this report would be to help stimulate thought on this matter.

All the same, it should be emphasized that this report is an extension of an initiative already taken by the Commission a few years ago concerning information on measures to improve the terms governing participation in the Fund's contracts. It is the third of a series of communications presented to the Council by the Commission under the above-mentioned articles of the respective Financial Regulations relating to the second and third EDFs.

The first report, published in 1966 (Doc. Sec 66-1415),¹ set out all the measures adopted from the start of the first Fund's operations with the aim of removing obstacles in law or in fact which might hinder participation in the invitations to tender by firms of one Member State or another. It also examined the statistics on the distribution of the contracts financed by the Fund and found a relative imbalance, which the Commission proposed to remedy.

The second report, communicated to the Council in 1968 (Doc. SEC(68.3394) following a Council Resolution of 6 June 1967 on improving the conditions of competition, surveyed the measures that the Commission has taken or was proposing to take to this end. In the statistical part, it concluded that there was a much more satisfactory balance than at the time of the first report, particularly for the contracts under the second Fund.

The report presented here comes at a turning point in the development of contracts financed by the EDF.

On the one hand, the various Funds in force have provided much management experience, from which a number of lessons may be learned. Contracts under the first Fund are today virtually closed and those under the second Fund have nearly all been awarded. As for the third Fund, it has so to speak reached its fully operational stage. We can therefore go back far enough to make interesting comparisons based on consolidation of what has been achieved and a set of new measures carried out to implement the second Yaoundé Convention. It will, moreover, be recalled - to give an idea of numbers - that 1 250 invitations to tender have been issued from the start and that the funds available under the third EDF are such that the issue of approximately seventy more invitations to tender can be envisaged.

On the other hand, the Association is on the verge of seeing the fourth Fund introduced, which, because of enlargement, will receive a much greater amount of aid than the three preceding Funds, as well as increased and strengthened means of action, which will in particular make it possible to ensure wider participation by the national firms of the beneficiary countries in the execution of development projects.

The amount of the fourth Fund, considerably increased compared with the third, will arouse interest in industrial circles, which might participate on a much greater scale than previously. The Commission's task of ensuring that there is a better balance as regards participation by nationals of the different Member and Associated Countries will tend to become wider. The considerably increased political importance of the new Association, compared with the previous Association, cannot but stimulate the desire of the Governments of the Member and Associated States to improve the value of their respective contributions by actively bringing to bear in the execution of projects the weight of their human and technical resources.

This twofold consideration - experience of more than fifteen years and the prospect of enlargement - therefore makes it particularly necessary to have information on the methods for ensuring that participation in EDF contracts is on equal terms.

To this end, this report intends, in Chapter I, to recall all the principles which have been adopted for organizing invitation to tender procedures, and, in Chapter II, to analyse the results obtained on the basis of the statistical data regarding participation and the placing of contracts.

CHAPTER I

Principles adopted for organizing
invitation to tender procedures

Among the texts governing the award and performance of public contracts financed by the EDF the basic provisions concerning invitations to tender remain Article 132(4) of the Treaty of Rome (first EDF), Article 25 of the first Yaoundé Convention (second EDF) and Article 26 of the second Yaoundé Convention (third EDF).

Apart from a few differences in the wording, the common denominator of the three articles is the provision that participation in tenders shall be open to firms that are nationals of the Member States and Associated States, Countries and Territories on equal terms.

The basic principle thus enshrined constitutes an objective with regard to which the Commission - in order to attain it - has had to find its way without knowing to begin with the extent of the obstacles to be overcome. Experience alone has revealed these obstacles and made rapid and effective adjustments necessary.

Thus the provisions laid down and specified over the years in Article 20 of Regulation No 5 of the Council (first Fund), Article 47(2) and (3) of the Financial Regulation relating to the second Fund and Article 49(1), (2) and (3) of the Financial Regulation relating to the third Fund reflected the results of experience and the major obligations which the Commission had entered into on its own initiative.

More details of these provisions will be given below in the summary of the various principles and measures adopted by the Commission for organizing invitation to tender procedures.

It should, however, be emphasized that, once the principle of working towards free access to contracts on equal terms had been fixed, the Commission always enjoyed considerable freedom of action.

The Commission was certainly not starting from scratch, to the extent that it was able to find food for thought in the procedure in force in the States which were party to the Association or in the practices followed by other international organizations, or even draw upon the work carried out in other sectors of the Community's activities.

Moreover, the Commission has not worked in isolation: the rules applied to EDF contracts were always drawn up only after wide consultation with the interested parties, in particular the firms, through their professional groups.

It is nevertheless a fact that the wide room for manoeuvre available to the Commission was the key to undeniable efficiency since it enabled the Commission to perfect the existing models and create original instruments adapted to its activities in order to meet both the interests of recipients and the aspirations of firms. A sign of this trend is that the extensive and lively discussions of the early years of EDF activity on a number of guidelines adopted by the Commission have not recurred since. For years there has been no complaint about the basis of the principles governing public contracts financed by the EDF.

Thus it would not be an exaggeration to claim that the Community's invitation to tender procedures are today the most appropriate of the methods of international development cooperation.

The principles involved govern each stage of the invitation to tender.

Some are concerned with the preparation and the actual issue of the invitation to tender in such a way as to provide the best conditions for the preparation of tenders. These principles have been supplemented by measures for rationalizing the presentation of invitations to tender.

Other rules relate to the selection of the contractor and are designed to ensure maximum objectivity in the assessment and comparison of tenders.

However, account must also be taken of a set of corrective measures taken regarding all these rules in view of the nature of the projects: here it can be seen that the Commission is concerned with achieving some kind of balance between national and foreign firms so that each may play a part according to its size and its capabilities.

Finally, certain rules drawn up by the Commission, although not directly concerned with the procedure for awarding contracts, nevertheless have an effect on the terms offered to firms to make contracts financed by the EDF more attractive. This is particularly the case for the clauses in force in respect of payment.

All these measures have been implemented in various forms according to the body of rules and regulations available to the Commission. However, it should be particularly emphasized that most of these rules and principles have been established via patient codification by the Commission.

It is this "legislative" aspect that will have to be concentrated on first of all.

This chapter, built around the ideas which have just been set out, will therefore develop the following points:

1. codification of the rules applicable to EDF contracts,
2. principles for the preparation of invitation to tender dossiers,
3. principles involved in the procedure for issuing invitations to tender,
4. measures taken to rationalize the presentation of invitation to tender dossiers,
5. rules governing selection of the contractor,
6. measures to ensure a balanced sharing of work between firms established in the country concerned and foreign firms,
7. rules for the performance of contracts to ensure indirectly that the terms are equal.

1.1 Codification of the rules applicable to EDF contracts

The first fundamental achievement of this long and exacting work remains the drawing up of a single General Specification for public works and supply contracts financed by the EDF.

In its second communication to the Council, the Commission had already emphasized the importance of drawing up General Specifications which at that time existed in draft form.

Since then, the draft has been endorsed by the high authorities of the Association:

Decision No 42/71 of the Association Council of 30 November 1971 (OJ No L/39 of 14 February 1972) brought the text of the General Specifications into force for the AASM;

Decision No 73/313 of the Council of the European Communities of 24 July 1973 (OJ No L/287 of 14 October 1973) enabled an identical measure to be taken in order to apply the General Specifications to the OCT.

The general specifications take the form of 137 articles grouped under two titles having different legal application.

Title I comprises regulations from which the interested parties would not be able to derogate through agreements they might enter into. This limitation of the rights of the contracting parties is in accordance with the idea of drawing up "rules of the game" that establish certain principles and definitions, organize the procedure for preparing and awarding contracts and lay down the method for settling disputes. The Commission is thus assured that rules considered as fundamental for observing fair competition will be applied.

Title II, on the other hand, consists of contractual clauses which represent a model for specifications, adaptable and modifiable as required in accordance with a specific contract. These provisions govern mainly the procedure for the performance of contracts. Some are common to works and supply contracts; others relate exclusively to works contracts; and finally others relate specifically to supply contracts.

The details of some of these clauses will be indicated below in the summary of particular measures adopted to comply with the conditions of competition.

Prominence should be given here to the substantial progress represented by the entry into force of such a document, particularly from the point of view of improving the conditions of competition.

(a) As regards content, the General Specifications have answered the desire expressed by firms for some years for standardization of the conditions applicable to public contracts financed by the EDF.

The earlier report (1968) mentioned above set out the difficulties of every kind (mass of regulations, complexity of procedures, language barriers, etc.) which contractors and suppliers come up against because of the different laws governing the award and execution of contracts in the associated countries. Without going back over this point, it is important to stress that the standardization achieved by the new General Specifications provides firms with clear legal guarantees, better enabling them to assess the conditions of an overseas operation. The most conclusive result is that foreign firms no longer have to overestimate in their tenders the risks involved due to the existence of a great number of differing national rules with which they are unfamiliar. This result is of no small consequence, from the point of view of reducing project execution costs. Furthermore, the immutability of the clauses relating to the preparation and award of contracts is regarded as a very real guarantee that equal terms will be observed. This guarantee is strengthened by the fact that the General Specifications are available in the official languages of the Community.

Firms are thus required to become increasingly familiar with a document the modern nature of which is beginning to show its worth. Not content with merely borrowing from regulations existing in the Member States and the associated countries, the Commission was concerned to improve the instrument by adapting it to cater for shortcomings in the conditions under which public contracts are currently prepared and carried out; finally, it made use of the most recent work done on this subject by the Community authorities.

(b) The scope of the General Specifications reveals undoubted progress in the way in which public contracts are regulated at international level.

Measures have been taken to insert the General Specifications in the national legislation of each Associated State and in the legal system of the Community. This point is important, for it demonstrates that the General Specifications are not a mere reference document drawn up by third parties, which may be resorted to as an auxiliary measure. On the contrary, the new general provisions are part of national regulations in the same way as texts intended to govern domestic contracts and are applicable, as texts of national law, to contracts financed by the EDF. The latter contracts can therefore be concluded and carried out with respect for national sovereignty but at the same time following a common model.

The General Specifications thus represent represents a work of codification, the advantages of which should not be underestimated.¹

¹ Enlargement of the Association will lead to the preparation of a new text taking into account the special features of the system traditionally in force in English-speaking countries. Since the drawing up and negotiation of this new version of the general specifications will be a lengthy task, transitional arrangements will be made. The present Associated States will continue to apply to EDF contracts the common text now in force, while the newly Associated States will apply their respective national laws and practices, except, however, where any provision discriminates against the Association.

After all, this undertaking is part of a wider framework which the Commission has resolved to set up, aimed at drawing up a code of practice for EDF contracts.

Thus, mention may be made here of:

- (a) The establishment of general provisions to govern service contracts (study, technical assistance and works supervision contracts).

Originally conceived as a job of putting in order EDF practices in these matters, the preparation of these documents benefited from the precedent constituted by the General Specifications.

These provisions have been applied on an experimental basis to technical assistance and works supervision contracts since March 1972, and to study contracts since April 1973.

It is possible that the Commission might combine the three documents at a later stage into a common text with specific clauses for the various types of contract. Such a document would have to go through the same stages of discussion and adoption as were employed in negotiating the General Specifications. The document in question will, however, be quite distinct from the latter.

- (b) The finalizing of rules of arbitration to assist in settling disputes which might arise between the administration and the tenderer or contractor.

Recourse to this procedure had already been adopted as a means of settling disputes under the second Fund via an arbitration clause included in all financing agreements, giving jurisdiction to the Court of Arbitration of the International Chamber of Commerce.

However, a decisive step was taken with the General Specifications, Article 55 of which explicitly entrusts the Association Council with the task of drawing up rules of arbitration.

The Commission has now prepared a draft: it has made use of or been guided by an important body of highly authoritative texts, in particular the IBRD Convention of 18 March 1965.

The main feature of the draft, following modern trends in arbitration law, has been to institutionalize much of the procedure with a view to achieving a simple and effective means of settling disputes between parties. Its institutional character does not, however, exclude consensual aspects on certain matters.

It should be stressed that this draft, which is a new aspect of the standardization of law in relations between the administrations of the associated countries and the firms participating in EDF contracts, is primarily intended to speed up the settlement of disputes which sometimes arise in large and difficult contracts: it is therefore a notable factor as regards promoting the expansion of competition.

This draft will come to fruition under the new association, since the texts governing the fourth EDF provide for the entry into force of rules of arbitration.

1.2 Principles for the preparation of invitation to tender dossiers

The Commission has endeavoured to provide firms with invitations to tender which are as comprehensible and complete as possible. This aim springs from the desire to make it easier for firms to draw up tenders and from the

need to provide for firms which are not very familiar with the language in which the dossier is drawn up, a text that can be easily translated. Furthermore, this approach was determined by the desire to ensure that the contractual nature of the contracts is fully respected. This explains the importance attached to the use of the written word to establish quite clearly the conditions applicable to the contracts. This policy is intended to inspire confidence in firms and encourage them, as a result, to take part in the proposed project.

1.2.1 The documents contained in the invitation to tender dossier are in line with the practice normally followed in such matters.

Apart from the documents drawn up for publicity or information purposes (see below), there are two contractual documents governing the procedure for contracts:

- i. the General Specifications, which constitute the general regulations covering the preparation, award and execution of EDF contracts. The content and scope of this basic document have been explained above;
- ii. the Special Conditions, which determine the detailed rules for each contract. These are technical and administrative clauses containing specifications which supplement the General Specifications and may, in certain circumstances, derogate from the latter where the provisions are not binding. The technical part of the Special Conditions is usually accompanied by general or detailed plans or drawings intended to clarify the nature of the services required from the contractors.

In addition, for a unit price contract the invitation to tender dossier includes an outline price list and an outline itemized estimate which tenderers are required to complete as a means of indicating what is contained in their tender.

The assessment and comparison of tenders are thereby facilitated.

1.2.2 These documents present certain problems with regard to the details of contract specifications.

(a) Care was taken in drawing up the General Specifications not to give too narrow a definition of the quality of services. This is why provision was made for the submission of variant solutions.

During discussions with professional organizations, the usefulness from the firms' point of view of submitting variations was repeatedly stressed, in so far as the complexity of the techniques involved and the specialization of European industry made it necessary to provide for such a possibility in order to achieve, in certain cases, the best suited and most economical solution. Moreover, such a policy undoubtedly serves the interests of the party for whom the contract is to be performed if that party is astute enough to look upon the contractor not as an opponent but as a collaborator.

(b) With regard to competition, the Commission on many occasions came up against the delicate problem of neutrality in defining the services to be rendered, particularly as regards supplies.

There are pitfalls to be avoided on both sides. On the one hand, excessively detailed specifications involves a considerable risk of restricting competition by stipulating, at one extreme, a specific product. On the other hand, too general a description may make tenderers hesitate or decline to tender, given the complexity of the techniques involved and the variety of goods on the market. The best procedure when drawing up invitations to tender is thus to find a happy compromise between too vague a description and too

precise a definition.

To this end the Commission may use one of several methods, depending on the circumstances.

Where goods are standardized on an international scale (dimensions, shape, weight, proportion of constituent elements, etc.), the Commission likes to use such a system of reference. Thus the alignment of technical specifications carried out at Community level under "Euronorm" is very useful in this respect - particularly since publications in this field are readily available to firms. Similarly, to take a very specific sector, the work done on harmonization under the Community transport policy has led to a widening of competition in the field of vehicle supplies.

In difficult cases, the Commission seeks advice and technical collaboration from impartial experts or specialists from professional organizations. Thus, as regards fertilizers, this method led to a standardized impartial description based on the purpose and use of the supplies requested.

In all cases, the Commission takes care to include in the invitation to tender dossier the provision that any materials or supplies that will serve the same purpose as those specified or referred to may be proposed.

1.2.3 With regard to the method of preparing invitation to tender dossiers, the principle is that they are drawn up by the national authorities of the associated country benefiting from an operation under the Fund.

This principle fits in with the rationale of the association; this implies that it is the Governments of the Associated States and, where appropriate, their institutions and other specialized bodies, which are responsible for the execution of projects.

The complexity of the techniques involved has, however, led to this principle being accompanied by additional cooperation arrangements.

(a) Generally speaking, before any invitation to tender is issued it is examined by the EDF from the technical, legal and financial angles. This practice provides an additional guarantee that the principle of equal terms will be observed. It depends on close collaboration between the Commission and its on-the-spot representatives (the Commission Delegates).

(b) Where there is some doubt as to the method to be applied, invitations to tender with competition are issued. These require the tenderers themselves to study and propose the best solution to meet the requirements of the country concerned.

(c) Where projects are of a certain size or involve an advanced technology, the Commission finances study contracts concluded by the administrations of the Associated States with firms of consultant engineers in order to draw up the invitation to tender dossiers. These consultants are also responsible for transmitting the dossiers to the firms that are interested and remain at their disposal for any additional information the latter may require.

In this field it is essential to ascertain the quality of the services rendered and the impartiality of the consulting engineers chosen.

The Commission therefore possesses substantial supervisory powers at two stages:

- i. When the consultancy firm is chosen, through the part played by the Chief Authorizing Officer of the Fund in the procedure for appointing and approving the contractor.

In this connection the Commission has available a wide selection of qualified firms that are nationals of the member or associated countries and possess sufficient international experience to be able to take into consideration the whole range of current techniques when drawing up the dossier. The Commission takes particular care to ensure that only those firms which do not have any interests in any given undertakings are chosen. This, moreover, makes it easier to achieve a degree of balance between nationalities in the distribution of contracts awarded for studies financed by the Fund.

- ii. When the invitation to tender dossier is being drawn up, the studies are scrutinized by the Commission and the Commission Delegate, who are entitled by the terms of the contract to intervene at any time, in particular to check that the dossier takes account of various local factors.

The most striking result of this system has been that the fairly large number of complaints made before the start of the second EDF (1965) about the impartiality of the consultant engineers and discriminatory elements in certain invitation to tender dossiers, have nowadays become very rare.

1.3 Principles involved in the procedure for issuing invitations to tender

The Commission has made great efforts to see that invitations to tender are issued under conditions which will ensure that participants are placed on equal terms.

Here there were at least three objectives to be attained: that of ensuring the widest possible publicity, that of facilitating the submission of tenders and that of rationalizing the rate at which invitations to tender are issued.

1.3.1 With regard to publicity, it became clear that priority should be given to recognizing the importance attached by firms to being informed in good time and in sufficient detail of all the major factors required to enable them to participate in carrying out a project.

For this reason the Commission made a serious effort to develop a system to provide the fullest possible information, based on three elements: the publicizing of projects, of the actual invitations to tender, and of the outcome of the invitations to tender.

1.3.1.1 Publicizing of projects

Measures taken here are based on the idea that firms wish to have at their disposal as much information as possible on the progress of operations financed by the Fund so that they can develop their own strategies and programme their activities. This is especially true in the case of major infrastructure projects.

This is why for each project the main stages of the procedure call for particular publicity measures.

Thus the financing decisions taken by the Commission after the EDF Committee opinion are published in the Official Journal of the European Communities as a Note which indicates not only what the project consists of and the amount of money earmarked for it, but also gives a full account of the various services required to carry it out and details of how they are to be implemented. This information is supplemented by a press release distributed by the Community's Spokesman's Group and taken up

by the news agencies, newspapers, etc., in the Member States and associated countries.

Similarly, the studies awarded to consultancy firms are announced by the Commission in brochures giving a progress report on projects. These brochures themselves have a wide circulation. Such studies represent the initial approach to a project and are drawn up several months before the call for tender, enabling those in the industries concerned to follow the progress of the project and put their point of view to those responsible for it.

1.3.1.2 Publicizing of invitations to tender

The importance attached to publicizing invitations to tender may be gauged by the number of texts which stipulate that it is required¹.

The main method of publicizing invitations to tender remains notification through the press in the form of the notice of invitation to tender. This provides information on the purpose of the contract, the location and the time allowed for providing the services, the terms on which the dossiers are made available and tenders are to be submitted and examined, as well as the conditions for taking part in the invitation to tender.

This information package leads to the notices of invitation to tender being given very wide publicity. They are published simultaneously in the Official Journal of the European Communities (i.e., in the six official languages of the Communities) and in the Official Journal of the beneficiary state, country or territory. They are also notified by the Government of the beneficiary state or country to the consular

¹Article 20 of Council Regulation No 5, Article 47(2) of the Financial Regulation of the second EDF, Article 49(2)(a) of the Financial Regulation of the third EDF, Article IX of the General Provisions for Financing Agreements under the second and third EDF, Article 18 of the General Specifications.

representatives of the Member States and Associated States and Countries established in that state or country. Any amendment to the notices of invitation to tender is published under the same conditions. In addition, various trade and professional publications in the Member States and the Associated States, Countries and Territories have started printing such notices and amendments.

In addition to the notice of invitation to tender mechanism - and again with the intention of enabling firms to become acquainted in good time with the nature of the services to be provided - the Commission has arranged for the invitation to tender dossier to be available for consultation locally, in Brussels and in the chief industrial centres in Europe.

Finally, the Commission has adopted two sets of measures to supplement the information available to firms on the local conditions for carrying out the services:

- i.) For information purposes in respect of works contracts, the invitation to tender includes a "General Information Sheet" brought up to date at the time of publication or distribution of the invitation to tender, and containing two parts:

general practical information, such as: geographical notes, notes on the climate, monetary system and organization of banks, means of access;

factors with a direct financial incidence on the calculation of unit prices: fiscal and customs arrangements, labour and wage rates, social security charges, the cost of transport, construction materials, energy and water, the cost of living.

This General Information Sheet is drawn up with the purpose of providing outside firms with information already possessed by local firms. It is an important factor for ensuring that the conditions of competition are observed.

- ii. For works projects of a sufficient size, site visits and sessions to provide additional information are organized for interested parties by the national administration. This procedure permits, in particular, discussion of technical, administrative and financial points which are essential for calculating the prices.

The site visits, when well organized and well conducted, have produced very good results in various respects. On-the-spot examination of all the difficulties which might arise during execution of the project, together with clarification of conditions existing as regards labour, wages, transport, the quality of local materials, etc., enable prices to be calculated with full knowledge of the facts. In this way a situation is avoided whereby tenderers unacquainted or less familiar with such factors build into their calculations a contingency margin which increases the cost of the project. Furthermore, these joint visits help to create an atmosphere of trust between the future contracting parties who during such visits join in detailed discussions on how the works are to be carried out and adopt their positions on this basis. Finally, site visits enable a better assessment to be made as to whether the various firms involved are genuinely competing with one another or are tending rather to reach agreements among themselves on certain points. It is often uncertainty regarding the conditions of execution, in so far as it prevents prices being accurately calculated, which is the source of agreements between firms.

It should be added that again in order to ensure optimum conditions of competition the Commission has arranged to have a report drawn up at the conclusion of site visits and sent to all firms which have displayed interest in the project. The contents of this report form an integral part of the invitation to tender dossier and are thus given a contractual character.

1.3.1.3 Publication of the results of the invitations to tender

Initiated by the Commission in the early years of the EDF's activity, this practice has been sanctioned by the Financial Regulations relating to the second and third Funds.

Its primary objective is to supplement the information measures described above with the publication of the final stage of the procedure for the placing of contracts.

But it has also proved a useful means of informing firms involved in a subsidiary capacity, such as subcontractors, carriers, forwarding agents, etc., of the identity of the contractors, whom they can then contact to offer their services.

1.3.2 To facilitate the submission of tenders, a fairly flexible policy has been adopted in the matter of time limits.

These have been so calculated as to allow all interested firms of the Member States and the Associated States, Countries and Territories to compete, with account being taken of distance from the beneficiary country, the possible need for a translation, any investigations carried out on the spot and the forwarding time required for correspondence.

Time limits have been fixed at four months for works contracts and three months for supply contracts as a normal rule. They may be reduced in the case of accelerated procedures (see below). However, they may be extended in the case of invitations to tender with competition or where justifiable complaints concerning a delay in the forwarding of the invitation to tender dossier are lodged with the Commission¹.

¹It is mainly to avoid the inconvenience of such delays, occasionally reported in the past, that the Commission has introduced the system of the direct sale in Europe of invitation to tender dossiers drawn up by consultancy firms (see above).

These time limits are considerably longer than those operating under procedures implemented under the aegis of other international financing bodies (in particular the World Bank). It must be stressed, however, that the EDF practice generally meets with the approval of firms. When adopting it the Commission was concerned to enable the latter to acquaint themselves more closely with the details of the work to be performed and thus prepare tenders with full knowledge of the facts.

1.3.3 To rationalize the frequency of issue of invitations to tender, the Commission has programmed certain invitations to tender for works contracts.

The objective pursued is above all to speed up the execution of projects - and thereby reduce costs - by working on the basis of the idea that it can be hoped to avoid over-spending, which is often due to delays in the placing of works contracts, if the interval between the opening of the tenders and the approval of the project by the Community authorities is reduced to a minimum.

To this end, the programme drawn up starts from the ideal date for the commencement of work on the site (governed by the climatic conditions) and works backwards - after deducting the periods allowed for preparing tenders, selecting the contractor, signing the contract and transporting equipment - to the date of issue of the invitation to tender, which must be as close as possible to the date on which the project is laid before the EDF Committee.

The advantage of such planning is that projects are staggered so that the tendering conditions can be fully competitive for each project. It also helps to eliminate wasted periods of time and occasionally even enables certain time limits to be dovetailed.

This system has been tried out with road projects, which are particularly dependent on climatic factors, and the results are encouraging. It will now be extended to other kinds of projects.

To round off the system that has been introduced for information, the Commission could take the initiative of developing this programming operation into a means of informing firms and even of coordinating the rate of issue of invitations to tender to a certain extent.

Firms would thus be better equipped to meet their various obligations and to coordinate their services more effectively in a given geographical area, for it is well known that firms have a tendency, on account of the work involved in installing their staff and heavy equipment, to direct their activities to those regions which offer a succession of jobs either in one country or in a group of neighbouring countries. The assistance of the firms concerned can consequently be better secured if information is provided in good time and covers several years. The extent to which increased participation helps to bring down the cost of operations cannot be overemphasized.

1.4 Measures taken to rationalize the presentation of invitation to tender dossiers

The action undertaken by the Commission to ensure that invitations to tender are prepared and issued under the best conditions has been supplemented by measures relating to the presentation of invitation to tender dossiers. Some of these concern the standardization of certain dossiers while others are connected with the practice of splitting contracts into lots.

1.4.1 In parallel with the work undertaken on codification as described above, emphasis has been laid on standardizing invitation to tender dossiers.

The most positive results achieved in this field have been in respect of supplies.

Technically, the system consists in drawing up a simplified dossier, which means that the majority of the contractual provisions generally constituting the invitation to tender dossier itself can be published in the Official Journal of the European Communities. These provisions are so drafted as to provide tenderers with as much information as possible in their own language - on the components to be taken into account in calculating the amount of the tender; the main advantage of such a system is that it facilitates the participation of a large number of small and medium-sized firms which, although in a position to respond to the invitation to tender, it would otherwise virtually be impossible to reach. Providing fuller information for firms means that the usual time limit for submitting tenders can be considerably reduced as candidates are left with a minimum - the technical part alone - to translate themselves.

Tried out for the first time in 1964, a system of this kind has gradually been extended to cover all supply contracts.

It was last improved in June 1969, when the Commission split the document into two parts: Part A, which is variable and specific to each invitation to tender, describing the supplies and stating the Special Conditions, and Part B, which is standard and sets out the General Conditions common to invitations to tender for supply contracts. This standardization and simplification enables invitations to tender to be issued more rapidly and in greater numbers.

Thanks to this improvement, the administrations of the beneficiary countries have been able to speed up the drafting of dossiers, while the Commission's departments were able to rationalize the work of translation into the official languages of the EEC and that of publication, and it is now possible to issue invitations to tender immediately following reception of the technical details.

It was only thanks to this system that it was possible to cope with the increase in the number of invitations to tender and, in specific cases, to ensure that orders were delivered on time.

In 1973 almost all invitations to tender for supplies were issued in accordance with this simplified procedure.

Encouraged by this conclusive experiment in standardization for straightforward supply contracts, the Commission undertook to extend it to composite contracts, that is supply contracts involving a considerable proportion of assembly work. Electrical installations in general are an example, and the equipping of oil mills or tea factories also belongs to this category.

For works contracts standardization mechanisms remain more delicate because of the complexity and specificity of work in this field.

However, the Commission is in contact with international bodies and various national federations of public works firms to study ways and means of drafting common technical specifications applicable to given types of contracts. Its departments are carefully watching developments following initiatives taken recently in connection with the drafting of common specifications for road

works in Africa. This research could be combined, in the fairly near future, with the efforts undertaken by the Commission to draw up standard special conditions and standard outline unit price lists for each category of contract. The preparation of texts applicable to contracts financed by the EDF, while representing a further step towards codification, would provide useful reference standards for the presentation of invitation to tender dossiers.

1.4.2 The second set of measures adopted by the Commission to rationalize the procedure for the issue of invitations to tender corresponds to a guideline laid down in Article 49(2)(c) of the Financial Regulation for the third EDF, according to which the Commission shall take steps to group invitations to tender in homogeneous lots which are as large as is economically and technically warranted, and to organize the issue of invitations to tender for operations to be carried out in neighbouring countries in such a way that it is possible to coordinate the performance of the contracts.

The policy followed by the Commission in this field is in fact of relatively long standing. Already under the second Fund Article 28 of Commission Regulation No 62/65 laying down detailed rules for the functioning of the EDF stipulated that invitations to tender be grouped into lots which were as large as was economically and technically desirable.

In the light of the foregoing, the following course of action has been adopted:

(a) In general, the decision to split an invitation to tender into lots is governed by economic considerations (such as the geographical situation) and technical factors (in particular to take account of the specialization involved). Here it is standard practice to enable candidates to tender for a single lot, several lots, or all the lots, so that each firm can

participate according to its scale; in addition, cost benefits can be obtained if the tenderers grant an overall rebate where certain lots are grouped together.

(b) As regards works contracts, the practice of splitting into lots and grouping invitations to tender into homogeneous lots has made EDF contracts accessible to small and medium-sized firms and has thus constituted an important factor in the expansion of competition.

In order to take account of geographical situations and to meet an efficiency requirement, the Commission is moreover endeavouring to group together in a single invitation to tender, subdivided into several lots, works of the same kind to be undertaken in regions which are very close to one another; a further possibility would be to have invitations to tender issued in close succession for works of the same type in one or several neighbouring countries.

Such grouping or coordination of works also encourages cooperation between firms, thus contributing to the attainment of an objective which the Commission set itself and which it has employed a number of specific means to reach (see below).

(c) As regards supplies, the position adopted by the Commission is to invite tenders as far as possible for everything required for the execution of a given project or for all items which are sufficiently similar to be covered by a single invitation to tender. In other words, as with the neutrality of specifications (see above), the rule for the presentation of invitation to tender dossiers lies in finding the right balance between excessive dispersion and excessive concentration of lots. Consequently,

the Commission takes particular care with these grouping operations. Occasionally based on geographical criteria, they prevent the dispersion of supplies of the same type earmarked for regions which border on one another but are situated in different associated countries.

In addition, when making their choice, the Commission's departments are guided by the concern to take into account the structure of the industries involved, and particularly that of European industries. The Commission was approached on numerous occasions during the early years of EDF activity and as a result its departments have come to acquire a fairly thorough knowledge of this structure, and the approach adopted - splitting or grouping - is decided accordingly.

To complete the package of measures for rationalizing the grouping of lots of supplies, the Commission recently began to study the possibility of placing orders spread over several years following an invitation to tender. The advantage of such a system would be to achieve a balance between a price and utility guarantee for the beneficiary country and the attraction which the possibility of making a large sale holds for tenderers. This system would apply essentially to agricultural projects, which are carried out over several years.

(d) It must be stressed that the practice of grouping into lots in particular enabled the disadvantages of the system of turnkey projects to be avoided.

Although the latter system can, in certain specific cases, lead to perfectly coordinated projects finished on time, it has certain disadvantages as regards the general principles of development. In particular, it leaves no room for the educational effect expected of cooperation; it is also difficult to reconcile with the very principle of the invitation to tender,

for the all-in-job does not correspond exactly to the industrial structure of the member and associated countries; lastly, it would not ensure access on equal terms for all their nationals, and in particular it would exclude those industries in associated countries which do not possess the necessary capacity and staff to undertake all-in work.

However, under the system of grouping into homogeneous lots which are as large as is economically and technically warranted, firms can submit tenders directly in accordance with their capacity - and firms of the associated countries are well catered for under this procedure.

1.5 Rules governing selection of the contractor

1.5.1 The arrangements for selecting the contractor for an EDF contract following an invitation to tender are the subject of close cooperation between the national authorities of the beneficiary associated country and the Commission.

(a) Normally the placing decision does not require a formal preselection procedure.

A committee appointed for the purpose in accordance with national regulations¹ is responsible for the opening of the tenders. However, as stipulated by the Commission Regulations laying down the operating rules for the second and third Funds respectively, the EDF Delegate is present as an observer at the opening of the tenders and also attends the subsequent meetings

¹In the preamble to the Decision implementing the General Specifications, the Council of Association stressed the advantage of the public opening of tenders gradually becoming the rule for all categories of invitation to tender. It is already compulsory for supply contracts, but for works contracts it is still national regulations which determine whether the procedure is used. In practice, many of the Associated States now comply with this procedure.

at which the tenders are examined and proposals for the placing of the contract made. Thus, the Delegate acts as the guarantor of the regularity of the proceedings at the different stages of the procedure. He approves the choice of contractor on behalf of the Commission - or refers to the latter in complex cases.

(b) For major works requiring a certain financial and technical capacity on the part of the contractors, the Commission has recommended the use of a procedure whereby applications are sorted in advance: preselection. This operation comprises two stages:

- i. preselection of candidates, decided by a national committee of the beneficiary country, with the approval of the EDF departments;
- ii. an invitation to tender restricted to preselected firms.

Both the Member States and the Associated States are familiar with this procedure, which is also used by large aid donors such as the World Bank.

Thanks to this technique, firms are informed of the main details of the project when they receive preselection notices; they are consequently in a position to acquaint themselves with a great deal of data concerning its execution, and to take advantage of an appreciable period for study and reflection. This procedure also enables a prior assessment to be made of the technical and financial means of future competitors, and at the same time saves unsuccessful candidates unnecessary expenditure on the preparation of a tender.

1.5.2 As regards selection criteria, the principle is that of choosing the tender which is economically the most advantageous.

This system implies that the lowest tender is not selected automatically.

It involves taking into consideration, in addition to the amount of the tender, other factors making for good management.

Article 20 of Council Regulation No 5 (first Fund), confirmed by Article 47(3) of the Financial Regulation relating to the second Fund, envisaged as assessment criteria the qualifications and guarantees offered by tenderers and the nature and conditions of execution of works and supplies. The Financial Regulation relating to the third Fund (Article 49(3)) added the concepts of the price, utilization cost and technical value of the services rendered. The latter are likewise listed in Article 45 of the General Specifications, which also mentions the financial guarantees.

This set of criteria - the list is not exhaustive¹ - is intended to determine as far as possible the various components of a tender by weighing technical considerations against financial aspects.

The Commission sees to it that the special conditions specify, wherever necessary, the elements to be taken into consideration in this respect.

1.5.3 In accordance with the procedures set out above, and to enable the choice of contractor to be made on the basis of equality of terms, the Commission has laid down, in conjunction with the national departments of the Associated States, a number of rules to facilitate the evaluation of tenders and to ensure maximum objectivity in comparing them. Account had to be taken here of the impact of such factors as the currency in which the contract is denominated, taxation and transport costs, and measures had to be taken to counter any discrimination here. The machinery established for this purpose has been partially embodied in Articles 31 to 37 of the General Specifications.

¹The parties negotiating the new association convention agreed to add the following criterion: "Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above (the same as those stated in this paper), preference shall be given to the one which permits the greatest possible utilization of the physical and human resources of the ACP States."

1.5.3.1 Currency of tender

The effect of this factor varies according to the type of contract.

(a) In so far as works contracts are concerned, the principles have been laid down taking into account the fact that the services to be provided are tied to a clearly defined local area.

It is for this reason that the tender is made out in the national currency. However, tenderers may indicate in their tenders the percentage of the amount of their tender which they wish to be paid in the currency of the Member State or the associated country of which they are nationals or in which they have their registered place of business. But grounds must be given for this transferable percentage so that the contractor cannot abuse the exchange rate guarantee¹ applying to this portion of the contract by inordinately inflating the foreign currency expenditure which he requires to be met. This being so, the Commission sees to it that the assessment of the percentage shown in the tender does not enter into the evaluation of the tender itself.

(b) In so far as supply contracts are concerned, account has to be taken of the complexity of the production and distribution process. Thus firms are free to express their tender either in the currency of the country in which they have their registered place of business, or in that of the beneficiary country, or even in that of the Member State or Associated State in which the supplies are produced. However, in order to ensure

¹The exchange rate guarantee is arrived at by fixing in the contract for the full duration of the execution of the works the rate of exchange of the currency of the country where the contracting firm's registered place of business is situated relative to the currency of the associated country receiving aid from the EDF. See 1.7.2(c) below for the scope of this mechanism.

equality in the comparison of tenders, the price shown in currencies other than the national currency is converted into the latter on the basis of the exchange rates published monthly in the Official Journal of the European Communities. The reference rates are those in force on the first working day of the month preceding the final date fixed for the submission of tenders.

(c) The exchange rate guarantee accorded for part of the amount of the works contract and the fixing of exchange rates for the comparison of tenders are characteristics peculiar to EDF contracts. The Commission sanctioned them after examining requests for their adoption from the relevant industrial sectors and being convinced that they were justified on practical grounds, which experience has moreover confirmed.

The tenderers calculate the price of their tender approximately one month before it is submitted, given the time required for drawing up the tender in its final form and for transmitting it to the destination, which generally takes a fairly long time.

It is for this reason that the economic and monetary conditions existing at the time when the tenderers are calculating their price are decisive and taken into account and any change in the exchange rate occurring subsequently no longer influences the assessment and comparison of tenders. Hence the care taken in the invitation to tender dossier to specify the mechanism for determining the rate of exchange.

1.5.3.2 Taxation

The arrangements concluded in this sphere with the associated countries have here again resulted in there being a different system depending on the nature of the contract.

(a) In so far as works contracts are concerned, in order that the amounts of the various tenders are directly comparable, the tenders submitted include all entry duties, taxes and levies to be paid in the associated country upon performance of the contract as set out in the "General Information Sheet" contained in the invitation to tender dossier.

(b) In so far as supply contracts are concerned, the Commission has managed to arrange a compromise between the normal practices of international trade and the need to protect the national industries of the associated developing countries. This is why tenders are calculated net of entry duties and taxes when they are concerned with manufactured goods or supplies originating outside the beneficiary country. On the other hand, in order to neutralize the effect of indirect taxation when tenders are compared, those involving local manufactures or supplies are submitted without including the consumption or production tax (ex-works price).

The fixing of rules governing taxation and the transparency of the latter are of great importance in determining whether the terms are equal. The fixing of these rules enables the tenderers to calculate their tender with full knowledge of the facts; what is more, should the tax system change, the firms are still covered because of the price review mechanism.

1.5.3.3 Transport

In this field there has been a particular problem with regard to supply contracts if the place of delivery is not the same as the port of discharge.

In this case calculation of the cost of transport to the interior and in particular that of transport for which there is no official rates may raise serious difficulties for non-resident suppliers in that they do not have available sufficiently accurate information on costs.

There have been occasions when various competitors have approached one or more transport firms holding a monopoly and have been quoted different prices; if the cost of transport to the interior is thus calculated differently according to the various tenderers and if, because of the distance involved, transport represents a considerable part of the contract, equality of competition is no longer guaranteed.

In order to eliminate this source of discrimination which might affect the conditions of competition, the invitation to tender dossier specifies the geographical location to which the cost of transport (and insurance) is included in the tender. This location, which must be situated on a network subject to official rates, is called the point for comparing tenders. The cost of transport from this point to the place of delivery is not taken into account when tenders are compared.

The principle underlying this system, which consists of excluding from the comparison of tenders any element in the contract which might be calculated on an erroneous or false basis, is used for solving in the same fashion problems similar to that of transport. If the supplier of a piece of complex industrial equipment, for example, is required to train personnel for a given period, payment for this service may vary according to the various allowances for board and lodging provided by the tenderer, allowances which cannot be calculated on the same bases. In such a case, the price submitted for the training is calculated independently

from the prices asked for the equipment and its installation. This enables the basis used for the calculation to be known, any errors made to be detected and thus makes it possible to exclude the cost of training from the comparison of the tenders or to include it after it has been adjusted.

1.6. Measures to ensure a balanced sharing of work between firms established in the country concerned and foreign firms

The special features of certain operations financed by the EDF have led the Commission to relax the arrangements for recourse to open international invitation to tender.

Thus the Fund's Chief Authorizing Officer is empowered, according to the provisions of the Commission Regulations laying down the operating rules for the functioning of the second and third EDFs, to authorize, as an exceptional measure, the placing of contracts after restricted invitation to tender, the conclusion of contracts by direct agreement (mutual agreement contracts) and the performance of contracts by public works departments.

Derogations of this kind are provided for certain operations connected with exceptional aid (in cases of economic difficulties resulting from a fall in world prices or from natural disasters) and in cases of recognized emergency or where the nature, the minor importance of the specific characteristics of certain works or supplies so justify.

However, above all, with the entry into force of the third EDF, both the Yaoundé Convention itself and the Financial Regulation have given the official stamp to a certain number of special procedures which supplement or correct the above-mentioned practices.

These procedures are based on the idea that in certain cases the rules governing participation should be such as to ensure a balance of tasks between local and

foreign firms in relation to their economic and technical resources. The purpose of some of these procedures is to encourage cooperation between firms; others provide arrangements in favour of industries in the associated countries.

1.6.1 Under Article 49(2)(d) of the Financial Regulation relating to the third Fund the Commission is invited to encourage, in so far as possible, especially where large-scale works or works of a special technical nature are to be carried out, cooperation between firms of the Member States and of the Associated States, Countries and Territories, in particular by preselection and the creation of groups.

The Commission has already gained much experience in this field.

(a) As has previously been stated, the practice of grouping services into homogeneous lots was partly conceived for this purpose (see above).

Moreover, the AASM/OCT firms are eligible to participate as sub-contractors to the foreign contractors and thus often obtain their own share of the large works contracts.

(b) The Commission has also taken steps to encourage directly collaboration between firms through the setting up of multinational groups of firms.

This action was the fruit of much discussion with the Union of the Industries of the European Community (UNICE). The latter, concerned by the fact that originally almost all the overseas works contracts were awarded to traditional firms - in other words mainly the locally established subsidiaries of firms that are nationals of the former colonial powers - had proposed that the Commission take action to ensure that contracts of a certain size were reserved solely for groups of firms

composed of partners of at least two different nationalities.

The Commission refused, however, to adopt a measure which might jeopardize free competition and instead tried to persuade the relevant industrial circles to accept its view by stressing the advantages that such collaboration would surely provide, such as the pooling of technology or the reduction of administrative costs.

It was also in order to meet this objective of cooperation that the previously-mentioned formula of preselection was advocated. Published in good time with maximum information on the administrative and technical conditions of the works to be carried out, it gives the various candidates approximately two months to find the ideal partner(s) with the right equipment and technology to complete their own potential.

From this point of view preselection was even made compulsory in the texts of the third Fund for works contracts estimated at over 5 million u.a.

The formula has produced encouraging results in that stable groups have gradually been formed, often composed of the locally established subsidiary of a European firm, a firm which is a national of the beneficiary country and a partner from outside which is a newcomer to the market. This procedure has enabled the local partner's technology and organization to be improved and the new arrival to be initiated into local conditions.

Heartened by this encouraging experience, the Commission, looking ahead to the fourth EDF, proposes to continue encouraging groups - whilst recommending that the compulsory

nature of preselection be dropped in so far as the latter has produced satisfactory results: groups have been established, a number of them have given proof of their ability and competence, their multinational composition is in line with what the Commission intended and these groups regularly reply to EDF invitations to tender.

1.6.2 The second aspect of the corrective measures for the rules governing the open international invitation to tender is based on the concern to protect the economies of the associated countries.

The legal basis for these exceptions is in the actual text of the second Yaoundé Convention, Article 26(2) of which stipulates that "the provisions of paragraph 1 (the principle of participation on equal terms) shall be without prejudice to measures intended to assist construction or large or small-scale production undertakings of the Associated State concerned, or of another Associated State in the same area, to take part in the execution of public works contracts of limited scope or of contracts for the supply of locally produced goods".

Some of the measures which have been taken under this heading are concerned with works contracts, others with supply contracts; it must moreover be emphasized that the new association looks as though it will tend to accentuate the preference given in this way to the firms of the Associated States.

1.6.2.1 Works contracts

Under the second Fund, faced with a certain lack of interest on the part of international tenderers for small-scale works contracts, the Commission had deemed

it useful to use an invitation to tender procedure more appropriate to this type of contract which, without excluding participation by all the interested firms, would be directed more particularly at the firms of the neighbouring Associated States. Thus the practice of the local or regional invitation to tender was established.

The texts relating to the third Fund have made this practice official by providing the possibility of organizing an accelerated procedure for issuing invitations to tender, which includes shortened time-limits for the submission of tenders.

Invitations to tender by accelerated procedure are published in abbreviated form in Europe in the Official Journal of the European Communities and various journals which include this information. The time-limits for the submission of tenders are those usually applied for public contracts in the beneficiary country, subject to a minimum period being observed.

It should be emphasized that these provisions are not designed to exclude participation by foreign firms. Participation by them is still possible since the invitations to tender are publicized although on a minimum scale. By encouraging this type of procedure, the Commission wished above all to increase the number of works contracts performed by the national firms of the associated countries; but at the same time, given the small likelihood of foreign competition, it was able to aim at accelerating projects.

The limit below which such a procedure may be organized was fixed at 500 000 u.a. under the third Fund and will increase to 2 million u.a. under the fourth Fund - which is a more realistic assessment of the threshold above which foreign competition

is likely. However, in order to maintain the advantages of certain patterns of specialization, the Commission considers it necessary to arrange for the traditional international invitation to tender to be possible where the nature of the work might in this respect favour the operation being carried out under the best technical and financial conditions.

1.6.2.2 Supply contracts

The provisions adopted in this field are not concerned with participation in competition but with the choice of the contractor.

It should first of all be emphasized that Commission Regulation 229/72 formally excluded the accelerated procedure for supply contracts. The Commission realized that there is no threshold below which European industries would fail to be interested. Moreover, the formula invitation to tender with a simplified dossier (see above) alone enables the imposing objective to be met of speeding up the operations thanks to the shorter time-limits for the submission of tenders.

On the other hand, in order to encourage the national industries' production it was decided to give those industries a "degree of protection", to be taken into account when tenders which are technically and economically equal are compared.

The Financial Regulation for the third EDF reserved application of this degree of protection to newly created or developing industries which produce a sufficient margin of value added. The amount of protection, decided on a case-by-case basis, may be as high as a margin of 15% compared with the tender considered the most economically advantageous.

The Commission has had its recommendation accepted that the 15% preference be applied automatically under the fourth EDF to all tenders for supplies originating in any of the associated countries.

It has also had its proposal accepted that the price preference system be extended to works contracts. However, so as not to increase inordinately the cost of projects, the Commission considered that the degree of protection should be limited to a percentage lower than that suggested for supply contracts (10%) and be applied exclusively to works contracts valued at less than 2 million u.a.

Firms in the Associated States will thus be given a two-fold stimulus for small works contracts both from the point of view of participation (accelerated procedure) and from that of the placing of contracts (price preference).

1.7 Rules for the performance of contracts to ensure indirectly that the terms are equal

The principles evoked above are all concerned directly with the procedures for preparing and placing contracts.

Other factors, connected with the rules for the performance of contracts, also play a part in determining how attractive contracts are to firms. This is particularly the case for the financing facilities granted to firms and for the limitation of excessive commercial obligations required of suppliers. These may produce an unquestionable widening of the field of competition particularly for small-scale and foreign firms. Thus the Commission has taken care to remove

the causes of discrimination and to give a certain amount of support and protection to those which have been awarded EDF contracts.

1.7.1. A contractor who is performing a contract, especially a works contract, often commits considerable expenditure which may not be covered by adequate funds. This is a difficulty which especially faces small firms whose financial standing is not very high and whose opportunities for obtaining bank loans are limited.

In order to get round this kind of obstacle, which might restrict participation in EDF contracts, the Commission has formulated measures to ease the financial situation of the firms, either by directly granting advances, or making it easier for the firms concerned to obtain bank loans.

(a) Advances may be granted to the contractor for operations preparatory to the performance of the contract. Subject to the establishment of a guarantee (deposit or directly liable guarantor), the contractor may obtain two kinds of advances:

- i. a lump-sum advance enabling him to meet expenditure resulting from the start of the contract, which is payable as soon as notification is given that the contract has been accepted;
- ii. an advance for the purchase or order of plant, machines, tools and materials necessary for the performance of the contract and of any other prior expenses of a major kind, such as the acquisition of patents and study costs.

Reimbursement of the advances is made by means of a deduction from the instalments and possibly from the balance owing to the contractor in accordance with the procedure laid down in the Special Conditions.

It should moreover be emphasized that the lump-sum advance to cover expenditure resulting from the start of the contract is, because of its prefinancing nature, not cleared until the performance of the contract is already well advanced.

Such a mechanism is justified by the desire to make sure that the advance serves its purpose by allowing the contractor to make use of it for a sufficiently long period.

(b) The second source which enables firms to obtain adequate funds is recourse to bank loans.

However, the opening of credit accorded in this way to contractors is generally only granted where the credit institutions have been provided with guarantees. This is why the Commission has established a system of mechanisms to facilitate this set-off for contractors while ensuring that both the creditors and the administration of the beneficiary associated country are given the essential legal security.

Originally the only mechanism provided for was that of pledging the contract as security, a mechanism well known in French law and in the regulation of the French-speaking Associated States. However, in order to ensure equal terms for firms accustomed to different laws and unfamiliar with this mechanism, the Commission subsequently provided for the possibility of using at the same time another more current procedure, that of the assignment of debt.

Finally, as regards supply contracts in particular the Commission noticed that suppliers obtained bank loans more easily if the contracts they held were clearly

shown to be financed by the EDF. Thus a procedure for the authentication of contracts was instituted: at the request of the supplier or his bank, a certificate is delivered by the Fund's Chief Authorizing Officer, certifying that the contract is financed by the EDF.

1.7.2 The Commission's action was not limited to measures for making it easier for firms to obtain funds. It paid particular attention to establishing the EDF's reputation as a prompt payer by doing its utmost to ensure that payments due to firms for their services are made within a particularly short period of time.

(a) Generally speaking, when delays occur in the issue of payment documents which might call into question the whole performance of the contract, the Chief Authorizing Officer is authorized by Commission regulations to take any measure required to remedy such a situation.

The Commission may even take the place of the national authorities in order to make directly the payments due to the contractor.

(b) As regards supply contracts, which here pose a special problem, the Commission has attempted to reduce as far as possible for the contract holder the burden of interim financing. The measures taken to achieve this are of two types:

- i. Phasing of payments must be provided for in the Special Conditions. Here, in order to bring the EDF's terms of payment closer to those in use in the commercial sector, a standard formula was recommended.

It consists of paying a certain percentage of the amount of the order at each important stage in the performance of the contract (notification of the contract, loading of the goods, provisional acceptance of the latter) so that there is only a balance of the order of 10% to be settled at the end of the guarantee period, after final acceptance of the supplies.

- ii. In the past the first two instalments of the above bills-payable book have often been paid late.

On due reflection the Commission considered that in so far as these payments had to be made outside the beneficiary associated country without there even being any requirement to establish the reasons for this inside that country, it could as manager of the EDF funds, act on its own account. The Commission therefore adopted the procedure of directly sanctioning and paying these first two instalments of the amount of the contract.

- (c) As regards payment for works contracts, the importance of the previously mentioned exchange guarantee mechanism rate will be remembered.

The exchange rate guarantee protects the contractor against devaluation of the currency of the country where the works are carried out. Since this involves that part of the contract for which the contractor has requested payment, at the time of his tender, in the currency of the country in which his registered place of business is situated, the rate of exchange applied until the services have been rendered in full remains that in force at the time when the tender was drawn up. This parity therefore has a contractual character.

The contractor is therefore safe in the knowledge that the amount of currency required, where appropriate, for paying the expatriate staff and importing plant or materials will retain its value compared with the local currency - whatever the fluctuations in the latter.

1.7.3 The suppliers' commercial obligations are in line with the standards generally in force for public contracts. Suppliers are in particular required to provide the usual commercial guarantees for a certain period of time varying according to the nature of the supplies.

These obligations also imply the possibility of an after-sales service guaranteeing the maintenance and repair of the supplies as well as the resupply of spare and replacement parts. However, in this respect, the Commission has had to take the necessary precautions to ensure that excessive requirements do not have the effect of excluding suppliers who are not established in the associated countries from the invitations to tender. Thus the General Provisions of Part B of the invitations to tender with simplified dossier for supply contracts contain a particularly flexible device which provides for:

- i. the possibility of waiving such an obligation if, because of their nature, the supplies do not require after-sales service;
- ii. the possibility for the supplier to have after-sales service provided by an intermediary in respect of whom it is sufficient to produce references.

In conceiving and applying these various measures, the Commission has taken into account what it has learned from experience and has introduced the measures as it has found or as it has been brought to its notice that competition has been infringed.

There is no doubt that this pragmatism will remain the rule for supplementing, where appropriate, the vital system for ensuring that the principle of equal terms is observed.

CHAPTER 2

Statistical analysis

2.1 Development of the rate and volume of invitations to tender

2.1.1 General trends

The table in Annex I shows the way international invitations to tender for works and supply contracts financed by the EDF have developed from the outset in terms of number, volume and average amount involved.

If the difficult year following the launch of the first Fund is discounted, a breakdown by five-year periods (1960-64, 1965-69, 1970-74) reveals certain general trends which crystallized as the three Funds progressively overlapped one another.

In particular, it will be seen that:

- i. during the first period, there was a rapid increase in the volume of contracts; a decisive step forward was made in the second year (62 million u.a.), a peak was reached during the fourth year (113 million u.a.), and at the end of the period the volume started to fall off;
- ii. during the second period, there was again a gradual increase in the first three years, the peak being reached in the third year (103 million u.a.);
- iii. during the third period, after an appreciable decrease during the first year, there was a major recovery from the second year, reaching a peak in the third year (over 122 million u.a.).

The average value of contracts placed following invitations to tender has followed this general trend. It will be noted, however, that for the third period, the peak was reached in the second year - 1971 - though

fewer invitations to tender were issued during that year.

It should be pointed out, moreover, that a new pattern emerged in the average value of contracts placed following invitations to tender during the last five-year period:

- i. In general terms, the total number of invitations to tender is less for the period 1970-74 (376) than for each of the preceding five-year periods (318 and 469 respectively). The average varied between six and eight invitations to tender per month, depending on the period in question;
- ii. However, the average value of contracts placed following invitations to tender was appreciably greater for the period 1970-74: 1 195 000 u.a. as against 952 000 u.a. for the period 1960 and 896 000 u.a. for the period 1965-69.

2.1.2 Analysis

The general trends outlined above are the result of the interplay of various factors which it is easier to clarify by means of a breakdown by type of contract (see table in Annex II).

(a) The period 1960-64

The steady increase in the overall volume of contracts during this phase, involving only contracts under the first EDF, was due to the increase in works contracts.

The peak reached in 1963 responded to a large increase in the volume - but not in the number - of both works and supply contracts. This is

due to the speeding up of the procedure for financing decisions on major projects under the first Fund.

(b) The period 1965-1969

The first year was marked by something of a falloff following a movement which had started at the end of the preceding period; this falloff - affecting both types of contract - corresponded to a slowing-down of operations under the first Fund at a time when the execution of projects under the second Fund had only just started.

However, during the second phase (1966-1969) there was a recovery due to the fact that projects under the second Fund had progressively become fully operational.

It will be noted that supply contracts increased steadily in both number and in volume. The curve is slightly different for works contracts, the volume of which decreased in the final year of the period; the high point for the award of contracts for major projects was in 1967, and it is for this reason that the total volume of contracts reached a peak in that year.

(c) The period 1970-1974

As in the preceding period, the appreciable reduction in the volume of contracts for the first year is indicative of the transitional phase which that year constituted.

This phase came before the start of projects under the third Fund and at the same time was marked by a slowing down of operations under the second Fund as regards both works and supply contracts.

The following phase, however, saw the effective launch of contracts under the third Fund.

This factor has had a marked impact on the pattern of the statistics relating to works contracts. It explains the sharp up-swing from 1971 in the curve relating to invitations to tender for works contracts. It should be emphasized, moreover, that the steady increase in the resources committed under the third EDF hides the accompanying reduction in contracts placed under the other two Funds.

The figures for supply contracts reveal a slightly different movement.

There was a sharper drop in the number and value of invitations to tender issued for such contracts in 1971. This may be explained both by the quite natural slowing down of operations under the second Fund and by delays - solely attributable to the economic situation at the time - in the implementation of projects under the third Fund.

However, the situation recovered in the following year, and the increase in the number and value of supply contracts - mainly due to the contracts placed under the third EDF - explains the peak reached in 1972 by the total value of contracts placed following invitations to tender. The rationalization measures described in Chapter I, item 1.4, have come to full fruition here.

The figures for 1973 show the same trend as that for works contracts, namely the combination of a marked slowdown in operations under the first and second Funds and normal growth under the third Fund.

The data for 1974 produce a profile similar to that for 1969: an increase in respect of supply contracts, with an average, never previously reached,

of 475 000 u.a.¹, and a sharp downturn for works contracts subsequent to the slowdown in operations under the third EDF.

Thus, a new transitional phase seems to have started. There can be no doubt, however, that the substantial fourth EDF will enable peaks to be reached in the future which were never approached under the earlier Funds.

- (d) Lastly, it should be pointed out that in view of the trend of the average value of contracts placed following invitations to tender, a distinction should be made in respect of invitations to tender issued since 1971.

Here account must be taken of the measures put into effect under the second Yaoundé Convention.

Because of the facilities granted for the issue of invitations to tender by accelerated procedure and for the conclusion of mutual agreement contracts, the curve for traditional international invitations to tender has turned downwards.

Accordingly, it will be noted that between 1 January 1971 and 31 December 1974, 55 invitations to tender for works contracts worth 18 580 000 u.a. were issued by accelerated procedure, whereas 116 invitations to tender worth 337 144 000 u.a. were still issued by the traditional procedure.

¹ This is mainly accounted for by the amounts relating to four invitations to tender for the supply of railway equipment, the equipping of a tea factory and a large order for fertilizers and insecticide.

Accordingly, compared with the figures for the preceding years, the average value of contracts placed following traditional international invitations to tender in the years 1971-74 is still considerably higher. In 1971 it was over 2.5 million u.a. and in 1972 and 1973 it even went beyond the 3 million u.a. mark, but dropped to slightly over 2 million u.a. in 1974. However, between 1959 and 1970 the average for invitations to tender for works contracts exceeded 2 million u.a. only once (in 1967).¹

2.2 Results of invitations to tender

The table in Annex III contains a breakdown by nationality of works and supply contracts placed under the three Funds, showing the position at 31 December 1974.

It enables certain interesting comparisons to be made, though it must be borne in mind that the three Funds are not at the same stage of development since they were launched at different times.

Thus, the accounts for the first EDF are now closed, with contracts totalling 442 million u.a. Similarly, the contracts which have so far been placed under the second EDF amount to a similar sum - 412 million u.a. On the other hand, the third EDF, with a current total of the order of 283 million u.a., has not yet reached a comparable level; also, the overall balance of contracts under the third EDF has not yet taken final shape.

2.2.1 If the figures for all contracts are considered, it can be seen that the general structure of distribution varies according to the Fund - though there is a more pronounced gap between the first

¹ The average value shown in the table for works contracts does not correspond to these figures, for it includes invitations to tender issued by accelerated procedure. Taking traditional international invitations to tender in isolation, their average value was 3 073 000 in 1972, 3 683 000 in 1973 and 2 083 000 in 1974.

EDF on the one hand and the second and third EDFs on the other.

(a) The results of the first EDF show a fairly marked imbalance, which is evidenced by the following:

- i. two dominant items - well above the 25% threshold - for French firms and firms of the AASM/CCT group;
- ii. a share of the order of 15% for Italian firms alone;
- iii. as regards the four other Member States, a share of 5% for Germany and less than 5% for the Benelux countries.

(b) The results of the second EDF show an appreciably more balanced structure.

Although the French share remains virtually the same, there is a rebalancing in the 10-20% bracket, with the AASM/OCT, Germany and Italy all coming within it.

Benelux firms are still in the lower bracket, although Belgium's share is above 5%.

(c) The results available so far for the third EDF indicate a structure occupying something of an intermediate position between those which emerged for contracts under the other two Funds: this situation is particularly marked in the case of Germany, Belgium, Italy and the AASM/OCT.

2.2.2. On the basis of the same comparison for all contracts, certain main trends may be traced, through the three Funds by reference to the nationality of the contractors.

- (a) It will be noticed first of all that France, with a relatively stable share of around 45%, is in a particularly dominant position. This dominance would seem to be increasing, judging by the present situation of the third EDF.
- (b) The Luxembourg share is the only one which has increased continuously; under the third EDF it even crossed the 1% threshold.
- (c) The situation for German, Belgian, Italian, Dutch and AASM/OCT contractors moved in a similar manner, although in opposite directions:
 - After a somewhat poor start under the first EDF, German and Belgian firms were much more successful under the second EDF. But whereas Belgian firms have maintained their improved position under the third EDF despite a slight downturn, German firms have lost considerable ground. Dutch contractors increased slightly under the second EDF as compared with the first, but their number has likewise been reduced considerably under the third EDF.
 - There has been some instability in the performance of Italian and AASM/OCT firms too, but here the pattern is reversed: a decline under the second EDF followed by a significant recovery under the third EDF.

2.2.3 An examination of this overall data according to type of contract shows that on the whole the results set out above depend greatly on those achieved for works contracts.

Works contracts account for 89% of the contracts placed under the first Fund and 79% of those placed under the second and third Funds.

The similarity between the figures is thus particularly marked for the first Fund, as it is for the other two Funds - though to a lesser degree.

There is, however, a slight difference in the choice of criteria for assessing the economic repercussions of the two types of contract: the works contracts breakdown takes account of the nationality of the contractors, whereas for the purposes of the supply contracts breakdown the results have been worked out on the basis of the origin of the goods. This difference is due to the fact that the nationality of the suppliers is not a particularly accurate indicator of direct participation by European firms, since nearly all the supplies are distributed by wholesalers established in the associated countries.

Given the foregoing considerations, it is necessary to see what factors have contributed to such a breakdown in respect of the two types of contract.

As regards works contracts, the analysis will involve a study of participation levels by establishing the relationship between the number of tenders submitted by a country and the number of contracts placed with that country. However, in order to ensure thoroughness the examination will be limited to contracts under the third EDF,

the breakdown for which occupies something of an intermediate position between those for the other two Funds.

2.3 Breakdown of works contracts - analysis of contracts placed and participation levels (third EDF)

The table showing the breakdown of works contracts as at 31 December 1974 (see Annex No III) gives a total of 223 636 000 u.a. for contracts under the third EDF.

In fact, the value of the contracts placed following invitation to tender under the third EDF alone is 186 817 000 u.a., for it is necessary to deduct from the overall total the appropriations charged to the third EDF but earmarked as additional financing for projects in respect of which contracts were awarded under the first two Funds - 25 205 000 u.a. - and the value of the contracts placed without international invitation to tender - 11 614 000 u.a.

It is on the basis of this real figure of 186 817 000 u.a. that the analysis of the contracts has been carried out.

2.3.1 In order to determine more closely the impact of the various factors which have contributed to the breakdown described above, the size of the contracts should be taken into consideration first of all.

Factors such as the minimum value attracting foreign firms or the degree of complexity of the projects have an effect on where contracts are placed.

Also, the sum of 186 817 000 u.a. should not be considered as a homogeneous amount but should be broken down into its main components by reference to the size of the contracts which make up its total.

This overall sum has accordingly been divided into three sections on the basis of two bench-marks:

- i. 1 million u.a.: this is approximately the minimum value attracting foreign firms;
- ii. 3 million u.a.: the minimum for major infrastructure projects (ports, major roadworks, etc.).

On this basis, the volume of the works contracts placed under the third EDF can be broken down as follows:

Contracts (amount)	Volume ('000 u.a.)	%
0 to 1 million u.a.	22 112	11.84
1 to 3 million u.a.	51 060	27.33
> 3 million u.a.	113 645	60.83
Total	186 817	100

It will be noted that the volume of contracts worth over 3 million u.a. accounts for by far the greatest portion of the total. There is, moreover, a relationship between this situation and the average value of contracts placed following invitations to tender issued for works since the inception of the third EDF (see above). It will also be noted that more than 88% by value of the contracts are in excess of 1 million u.a.

2.3.2 On these bases, the 91 invitations to tender issued since the start of the third EDF have been analysed and the results broken down according to the size of the resulting contracts. Here account has been taken of separate contracts - in particular for separate lots where works or supplies are subdivided into a number of lots. The analysis has covered a total of 122 contracts, involving their itemization by number and by value, and the Commission's departments have moreover examined the relevant tenders.

This analysis has enabled the table in Annex IV to be drawn up.

2.3.2.1 As regards contracts placed with single firms or with firms forming part of one-country consortia, four items are of particular interest:

- (a) Firms of the AASM/OCT group are almost in a majority position as regards contracts worth less than 1 million u.a.: their share represents 52% in value and 70% in number.

This reflects the magnitude of contracts placed by accelerated procedure, of which almost all have been placed with AASM/OCT firms. This position is made even stronger if the volume of contracts placed without international invitations to tender (approximately 11.5 million u.a.) - as referred to above - is added to the volume of contracts placed with firms of this group.

AASM/OCT firms do not have so great a share of contracts worth between 1 and 3 million u.a.: 20% in value and 26% in number. This is due to the fact that contracts in this category placed with the firms in question are mostly worth less than 2 million u.a.: they mainly involve hydraulic engineering works, small-scale construction and hydroagricultural schemes.

As regards contracts worth more than 3 million u.a., AASM/OCT firms have a relatively small share (one contract representing 3% of the value of the contracts in this category). Nevertheless, this shows that the firms are capable of carrying out large-scale projects in areas where they have already acquired a certain amount of experience (in this particular case, a hydroagricultural scheme).

(b) The situation for French firms is somewhat the reverse:

- i. As regards contracts worth less than 1 million u.a. they have won 30% in value but only 17% in number. This means that they have competed successfully mainly for contracts worth between 500 000 u.a. and 1 million u.a., that is to say small contracts for which open international invitations to tender were issued in view of the relatively complex services required (construction of filtering or pumping stations for example).
- ii. For contracts worth between 1 and 3 million u.a., French firms have a bigger share: 40% in both value and number. Unlike the trend observed for AASM/OCT firms, a number of these contracts are worth more than 2 million u.a.: they involve medium-scale infrastructure works (roads, bridges) or specialized assembly work (sanitary equipment).
- iii. As regards contracts worth more than 3 million u.a., the share of contracts placed with French firms remains relatively high: nearly 35% in value and 47% in number; four of the eight contracts placed in this category are in the 3 to 4 million u.a. bracket: three involve roads and one a port project. Another contract - for a

hydroagricultural scheme - is worth slightly more than 4 million u.a., and two others, worth between 6 and 7 million u.a., and for major road works. The French firms' outstanding success was the winning of a contract worth more than 8 million u.a. for a railway project.

(c) Italian firms have been successful on both sides of the two contract magnitude thresholds:

- i. They have won 8% in value and 6% in number of contracts worth less than 1 million u.a. The four contracts they won in this category followed open invitations to tender. In this respect the situation is therefore comparable to that of French firms, although the Italian share is appreciably less.
- ii. Italian firms have also won two contracts for a road and a port project, worth 7 million and 6.5 million u.a. respectively. This represents approximately 12% in both value and number of contracts worth more than 3 million u.a.

On the other hand, Italian firms have won no contracts in the 1 to 3 million u.a. bracket.

(d) The performance of German firms' results is similar to that of Italian firms. However, the volume of the contracts they have won is considerably less:

- i. One contract worth 301 000 u.a.: this was for the "works" part of a composite contract comprising a large proportion of supplies placed with the same contractor for the extension of a tea factory.
- ii. One contract worth 3 586 000 u.a. for the extension of a port project.

It will be noted that Benelux firms have won no individual contracts. Their share comes from contracts placed with multinationals.

2.3.2.2 As regards contracts placed with multinationals, two trends should be highlighted. These are evident from the table in Annex V, which details the overall figures given for multinationals in the preceding table.

(a) If the value of the contracts placed is considered in terms of the three contract value sections, the following observations may be made:

- i. As regards contracts worth less than 1 million u.a. it will be observed that the performance of multinational is fairly mediocre (9% in value, approximately 7% in number) but their presence can be felt nonetheless. This presence can in fact be explained by the nature of the contracts - works connected with major supply contracts (like the contract placed with Germany referred to above).
- ii. As regards contracts worth between 1 and 3 million u.a. it will be noted that the contracts placed with these firms are equivalent in value to those placed with French firms although slightly fewer in number. The analysis shows that a greater proportion of these contracts were in fact worth more than 2 million u.a.
- iii. As regards contracts worth more than 3 million u.a. there is a marked predominance of multinationals: although their share of the number of contracts placed is less than that of the French (29% against 47%), the value of the contracts placed with them is much greater, since it represents almost half (47%) of the value of the contracts in this category (it will be remembered that the French share is 35%). The table detailing the contracts placed with multinationals shows that these are in fact very big

and all relate to road projects: three of them are worth over 10 million u.a. (and even 20 million u.a. for a French/German/AASM Consortium).

It is also worthy of note that consortia have the greatest share of all contracts worth more than 1 million u.a., with an overall total of 73 233 000 u.a.; their share accounts for 45% - i.e., almost half - of the total value of these contracts (164 705 000 u.a.).

This evaluation may be compared with an identical analysis carried out six years ago of invitations to tender issued between 1 January 1966 and 1 October 1968 - the period which saw the development of major projects under the second Fund: contracts placed with multinationals during that period accounted for an overall total of 97 889 000 u.a., representing 47% of all contracts worth more than 1 million u.a. (122 586 000 u.a.). The comparison shows clearly that the success of multinationals has not diminished under the third Fund and that the incentive measures taken by the Commission have borne fruit.

(b) This conclusion is borne out, moreover, by an examination of the composition of the consortia which have won contracts.

The relatively large number of contracts placed with consortia composed of members from two different countries will be noted: 18 contracts out of 21 placed with multinationals. The way in which the contracts have been allocated reveals certain constants: four contracts have been placed with French/AASM/OCT consortia, three with Franco-German consortia, three with Franco-Belgian consortia and three with Franco-Italian consortia.

The other two-country consortia have each won a single contract, in some instances involving a large amount (as in the case of a Belgo-Italian

consortium where the contract involved represents on its own almost 4% of the present total for works contracts under the third EDF).

Consortia whose composition is more complex have won fewer contracts (3 out of 21) but for much higher sums (56% of the total value of contracts placed with consortia). Thus, two consortia composed of three partners (one French/German/AASM and the other Belgian/Italian/AASM) won contracts worth a cumulative total of 31 564 000 u.a., in other words 17% of the total amount of works contracts under the third Fund. Similarly, a contract worth 10 185 000 u.a. was awarded to a consortium composed of partners from four different countries (France/Germany/Belgium/AASM).

It is also interesting to note that the contract-winning consortia composed of more than two partners each comprise an AASM firm as well as European partners. This shows how far multinationals promote cooperation between firms, with each of the firms concerned finding its place according to its scale.

2.3.3 An examination of participation levels reveals certain trends.

As has repeatedly been emphasized above, the number of contracts placed is not in itself indicative of the performance of firms: it should be weighted by the value of the contracts. Nevertheless, this indicator remains of major importance for the statistical results when it is compared with the number of tenders.

The tables analysing the performance of firms enable these two indicators to be compared.

2.3.3.1 In the case of single firms or firms forming part of one-country consortia, the different contract value brackets show that there is a certain relationship between the number of tenders and the number of contracts placed.

This should not be regarded as a sort of "award coefficient" for assessing the number of tenders required for a given nationality to win a contract. Although certain constants can be discerned¹, any trends revealed by this factor should in actual fact be weighted by other factors such as the amount of the tenders or the geographical or monetary area where the contract is to be performed.

On the other hand, it is interesting to note that a large number of contracts placed with a given country corresponds to a large number of tenders submitted by that country. The performance of French and AASM/OCT firms illustrates this.

2.3.3.2 In the case of multinationals, this trend is less evident in the detailed analysis (table in Annex V) than in the overall share for consortia (table in Annex IV): this is illustrated by the performance of multinationals in respect of contracts worth over 3 million u.a., which is comparable to that of French firms.

However, the detailed analysis of the multinationals' performance, which is greatly conditioned by their diversity, suggests an opposite trend through the figures relating to the performance of consortia comprising more than two partners. No contract worth less than 3 million u.a. has been placed, with only one tender being submitted by multinationals; on

¹ A ratio of 1 : 5 for French firms can be seen in each contract bracket and a ratio of 1 : 3 for the AASM/OCT firms in the first two contract brackets.

the other hand, nine tenders for contracts worth more than 3 million u.a. have led to three contracts.

What emerges from all these considerations is not determinism but a sort of postulate reflecting a statistical tendency: logically enough, it is the firms that submit the most tenders that win the most contracts.

2.4 Breakdown of supply contracts:

2.4.1 The table in Annex III gives the results for supply contracts under the three Funds.

An examination of the breakdown by Fund shows that so far the best balance has been achieved under the second EDF, at least as regards supplies originating in the Member States.

The pattern of results through the three Funds varies according to country:

- i. Supplies originating in France and Luxembourg have increased continuously;
- ii. Supplies originating in Germany and the Netherlands, however, have fallen off progressively, with a fairly sharp reduction from the second to the third EDF, particularly for Germany;
- iii. Supplies originating in Belgium, Italy and the AASM/OCT have followed an irregular pattern: an increase from the first to the second Fund, followed by a drop under the third Fund for Belgium and Italy, while there has been a reverse trend for the AASM/OCT (with a strong recovery under the third Fund).

- iv. Supplies originating in third countries have increased dramatically under the third Fund - from less than 1% to over 5%. This exceptional movement is attributable to the fitting out of a Zairian tea factory with specialized equipment originating in India.

Here again account should of course be taken, when comparing figures, of the fact that the total sum made available from the third EDF for contracts - approximately 60 million u.a. - is only 70% of the total outlay under the second EDF. The final breakdown which will emerge when operations under the third Fund are closed cannot be predetermined on the basis of this sum and available for contracts, which is relatively low compared with the amount of all the contracts to be placed.

Experience shows, moreover, that a single contract of above-average value can modify the percentage breakdown. Products originating in Luxembourg are a case in point: the equipping of a large oil mill with these products has led to a large increase in the Luxembourg share compared with its share under the first and second EDFs.

2.4.2 A number of economic data should be considered in interpreting these various results.

- (a) It should first of all be pointed out that the economic impact of supply contracts is assessed by reference to the origin of the goods, for the complex organization of the distribution network for European manufactures is such that a large part of the consumer goods manufactured in Europe is in fact distributed by wholesalers who have

their registered office in the associated countries. The comparative table below illustrates this particularly clearly:

BREAKDOWN OF SUPPLY CONTRACTS (for the third EDF)

Firms	By origin of goods		By nationality of suppliers		
	Amount ('000 u.a.)	%	Amount ('000 u.a.)	%	Number of contractors
BELGIUM	2 643	4.39	2 758	4.58	5
FRANCE	26 586	44.14	18 042	29.95	82
GERMANY	5 807	9.64	7 250	12.04	19
ITALY	4 693	7.79	3 211	5.33	10
LUXEMBOURG	1 929	3.20	1 750	2.91	1
NETHERLANDS	2 521	4.19	1 734	2.88	5
AASM/OCT	12 652	21.00	25 493	42.31	230
THIRD COUNTRIES	3 407	5.65	-	-	-
TOTAL	60 238	100	60 238	100	352

It will be noted that the AASM/OCT share in the breakdown by nationality of suppliers is much bigger than in the breakdown by origin of supplies (+ 21%) and that it accounts for virtually all the negative difference for all the other countries combined - in particular France (- 14%), Italy (- 2.5%) and the Netherlands (- 1.5%). This result is corroborated, moreover, by the large number of AASM/OCT contractors - 230 - which is almost three times the number of French suppliers and 12 times the number of German suppliers.

It is interesting, however, to note that the German, Belgian and Luxembourg shares vary only slightly from one column to the other. This is because they have mainly been involved in the provision of special equipment such as hospital installations, slaughterhouses, micro-wave links, medium and high voltage power lines, equipment for oil mills. These supplies require special allied services (in particular assembly) : also, European contractors have obtained contracts for which they tendered directly. Moreover, the German surplus is explained by the part played by that country in the supply and assembly of the equipment of Indian origin for the tea factory referred to above.

(b) The two apparently aberrant trends noticeable in the third EDF figures, that is to say the large increase in the French share and the appreciable decrease in the German share, are mainly due to two reasons :

- i. One is structural, and derives from the volume of traditional trade flows. A study of the results by area shows that the lion's share by value of supply contracts goes to the franc area, where goods originating in France are better known and appreciated. This tendency to prefer goods from the former colonial powers is likewise evident in the other areas : for example Somalia, where a large percentage of supplies comes from Italy, or the Netherlands Antilles and Surinam, where deliveries have consisted almost entirely of products originating in the Netherlands ;
- ii. The other is economic, and derives from the fact that consumer goods originating in certain European countries have been considered by the traditional tenderers as having become less competitive.

This is largely explained by the monetary changes which have occurred on several occasions during the life of the third Fund. A particular case in point is Germany, whose supplies, given the successive revaluations of the DM, have become progressively less competitive than French supplies, in respect of which export prices have been favourably affected by devaluation and the downward float.

The EDF procedures cannot therefore be blamed for the sometimes indifferent performance of certain countries. On the contrary, the action taken by the Commission has often had a positive influence in improving supplies to the beneficiary countries and in achieving a better sharing of the work load. This is reflected by:

- i. The diversification of tenders from European firms: the balance achieved under the second EDF is particularly indicative of this;
- ii. Cooperation between firms, in that many European manufacturers have commercial links with distributors whose registered offices are located in the associated countries. Such a method of work sharing means that the economic spin-off from supply contracts benefits both European manufacturers and the beneficiary countries. It should be added that this de facto complementarity of services is not incompatible with the efforts made by the Commission to encourage direct tendering by European firms and the development of home production in the associated countries: the combination of these various factors should lead, in the longer term, to an appreciable expansion of competition.

2.5 Technical cooperation contracts

Service contracts financed by the European Development Fund are concluded in the form of technical cooperation contracts. They comprise:

- i. studies for the preparation of projects, in particular from the angle of profitability, integration into the beneficiary country's economy, etc.;
- ii. works supervision, which involves providing the person on behalf of whom the work is to be carried out with assistance in site management;
- iii. technical assistance, which involves making available to the national authorities staff to advise and assist the latter in the management of projects and, more generally, even in the conduct of their administrative duties.

The special nature of these various services, which essentially involve qualitative criteria, means that they cannot be covered by invitation to tender procedures¹. The contractors in question are selected in a different manner: they are designated by agreement between the beneficiary countries and the Commission. The latter has the right to make proposals to the national authorities. Experience has shown, moreover, that so far this method of collaboration has generally operated harmoniously.

Such a system is useful for the statistical breakdown of contracts, in that the Commission thus has an instrument enabling it to direct assignments

¹Under the fourth EDF, however, certain contracts may be awarded following invitation to tender where technical, economic or financial considerations warrant recourse to this procedure, particularly in respect of major studies which are highly complex and technical.

to consultancy firms and consultant engineers according to their nationality. This is all the more important in that the volume of contracts for technical cooperation is equal in value to the expenditure on supply contracts - as may be seen from the table below. The figures given also include expenditure incurred by EDF staff working on the spot (delegate and administrative and technical staff).

BREAKDOWN OF TECHNICAL COOPERATION CONTRACTS

Position at 31 December 1974

Country	1st EDF		2nd EDF		3rd EDF	
	Amount	%	Amount	%	Amount	%
BELGIUM	6 449	13.85	9 912	9.79	8 025	12.89
FRANCE	11 442	24.58	29 239	28.87	20 425	32.80
GERMANY	9 242	19.65	26 054	25.73	15 332	24.62
ITALY	9 797	21.04	14 184	14.01	10 226	16.42
LUXEMBOURG	653	1.40	1 561	1.54	1 307	2.10
NETHERLANDS	5 123	11.01	9 774	9.65	5 158	8.29
AASM/OCT	3 849	8.27	10 548	10.41	1 792	2.88
THIRD COUNTRIES	-	-	-	-	-	-
TOTAL	46 555	100	101 272	100	62 265	100
(Reminder): Supply contracts	47 699		85 414		60 238	

2.5.1 An examination of these figures reveals the rebalancing that the Commission has been able to effect through its powers in this field.

In particular, the German, Belgian and Dutch shares follow a rising curve compared with that for works and supply contracts, whereas the

French share, while remaining the greatest, is somewhat reduced.

As regards the second and third Funds, the balance thus achieved is particularly significant if it is compared with the Member States' percentage contributions to the financing of EDF operations, as is shown in the table below:

COUNTRY	2nd EDF		3rd EDF	
	% contributions	% contracts	% contributions	% contracts
BELGIUM	9.45	9.79	8.89	12.89
FRANCE	33.77	28.87	33.16	32.80
GERMANY	33.77	25.73	33.16	24.62
ITALY	13.70	14.01	15.62	16.42
LUXEMBOURG	0.27	1.54	0.28	2.10
NETHERLANDS	9.04	9.65	8.89	8.29
AASM/OCT	-	10.41	-	2.88

Only the percentage of technical cooperation contracts placed with the AASM/OCT under the third Fund is greatly reduced. Of course, the higher percentages under the first and second Funds derived in the main from a special situation, namely the supervision of works carried out under the

major oil palm projects financed in Ivory Coast¹. Nevertheless, it can be seen that under the third EDF the AASM has had a very small share in the provision of technical cooperation services.

It is for this reason that the situation will change profoundly under the fourth EDF. The negotiations on the enlargement of the Association have confirmed the practical proposals made by the Commission for much greater participation by the beneficiary countries; in particular, these involve material support for national administrations that have staff capable of carrying out studies and work supervision, recourse to national consultancy firms and cooperation between the latter and European consultancy firms.

2.5.2 The profile of the results for technical cooperation contracts has an impact on the final statistical breakdown of all works, supply and service contracts financed by the EDF in that it rebalances the latter somewhat. The inclusion of this factor produces the following table for each of the three Funds:

All contracts
Position at 31 December 1974

'000 u.a.

COUNTRY	1st EDF		2nd EDF		3rd EDF	
	Amount	%	Amount	%	Amount	%
Belgium	17 614	3.61	37 715	7.35	21 894	6.33
France	211 496	43.29	213 444	41.59	153 419	44.32
Germany	32 201	6.59	101 451	19.77	44 080	12.74
Italy	72 137	14.77	54 012	10.52	45 185	13.05
Luxembourg	1 484	0.30	3 476	0.68	4 556	1.32
Netherlands	23 582	4.83	29 346	5.72	9 257	2.67
AASM/OCT	129 623	26.53	73 200	14.26	64 341	18.59
Third countries	409	0.08	600	0.11	3 407	0.98
TOTAL	488 546	100	513 244	100	346 139	100

¹The Ivory Coast firm, Sodepalm, was responsible for all supervision of the work, which cost 7.7 million u.a.

This table should be compared with that for all works and supply contracts shown in Annex III. It confirms the value of the results achieved for the second EDF. Moreover, the improvement in the German share and the appreciable recovery of the Dutch share under the third EDF demonstrate the advantages of this "steadying factor" available to the Commission in respect of contracts where the development of the economic situation makes the services offered by firms of certain Member States less competitive.

C O N C L U S I O N

To conclude this report stress should be laid on the great efforts made by the Commission to establish as clear and detailed arrangements as possible for competition and for access on equal terms to contracts financed by the EDF.

To this end, it has chosen a pragmatic method with two main objectives:

i. To identify the discriminatory factors, whether de jure or de facto, which are liable to adversely affect competition in the participation of firms;

ii. To draw up common rules for removing such distortions.

During the first years of its activity, the Commission observed the reactions of the industries concerned and then improved the instrument that it was preparing for contacts with the latter. It was therefore encouraged to see that the measures it had adopted had met with the approval of those concerned, since no-one had called in question their purpose or criticised their application.

As to the results attained by these measures, it should primarily be stressed that the aim of obtaining the best cost has been largely achieved. The response to invitations to tender, as regards both the number of participants and the content and amount of their tenders, shows that firms are seriously interested in EDF contracts.

It can also be stated that, generally speaking, competition is keen: there have been very few occasions where the Associated States and the Commission, because of a lack of tenders or excessive prices, have had to restart the procedure by issuing a second invitation to tender or falling back on contracts by mutual agreement.

As regards the nationality balance of the contracts placed, the success of the measures taken by the Commission is not so clearly apparent.

As has repeatedly been emphasized, the results of the second Fund, which corresponds to the intensive phase in the working out of the competition standards, suggest that this Fund is structurally the most balanced so far. It seems that for the third Fund, the anticipated effect of these arrangements and of the new measures implemented has to a large extent been distorted by the economic, and particularly the monetary, disorders which occurred halfway through the life of this Fund.

There is nothing to indicate that these measures will not once again prove their effectiveness in the long term. It should, however, be emphasized that the Community's action, apart from any effort made to counter the vagaries of the economic situation, comes up against something of a "psychological" barrier in that it can have no control over the willingness of industry in all its forms to participate in the invitations to tender issued by the EDF. Although the Commission can establish a framework and instruments to ensure equal terms, it cannot easily overcome the reluctance of certain European industrialists to commit themselves to working in countries where the economic, social and climatic conditions are different from those usually encountered in Europe.

This is also part of the reason why the guidelines adopted for implementing the fourth Fund reflect a greater effort to develop the national resources of the associated countries. In particular, the broadening of the accelerated procedure for works contracts and the preferences granted to the works contractors and suppliers of the associated countries will be bound to produce new trends in the allocation of contracts under the Fund in particular by improving the balance of work between foreign firms and firms established in the countries concerned. There is no doubt that in the past the search for such a balance was not one of the first priorities despite the need for it.

The desire to make the field of competition increasingly wide and the stimulus given to international cooperation have even led the drafters of the new association convention to provide for the possibility of third countries participating in contracts financed by the Community. Such participation will of course be of an exceptional nature, and will primarily be warranted by the desire to avoid an excessive increase in the cost of projects, by the Community contribution to the financing of regional or interregional cooperation schemes concerning third countries, and in cases of cofinancing.

It is nonetheless true that by thus making official a practice in respect of which the Commission had already granted a derogation in certain cases, the drafters of the new convention have accommodated a concern for efficiency and at the same time have met certain expectations on the part of the associated countries and the developing third countries.

ANNEXES

ANNEX I

Trend of invitations to tender in terms of number,
volume and average amount involved.
 (works and supplies combined)

n.a.

Year	Number	Total amount	Average
1959	11	1 699 327	154 484
1960	56	37 159 585	663 564
1961	97	62 523 089	664 568
1962	89	82 203 419	923 634
1963	85	113 896 071	1,339 953
1964	54	67 056 053	1.241 778
1965	66	62 207 068	942 531
1966	95	75 066 714	790 175
1967	96	103 684 339	1.080 045
1968	116	100 636 136	867 552
1969	96	78 641 267	819 179
1970	63	41 668 898	661 411
1971	64	105 612 866	1 650 201
1972	96	122 800 620	1 279 173
1973	82	107 958 741	1 316 570
1974	71	71 169 654	1 002 389

ANNEX II

Trend of invitations to tender in terms of number, volume
and average amount involved
 (by type of contract)

n.a.

YEAR	INVITATIONS TO TENDER FOR SUPPLY CONTRACTS			INVITATIONS TO TENDER FOR WORKS CONTRACTS		
	Number	Total amount	Average	Number	Total amount	Average
1959	1	30 000	30 000	10	1 669 327	166 933
1960	7	521 258	74 465	49	36 638 327	747 721
1961	47	8 334 399	177 328	50	54 188 690	1 083 774
1962	22	2 691 820	122 355	67	79 511 599	1 186 740
1963	29	13 192 466	454 912	56	100 703 605	1 798 278
1964	22	6 995 241	317 965	32	60 060 182	1 876 000
1965	23	6 370 931	276 997	43	55 836 137	1 298 514
1966	53	10 067 514	189 953	42	64 999 200	1 547 600
1967	58	17 028 153	293 588	38	86 656 186	2 280 425
1968	67	18 822 193	280 928	49	81 813 943	1 669 672
1969	63	19 860 478	315 245	33	58 780 789	1 781 236
1970	41	9 452 050	230 537	22	32 216 848	1 464 402
1971	25	6 941 150	277 546	39	98 671 716	2 530 044
1972	51	22 370 669	438 641	45	100 429 951	2 231 776
1973	40	10 176 990	254 425	42	97 781 751	2 328 137
1974	26	12 327 600	474 238	45	58 842 054	1 307 601

ANNEX III

Results of invitations to tender

'000 u.a.

COUNTRY	WORKS CONTRACTS (by nationality of contracts)						SUPPLY CONTRACTS (by origin of goods)						ALL CONTRACTS					
	1st EDF		2nd EDF		3rd EDF		1st EDF		2nd EDF		3rd EDF		1st EDF		2nd EDF		3rd EDF	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
GERMANY	13 475	3.41	59 637	18.26	22 941	10.26	9 484	19.88	15 760	18.45	5 807	9.64	22 959	5.19	75 397	18.30	28 748	10.13
BELGIUM	8 714	2.21	20 549	6.29	11 226	5.02	2 451	5.14	7 254	8.49	2 643	4.39	11 165	2.53	27 803	6.75	13 869	4.89
FRANCE	182 209	46.21	149 704	45.84	106 408	47.58	17 845	37.41	34 501	40.39	26 586	44.14	200 054	45.26	184 205	44.71	132 994	46.85
ITALY	57 637	14.62	26 507	8.11	30 266	13.54	4 703	9.86	13 321	15.60	4 693	7.79	62 340	14.10	39 828	9.67	34 959	12.31
LUXEM- BOURG	825	0.21	1 884	0.58	1 320	0.59	6	0.01	31	0.04	1 929	3.20	831	0.19	1 915	0.46	3 249	1.15
NETHER- LANDS	15 071	3.82	14 899	4.56	1 578	0.70	3 388	7.10	4 673	5.47	2 521	4.19	18 459	4.18	19 572	4.75	4 099	1.44
AAST/OCT	116 361	29.52	53 378	16.36	49 897	22.31	9 413	19.74	9 274	10.86	12 652	21.00	125 774	28.46	62 652	15.21	62 549	22.03
THIRD COUNTRIES	-	-	-	-	-	-	409	0.86	600	0.70	3 407	5.65	409	0.09	600	0.15	3 407	1.20
TOTAL	394 292	100	326 558	100	223 636	100	47 699	100	85 414	100	60 238	100	441 991	100	411 972	100	283 874	100

ANNEX IV

Breakdown of tenders for works contracts and works contracts placed under the 3rd EDF¹

CONTRACTS	0 to 1 million u.a.			1 to 3 million u.a.			3 million u.a.		
	Tenders (number)	Contracts placed		Tenders (number)	Contracts placed		Tenders (number)	Contracts placed	
		Number	Total amount ('000 u.a.)		Number	Total amount ('000) u.a.		Number	Total amount ('000 u.a.)
GERMANY	6	1	301	5	-	-	11	1	3 586
BELGIUM	3	-	-	3	-	-	4	-	-
FRANCE	65	12	6 602	70	14	20 306	41	8	39 648
ITALY	8	4	1 783	6	-	-	14	2	13 464
LUXEMBOURG	-	-	-	1	-	-	-	-	-
NETHERLANDS	3	-	-	1	-	-	1	-	-
WASM/OCT	149	49	11 470	32	9	10 444	6	1	4 024
MULTI-NATIONALS	12	4	1 956	15	12	20 310	25	5	52 923

RE: The countries refer to single firms or firms forming part of one-country consortia.

¹This table covers only contracts financed from the EDF. In cases of cofinancing (involving certain major contracts) only the EDF share has been taken into account.

ANNEX V

Breakdown of contracts placed with multinationals

CONTRACTS MULTINATIONALS	0 to 1 million u.s.			1 to 3 million u.s.			3 million u.s.		
	Tenders (number)	Contracts placed		Tenders (number)	Contracts placed		Tenders (number)	Contracts placed	
		Number	Total amount ('000 u.s.)		Number	Total amount ('000 u.s.)		Number	Total amount ('000 u.s.)
FRANCE/GERMANY	-	-	-	2	2	4 171	8	1	4 000
FRANCE/BELGIUM	3	1	802	3	2	2 933	-	-	-
FRANCE/ITALY	1	1	398	2	2	2 886	1	-	-
FRANCE/LUXEMBOURG	-	-	-	1	1	1 140	1	-	-
FRANCE/NETHERLANDS	-	-	-	-	-	-	1	-	-
FRANCE/AASM-OCT	6	1	426	6	3	5 146	2	-	-
BELGIUM/GERMANY	-	-	-	-	-	-	1	-	-
BELGIUM/ITALY	-	-	-	-	-	-	2	1	7 174
BELGIUM/AASM	1	-	-	-	-	-	-	-	-
GERMANY/NETHERLANDS	1	1	330	-	-	-	-	-	-
ITALY/AASM	-	-	-	1	1	2 668	-	-	-
NETHERLANDS/AASM	-	-	-	1	1	1 366	-	-	-
FRANCE/GERMANY/ BELGIUM	-	-	-	-	-	-	1	-	-
FRANCE/GERMANY/ NETHERLANDS	-	-	-	-	-	-	2	-	-
FRANCE/GERMANY/ AASM	-	-	-	1	-	-	2	1	20 479
FRANCE/ITALY/AASM	-	-	-	-	-	-	1	-	-
GERMANY/ITALY/ AASM	-	-	-	-	-	-	1	-	-
BELGIUM/ITALY/AAS	-	-	-	-	-	-	1	1	11 085
FRANCE/GERMANY/ BELGIUM/AASM	-	-	-	-	-	-	1	1	10 185

TABLE OF CONTENTS

TABLE OF CONTENTS

	Pages
INTRODUCTION	1
CHAPTER I: Principles adopted for organizing invitation to tender procedures	7
1.1 Codification of the rules applicable to EDF contracts	11
1.2 Principles for the preparation of invitation to tender dossiers	16
1.2.1 Documents contained in the invitation to tender dossier	17
1.2.2 Neutrality of the contract specifications	18
1.2.3 Method of preparing invitation to tender dossiers	19
1.3 Principles involved in the procedure for issuing invitations to tender	21
1.3.1 Information measures	22
1.3.1.1 Publicizing of projects	22
1.3.1.2 Publicizing of invitations to tender	23
1.3.1.3 Publication of the results of invitations to tender	26
1.3.2 Time limit for the submission of tenders	26
1.3.3 Programming of invitations to tender	27
1.4 Measures taken to rationalize the presentation of invitation to tender dossiers	28
1.4.1 Standardizing invitation to tender dossiers	29
1.4.2 Grouping or splitting services into lots	31

1.5	Rules governing selection of the contractor	34
1.5.1	Arrangements for selecting the contractor	34
1.5.2	Selection criteria	35
1.5.3	Evaluation and comparison of tenders	36
1.5.3.1	Currency of tender	37
1.5.3.2	Taxation	38
1.5.3.3	Transport	39
1.6	Measures to ensure a balanced sharing of work between firms established in the country concerned and foreign firms	41
1.6.1	Cooperation between firms	42
1.6.2	Protecting the economies of the associated countries	44
1.6.2.1	as regards works contracts	44
1.6.2.2	as regards supply contracts	46
1.7	Rules for the performance of contracts to ensure indirectly that the terms are equal	47
1.7.1	Aid to firms' finances	48
1.7.2	Speeding up payment procedures	50
1.7.3	Limiting the suppliers' commercial guarantees	52
CHAPTER 2:	Statistical analysis	54
2.1	Development of the rate and volume of invitations to tender	55
2.1.1	General trends	55
2.1.2	Analysis	56
2.2	Results of invitations to tender	60
2.2.1	General structure of contract distribution	60

2.2.2	Main trends for each EDF	62
2.2.3	Influences of works contracts	63
2.3	Breakdown of works contracts - analysis of contracts placed and participation levels (3rd EDF)	64
2.3.1	Size of contracts	64
2.3.2	Analysis of contracts placed	66
2.3.2.1	Contracts placed with single firms or firms forming part of one-country consortia	66
2.3.2.2	Contracts placed with multinationals	69
2.3.3.	Analysis of participation levels	71
2.3.3.1	Participation of single firms and firms forming part of one-country consortia	72
2.3.3.2	Participation of multinationals	72
2.4	Breakdown of supply contracts	73
2.4.1	Results	73
2.4.2	Interpretation	74
2.5	Technical cooperation contracts	78

CONCLUSION

ANNEXES:

I.	Trend of invitations to tender in terms of number, volume and average amount involved (works and supplies)	87
II.	Trend of invitations to tender in terms of number, volume and average amount involved (by type of contract)	88
III.	Results of invitations to tender	89
IV.	Breakdown of tenders for works contracts and works contracts placed under the 3rd EDF	90
V.	Breakdown of contracts placed with multinationals	91

