

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 13 January 1983.

REPORT FROM THE COMMISSION TO THE COUNCIL

on measures taken or proposed in order to improve the terms
of competition for participation in EDF-financed contracts

(Report presented in accordance with Article 43 of the
Financial Regulation applicable to the fourth EDF)

On 10 August the Commission transmitted to the Council the results as at 31 December 1981 of invitations to tender issued under the first four European Development Funds (1).

The work of the ACP-FIN Working Party throughout 1981 and in the first six months of this year shows the importance the Member States attach to the issue of competition for EDF-financed contracts. Accordingly, to complement the tender results, the Commission decided to send the Council a sequel to its January 1981 (2) report, again based on Article 43 of the Financial Regulation for the fourth EDF and detailing measures which the Commission has taken or intends to take in order to improve the terms of competition for participation in EDF invitations to tender. It is in two parts.

Part One reviews the implementation of the guidelines which have been under discussion in the ACP-FIN Working Party since 1979 and have given rise to a number of measures. Part Two contains an analysis of competition for EDF-financed contracts.

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(1) COM(82)538 final.

(2) COM(80)911 final, 9 January 1981.

PART ONE: REVIEW OF GUIDELINES AGREED WITH THE MEMBER STATES

The guidelines agreed in 1980 consisted essentially of a set of six measures which had been unanimously approved by the Member States, while the ACP-FIN Working Party was to continue consideration of a further seven measures.

In this report the Commission will be describing the implementation of the six measures which it was jointly decided to put into operation immediately, plus those of the seven other measures which have a direct bearing on competition for contracts.

I. Implementation of unanimously-approved measures

1. Operational summary of development projects

The operational summary is published every two months in the ACP-EEC Courier, and businessmen are increasingly aware of the value of these "blue pages".

Twelve operational summaries have been issued in two years, and their scope has expanded considerably over that period. The first summary, in November 1980, covered 153 projects, while the latest (September 1982) dealt with 391, 321 of them in ACP States or OCT. The surge is largely attributable to the advent of projects from the fifth EDF, most still at the identification stage; this is in line with the aim of the summary, which is to draw firms' attention to projects at the earliest possible stage of the investment period.

Judging by the requests for additional information attracted by the "blue pages", this aim would appear to have been fairly successfully achieved.

Certainly, the new feature has been well received by firms, consultancies in particular.

The "institutionalization" of the blue pages operational summary has also had an impact on dealings between the Commission and the Member States; at the latter's request it has now become established practice where possible, not to submit financing proposals to the EDF Committee unless the projects concerned have already appeared in the blue pages.

Because of this new practice, and also to keep readers of the two-monthly feature as up to date as possible, the Commission will now be inserting a "stop press" section enabling the very latest projects to be included at the time of going to press.

The Commission is keen to do whatever it can to improve the content and/or layout of the blue pages. Accordingly, it has decided to adopt a Member State's suggestion to indicate projects which are appearing for the first time, so that readers get a better overall picture of the situation. It has also decided on its own initiative to incorporate a sector-by-sector index to enable firms to locate particular types of project more easily.

2 Publication of notices of invitation to tender in "Development Forum"

Between the first issue, dated 18 August 1980, and 31 August 1982, 294 notices of invitations to tender for Community-financed projects in developing countries were published in the UN magazine "Development Forum", 219 of them for projects in ACP States or OCT.

This has unquestionably increased the publicity given to Community-financed contracts - so much so, indeed, that despite all efforts to make the conditions of eligibility as clear as possible, the Commission has received applications for tender specifications from American and Swiss firms.

However, in assessing the effectiveness of this measure it has to be borne in mind that "Development Forum" comes out only every two months, so that it inevitably lags behind the supplements to the Official Journal (published on a daily basis).

In practice, therefore, where an invitation to tender notice is sent simultaneously to Luxembourg and Geneva, there can in extreme cases, be a delay of up to as much as a month between publication in the OJ Supplement and publication in the "Development Forum", making it difficult for those reading only the latter to submit their tenders in time.

Publishing invitation to tender notices in "Development Forum", therefore, is basically a means of spreading awareness of the Community's development activities, even if the impact is fairly modest in operational terms.

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3. Quarterly notification of statistics relating to contracts

Since 30 September 1980, in response to a request from the Member States, the Commission has been regularly providing quarterly statistics on contracts, in addition to the yearly returns annexed to the annual report on results of invitations to tender.

The quarterly returns originally applied to the fourth EDF alone:

- statistics relating to contracts in non-associated developing countries and the Maghreb and Mashreq countries were added on 30 September 1981, and
- statistics for the fifth EDF on 30 June 1982, the latter two sets of figures could not be included until a sufficiently large number of projects had reached the execution stage.

4. Summary of current invitations to tender

The Member States asked the Commission to supplement the publication of invitations to tender as and when they are issued with a weekly summary in the Official Journal of procedures under way.

As the Commission explained in the previous report, it was unable to do this right away. The first summary appeared in supplement to the Official Journal No. S 199 of 14 October 1982, listing 45 notices of invitation to tender, 32 of them for ACP States or OCT.

Unfortunately, practical problems with the actual publication

meant that this first summary was well out of date by the time it appeared, as it only went up to 15 August. The gap should be closed in subsequent editions. Nevertheless, the experience does suggest that in view of the difficulties involved, the Commission would have trouble in bringing out a weekly summary. A more realistic undertaking, in the Commission's view, would be to publish a monthly statement which, given the time normally allowed for tendering, should be quite adequate as a guide to the latest position.

5. Updating the programme of contracts under the fourth EDF

As the Commission stated in its previous report, the "programme", an advance timetable for the issue of invitations to tender, was updated to cover the period 1980/81-1983 on the basis of projects known as at 1 July 1980. Projects for the fourth EDF as a whole were well advanced by that date, so the Commission sees no need for any further updating. It is worth considering, incidentally, whether this document actually serves any useful purpose, since if the information provided in the "operational summary" (measure No. 1) is used correctly the programme would be redundant.

6. Keeping the recipient countries informed via the Commission Delegates of what Member States' firms, particularly those without on-the-spot representation, can offer in the way of mutual agreement contracts

The circular announced in the earlier report was sent out to all Delegates on 24 February 1981, with the aim of notifying them of all measures agreed with the Member States to improve the terms of competition. Particular emphasis was placed on measure No. 6,

concerning competition for direct contracts and the role the Delegates were expected to play in that connection, with reference inter alia to the specific problems of Irish, Luxembourg and Danish firms, for which the difficulties involved as regards representation in the ACP States are far greater.

The Delegates were asked to see that the procedures followed by the recipient country's authorities complied with the basic principle enshrined in the EDF General Conditions, and indeed most other sets of general conditions, viz. that the conclusion of contracts by mutual agreement in no way rules out competition among a number of potential contractors or suppliers - rather the reverse.

With this in mind the Commission prepared information brochures on the Danish, Irish, Luxembourg and Dutch internal markets, including a list of major firms in various sectors in these four Member States, which were sent to all Delegates. Delegates were told that these guides were to be kept at their offices for consultation in connection with contracts by mutual agreement and restricted invitations to tender, and asked to let the authorities know they were available, and remind them of their existence whenever a restricted tender or direct contract procedure was contemplated.

II. Other measures relating to competition

Among the other guidelines indicated by the Council for further consideration by the ACP-FIN Working Party, action has so far been taken on two points with a direct bearing on matters of competition.

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1. Updating by the Commission of the booklet "Access to Contracts"

"The European Development Fund: Access to Contracts" was a Commission booklet first published in 1973 and subsequently revised in 1977. The updated version, issued in 1981, is entitled "How to participate in contracts financed by the European Development Fund".

The change of title marks a deliberate attempt to make the booklet more accessible for businessmen, more geared to practical considerations than the earlier versions; it now contains, among other features, tables and an explanation of the competition rules for different types of contracts.

At the same time, the Commission reissued an updated version of the booklet on EDF procedures, originally published in 1972.

With these two publications businessmen now have an up-to-date source of information both general and practical which should enable them to find their way round the field of EDF-financed projects and contracts.

2. The role of Commission Delegates in ensuring equality of access to EDF-financed contracts

The February 1981 circular to Commission Delegates mentioned above not only outlined what Delegates were expected to do in connection with contracts by mutual agreement (see above), but also provided guidelines for their work in supplying information to firms and Member States.

- a) Firms: on the assumption that the greater accessibility of information in the blue pages and elsewhere would lead to an increase in the number of requests for details, the Commission asked Delegates, who often receive such requests direct, to make sure that they dealt with them conscientiously and took time to answer them. As a corollary to those instructions, the ACP-FIN Working Party was told that should a firm, exceptionally, be dissatisfied with the treatment it had received, the Commission should be informed via the Permanent Representation concerned of the specific circumstances of the case.
- b) Member States: the Commission has reminded Delegates of the importance of the clause in the financing agreements which stipulates that the Government of the recipient country must notify Member States' consular representatives of invitation to tender notices. Delegates were asked to draw the national authorities' attention to this practice, the point of which has sometimes been overlooked, and if necessary to take steps to see that it was complied with.

These guidelines on the role Delegates are expected to play in matters of competition are to be incorporated and enlarged on in the forthcoming edition of the "Manual of Instructions for Commission Delegates", which is currently being prepared. The new edition will, incidentally, be in loose-leaf form so that it can be more easily updated.

PART TWO: THE STATE OF COMPETITION

At 31 December 1981 the total value of works and supply contracts concluded under the fourth EDF was 1 262 480 000 ECU.

Contracts awarded on the basis of international invitation to tender accounted for 877 032 000 ECU or 69.5% of that figure. The remaining 30.5%, worth 385 439 000 ECU, represented the exceptional performance procedures provided for in Article 19 of Protocol No. 2 to the first Lomé Convention, viz. the placing of contracts after restricted invitations to tender and the conclusion of contracts by direct agreement, or the performance of contracts by public works departments.

1. Breaking down these figures by type of contract shows that:
 - i) 72.5% of works contracts were awarded on the basis of international invitations to tender, and 27.5% of them after restricted procedures;
 - ii) the corresponding figures for supply contracts are 61.3% and 38.7%.

For works contracts, therefore, the international invitation to tender is still very much the rule; the few exceptions tend to be for direct labour operations. The international invitation to tender is less predominant for supply contracts; restricted invitations to tender and contracts by mutual agreement are not infrequent.

2. The position as regards the nationality of contractors, broken down by contract award procedure, is as follows:

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2.1 International invitations to tender

- a) works contracts: the lion's share of these (31.23%) went to France, a fact attributable mainly to the high level of participation by French firms in the invitations to tender. An analysis of fourth EDF works contracts for more than 2m ECU showed that French firms accounted for 220 out of a total of 638 bids (34.5%) and succeeded in winning 27 out of the 76 contracts.

A sizeable share (23.98%) also went to ACP firms, for the same reason; they accounted for 22.9% of bids and won 22 contracts. ACP firms also get practically all contracts awarded on the basis of invitations to tender by the expedited procedure.

The rate of participation by German and Italian firms (10% and 10.8% respectively) was more or less identical, as was the success rate (9 contracts each); the difference in the share - 10.44% for Germany as against 15.02% for Italy - is due to the size of the various contracts concerned.

- b) supply contracts: the salient feature here is the near-equality between the United Kingdom, Italy, France and Germany: their respective shares range from 18.40% to 21.29%, a spread of no more than three percentage points. The competitive balance between the four countries is striking. There is also a balance, at a lower level, between Belgium and the Netherlands (around 4.3%). It is also striking that, in the case of international invitations to tender, the percentage of supplies of ACP origin is very low, less than 3%.

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2.2 Closed procedures (restricted invitations to tender, mutual agreement, direct labour)

The first point to note here is that the proportion of works to supply contracts is different; where closed procedures are used, supply contracts account for 33.64% of the total, compared to 23.35% where the international invitation to tender procedure is used, while works contracts make up 66.36% as against 76.65%. This is in line with the tendency already noted to waive the international invitation to tender procedure more often in the case of supply contracts.

- a) works contracts: the salient point here is the marked preponderance of ACP-OCT contractors, whose share amounts to 92.7%. This basically reflects the prevalence of direct labour contracts, by definition carried out exclusively by the recipient countries' administrations. Also, restricted invitations to tender and contracts by mutual agreement are usually too small to attract international competition, though they are ideally suited to the capacities of local contractors.
- b) supply contracts: France heads the list with 26.37%, slightly higher than its share under international invitations to tender.

Germany does slightly less well than under international invitations to tender, but still takes a respectable 18.33%.

The UK, again, takes 18.64%, more or less the same as its performance under international invitations to tender, and the same applies, at a lower level (4.3%) to Belgium and the Netherlands.

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Italy, on the other hand, seems to be "penalized" by the use of closed procedures, its share falling from the 19.94% gained under international invitations to tender to a mere 6.68%, while the reverse applies to the ACP States and OCT, which increased their share under the closed procedures from 2.85% to 17.34%; contracts by mutual agreement, it appears, offer a better outlet for local supplies.



Member States have expressed concern that some invitations to tender initially issued internationally have subsequently been cancelled. As a footnote to these considerations on competition, we look at the reasons for these cancellations.

We examined a sample of fourteen such cases among the results published at 31 December 1981. The most frequent cause of cancellation (seven of the fourteen) was a cost overshoot. In three cases, bids did not conform to technical specifications, in two no bids were received and in a further two the authorities in the recipient country decided not to follow up a tender procedure which had been initiated.

These changes of course are obviously very inconvenient, but they affect fewer than 10% of all invitations to tender for Community-financed projects in a year. Also, it should be clearly emphasized, as a number of cases have shown, that even where an invitation to tender is cancelled, the Commission still considers it most important that, when a mutual agreement procedure is subsequently used, a number of competing firms should as a rule still be consulted.

14 INTERNATIONAL CONTRACTS

Figures for fourth EDF as at 31 December 1981

Breakdown by country including ACP/OCT and third countries

'000 ECU

Nationality of firm	Works contracts		Supply contracts		All contracts	
	amount	%	amount	%	amount	%
Germany	70.154	10,44	43.594	21,29	113.748	12,97
Belgium	59.155	8,80	9.331	4,56	68.486	7,81
France	209.974	31,23	41.897	20,46	251.871	28,71
Italy	100.974	15,02	40.831	19,94	141.805	16,17
Luxembourg	-	-	11	0,01	11	0,01
Netherlands	31.850	4,74	8.726	4,26	40.576	4,62
Denmark	2.309	0,34	1.562	0,76	3.871	0,44
United Kingdom	27.840	4,14	37.671	18,40	65.511	7,47
Ireland	-	-	7	0,01	7	0,01
ACP/OCT	161.212	23,98	5.830	2,85	167.042	19,04
Third countries	8.821	1,31	15.283	7,46	24.104	2,75
Total	672.289	100,00	204.743	100,00	877.032	100,00
		76,65		23,35		100,00

RESTRICTED INVITATIONS TO TENDER- CONTRACTS BY MUTUAL AGREEMENT - DIRECT LABOUR

'000 ECU

Nationality of firm	Work contracts		Supply contracts		All contracts	
	amount	%	amount	%	amount	%
Germany	684	0,27	23.750	18,33	24.434	6,35
Belgium	2.136	0,83	5.461	4,21	7.597	1,97
France	7.428	2,90	34.196	26,37	41.624	10,80
Italy	3.284	1,28	8.660	6,68	11.944	3,10
Luxembourg	-	-	10	0,01	10	-
Netherlands	-	-	5.716	4,41	5.716	1,48
Denmark	-	-	406	0,31	406	0,10
United Kingdom	3.656	1,43	24.165	18,64	27.821	7,23
Ireland	-	-	31	0,02	31	0,01
ACP/OCT	237.157	92,70	22.494	17,34	259.651	67,35
Third countries	1.433	0,55	4.772	3,68	6.205	1,61
Total	255.778	100,00	129.661	100,00	385.439	100,00
		66,36		33,64		100,00

