

**EUROPEAN ORGANISATION  
FOR THE SAFETY OF AIR NAVIGATION**

**EUROCONTROL**

**CONTRACT REGULATIONS  
OF EUROCONTROL**

Text approved by Measure No. 19/243 of the Permanent Commission,  
dated 29 August 2019

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## **PREAMBLE**

Having regard to Articles 8 and 13 of Annex 1 (Statute of the Agency) to the amended Convention,  
Having regard to Article 3 of Annex 1 (Statute of the Agency) to the amended Convention, granting the Director General considerable management independence with regard to the implementation, utilisation and efficient operation of technical, financial and personnel resources,

Whereas:

- (1) the integrity and transparency of EUROCONTROL's procurement system and the protection of the financial interests of EUROCONTROL are core to the efficient and effective management of public resources put at its disposal by the Member States and its stakeholders;
- (2) it is of utmost importance to carry out procurements in a transparent, proportionate, impartial, non-discriminatory and open manner and to avoid conflicts of interest;
- (3) EUROCONTROL wishes to use and encourage the use of electronic means for procurement;
- (4) it is necessary to establish a procurement review procedure in order to ensure an effective appeal procedure for the tenderers;

# **PART I: CONTRACTS FOR THE EXECUTION OF WORKS, THE SUPPLY OF PRODUCTS AND THE PROVISION OF SERVICES TO EUROCONTROL**

## **A) GENERAL PROVISIONS**

### **Article 1 – Scope**

- 1.1 The present Contract Regulations establish the rules and procedures leading to a contract award by EUROCONTROL.
- 1.2 The present Contract Regulations do not apply to:
- a) agreements that serve the fulfilment of the public tasks of EUROCONTROL, which are entered into between EUROCONTROL and international organisations or public authorities or bodies;
  - b) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; and
  - c) appointment of officials, servants or contract agents subject to the EUROCONTROL employment regulations.

### **Article 2 – Definitions**

For the purposes of the present Contract Regulations, the following definitions apply:

- (1) ‘Advisory Committee’ means the Advisory Committee on Procurement and Sales Contracts;
- (2) ‘Call for tenders’ means a competitive tendering procedure by which EUROCONTROL invites potential suppliers to submit tenders for the execution of a contract, specifying the procedure, the EUROCONTROL requirements and the contractual terms and conditions;
- (3) ‘Candidate’ means a supplier that has sought an invitation or has been invited to participate in a restricted procedure, private treaty procedure, procedures involving a call for expression for interest, competitive dialogue, innovation partnership procedure or dynamic purchasing system;
- (4) ‘Common procurement’ means procurement involving EUROCONTROL and one or more Member State(s), and/or appropriate air navigation service providers and/or other third parties;
- (5) ‘Code of conduct’ means a statement and description of required behaviours, responsibilities, and actions expected to be adhered to by the persons or bodies subject to such code of conduct;
- (6) ‘Competitive dialogue’ means a procedure in which any supplier may request to participate and whereby EUROCONTROL conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable set of specifications (and on the basis of which the candidates may be invited to tender);
- (7) ‘Contracts’ means contracts for pecuniary interest concluded in writing between EUROCONTROL and one or more supplier(s) and having as subject matter the execution

- of works, the supply of products and/or the provision of services;
- (8) 'Contract Regulations' means the present administrative and financial rules governing EUROCONTROL's operations in regard to contracts;
- (9) 'Contractor' means any natural or legal person or public entity, or group of such persons and/or legal entities, to whom EUROCONTROL has awarded a contract;
- (10) 'Days' means calendar days;
- (11) 'Deliverables' means the works to be executed, services to be provided or products to be supplied under a contract;
- (12) 'Dynamic purchasing system' means a completely electronic process for purchasing commonly used products, the characteristics of which, as generally available on the market, meet EUROCONTROL's requirements;
- (13) 'Electronic auction' means a repetitive process involving an electronic device for the presentation of new prices, revised downwards (or upwards for sales), and/or new values concerning certain elements of tenders, which is applied after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods;
- (14) 'Electronic Means' means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, or by optical or other electromagnetic means;
- (15) 'EUROCONTROL' means the European Organisation for the Safety of Air Navigation represented by the EUROCONTROL Agency for the Safety of Air Navigation itself represented by the Director General and/or his/her authorised representative;
- (16) 'Contract Manager' means the official belonging to EUROCONTROL's Procurement Services in charge of a procurement procedure;
- (17) 'Framework agreement' means an agreement between EUROCONTROL and one or more suppliers, the purpose of which is to pre-establish the terms governing the specific contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged;
- (18) 'Independence' means the freedom from conditions that threaten the ability of a procurement activity to be carried out in an unbiased manner;
- (19) 'Intellectual Property' means creations of the mind: inventions, literary and artistic works, software codes, and symbols, names, trademarks, images, and designs used in commerce protected (or protectable) by appropriate intellectual property rights such as patents, copyrights, trademarks etc.;

- (20) 'Maintenance contract' means a contract under which a contractor agrees to perform maintenance services such as periodic technical maintenance or periodic maintenance of buildings or equipment;
- (21) 'Member State' means a Member State of EUROCONTROL;
- (22) 'Open procedure' means a procedure in which any interested supplier may submit a tender;
- (23) 'Procurement documents' means all documents produced or referred to by EUROCONTROL to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice, the technical specifications, the descriptive documents, the proposed terms and conditions or draft contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional information forming part of a call for tenders;
- (24) 'Procurement Services' means the services within EUROCONTROL responsible for managing EUROCONTROL's procurement procedures and letting contracts with suppliers;
- (25) 'Private treaty procedure' means a specific procedure by which EUROCONTROL consults suppliers of its choice and negotiates the terms of any contract with one or more of them without recourse to competitive tender action;
- (26) 'Restricted procedure' means a specific procedure in which only a limited number of suppliers are invited by EUROCONTROL to submit a tender;
- (27) 'Standstill period' means the period following the notification by EUROCONTROL of a contract award to the rejected tenderers, before a contract is signed with the selected tenderer(s);
- (28) 'Subcontractor' means a supplier that is proposed by a tenderer or contractor to perform part of the contract;
- (29) 'Supplier(s)' means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers on the market the execution of works, the supply of products or the provision of services;
- (30) 'Tender' means a written commitment, delivered by post, by electronic means or by hand, on the part of the tenderer in response to a call for tenders issued by EUROCONTROL;
- (31) 'Tenderer' means a supplier that has submitted a tender;
- (32) 'Tender Board' means the board responsible for opening and for verifying the correct receipt and completeness of the tenders received in hard copy in response to a call for tenders;
- (33) 'Utilities' encompass the following supplies: gas, electricity,

water, telephone, postal services, security/safety/reception services, catering services, building-related infrastructure and building-related maintenance;

(34) 'Written or in writing'

means any expression consisting of words and/or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

### **Article 3 – General principles**

Procurement procedures shall be carried out in accordance with the general principles of transparency and publicity, proportionality, equal access and treatment, non-discrimination and fair competition.

### **Article 4 – Independence of the Procurement Services**

In order to guarantee the proper execution of procurement actions in a transparent and impartial manner and to avoid conflicts of interest, the Director General shall take all the necessary measures to ensure the independence of the Procurement Services as regards the performance of the functions which, by virtue of their appointment, are assigned to them under these Contract Regulations.

### **Article 5 – Conflicts of interest**

5.1 EUROCONTROL shall take all appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all candidates, tenderers and suppliers.

5.2 EUROCONTROL shall ensure that no member of its staff and no person or entity with whom it has entered into a contract is involved in a procurement procedure, directly or indirectly, or may influence the outcome of a procedure if that person or entity or someone closely connected to him/her, including but not limited to, family members, relatives, partners or spouses, has, directly or indirectly, a financial, economic or other personal interest which might be perceived as compromising their impartiality and independence in the context of the procurement procedure.

All such persons involved in a procurement procedure must sign an appropriate declaration of absence of conflict of interest to that effect.

### **Article 6 – Confidentiality of procedures**

6.1 The procurement procedure shall remain confidential and shall be documented in writing. EUROCONTROL may impose requirements on suppliers with the objective of protecting the confidential nature of information which EUROCONTROL makes available during the procurement procedure.

6.2 EUROCONTROL shall not disclose information, designated as confidential, forwarded to it by candidates or tenderers including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

## **Article 7 – Method for calculating the estimated value of procurement**

- 7.1 The calculation of the estimated value of a procurement action for the purposes of the application of the thresholds provided for in the present Contract Regulations shall be based on the total maximum net amount payable (excluding taxes) over the entire duration of the contract, with the exception of contracts specified in Article 7.3 below. The total amount shall include any form of option and any foreseen renewals or provision as explicitly set out in the procurement documents and/or contract. The calculation shall include ancillary costs, in particular premium payments, fees, interest, indexation, commission, travel and accommodation costs and shall take into consideration the entire duration of the contract, unless specified otherwise.
- 7.2 With regard to the following services the basis for calculating the estimated contract value shall, where appropriate, be the following:
- a) Insurance services: the premium payable and other forms of remuneration;
  - b) Banking and Pension Fund investment contracts and other financial services: the fees, commissions payable, interest and other forms of remuneration.
- 7.3 In the case of procurement of regular and recurring goods and services (such as utilities contracts, maintenance contracts, insurance, licenses, rentals, subscriptions, including cloud subscriptions and other contracts of a similar nature), the calculation of the estimated contract value shall be based on the total aggregate annual amount or total aggregate estimated annual amount, adjusted, where possible and appropriate, to take account of the anticipated changes in quantity or value which would occur in the course of the 12 months following the initial contract.
- 7.4 In the case of mixed contracts which have as their subject-matter elements falling under Article 7.1 and elements falling under Article 7.3, the total amount shall be calculated on the basis of Article 7.1 for the non-recurring part and Article 7.3 for the recurring part.

## **Article 8 – Subdivision of contracts**

A procurement shall not be subdivided with the effect or for the purposes of preventing it from falling within the thresholds established by the present Contract Regulations as referenced in Article 10.

## **B) PROCUREMENT PROCEDURES**

### **Article 9 – Procurement procedures overview**

- 9.1 EUROCONTROL shall award contracts by open procedure, unless specified otherwise in Article 9.2 below.
- 9.2 In exceptional cases and under the specific conditions laid down in Articles 13, 14, 15 and 16 below, the following procedures may be used:
- a) the restricted procedure: where, in accordance with Article 13 below, a call for tenders is issued only to a limited number of suppliers;
  - b) the private treaty procedure: where, in accordance with Article 14 below, the Procurement Services issue a direct invitation to suppliers of its choice to submit a tender and negotiate a contract;
  - c) the competitive dialogue: where, in accordance with Article 15 below, EUROCONTROL conducts a dialogue with the candidates admitted to that procedure;

- d) the innovation partnership procedure: where, in accordance with Article 16 below, EUROCONTROL needs to develop innovative products, services or works not readily available on the market.
- 9.3 The launching of a procedure as referred to in paragraph 9.2 above shall be duly justified in writing.

### **Article 10 – Thresholds**

The following threshold amounts (minimum or maximum as specified in the respective Articles) shall apply:

- In accordance with Article 13 f), EUR 100,000 for the application of the restricted procedure referred to therein;
- In accordance with Article 14 e), EUR 20,000 for the application of the private treaty procedure referred to therein;
- In accordance with Article 25.2, Article 25.5, Article 43 and Article 49.2, EUR 200,000 for the obligation to send a contract notice to a point of contact designated by each Member State, the publication of the award notice, the application of the appeal procedure and the review of procedures and contracts by the Advisory Committee on Procurement and Sales Contracts;
- In accordance with Article 29.2 j), EUR 1,000,000 for requesting the tenderer a proof of the economic and financial standing;
- In accordance with Article 50.3 a), EUR 2,000 for transactions that may be effected on the strength of an invoice;
- In accordance with Article 52, EUR 60,000 for requesting financial and performance guarantees to the contractor;
- In accordance with Article 62.2, EUR 5,000,000 for the approval of contracts by the Provisional Council (with the exception of utilities contracts).

## **Section I - Types of procedure**

### **Article 11 – Calls for expression of interest**

- 11.1 EUROCONTROL may make known its intention of planned procurements through the publication of a call for expression of interest.
- 11.2 EUROCONTROL may use a call for expression of interest to:
- a) identify and collect a list of potentially interested suppliers in the market;
  - b) receive feedback from the market on an initial technical solution, idea or approach;
  - c) pre-select candidates to be invited to submit tenders in response to future restricted call for tenders.
- 11.3 In the procurement documents, EUROCONTROL shall identify the subject matter of the procurement by providing a description of its needs and the characteristics required of the works, supplies and/or services to be bought.
- 11.4 In the event that the call for expression of interest is to be followed by a restricted call for tenders, the procurement documents shall specify the applicable exclusion, selection and award criteria. EUROCONTROL shall also indicate which elements define the minimum requirements to be met by all tenders.

## **Article 12 – Open procedure**

In open procedures, any interested supplier may submit a tender in response to a call for tenders.

## **Article 13 – Restricted procedure**

A call for tenders may be restricted to a limited list of suppliers, selected in accordance with pre-established and objective criteria relating to their economic, financial and technical standing, in the following cases:

- a) where, for technical or legal reasons, the products, services or works can be supplied by a limited number of suppliers only, particularly when there is a need for very specific expertise, serviceability, trustworthiness and/or reliability;
- b) where the launch of an open procedure, as referred to in Article 12 above, would entail, for EUROCONTROL and/or potential tenderers, expenditure disproportionate to the value of the products, services and/or works to be purchased or to any potential commercial advantage which could be achieved by wider publicity;
- c) where an open procedure referred to in Article 12 above produces no result or the result produced is not acceptable from a technical and/or financial point of view and it is still possible to invite more than one supplier to submit a tender;
- d) where, for reasons beyond EUROCONTROL's control, the execution of works, the supply of products and/or the provision of services is a matter of such urgency that it is not possible to wait for an open procedure as referred to in Article 12 above to be carried out, but there is still time for a restricted procedure;
- e) as a result of a call for expression of interest, in accordance with Article 11 above, where the selection and award criteria for choosing suitable suppliers are clearly defined;
- f) where the estimated amount for the procurement, calculated in accordance with Article 7 above does not exceed EUR 100,000. In such a case, the minimum number of candidates to be invited to submit a tender shall be four (4).

## **Article 14 – Private treaty**

Contracts may be let or amended by a private treaty procedure in the following exceptional circumstances:

- a) where, for reasons beyond EUROCONTROL's control, the execution of works, the supply of products and/or the provision of services is a matter of such urgency that it is not possible to wait for one of the other procurement procedures specified in Articles 12 and 13 above to be conducted;
- b) where, after having launched other procurement procedures as referred to in Articles 12 and 13 above, no tenders have been submitted or where the tenders submitted did not comply with the mandatory requirements of the initial procurement procedure, provided that these requirements were not substantially altered by EUROCONTROL and a period not exceeding three (3) months has elapsed after the formal declaration of closure of the procurement procedures referred above;
- c) where the works, products and/or services can be supplied by one particular supplier only. These reasons may be of a technical, artistic or legal nature, including the exercise of exclusive rights established in accordance with applicable law;
- d) for additional works, products or services which were not included or considered in the initial contract and which have become necessary for the satisfactory completion of the project due to circumstances which EUROCONTROL, acting diligently, could not have foreseen, provided that the amendment does not alter the overall nature of the initial contract and where such additional products, or services or works cannot reasonably be technically, economically or contractually separated from the initial contract;

- e) where the contract for the execution of works, the supply of products and/or the provision of services involves an amount not exceeding EUR 20,000;
- f) where the contract concerns services and/or advice in the medical and/or legal domain and/or is related to advice on organisational matters requiring a particular relationship of trust, confidence and/or confidentiality.

### **Article 15 – Competitive dialogue**

- 15.1 In the case of particularly complex contracts, where EUROCONTROL considers that the use of the open or restricted procedure will not allow a contract to be awarded to the tenderer offering the most economically advantageous tender, the competitive dialogue procedure may be used.
- 15.2 A contract shall be deemed 'particularly complex' where it cannot be awarded without prior negotiations because of specific circumstances related to the nature, technical intricacy and/or the legal and financial set-up of the contract or the risks attached to the subject matter of the contract.
- 15.3 EUROCONTROL shall specify its needs and requirements, the award criteria and an indicative timeframe in the contract notice or in a descriptive document.
- 15.4 EUROCONTROL shall open a competitive dialogue with candidates satisfying the selection criteria set out in the contract notice in order to identify and define the means best suited to satisfying its needs. EUROCONTROL may discuss all aspects of the procurement with the selected candidates during the competitive dialogue but may not alter the needs and requirements and award criteria as provided for in paragraph 15.3 above.
- 15.5 During the competitive dialogue, EUROCONTROL shall ensure equality of treatment among all candidates and confidentiality of the solutions proposed and/or other information communicated by a candidate participating in the competitive dialogue unless such candidate agrees to its disclosure.
- 15.6 EUROCONTROL may provide for the competitive dialogue to take place in successive stages in order to reduce the number of solutions to be discussed during the competitive dialogue stage by applying the announced award criteria if provision is made for this possibility in the contract notice.
- 15.7 Without prejudice to the provisions of Article 41, EUROCONTROL shall continue the competitive dialogue until it can identify the solution or solutions which are capable of meeting its needs.
- 15.8 After informing the candidates that the competitive dialogue is concluded, EUROCONTROL shall ask the candidates to submit their final tenders on the basis of the solution or solutions presented and specified during the competitive dialogue. These tenders shall contain all the elements required and necessary for the performance of the project. At EUROCONTROL's request, these tenders may be further clarified, specified and fine-tuned provided this does not have the effect of changing basic aspects of the competitive dialogue or of the call for tenders, where variations to those aspects are likely to distort competition or have a discriminatory effect.
- 15.9 At EUROCONTROL's request the tenderer identified as having submitted the most economically advantageous tender may be asked to clarify aspects of its tender or confirm commitments contained in its tender provided this does not have the effect of modifying substantial aspects of the competitive dialogue or of the call for tenders and does not risk distorting competition or causing discrimination.

## **Article 16 – Innovation partnership procedure**

- 16.1 EUROCONTROL may apply an innovation partnership procedure for the development of innovative products, services or works not readily available on the market and their subsequent purchase, provided that they comply with the performance level and maximum costs agreed between EUROCONTROL and the participants to the innovation partnership procedure.
- 16.2 On publication of a contract notice, interested suppliers may submit a request to participate in the innovation partnership procedure. They shall submit their application within the time limit specified in the contract notice and provide the documentation requested by EUROCONTROL.
- 16.3 In the procurement documents, EUROCONTROL shall identify the need for innovative products, services or works that cannot be met by purchasing products, services or works readily available on the market. EUROCONTROL shall indicate which elements constitute the minimum requirements to be met by all candidates. The information provided shall be sufficiently precise to enable suppliers to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.
- 16.4 EUROCONTROL shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. EUROCONTROL shall invite at least three (3) eligible candidates to participate in the procedure and provide them with a request for proposal setting out EUROCONTROL's detailed needs. The number of candidates invited shall be sufficient to ensure genuine competition. However, where the number of candidates meeting the selection criteria is below the minimum number, EUROCONTROL may continue the procedure with all candidates meeting the selection criteria.
- 16.5 EUROCONTROL may decide to set up an innovation partnership with one partner or with several partners conducting separate research and development activities.
- 16.6 The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of products, the provision of services or the completion of works. The innovation partnership shall set intermediate targets to be attained by the participants and provide for payment of the remuneration in instalments. If the procurement documents so provide, after each phase EUROCONTROL may either terminate the innovation partnership or, in the case of an innovation partnership with several participants, reduce the number of participants by terminating individual contracts.
- 16.7 If the procurement documents so provide, negotiations during the innovation partnership procedure may take place in successive stages, applying the award criteria specified, in order to reduce the number of tenders to be negotiated. EUROCONTROL shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender. Changes to the technical specifications shall be communicated to tenderers to allow them to modify and re-submit amended tenders. Minimum requirements and award criteria shall not be subject to negotiations.

## **Section II - Other procurement techniques and instruments**

### **Article 17 – Framework agreements**

- 17.1 EUROCONTROL may conclude framework agreements on the basis of the provisions set out in this Article.
- 17.2 Where a framework agreement is concluded with more than one party, that framework agreement shall be performed through reopening competition amongst the parties to the framework agreement.

- 17.3 The competitions referred to in paragraph 17.2 above shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms and, where appropriate, other terms referred to in the procurement documents for the framework agreement in accordance with the following procedure:
- a) For every contract to be awarded, EUROCONTROL shall consult in writing the parties to the framework agreement capable of performing the contract;
  - b) EUROCONTROL shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to submit the tenders;
  - c) Tenders shall be submitted in accordance with the instructions contained in the procurement documents, and their content shall not be opened until the stipulated time limit for reply has expired;
  - d) EUROCONTROL shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.
- 17.4 The selection of such preferred potential tenderers shall be made following a call for tenders subject to the opinion of the Advisory Committee provided for in Article 49 below.
- 17.5 The duration of a framework agreement, including any extensions, shall not exceed five years.

#### **Article 18 – Dynamic purchasing systems**

- 18.1 For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of EUROCONTROL, a dynamic purchasing system may be used. The dynamic purchasing system shall be operated as a completely electronic process, and shall be open throughout the period of validity of the dynamic purchasing system to any candidate that satisfied the selection criteria. It may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.
- 18.2 All the candidates satisfying the selection criteria shall be admitted to the dynamic purchasing system and the number of candidates to be admitted to the dynamic purchasing system shall not be limited. Where EUROCONTROL has divided the dynamic purchasing system into categories of products, works or services in accordance with paragraph 1 of this Article, it shall specify the applicable selection criteria for each category.
- 18.3 All communications in the context of a dynamic purchasing system shall only take place by electronic means.
- 18.4 For the purposes of awarding contracts under a dynamic purchasing system, EUROCONTROL shall:
- a) Publish a call for competition making it clear that a dynamic purchasing system is involved;
  - b) Indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how it operates, the IT solution used and the technical connection arrangements and specifications;
  - c) Indicate any division into categories of products, works or services and the characteristics defining them;

- d) Indicate the period of validity of the dynamic purchasing system;
  - e) Offer unrestricted and full direct access, as long as the dynamic purchasing system is valid, to the procurement documents.
- 18.5 EUROCONTROL shall give any supplier, throughout the entire period of validity of the dynamic purchasing system, the possibility to request to participate in the dynamic purchasing system. EUROCONTROL shall finalise its assessment of such requests in accordance with the selection criteria within twenty (20) days following the receipt of the request. The deadline may be prolonged to twenty-five (25) days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.
- 18.6 Notwithstanding paragraph 18.5 above, as long as the call for tenders for the procurement under the dynamic purchasing system has not been sent, EUROCONTROL may extend the evaluation period provided that no call for tenders is issued during the extended evaluation period. EUROCONTROL shall indicate in the procurement documents the length of the extended period that they intend to apply.
- 18.7 EUROCONTROL shall inform the candidate concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.
- 18.8 EUROCONTROL shall invite all admitted candidates to submit a tender for each specific procurement under the dynamic purchasing system.
- 18.9 The duration of a dynamic purchasing system shall not exceed four (4) or in exceptional duly justified cases, five (5) years. At the end of every term, EUROCONTROL shall re-launch a full and open tender procedure.

#### **Article 19 – Electronic auctions**

- 19.1 EUROCONTROL shall be entitled to use electronic auctioning as a means of receiving tenders.
- 19.2 An electronic auction may also be held on the reopening of a competition among the parties to a framework agreement as referred to in Article 17, on the opening for competition of contracts to be awarded under the dynamic purchasing system as referred to in Article 18 and for sales of redundant property and assets as referred to in Articles 63 and 64.
- 19.3 The use of electronic auctions is conditional on a due notification in the contract notice or the call for tenders.
- 19.4 When performing an electronic auction EUROCONTROL shall state in the call for tenders conditions at least the following:
- a) the values of the features which will be the subject of the electronic auction, provided that those features are quantifiable and can be expressed in figures or percentages;
  - b) any limits on the values which may be submitted, as they result from the specifications relating to the subject matter of the contract (“auction value”);
  - c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
  - d) the relevant information concerning the electronic auction process including whether it includes phases and how it will be closed, as set out in paragraphs 19.10 to 19.13 below;
  - e) the conditions under which the tenderers will be able to tender and, in particular, the minimum differences which will, where appropriate, be required when submitting the tender;
  - f) the relevant information concerning the IT solution used and the arrangements and technical specification for connection.

- 19.5 Before proceeding with an electronic auction, EUROCONTROL shall make an initial full evaluation of the tenders and draw up a report on the evaluation of tenders (“initial evaluation”).
- 19.6 Following the initial evaluation, EUROCONTROL shall invite all tenderers that have not been excluded in the framework of the initial evaluation, to submit new auction values for electronic auction. The invitation shall be sent to the tenderers by electronic means.
- 19.7 The invitation sent by EUROCONTROL shall contain all relevant information concerning individual connection to the IT solution used for the electronic auction, the date and time of the start of the electronic auction. Where such information has already been indicated in the call for tenders conditions, it will suffice to mention in the invitation the reference to the call for tenders conditions.
- 19.8 If the basic contract award criterion of the most economically advantageous tender is applied, the invitation shall, in addition, contain the following:
- a) the outcome of the initial evaluation of a tender submitted by the relevant tenderer, and
  - b) the mathematical formula to be used in the electronic auction to determine automatic rankings on the basis of the new auction values submitted and which shall incorporate all partial evaluation criteria published in the contract notice or in the call for tenders.
- 19.9 The electronic auction shall not start sooner than two (2) days after the dispatch of all invitations.
- 19.10 The electronic auction may take place in a number of successive phases (“auction phases”). EUROCONTROL shall inform tenderers of the timetable for the auction phases and other particulars relating to the individual auction phases in the invitation.
- 19.11 Throughout each phase of an electronic auction, EUROCONTROL shall be obliged to communicate to tenderers the information on the ranking thereof or on the best auction values at any moment. EUROCONTROL may also communicate other information concerning prices or values in question in a manner indicated in the invitation, provided that it retained such an option in the call for tenders conditions. EUROCONTROL is entitled to announce at any time in the course of the electronic auction the number of participants in a given auction phase. However, EUROCONTROL shall not disclose the identity of the participants in the electronic auction to the tenderers during any phase of the electronic auction.
- 19.12 The tenderer is entitled to require of EUROCONTROL the information concerning auction values submitted by other tenderers, if EUROCONTROL has allowed for such a right in the call for tenders conditions or in the invitation.
- 19.13 EUROCONTROL is entitled to close an electronic auction:
- a) on the date and time fixed in advance;
  - b) if it receives no new auction values, which would meet the requirements concerning minimum differences for each submission; in that event, EUROCONTROL is entitled to state in the invitation the time which will have to elapse after receiving the last submission with a new auction value before it closes the electronic auction, or if the number of the auction phases fixed in the invitation has been completed.

## **Article 20 – Electronic catalogues**

- 20.1 Where the use of electronic means of communications is required, EUROCONTROL may require tenders to be presented in the form of an electronic catalogue or to include an electronic catalogue.
- 20.2 Where the presentation of tenders in the form of an electronic catalogue is accepted or required, EUROCONTROL shall:
- a) state this in the call for tenders notice;

- b) indicate in the procurement documents all the necessary information pursuant to Article 27 concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the electronic catalogue.

### **Article 21 – Common procurement**

- 21.1 At the request of one or more Member State(s) and/or appropriate air navigation service providers or where there are possible synergies in procuring identical products, services or works with a party which is not a Member State or an air navigation service provider, EUROCONTROL may proceed with a common procurement procedure.
- 21.2 In such event, EUROCONTROL and the relevant Member State(s) or appropriate air navigation service provider(s) or party shall enter into an agreement which shall determine:
  - a) the applicability of the contractual procedures of the present Contract Regulations and/or other regulations guaranteeing the principles of fair and open competition, which shall not contradict the present Contract Regulations;
  - b) the other participating contracting authorities, their respective roles and responsibilities and the envisaged structure of the contractual relationship;
  - c) the internal organisation and the participation of the other party/ies in EUROCONTROL's procurement procedures (i.e. drafting of specifications, evaluation of offers, negotiations, participation in EUROCONTROL's internal bodies/meetings, management of the procedure, distribution of the works, supplies or services to be procured, cost sharing methodology, conclusion of contracts);
  - d) the applicability of third party regulations, provided that they are at least as stringent as the present Contract Regulations;
  - e) a code of conduct and provisions ensuring the avoidance of conflicts of interest.
- 21.3 The interest of EUROCONTROL in proceeding with common procurement action shall be duly documented.
- 21.4 Under no circumstances shall the procedure provided for in the present Article be used for the sole purpose of circumventing procurement regulations applying in the Member States. Should any such circumvention come to light, EUROCONTROL may terminate the relevant procurement action and any agreement between the parties in connection therewith.

## **C) CONDUCT OF THE PROCEDURE**

### **Section I - Preparation**

#### **Article 22 – General principles**

No procurement procedure shall be undertaken until approval has been obtained by the Procurement Services in accordance with the applicable rules and regulations of EUROCONTROL.

#### **Article 23 – Preliminary market consultation**

- 23.1 Before launching a procurement procedure, EUROCONTROL may conduct preliminary market consultations with a view to preparing the procurement and informing suppliers of their procurement plans and requirements.

- 23.2 For this purpose, EUROCONTROL may, for example, seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

#### **Article 24 – Prior involvement of candidates or tenderers**

- 24.1 Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised EUROCONTROL in accordance with Article 23.2 above, whether in the context of Article 23 above or not, or has otherwise been involved in the preparation of the procurement procedure, EUROCONTROL shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.
- 24.2 Such measures shall include the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.
- 24.3 Prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in writing.

### **Section II - Publicity and electronic procurement**

#### **Article 25 – Publication**

- 25.1 If EUROCONTROL decides to carry out a competitive tendering procedure, it shall publish a contract notice on the EUROCONTROL website and through the EUROCONTROL's electronic tool dedicated to procurement to the most relevant categories of suppliers identified in such tool. Whenever appropriate, EUROCONTROL may place advertisements in other relevant media.
- 25.2 In addition, the contract notice may be sent to a point of contact designated by each Member State. Such notice shall be sent where the procurement action relates to contracts exceeding a value of EUR 200,000.
- The contract notice shall contain the technical subject-matter, the main selection and award criteria, the admissibility conditions, the closing date and the contact person within EUROCONTROL responsible for the call for tenders.
- 25.3 The Procurement Services shall maintain a general list of potential suppliers further classified in accordance with different criteria relating to, inter alia, the main types of products and services required by EUROCONTROL. For this purpose, the conditions under which a supplier may be included in the general list shall be given the widest possible publicity.
- 25.4 EUROCONTROL shall draw up annual statistics and send them to the relevant body representing EUROCONTROL's Member States on matters of finance.
- 25.5 Publication of the award notice on EUROCONTROL website
- a) EUROCONTROL shall publish on its website an award notice on the results of all its open, restricted, competitive dialogue and innovation partnership procedures having a value equal to or exceeding EUR 200,000.
  - b) The award notice shall contain at least the following information:

- (i) the name of the contractor;
  - (ii) the date on which the contract was entered into;
  - (iii) the value of the contract;
  - (iv) the duration of the contract.
- c) Notwithstanding paragraph 25.5 b) above EUROCONTROL may withhold information from publication where its release:
- (i) would impede law enforcement or would otherwise be contrary to the public interest;
  - (ii) would prejudice the legitimate commercial interests of a particular supplier, whether public or private; or
  - (iii) might prejudice fair competition between suppliers.
- d) EUROCONTROL shall comply with paragraph 25.5 a) above within thirty (30) days.

### **Article 26 – Time limits**

When fixing the time limits for the receipt of applications and tenders, EUROCONTROL shall take into account, in particular, the complexity of the contract and the time required for drawing up tenders. In duly justified cases, the time limit may be extended by EUROCONTROL for the submission of tenders.

### **Article 27 – Electronic tender procedures**

- 27.1 EUROCONTROL shall publish its call for tenders and authorise submission of tenders by electronic means, except for the cases provided in Article 27.8 below.
- 27.2 Where EUROCONTROL publishes its calls for tenders or authorises submission of tenders by electronic means, the tools and devices to be used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use and shall not restrict suppliers' access to the procurement procedure.
- 27.3 The information relating to the specifications required for the submission of tenders including encryption if applicable, shall be made available to the candidates or tenderers free of charge.
- 27.4 In such cases, the call for tenders notice shall specify in particular the formal requirements to be observed by the candidates or tenderers and how to access the electronic platform.
- 27.5 A document sent or notified through such an electronic platform shall contain a scanned signature and shall be deemed to be the original and considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.
- 27.6 The scanned signatures referred to in paragraph 27.5 above shall have the equivalent legal effect of handwritten signatures.
- 27.7 All exchanges with candidates or tenderers and contractors, including the conclusion of contracts and any amendments thereto, may be done through electronic exchange systems set up by EUROCONTROL.
- 27.8 EUROCONTROL may decide not to publish its call for tenders by electronic means or not to require electronic means of communication in the submission process in the following situations:

- a) due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;
  - b) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by EUROCONTROL;
  - c) the use of electronic means of communication would require specialised office equipment that is not generally available to EUROCONTROL or to particular categories of suppliers;
  - d) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means;
  - e) when the use of means of communication other than electronic means is necessary either because of a breach of security of the electronic means of communications or for the protection of the particularly sensitive nature of information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are generally available to suppliers.
- 27.9 In respect of communications for which electronic means of communication are not used pursuant to the paragraph above, communication shall be carried out:
- a) either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip; or
  - b) by hand-delivery to the premises of EUROCONTROL by the candidate or tenderer in person or by an agent, in which case the evidence shall be constituted by the acknowledgement of receipt.

#### **Article 28 – Electronic signature**

- 28.1 Where EUROCONTROL decides that electronic signatures are required, EUROCONTROL shall accept advanced electronic signatures supported by a qualified certificate provided by a qualified trust service provider. The detailed requirements shall be established in the procurement documents.
- 28.2 The electronic signatures referred to in paragraph 28.1 above shall have the equivalent legal effect of handwritten signatures.

### **Section III - Content of calls for tenders**

#### **Article 29 – Procurement documents**

- 29.1 Procurement documents shall give a full, clear and precise description of the subject of the contract and specify the exclusion, selection and award criteria applicable to the procedure. The rules to be observed by the tenderer, and its obligations and rights vis-à-vis EUROCONTROL, shall be stated in the documents attached to every call for tenders.
- 29.2 Calls for tenders shall contain at least:
- a) full information, where applicable, on the electronic availability of, and access to, the procurement documents;
  - b) the object of the intended contract together with the formal tender requirements, in particular the time limit for the receipt of tenders, the address to which the tenders must be sent in case of tenders to be sent through non-electronic means of communication, the language or languages in which the tenders must be drawn up, the currency in

- which the tender is to be expressed, the format in which the tender must be submitted;
- c) options concerning additional products, services and works, as well as the number of possible renewals and extensions to the contract;
  - d) instructions for submission of information on any proposed subcontractors;
  - e) the selection criteria, award criteria, relative weighting and its calculation methodology;
  - f) the technical specifications, which shall define EUROCONTROL's requirements or, in the case of a competitive dialogue, the request for a proposal defining EUROCONTROL's needs;
  - g) the appropriate terms and conditions, draft contract and/or document specifying the key features of the contract;
  - h) the official tender forms, including the price declaration form, to be completed by the tenderer; where appropriate and possible, the price declaration form shall contain a price breakdown, in order to allow a fair comparison of the tenders received;
  - i) specification of the items/documents to be included in the tender and the period for which the tenders are to remain valid;
  - j) a request for proof of the economic and financial standing of the tenderer, for contracts the total value of which exceeds EUR 1,000,000;
  - k) specification of the cases in which tenderers will be excluded from participation;
  - l) a provision stipulating that EUROCONTROL reserves the right to cancel a tender at any time before the contract is signed or not to accept a tender, or to accept only one or more items, or to accept only parts of items of one or more offers, provided that the possibility of such subdivision into items or parts of items is clearly stated in the call for tenders documents.

### **Article 30 – Proof of economic and financial standing**

- 30.1 Proof of the tenderer's economic and financial standing, as referenced in Article 29.2 j) above, may, as a general rule, be furnished by one or more of the following references:
- a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
  - b) the presentation of balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the tenderer operator is established;
  - c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.
- 30.2 A tenderer may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to EUROCONTROL that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.
- 30.3 Under the same conditions, a group of tenderers may rely on the capacities of participants in the group or of other entities.
- 30.4 EUROCONTROL shall specify, in the contract notice or in the call for tenders, which reference or references mentioned in paragraph 30.1 above they have chosen and which other references must be provided by the tenderer and by other entities or group of other entities in case the tenderer intends to rely on the capacities of other entities.
- 30.5 If, for any valid reason, the tenderer is unable to provide the references requested by EUROCONTROL, it may prove his economic and financial standing by any other

document which EUROCONTROL considers appropriate.

### **Article 31 – Technical specifications**

- 31.1 EUROCONTROL shall specify its technical specifications in the procurement documents in line with applicable law and technical standards.
- 31.2 EUROCONTROL shall specify the evidence, such as labels, certificates and conformity assessment, in particular any environmental certificates that it requests from the candidates to demonstrate compliance with the specifications. Such evidence must be obtainable in a transparent manner. Other evidence shall be accepted where it is technically equivalent.
- 31.3 The specifications and the requested evidence shall be necessary and proportionate to meet the objectives of the procurement and based on objective and non-discriminatory considerations that avoid any unjustified obstacle to competition.

### **Article 32 – Code of conduct**

- 32.1 If necessary, for individual procurement procedures, EUROCONTROL may draw up a code of conduct setting out the rights and obligations of EUROCONTROL and other interested third parties (public or private).
- 32.2 The code of conduct shall as a minimum cover the following aspects:
  - a) scope and application (usually limited to one particular procurement project);
  - b) addressees;
  - c) confidentiality;
  - d) exclusion from procurement procedures for the duration of the conflict of interest, where applicable.
- 32.3 The code of conduct shall be signed by the participating individuals and/or entities.

## **Section IV - Information exchanges during the tendering period**

### **Article 33 – Communication with candidates and tenderers**

- 33.1 While the procurement procedure is under way, all contacts between EUROCONTROL and candidates or tenderers shall satisfy conditions ensuring transparency, equal treatment and good administration.
- 33.2 More particularly, candidates and tenderers shall:
  - a) communicate only with the contact person(s) indicated by EUROCONTROL. The means of communication shall be generally available and non-discriminatory;
  - b) submit their applications and tenders in accordance with the requirements set out in the contract notice or call for tenders.
- 33.3 Candidates or tenderers may submit in writing questions concerning the contract notice, the call for tenders or the supporting documents to EUROCONTROL in accordance with the procedure laid down in the contract notice or the call for tenders. EUROCONTROL shall reply to such questions within reasonable time limits, and shall communicate the answers to all candidates or tenderers on an anonymous basis if they are of relevance to all of them.
- 33.4 EUROCONTROL shall ensure that the information provided by candidates and tenderers is treated and stored in accordance with the principles of confidentiality and integrity and,

to the extent personal data is provided, in accordance with the EUROCONTROL Regulation on Personal Data Protection and its implementing rules.

## **Section V - Receipt and handling of tenders**

### **Article 34 – Receipt and handling of tenders**

#### **34.1 Common provisions for tenders submitted by electronic and non-electronic means**

- a) Applications and tenders shall be submitted in two separate parts, one technical cover containing the technical documents or volumes in the format prescribed by the technical specifications and one administrative – financial/commercial cover containing the tender and price proposals.
- b) Applications and tenders shall not be opened before the expiry of the date for submission.
- c) Tenders sent or handed in by tenderers following a call for tenders and any information concerning the number of tenders received or the names of the firms who have submitted tenders shall be kept strictly confidential and must not on any account be communicated to persons other than those who need to have knowledge thereof for the discharge of their duties.

#### **34.2 Tenders submitted by non-electronic means**

On receipt, sealed tenders shall be recorded in order of arrival in a special register kept by the Procurement Services; the tenders shall remain sealed until such time as they are opened simultaneously by the Tender Board. The tenders shall be kept safe by the Procurement Services until such time as they are to be opened by the Tender Board.

Tenders which have not been opened by the Tender Board because they do not meet the conditions laid down in the call for tenders, shall be returned unopened to the senders. The reasons for returning the tenders unopened must be communicated in writing to the senders.

Tenders opened by the Tender Board shall be promptly transmitted to the Contract Manager in charge who checks that the tender complies with the substantial formalities specified in the call for tenders and establishes an inventory of all tenders received which are considered admissible for further consideration in the procurement process. The proposed inventory of tenders judged admissible for further consideration in the procurement process shall be submitted to the signature of the Head of Procurement Services or any other authorising officer within the respective delegation limits.

#### **34.3 Tenders submitted by electronic means**

Tenders received via the EUROCONTROL's electronic tool dedicated to procurement shall be opened by the Contract Manager in charge who checks that the tender complies with the substantial formalities specified in the call for tenders and establishes an inventory of all tenders received which are considered admissible for further consideration in the procurement process. The proposed inventory of tenders judged admissible for further consideration in the procurement process shall be submitted to the approval of the Head of Procurement Services or any other authorising officer within the respective delegation limits.

## **Section VI - Exclusion from participation in the procurement procedure**

### **Article 35 – Exclusion from participation in the procurement procedure**

- 35.1 EUROCONTROL shall exclude candidates or tenderers from participation in procurement procedures at any time if:
- a) they are bankrupt, subject to insolvency or winding-up procedures, are having their assets administered by a liquidator or by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for under national legislation or regulations;
  - b) it has been established by a final judgment or a final administrative decision that the supplier is guilty of grave professional misconduct by having violated applicable law or regulations or ethical standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, but not limited to, any of the following:
    - (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
    - (ii) entering into agreement with other suppliers with the aim of distorting competition;
    - (iii) violating intellectual property rights;
    - (iv) attempting to influence the decision-making process of EUROCONTROL during the procurement procedure;
    - (v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure.
  - c) they have not fulfilled obligations relating to the payment of social security contributions or taxes in accordance with the legal provisions of the country in which they are established or the country in which EUROCONTROL is established or the country in which the contract is to be performed;
  - d) they or their management, staff or agents are subject to a conflict of interest that cannot be remedied by less intrusive means;
  - e) they have been convicted, in a judgment having the force of res judicata, of fraud, corruption, involvement in a criminal organisation, terrorist offences or financing, money laundering, child labour or human trafficking or any other illegal activity detrimental to EUROCONTROL's financial interests;
  - f) they have shown significant, persistent or repetitive deficiencies in the performance of another contract, which has led to its early termination or the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigation by an officer of EUROCONTROL;
  - g) they have not complied with their obligations under environmental, social and labour law.
- 35.2 Paragraphs a) to c) above shall not apply to any purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

- 35.3 Candidates or tenderers shall certify that they are not in one of the situations listed in Article 35.1 above and provide the evidence specified in the contract notice or call for tenders. If such circumstances arise in the course of the procedure the candidate or tenderer concerned shall inform EUROCONTROL thereof without undue delay. Candidates or tenderers may submit evidence to demonstrate their eligibility despite the existence of grounds for exclusion.
- 35.4 Where a candidate, or an undertaking related to a candidate, has been involved in the preparation of a procurement procedure, for example by advising on the procurement strategy or developing specifications, EUROCONTROL shall take appropriate measures to ensure fair competition and an equal level of information amongst all candidates. EUROCONTROL may exclude the candidate or undertaking from the procedure, if this is necessary for those purposes. Prior to exclusion, the candidate or undertaking shall be given the opportunity to prove that their previous involvement does not distort competition.
- 35.5 EUROCONTROL may exclude a candidate or tenderer that is in one of the situations described in Article 35.1 above from participation in any forthcoming tender procedure for a reasonable period of time. EUROCONTROL shall decide on the exclusion and determine the period of its duration applying the principle of proportionality, taking into account in particular:
- a) the seriousness of the offence, conduct, breach or act of bankruptcy;
  - b) the time which has elapsed since the offence, conduct, breach or act of bankruptcy was committed or occurred;
  - c) the duration and any recurrence of the offence, conduct, breach or act of bankruptcy;
  - d) the intention or degree of negligence of the supplier concerned; and
  - e) the measures taken by the supplier to avoid similar offences, conduct, breaches or acts of bankruptcy in the future.
- 35.6 The period of exclusion shall not exceed ten (10) years from the date notice thereof is delivered to the supplier. Prior to taking a decision to exclude the supplier, EUROCONTROL shall give the candidate or tenderer an opportunity to express its views unless the facts justifying the exclusion are laid down in a final judgment. EUROCONTROL shall notify the candidate or tenderer in writing of its decision and the main reasons for doing so.
- 35.7 The candidate or tenderer, whenever requested by EUROCONTROL, must:
- a) where the tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity;
  - b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in Article 35.1 above.

## **Section VII - Evaluation and contract award**

### **Article 36 – General principles**

- 36.1 All tenders admitted for evaluation in accordance with Article 34.2 and 34.3 above shall be submitted to a Tender Evaluation Panel.
- EUROCONTROL shall evaluate all tenders against the award criteria set out in Article 38 below after having:
- a) Verified compliance with the formal tender submission requirements (admissibility check);
  - b) Verified that the tenderers are not in an exclusion situation in line with Article 35;

- c) Assessed the fulfilment of the selection criteria in line with Article 37.
- 36.2 EUROCONTROL shall award the contract to the tenderer whose tender best meets the award criteria.
- 36.3 The evaluation process and outcome shall be documented in an evaluation report.
- 36.4 The evaluation shall be carried out in two steps:
  - a) evaluation of the technical cover containing the technical documents, volumes and proposals, in which tenders are evaluated and ranked on their technical merits; and
  - b) evaluation of the administrative-financial/commercial cover containing the price proposals which shall be carried out after the technical evaluation has been completed and will only take into consideration the tenders which have been judged technically compliant.

#### **Article 37 – Selection criteria**

- 37.1 EUROCONTROL shall specify in the procurement documents the compliance and selection criteria for assessing a candidate's or tenderer's capacity to perform the contract. The selection criteria shall relate to the candidate's or tenderer's authorisation and suitability to carry out the relevant professional activity, their economic and financial standing, and their technical or professional ability. The selection criteria shall be necessary and proportionate to ensure fair competition and achieve the contract objectives.
- 37.2 EUROCONTROL may lay down minimum requirements below which it cannot select candidates or tenderers. These minimum requirements shall be specified in the procurement documents.
- 37.3 EUROCONTROL shall specify in the contract notice the documents to be submitted by candidates or tenderers as proof of their financial, economic, technical and professional capacity. The documentation requested shall not go beyond the subject of the contract and shall take account of the legitimate interests of the suppliers as regards in particular the protection of their technical and business secrets.

#### **Article 38 – Award criteria**

- 38.1 EUROCONTROL shall award the contract to the tenderer that submitted the most economically advantageous tender.
- 38.2 Unless otherwise provided in the present Contract Regulations, the most economically advantageous tender is identified on the basis of one of the following options:
  - a) the price or costs only;
  - b) the best price-quality ratio;
  - c) quality only, in case of a price which is equally fixed for all market participants or a fixed cost stipulated in the contract notice; or
  - d) quality only, in the area of research, undertaken in collaboration with universities or similar (research) educational institutions located in the Member States, where EUROCONTROL is providing partial financing of the research activity.
- 38.3 The price or cost element shall, to the extent relevant, take account of life-cycle costs such as costs relating to acquisition, use, maintenance and end-of-life of products, works and services. Costs relating to environmental externalities linked to products, works and services during their life cycle may also be considered.
- 38.4 The best price-quality ratio shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects linked to the subject matter of the contract, such as:

- a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and the conditions thereof;
  - b) organisational structure, qualifications and experience of staff assigned to perform the contract, where staff quality can have a significant impact on the level of performance of the contract;
  - c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion; or
  - d) risks such as non-acceptance of EUROCONTROL standard terms and conditions or no agreement on acceptable terms and conditions.
- 38.5 EUROCONTROL shall specify in the procurement documents the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender except when using the lowest price method.
- The weighting applied to price or cost in relation to the other criteria must not result in the neutralisation of price or cost.
- 38.6 All of the selection criteria and award criteria identified in Article 37 above and in this Article 38 shall be linked to the subject matter of the contract and shall remain unchanged throughout the procedure.
- 38.7 The final choice shall be duly justified in writing.

#### **Article 39 – Negotiations**

- 39.1 After clarifications on the technical and financial elements of the tender, where opportunities are noted for price reductions and/or technical improvements, the Procurement Services may, with the appropriate assistance of the technical services, undertake negotiations with the tenderer(s) on the list of tenders meeting the technical requirements, for the purpose of obtaining the best terms and conditions and price.
- These negotiations may result in a request for an updated tender.
- Final negotiations may be carried out with the best-ranked tenderer in order to conclude the contract.
- 39.2 Under no circumstances shall these negotiations lead to a reduction of the technical requirements of the call for tenders below the minimum threshold for compliance. If such reduction is necessary, a new call for tenders shall be issued.
- 39.3 In these negotiations, EUROCONTROL shall ensure equal and fair treatment of the tenderers.

#### **Article 40 – Notification to unsuccessful tenderers**

- 40.1 Once a decision has been reached on the choice of the tender EUROCONTROL shall notify its final decision on the award of the contract in writing and without undue delay to all candidates or tenderers whose applications or tenders were not selected.
- 40.2 Where a tender is eliminated from the procurement procedure due to non-admissibility for administrative reasons or where the tender is not selected to proceed to a subsequent step in the evaluation procedure, EUROCONTROL shall, without undue delay, notify its decision not to retain such tenders. The notice shall give a summary reasoning for the decision.
- 40.3 The notice referred to in paragraph 40.1 above shall include:
- a) the criteria for the award of the contract;
  - b) a summary of the reasons for the decision.

- 40.4 In procurement procedures with a value equal or exceeding EUR 200,000, the notice referred to in paragraph 40.1 above shall also include, in addition to the items indicated in Article 40.3, the following elements:
- a) the score (if any) obtained by the rejected candidate or tenderer;
  - b) the duration of the standstill period;
  - c) the date at which the contract is due to be signed.
- 40.5 In procurement procedures with a value equal or exceeding 200,000 EUR, EUROCONTROL shall not sign the contract with the successful tenderer until a standstill period has elapsed. The standstill period shall have a duration of ten (10) days when the notification of paragraph 40.1 above has been made using electronic means of communication and fifteen (15) days when the other means of communications are used.
- The standstill period runs from the day after notices have been sent to all the relevant tenderers. The period ends (at the earliest) at either:
- a) midnight at the end of the tenth day after the date on which EUROCONTROL sends the standstill notice, where the notice has been sent by electronic means; or
  - b) midnight at the end of the fifteenth day after the sending date, where the notice has been sent by non-electronic means.
- 40.6 EUROCONTROL may decide to withhold certain information on the award of the contract, where the release of such information would impede law enforcement or be otherwise contrary to the public interest or would prejudice the legitimate commercial interests of suppliers, public or private, or might prejudice fair competition between them.

#### **Article 41 – Cancellation of the procurement procedure**

- 41.1 EUROCONTROL may, before the contract is signed, cancel the procurement procedure without the candidates or tenderers being entitled to claim any compensation.
- 41.2 The decision shall be justified and shall be brought to the attention of the candidates or tenderers as soon as possible.

#### **Article 42 – Substantial errors, irregularities and fraud**

- 42.1 For the purposes of this Article a “substantial error” means any infringement of a provision of a contract resulting from an act or an omission, which causes or might cause an economical loss to EUROCONTROL.
- 42.2 Where, after the signature of the contract, the procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, EUROCONTROL may suspend the performance of the contract or, where appropriate, terminate it.
- 42.3 Performance of the contracts may also be suspended in order to verify whether presumed substantial errors, irregularities or fraud have occurred.
- 42.4 Where substantial errors, irregularities or fraud are attributable to the contractor, EUROCONTROL may, in addition, refuse to make payments or recover amounts unduly paid, to an extent proportionate to the seriousness of the substantial errors, irregularities and fraud.

## **D) REVIEW PROCEDURE**

### **Article 43 – General principles**

In procurement procedures equal or exceeding EUR 200,000, candidates and tenderers may challenge EUROCONTROL's decision to reject their application or tender subject to the provisions of the present Chapter D.

### **Article 44 – Review by the Procurement Review Panel**

44.1 A Procurement Review Panel shall be established as part of the Agency. It shall be responsible to review, in the first instance, the contract award decisions taken by EUROCONTROL in application of the present Contract Regulations.

The Procurement Review Panel shall be composed of three (3) members from amongst EUROCONTROL officials and three (3) alternates, nominated by the Director General. The members shall appoint a Chairperson amongst themselves.

The Director General shall take all appropriate measures to ensure the independence of the members of the Procurement Review Panel regarding the performance of their functions which, by virtue of their appointment, are assigned to them under these Contract Regulations.

The members of the Procurement Review Panel shall be bound to keep secret all the facts and information received in the performance of their functions during and after the term of their office.

44.2 Candidates and tenderers may challenge in writing EUROCONTROL's decision to reject their application or tender within the standstill period specified in the notice received in accordance with Article 40.4. The claim shall include all supporting information and reasoned objections.

44.3 The Procurement Review Panel shall not entertain a claim unless it was submitted within the time limits set under Article 44.2 above. If the Procurement Review Panel considers that the decision to reject the claimant's application or tender infringes the present Contract Regulations it shall either recommend that the call for tenders procedure or parts of it are repeated (provided that the contract has not yet been signed) or indicate the corrective measures that should be taken. Otherwise the claim shall be rejected.

44.4 The Procurement Review Panel shall issue its recommendation to the Director General, who shall take his/her decision on the claim. Such decision shall state the reasons on which it is based and shall be final and binding on the parties, unless it is appealed against by the claimant in accordance with Article 45 below.

44.5 The decision of the Director General shall be notified to the claimant in writing within forty-five (45) days after the submission of the claim. Where the Director General considers it necessary, the above period may be extended by a maximum period of fifteen (15) days.

44.6 Unless otherwise decided by the Director General, the claim shall not have suspensive effect on the contract.

### **Article 45 – Review by the External Procurement Board**

45.1 An External Procurement Board shall be established. It shall be competent to review the decisions taken by the Director General in accordance with Article 44.4 above. It shall be responsible for deciding on appeals.

The External Procurement Board shall be composed of four (4) members and four (4) alternates, external to EUROCONTROL, with proven legal and practical experience in the field of public procurement.

The members of the External Procurement Board shall be appointed by EUROCONTROL's Provisional Council from among suitable candidates submitted by EUROCONTROL's Member States for a period of four (4) years, renewable once for a further period of four (4) years.

The members of the External Procurement Board shall not seek or accept instructions from anybody or participate in any activities involving EUROCONTROL which could trigger a potential conflict of interest.

- 45.2 Candidates and tenderers may appeal in writing the decision rejecting their claim taken in accordance with Article 44.4 above within fifteen (15) days of receipt of such decision. The appeal shall include all supporting information and reasoned objections.
- 45.3 If the External Procurement Board considers that the decision to reject the appellant's application or tender infringes the present Contract Regulations it shall either recommend that the call for tenders procedure or parts of it are repeated (provided that the contract has not yet been signed) or indicate the corrective measures that should be taken. Otherwise the appeal shall be rejected.
- 45.4 The External Procurement Board shall notify the appellant in writing of its decision within sixty (60) days after the submission of the claim. Where the External Procurement Board considers it necessary, the above period may be extended by a maximum period of thirty (30) days.
- 45.5 The decision shall state the reasons on which it is based and shall be binding and not subject to further appeal.
- 45.6 Where the decision of the External Procurement Board upholds the decision taken in accordance with Article 44.4 above, the costs incurred by the claimant shall not be reimbursed.
- 45.7 EUROCONTROL shall bear its own costs unless it is demonstrated that the claimant was not acting in good faith.
- 45.8 Unless otherwise decided, the appeal shall not have suspensive effect on the contract.

#### **Article 46 – Compensation**

Where as a result of the review procedure foreseen under Articles 43 to 45 of the present Contract Regulations a final and binding decision grants compensation to an appellant for the loss or injury suffered due to a breach of the present Contract Regulations by EUROCONTROL, such compensation shall in all cases be limited to reasonable costs incurred in the preparation of the tender.

### **E) PROCUREMENT IN THE FRAMEWORK OF SPECIAL AGREEMENTS**

#### **Article 47 – Procurement by EUROCONTROL under Special Agreements**

- 47.1 Procurement procedures which may be required in the framework of agreements concluded by EUROCONTROL in accordance with the provisions of Article 2 and 13 of the amended Convention shall be conducted in accordance with the present Contract Regulations.
- 47.2 Agreements as referred to in Article 47.1 above may, in exceptional and duly documented cases, make provision for other regulations guaranteeing the principles of fair and open competition which shall under no circumstances contradict the present Contract Regulations.

- 47.3 Under no circumstances shall the procedure provided for in this Article be used for the sole purpose of circumventing procurement regulations applying in the Member States. Should any such circumvention come to light, EUROCONTROL may terminate the relevant procurement action and any agreement between the parties in connection therewith.

## **F) CONSULTATIVE BODIES**

### **Article 48 – Tender Board**

- 48.1 In the cases where EUROCONTROL requires the submission of tenders by post, a Tender Board shall be established to open and to verify the correct receipt and completeness of the tenders received in hard copy following a call for tenders.
- 48.2 Composition:
- a) The Tender Board shall be composed by at least two (2) EUROCONTROL staff members, of which at least one (1) is not in the Procurement Services. Candidates and tenderers may not attend the opening.
  - b) The Head of Internal Audit may, if he/she sees fit, attend or be represented at Tender Board meetings.
- 48.3 Duties:  
The Tender Board is a body advising the Director General. It shall perform the following duties:
- a) Open the tenders;
  - b) Draw up a list of all tenders received within the deadline for the submission of tenders;
  - c) Draw up a list of the unopened tenders to be returned;
  - d) Mark the cover page of the commercial and technical parts of the tenders with the official stamp of EUROCONTROL and the date of opening;
  - e) Return to the sender any tender found to be inadmissible.

### **Article 49 – Advisory Committee on Procurement and Sales Contracts**

- 49.1 Composition:
- a) An Advisory Committee on Procurement and Sales Contracts ("Advisory Committee") shall be established. It shall comprise:
    - (i) Members with voting rights:
      - the Head of the Procurement Services as the Chairperson;
      - one or more officials having the appropriate technical expertise;
      - the Head of the Legal Service.
    - (ii) Members with consultative status:
      - the Head of unit of the technical service concerned.
  - b) The members of the Advisory Committee may arrange to be represented. In such event, they shall designate a representative. The representative must be an official of

## EUROCONTROL.

- c) The Head of Internal Audit may, if he/she sees fit, attend or be represented at Advisory Committee meetings.
- d) For the study of certain matters, the Advisory Committee may request the attendance of the other Heads of the units concerned or their representatives in order to secure the provision of additional information necessary.
- e) The Advisory Committee may also call in any expert it deems appropriate in order to ensure that it receives the best advice.

### 49.2 General functions:

- a) The primary duty of the Advisory Committee is to ensure that the proposed procurement actions are in compliance with the present Contract Regulations.

More particularly, the Advisory Committee shall give its opinion, in an advisory capacity, to the Director General, on:

- (i) all proposals for the launch of a procurement procedure (open procedure, restricted procedure, private treaty procedure, competitive dialogue procedure, innovation partnership procedure, framework agreements, dynamic purchasing systems and common procurement) involving amounts equal or exceeding EUR 200,000, calculated in accordance with Article 7 above, prior to the procedure being launched by the Procurement Services.
- (ii) all proposed amendments to contracts increasing their respective amounts above EUR 200,000, calculated in accordance with Article 7 above, prior to their signature;
- (iii) the award of sales contracts in accordance with Articles 63 and 64 below.
- (iv) at the request of the Director General, the Director responsible for financial and procurement matters, the Director or Head of Unit of the technical service or the Head of the Procurement Services, all matters relating to the application of the present Contract Regulations, including but not limited to:
  - any questions arising at the time of the award of the contract or at the conclusion or in the course of performance of contracts (such as, inter alia, waiver of the need for financial guarantees, requests for remission of penalties or damages, intellectual property rights, deviations from the specifications and standard terms and conditions of the contract) should the matter be sufficiently serious to justify a request for an opinion;
  - proposed procurement procedures and contracts involving an amount below the limit referred to in paragraph (i) and (ii) above, if the contracts are considered to involve questions of principle or are of a special nature.

- 49.3 The Director General shall have the authority to conclude amendments to the approved contract up to an additional amount not exceeding 15% of the total maximum contract amount, as originally reviewed by the Advisory Committee, without seeking the prior opinion of the Advisory Committee.

## **G) CONTRACTUAL PROVISIONS**

### **Article 50 – Contract formats**

- 50.1 The acceptance of a tender shall lead to the conclusion of a written contract.
- 50.2 Contracts may be concluded between EUROCONTROL and a natural person or between EUROCONTROL and legal entities. For the conclusion of a contract between EUROCONTROL and a natural person, the prior approval by the Director General shall be required.
- 50.3 Notwithstanding the provisions of paragraph 50.1 above, a transaction may be effected on the strength of an invoice or an equivalent document where:
- a) the cost of the works, products or services is less than EUR 2,000;
  - b) the cost relates to the participation of EUROCONTROL's staff or staff seconded from national authorities in seminars, conferences, missions, corporate events or to related expenses such as for hotels or restaurants, or rail or air travel;
  - c) the cost relates to external translation work or legal advice.
- 50.4 This Article does not release EUROCONTROL from the obligations contained in the present Contract Regulations regarding the organisation of competitive tender action as and where appropriate.
- 50.5 Transactions as referred to in paragraph 50.3 above shall be subject to the prior authorisation of the Head of the unit responsible for the transaction.

### **Article 51 – Acceptance of tenders**

- 51.1 Contracts may be let by EUROCONTROL:
- a) either by a simple letter of acceptance as specified in paragraph 51.2 below;
  - b) or by a letter accompanied by a contractual document as specified in paragraph 51.3 below;
  - c) or by the submission of an invoice in the cases provided for in Article 50.3 a) above.
- 51.2 The contract may be accepted by simple letter by EUROCONTROL where the successful tenderer's offer is in conformity with the conditions stipulated by EUROCONTROL in the call for tenders, or where additions and/or modifications agreed between the parties are clearly indicated in the tender, in which case reference shall be made as applicable to the annexed documents agreed between the parties.
- 51.3 The contract shall be accepted by a letter from EUROCONTROL accompanied by a contractual document embodying the complete administrative, financial and technical provisions agreed between the parties wherever the complexity or the length of the negotiations so warrant.
- 51.4 The contractual document referred to in paragraph 51.3 above, deemed to be an integral part of the letter of acceptance, shall, in order to avoid any disagreement at a later stage, be signed by the contractor and returned to EUROCONTROL.
- 51.5 Performance of the contract shall not start before contract signature.

### **Article 52 – Financial and performance guarantees**

- 52.1 For contracts above EUR 60,000, EUROCONTROL may, if it deems it appropriate and proportionate on a case-by-case basis and subject to risk-analysis, require contractors to provide a financial guarantee in order to:

- a) ensure full performance of the contract, or
  - b) limit the financial risks connected with payment of pre-financing.
- 52.2 Where contractors are required to provide a financial guarantee in advance, it must be for an amount and a period that are sufficient for it to be activated.
- 52.3 The financial guarantee shall be supplied by a bank or an authorised financial institution. It may be replaced by a joint and several guarantee by a third party, after acceptance by EUROCONTROL.
- 52.4 The guarantee shall be denominated in euro.
- 52.5 It shall have the effect of making the bank or financial institution or the third party stand as irrevocable collateral security, or first-call guarantor of the contractor's obligations.
- 52.6 No such surety shall be required for contracts to be let with national authorities of EUROCONTROL's Member States and with entities owned by the national authorities of EUROCONTROL's Member States, international governmental organisations and or other public or semi-public entities which are prevented by law, regulation or rule of a statutory nature from providing financial guarantees.

### **Article 53 – Contract price**

- 53.1 Prices of contracts may be set in accordance with one of the following options:
- a) Firm non revisable prices;
  - b) Maximum ceiling prices, or
  - c) A combination of the two where appropriate.
- 53.2 A modification of the agreed price may be accepted in the event of fluctuations occurring in the cost of labour and materials between the date of the tender and the date of completion of the contract. To provide for such circumstances, the contracts shall specify in detail the conditions under which the agreed price may be modified and the formula to be applied to calculate the modified price.

### **Article 54 – Penalties and liquidated damages**

- 54.1 Contracts shall provide that if the contractual service levels for punctuality, quality or performance are not met, the contractor shall incur a penalty.
- 54.2 Liquidated damages shall only be requested in addition to penalties where appropriate and applicable.

### **Article 55 – Duration of contracts**

- 55.1 The duration of a contract, including extensions, shall be established so as not to preclude the opening to competition of the contract within a reasonable time limit. If, given the nature and subject of the contract, this rule cannot be applied, the duration of the contract shall be fully justified and documented in writing.
- 55.2 Consultancy contracts shall be concluded for a maximum duration of five years and may be extended only in exceptional and duly justified cases.

### **Article 56 – Performance and modifications of the contract**

- 56.1 EUROCONTROL may order from the initial contractor additional products, services or works, provided that:
- a) the procurement documents include clear and precise review or option clauses that

provide for additional products, services or works, and

- b) the additional products, services or works were taken into account when calculating the value of the contract for the purposes of the application of the present Contract Regulations.

The clauses shall state the scope and nature of possible reviews or options and the conditions under which they may be used. They shall not provide for reviews or options that would alter the overall nature of the initial contract.

- 56.2 EUROCONTROL may order from a contractor additional products, services or works, irrespective of their value, provided that the necessary amendments to the initial contract are not substantial. Amendments shall be considered substantial if they change the overall nature of the contract.

Any amendment shall be considered substantial, in particular where one or more of the following conditions are met:

- a) the amendment changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract;
- b) the amendment extends the scope of the contract considerably;
- c) a new contractor replaces the one to which the initial contract was awarded in cases other than those provided for in paragraph 56.4 below.

- 56.3 In addition, EUROCONTROL may order from the initial contractor additional products, services or works in the cases referenced in Article 14a), 14c) and 14d).

- 56.4 A contract may be amended by replacing the contractor to which it was awarded with another contractor, as a consequence of either:

- a) an unequivocal, clear and precise review or option clause;
- b) the universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another supplier that fulfils the same criteria as were initially applied for the selection of the initial contractor, provided that this does not entail other substantial amendments to the contract and is not aimed at circumventing the application of the present Contract Regulations;
- c) EUROCONTROL assuming the obligations towards the contractor's subcontractors including the obligation to make payments directly to the subcontractors, where this is provided for in the contract.

#### **Article 57 – Law applicable and competent courts**

Contracts shall include a clause stipulating the law applicable to the contract and, where possible, the court having jurisdiction in the event of any dispute.

The law applicable shall, as a rule, be that of one of the Member States of the Organisation.

As a general rule it shall be the laws of Belgium with the exclusive place of jurisdiction in Brussels, unless specific and duly justified and documented conditions warrant otherwise.

#### **Article 58 – Intellectual property rights**

- 58.1 Deliverables created, developed and produced in the course of or in connection with the performance of a contract let by EUROCONTROL shall become the exclusive property of EUROCONTROL, which shall have free use thereof.

- 58.2 In exceptional and duly justified cases and where it is in the interest of the EUROCONTROL, ownership of a deliverable may remain with the contractor provided that this is explicitly stated in the terms of the relevant contract. In such event, however,

EUROCONTROL shall, wherever reasonably possible, be granted an unlimited, royalty-free and transferable licence to use the deliverables for any purpose it deems fit.

- 58.3 Contractors shall not dispose of, utilise, or copy the deliverables or any part thereof without EUROCONTROL's prior written consent.
- 58.4 Where it is in the interest of EUROCONTROL, contractors may be granted a licence to use the deliverables for their own purposes, subject to the conclusion of appropriate licensing agreements taking due account of the interests of EUROCONTROL.
- 58.5 Contractors shall be prohibited from communicating any information relating to the deliverables to third parties which are not involved in the associated procurement action without the prior written approval of EUROCONTROL, before EUROCONTROL publishes it for the first time.

#### **Article 59 – Other clauses**

All other contract conditions such as transfer of ownership, liability, termination and payment shall be laid down in each contract.

#### **Article 60 – Terms and conditions applicable to contracts**

- 60.1 In principle, the contracts let by EUROCONTROL shall be governed by general terms and conditions appropriate to each type of contract to be let.
- 60.2 The Procurement Services shall determine the special clauses applicable to each contract, having particular regard to the nature and object of the contract and the technical specifications.
- 60.3 In exceptional, duly justified and documented cases, terms and conditions of the contractor may be considered in lieu of the terms and conditions issued by EUROCONTROL, namely in cases where the terms and conditions of EUROCONTROL are not appropriate for the intended type of contract.

#### **Article 61 – Confidentiality and protection of personal data**

- 61.1 Contracts shall include the obligation by the parties to treat all personal data with the utmost care and in strict confidentiality.
- 61.2 Where the object of the contract includes the processing of personal data, the contract shall include specific conditions in accordance with the EUROCONTROL Regulation on Personal Data Protection and its implementing rules. Such terms and conditions shall take into account the sensitivity of the data and the protection afforded by the legal regime applicable at the place of the processing of the data.

#### **Article 62 – Approval of contracts**

- 62.1 The Director General shall have the authority to conclude contracts on behalf of EUROCONTROL.
- 62.2 Contracts for the execution of works, the supply of products and/or the provision of services of a value exceeding EUR 5,000,000, calculated in accordance with Article 7 above, shall require the prior approval of the Provisional Council. Utilities contracts shall not require the prior approval of the Provisional Council.
- 62.3 The Director General shall have the authority to conclude amendments to the approved contract up to an additional amount not exceeding 10% of the value approved by the Provisional Council, without seeking the prior approval by the Provisional Council.

## **PART II: CONTRACTS FOR THE SALE OF REDUNDANT PROPERTY AND ASSETS OF EUROCONTROL**

### **Article 63 – Sale of redundant property and assets**

63.1 Contracts for the sale of property and assets of EUROCONTROL for which it has no further use shall be in written form.

They shall be concluded following the issue of a call for tenders.

Where the organisation of competitive tenders would generate levels of administrative effort which are disproportionate to the expected earnings, direct sales or donations may be arranged following a positive opinion of the Advisory Committee.

63.2 EUROCONTROL shall endeavour to obtain the most economically advantageous offer, inter alia by using appropriate means of advertising, and to conclude the sale in the shortest possible time.

63.3 The staff of EUROCONTROL shall be entitled to bid for redundant property and assets of EUROCONTROL only when sold in accordance with the competitive tendering procedure.

63.4 Subject to a positive opinion obtained in advance from the Advisory Committee, redundant property may be sold to the staff of EUROCONTROL without recourse to competitive tendering outside EUROCONTROL.

63.5 Commercial auctioning platforms may be used for selling redundant property where such use is considered to be in the interest of EUROCONTROL and is likely to produce better offers.

### **Article 64 – Awarding of contracts**

The award of a sales contract shall be referred to the Advisory Committee for an opinion where the highest bid is not accepted following a call for tenders or where the Director General, the Director responsible for financial and procurement matters or the Head of the Procurement Services considers the Advisory Committee's opinion to be necessary.

## **PART III: GENERAL PROVISIONS**

### **Article 65 – Delegation of powers**

The Director General may delegate the powers conferred on him/her under the present Contract Regulations. Persons so delegated shall exercise the said powers strictly within the limits described in the act of delegation.

### **Article 66 – Publication of the Contract Regulations**

These Contract Regulations shall be published on the EUROCONTROL website dedicated to procurement and shall remain accessible to the public.

### **Article 67 – Rules of Application**

In order to ensure the correct execution of the obligations set under the present Contract

Regulations, the Director General shall establish Rules of Application of the present Contract Regulations and amendments thereto and shall communicate these to the Provisional Council for information.

**Article 68 – Languages**

The present Contract Regulations shall be published in English and French. In the event of any inconsistency between the texts, the text in the French language shall prevail.

**Article 69 – Entry into force**

The present Contract Regulations shall supersede as from 1 January 2020 the Contract Regulations of the EUROCONTROL Organisation as variously amended, for the last time by Measure No. 10/170 of 1<sup>st</sup> December 2010.