

EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

EUROCONTROL

- Measures of the Permanent Commission -

MEASURE No 02/87

approving the Contract Regulations of the Organisation

THE PERMANENT COMMISSION FOR THE SAFETY OF AIR NAVIGATION:

Having regard to the EUROCONTROL International Convention relating to Cooperation for the Safety of Air Navigation of 13 December 1960, as amended by the Protocol signed at Brussels on 12 February 1981, and in particular its Articles 6.1.b) and 7.3, as well as Article 8 of Annex 1 (Statute of the Agency) thereto;

On the proposal of the Director General and the Provisional Council,

TAKES THE FOLLOWING MEASURE:

Article 1

The text of Contract Regulations of the Organisation at annex to this Measure is hereby approved and shall replace the Contract Regulations of the Organisation as variously amended and for the last time by Measure N° 86/61 of 13 November 1998.

Article 2

This Measure shall enter into effect on 1.05.2002

Done at Brussels, on 2.4.2002



L. REKKE
President of the Commission

CONTRACT REGULATIONS OF THE EUROCONTROL ORGANISATION

TABLE OF CONTENTS

TABLE OF CONTENTS	2
PREAMBLE	4
PART I: CONTRACTS FOR THE SUPPLY OF GOODS AND SERVICES TO THE ORGANISATION	5
A) GENERAL PROVISIONS	5
Article 1.- Principles of fair competition and non-discrimination.....	5
Article 2.- Conflicts of interest.....	5
Article 3.- Confidentiality of procedures	5
Article 4.- Contract amounts.....	5
Article 5.- Breakdown of contracts	6
B) PROCEDURES	6
Article 6.- Procurement actions	6
Article 7- Restricted procedure	6
Article 8.- Framework contracts.....	7
Article 9.- Private treaties.....	7
Article 10.- Simplified procedures	8
C) PUBLICITY	8
Article 11.- Publication.....	8
Article 12.- Calls for interest.....	9
D) CONTENT OF CALLS FOR TENDERS	9
Article 13.- Tenders.....	9
Article 14.- Tender documents	9
E) NEGOTIATIONS	10
Article 15.- Negotiations	10
F) CONTRACT AWARD	10
Article 16.- Award criteria.....	10
Article 17.- Notification to unsuccessful tenderers.....	11
G) SPECIAL AGREEMENTS	11
Article 18.- Procurement by the Organisation under special agreements	11
Article 19.- Procurement in accordance with Article 13 of the amended Convention and common procurement.....	11
H) CONSULTATIVE BODIES	12
Article 20.- Tender Board.....	12
Article 21.- Advisory Committee on Procurement and Sales Contracts.....	12
Article 22.- Rules of procedure of the Advisory Committee and of the Tender Board	13
I) CONTRACTUAL PROVISIONS	14
I. Contract Formats.....	14
Article 23.- Contract formats	14
II. Contract Provisions	14
Article 24.- Financial guarantees	14
Article 25.- Contract price.....	15
Article 26.- Penalties /liquidated damages	15
Article 27.- Waiver of penalties	15
Article 28.- Extension of period of performance.....	16
Article 29.- Duration of contracts	16
Article 30.- Law applicable and competent courts	16
Article 31.- Intellectual property rights.....	16
Article 32.- Transfer of ownership and payment clauses	17
III. Conclusion of contracts.....	17
Article 33.- Approval of contracts	17
PART II: CONTRACTS FOR THE SUPPLY OF SERVICES AND SALE OF PROPERTY	18
A) CONTRACTS FOR THE SUPPLY OF SERVICES BY THE ORGANISATION	18
Article 34.- Supply of services by the Organisation.....	18
B) CONTRACTS FOR THE SALE OF REDUNDANT PROPERTY AND ASSETS OF THE ORGANISATION	19
Article 35.- Sale of redundant property and assets	19

Article 36.- Contract award.....	19
PART III: GENERAL PROVISIONS	20
Article 37.- Delegation of powers.....	20
Article 38.- Rules of Application	20
Article 39.- Languages	20
Article 40.- Entry into force.....	20

PREAMBLE

The purpose of these Contract Regulations is to lay down, pursuant to Articles 8 and 13 of Annex 1 (Statute of the Agency) to the amended Convention, the administrative and financial rules governing the Organisation's operations in regard to contracts.

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

In all the operations covered by the present Regulations, appropriate action shall be taken to respect the principles of free competition, transparency and equality of treatment of all suppliers/tenderers and to protect the financial interests of the Organisation.

These Regulations shall be available to the general public.

PART I: CONTRACTS FOR THE SUPPLY OF GOODS AND SERVICES TO THE ORGANISATION

A) GENERAL PROVISIONS

Article 1.- Principles of fair competition and non-discrimination

- 1.1 Contracts for the supply of goods and services to the Organisation, including contracts for works, shall be concluded in written form following a procurement action, in full compliance with the principles of fair competition and transparency.
- 1.2 The legal, procedural and technical terms of the procurement actions shall be fixed in an objective and non-discriminatory manner.

Article 2.- Conflicts of interest

- 2.1. The Organisation shall take all appropriate measures to avoid situations that may lead to conflicts of interest, namely where a National Administration or air navigation service provider is acting or intending to act as (potential) tenderer and possibly contractor.
- 2.2. In such cases, the Organisation shall draw up a code of conduct setting out the rights and obligations of the Organisation, the National Administrations, air navigation service providers and/or any other interested parties.
- 2.3. The provisions of Title II of the Staff Regulations governing Officials of the EUROCONTROL Agency are particularly relevant with regard to facts and information relating to tenders and contracts. The Organisation shall ensure that no member of its staff and no person under contract with the Organisation is involved in a procurement action if this person or someone closely connected to him/her, such as family members, relatives or common law partners, has an interest in the result of that procedure.

Article 3.- Confidentiality of procedures

The procurement actions, negotiations and evaluation process relating to the offers shall remain confidential and shall be documented in writing.

Article 4.- Contract amounts

- 4.1. The calculation of the value of a contract for the purposes of the application of the thresholds provided for in these Contract Regulations shall take into consideration the entire duration of the contract.
- 4.2. In the case of regular contracts or contracts which are to be renewed within a given time, the estimated contract value shall be established on the basis of:

- either the actual aggregate value of similar contracts concluded over the previous budgetary year or 12 months, adjusted where possible to take account of anticipated changes in quantity or value over the 12 months following the initial contract;
- or the estimated aggregated value during the 12 months following initial delivery or during the term of the contract, where this is greater than 12 months.

Article 5.- Breakdown of contracts

In no circumstances shall a contract for an amount exceeding those specified in these Contract Regulations be broken down into separate contracts in order to avoid the application of procedures governing contracts exceeding or equal to those amounts.

B) PROCEDURES

Article 6.- Procurement actions

- 6.1 Calls for tenders shall be launched by means of an open procedure, where a call for tenders is issued in accordance with Article 11.1 below.
- 6.2 In specific cases and under the specific conditions laid down in Articles 7, 8 and 9 below, the following procedures may be used:
- a) the restricted procedure where, in accordance with Article 7 below, a call for tenders is issued only to a limited number of potential tenderers

The use of the restricted procedure shall be duly justified in writing.
 - b) the framework contract procedure, as detailed in Article 8 below.

The launching of a framework contract procedure shall be duly justified in writing.
 - c) the private treaty procedure, in accordance with Article 9 below, where the Unit responsible for contracts issues a direct invitation to the potential supplier(s) to submit a tender and negotiate a contract.

Article 7- Restricted procedure

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

- i) where, for technical or legal reasons, the goods or services can be supplied by a restricted number of suppliers only, especially when there is a need for extraordinary expertise, serviceability or reliability;

- ii) where the publication referred to in Article 11 below would cause for the Organisation and/or potential tenderers expenditure disproportionate to the value of the goods or services to be purchased or to the potential commercial advantage that may be achieved by wider publicity.
- iii) where the open procedure referred to in Article 6.1 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;
- iv) where, for reasons beyond the Organisation's control, the purchase or hire of goods or the provision of services is a matter of such urgency that it is not possible to wait for the open procedure referred to in Article 6.1 above to be carried out, but there is still time for the restricted procedure.

Article 8.- Framework contracts

- 8.1 The Organisation may conclude framework contracts with a view to establishing a list of preferred potential tenderers in a particular domain. The selection of such preferred potential tenderers shall be made following a call for tenders subject to the positive opinion of the Advisory Committee provided for in Article 21 below.
- 8.2 The Organisation may invite the preferred potential tenderers under a framework contract, in the particular domain covered by the framework contract, to submit competitive tenders in accordance with the particular procedure laid down in that framework contract. The principle of fair competition and equal treatment of the preferred potential tenderers shall be respected at all times.
- 8.3 The duration of these contracts may not exceed three years or, in exceptional and duly justified cases, five years. At the end of every term, the Organisation shall re-open a full competition with a view to enabling potential tenderers not party to the framework contract to become parties to a new framework contract.

Article 9.- Private treaties

- 9.1 Contracts may be let by the private treaty procedure laid down in Article 6.2.c) above in the following cases :
 - a) where, for reasons beyond the Organisation's control, the purchase or hire of goods or the provision of services is a matter of such urgency that it is not possible to wait for one of the other procurement actions specified in Article 6 above to be carried out;
 - b) where, after having launched other procurement actions referred to in Article 6 above, no tenders have been submitted or where the submitted tenders were not in conformity with the essential requirements of the initial procurement action, provided these requirements are not substantially altered;

- c) where, for technical or legal reasons, the goods or services can be supplied by one particular supplier only;
- d) for additional goods or services not included in the project initially considered or in the contract first concluded but which have, owing to unforeseen circumstances, become necessary for the provision of the goods or services described therein, subject to the contract being awarded to the economic operator providing such services or goods:
 - where such additional services or goods cannot be technically or economically separated from the main contract without major inconvenience to the Organisation,
 - or
 - where such services or goods, although separable from the performance of the original contract, are strictly necessary for its completion.

The aggregate value of contracts awarded for additional services or goods may not exceed 50% of the amount of the main contract.

- e) where the contract for the purchase of goods and for the provision of services involves an amount not exceeding 12,000 euro.
- 9.2 In the cases referred to in paragraph 1 above, the Organisation shall, insofar as is possible and by all appropriate means, invite suppliers who are likely to be able to provide the goods or services in question to compete.
- 9.3 The use of the private treaty procedure based on one or more of the reasons provided for in paragraph 1 above shall be duly substantiated and documented in writing.

Article 10.- Simplified procedures

Contracts relating to goods or services for a value of less than 100,000 euro may be let following a price enquiry constituting a less formal competitive procurement action as laid down in the Rules of Application provided for in Article 38 below.

C) PUBLICITY

Article 11.- Publication

- 11.1 Calls for tenders shall be published as widely as possible by the Organisation by means of a tender notice prepared by the Unit responsible for contracts.

Such notice shall contain the technical subject of the call for tenders, the nature of the contract to be let, the closing date of the call for tenders and the contact person within the Organisation responsible for the call for tenders.

- 11.2 Publication may be restricted in the cases provided for in Article 7 above.

Article 12.- Calls for interest

Calls for tenders may be preceded by calls for interest to which the same publication principles as established in Article 11 above shall apply.

D) CONTENT OF CALLS FOR TENDERS

Article 13.- Tenders

A tender is the written commitment on the part of the tenderer in response to a call for tenders issued by the Organisation.

Article 14.- Tender documents

14.1 The rules to be observed by the tenderer, as well as his/her obligations and rights vis-à-vis the Organisation, shall be stated in the documents attached to every call for tenders.

14.2 Calls for tenders shall

- a) comprise the technical specifications, which shall specify, where possible, the award criteria;
- b) comprise the appropriate terms and conditions;
- c) comprise the official tender forms, including the price declaration form, to be completed by the tenderer;
- d) specify the items/documents to be included in the tender and the period for which the tenders are to remain valid;
- e) reserve the Organisation's right not to accept any offer, or to accept only one or several items, or to accept only parts of items of one or several offers, provided that the possibility of such subdivision into items or parts of items is clearly stated in the call for tenders documents;
- f) clearly establish the date for the submission of tenders, which shall be calculated in the light of the complexity of the subject of the call for tenders. In duly justified cases, this date may be extended for all potential tenderers;
- g) comprise a notice to tenderers giving practical information concerning the presentation and dispatch of tenders, embodying, *inter alia*, the instructions contained in this Article.

E) NEGOTIATIONS

Article 15.- Negotiations

- 15.1 Subject to the positive opinion of the Advisory Committee established in accordance with the provisions of Article 21 below and with the appropriate assistance of the technical services concerned, the Unit responsible for contracts may, in exceptional and duly justified cases where, as a result of the technical and commercial evaluation of the offers received, opportunities are noted for price reductions and/or technical improvement, undertake negotiations with the tenderer(s) on the list of offers meeting the technical requirements, for the purpose of obtaining the best terms and conditions.
- 15.2 Under no circumstances shall these negotiations lead to a reduction in the technical requirements of the call for tenders below the minimum threshold for compliance. If such a reduction is necessary, a new call for tenders shall be launched.
- 15.3 In these negotiations, special emphasis shall be placed on equal and fair treatment of the tenderers. In particular,
- (i) all modifications to administrative, technical or legal requirements shall be transmitted in writing to all tenderers complying with the technical requirements;
 - (ii) following the end of the negotiations, all tenderers meeting the technical requirements shall be given the opportunity, within a time limit fixed by the Organisation, to submit new or amended tenders on the basis of the revised requirements which have been despatched by the Organisation;
 - (iii) any such negotiations shall at no time invalidate the initial elimination of tenderers which was based on technical grounds.

F) CONTRACT AWARD

Article 16.- Award criteria

- 16.1 The award criteria, such as the cost of performance, running costs entailed, quality, technical merit, delivery date and period of completion, as well as the financial and technical guarantees of the tenderer shall be determined, as far as possible, in the call for tenders documents. These criteria shall remain unchanged throughout the procedure.
- 16.2 Upon completion of the procedure, the offer judged to be the most economically advantageous for the Organisation on the basis of the award criteria shall be selected.
- 16.3 The final choice shall be duly justified in writing.

Article 17.- Notification to unsuccessful tenderers

- 17.1 Where a decision has been reached on the tender to be selected and after conclusion of the contract, the other tenderers shall be notified that their tenders have not been selected and they shall be informed of the name of the successful tenderer.
- 17.2 The Organisation may decide to withhold certain information on the contract award, where release of such information would impede law enforcement or be otherwise contrary to the public interest or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

G) SPECIAL AGREEMENTS

Article 18.- Procurement by the Organisation under special agreements

Procurement action which may be required for the purpose of implementation of special agreements concluded between the Organisation and Member or non-Member States, in accordance with the provisions of Article 2 of the amended Convention, shall be conducted in accordance with these Regulations, unless otherwise provided in the special agreements concerned.

Article 19.- Procurement in accordance with Article 13 of the amended Convention and common procurement

- 19.1 Procurement action which may be required in connection with any administrative, technical or commercial contracts concluded between the Agency and the appropriate technical services, public or private, of Member or non-Member States or international organisations, in accordance with the provisions of Article 13 of the amended Convention, shall be conducted in accordance with these Regulations, unless otherwise provided in the contracts concerned.
- 19.2 At the request of a Member State, the Organisation may be mandated to procure identical goods and services on behalf of a Member State and itself.
- 19.3 In this event, the Organisation shall in principle apply the contractual procedures of the present Regulations except where any additional provision, which may not be in contradiction with the present Regulations, is agreed between the Member State and the Organisation.
- 19.4 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.
- 19.5 The interest of the Organisation in proceeding with procurement action under this Article shall be duly documented.

H) CONSULTATIVE BODIES

Article 20.- Tender Board

- 20.1 A Tender Board shall be established to open and to verify the admissibility of the tenders received following a call for tenders.
- 20.2 The Tender Board shall be composed as follows :
- the Head of the Unit responsible for contracts, or his/her representative: Chairperson;
 - the Head of the Unit responsible for management of the budget, or his/her representative.
 - the Head of the Legal Service, or his/her representative.
- 20.3 Secretariat services for the Tender Board shall be provided by the Unit responsible for contracts, under the supervision of the Head of that Unit.
- 20.4 The Internal Auditor may, if he/she sees fit, attend or be represented at the Tender Board meetings.

Article 21.- Advisory Committee on Procurement and Sales Contracts

- 21.1 An Advisory Committee on Procurement and Sales Contracts, hereinafter called "Advisory Committee", shall be established. It shall comprise:
- (i) with the right to vote :
 - the Head of the Unit responsible for contracts, who shall be the Chairperson,
 - the Head of the Unit in charge of economic and financial analysis,
 - one or more officials nominated by the Director General;
 - (ii) with consultative status :
 - the Head of the Unit of the technical service concerned;
 - the Head of the Legal Service.
- 21.2 The Members of the Advisory Committee may arrange to be represented. In this event, they shall designate a representative. The representative must be an official of the Organisation.
- 21.3 The Internal Auditor may, if he/she sees fit, attend or be represented at Advisory Committee meetings.

- 21.4 Proposals for procurement actions and contracts for amounts equal to or exceeding 100,000 euro, calculated in accordance with Article 4 above, shall, before they are signed, be submitted for the opinion of the Advisory Committee. The Director General, the Director Finance, the Director or Head of Unit of the technical service concerned or the Head of the Unit responsible for contracts may request that any contract below the 100,000 euro limit or concluded following the procedure referred to in Article 8 above be submitted to the Advisory Committee for its opinion.
- 21.5 The Advisory Committee shall issue its opinion to the Director General, in particular on matters referred to in Articles 4, 6, 15, 16, 24.4, 35.1 and 36 and, in general, on such other matters, within the ambit of these Regulations, as the Director General may submit to it for advice.
- 21.6 In formulating its opinion, the Advisory Committee shall, *inter alia*, advise:
- a) before initiating the procurement actions provided for in Article 6 above
 - on the procedure to be followed;
 - on the list of the potential tenderers to be invited to the restricted procedure referred to in Article 7 above.
 - b) at the end of the procedure and before signing the contract
 - on the choice of contractor and on the advantageous character of the offer taking into consideration the award criteria laid down in Article 16 above.
 - on the technical, administrative and financial principles that will govern the contract;
 - on the award of sales contracts in accordance with Article 36 below.
 - c) at any time during the procedure:
 - on the possibility of negotiating in accordance with Article 15 above.
 - on the waiving of the need for financial guarantees laid down in Article 24.4 below.
 - d) and on any other related item it may deem appropriate, without prejudice to any advice or decision of any other body that may have been established by the Director General.

Article 22.- Rules of procedure of the Advisory Committee and of the Tender Board

The rules of procedure of the Advisory Committee and of the Tender Board shall be laid down in the Rules of Application provided for in Article 38 below.

I) CONTRACTUAL PROVISIONS

I. *Contract Formats*

Article 23.- Contract formats

- 23.1 The acceptance of an offer shall lead to the conclusion of a written contract. The formats of acceptance of the offers by the Organisation shall be laid down in the Rules of Application provided for in Article 38 below.
- 23.2 Notwithstanding the provisions of paragraph 1 above, a transaction may be effected on the strength of an invoice or an equivalent document where:
- (i) the cost of goods or services is less than 1,000 euro;
 - (ii) the cost relates to the participation of the Organisation's staff in seminars, conferences, missions or to related expenses such as hotels, restaurants, rail and air travel,
 - (iii) the cost relates to external translation or legal advice.
- 23.3 The transactions mentioned in paragraph 2 above shall be subject to the prior authorisation of the Head of the Unit responsible for the transaction.

II. *Contract Provisions*

Article 24.- Financial guarantees

- 24.1 Contracts which provide for payments to the contractor in advance of the provisional acceptance of goods or services shall include a clause stipulating that the contractor shall, before any payment is made, arrange for a bank or other institution acceptable to the Organisation to stand surety. The surety shall guarantee jointly and severally with the contractor the repayment of the total sum advanced pending provisional acceptance of the goods by the Organisation or performance of the services.
- 24.2 No such surety shall be required for contracts to be let with National Administrations of the Organisation's Member States and with entities owned by the National Administrations of the Organisation's Member States which are prevented by a law, regulation or rule of statutory nature from providing financial guarantees.
- 24.3 In addition to the surety laid down in paragraph 1 above, contracts may require contractors to give a financial guarantee pending the final acceptance of the goods or services. This guarantee may be in the form either of a cash deposit or a joint and several surety from a bank or other institution acceptable to the Organisation. The amount of the guarantee shall be fixed with due regard to standard commercial practice.
- 24.4 In exceptional and duly justified cases, and after having sought the advice of the Advisory Committee established under Article 21 above, the Director General may waive, wholly or in part, the provisions regarding financial guarantees laid down in paragraph 1 above.

Article 25.- Contract price

- 25.1 Contracts shall be concluded at firm, non-revisable prices or, in case of incentive-driven contracts, at firm, non-revisable ceiling prices.
- 25.2 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 show in detail the conditions under which the agreed price may be modified and the formula to be applied to calculate the modified price.
- 25.3 In duly justified cases, contracts may provide for the reimbursement of relevant, properly substantiated costs incurred by the contractor. Such contracts shall contain a clause authorising the Organisation to carry out the inspection, verification and supervision necessary to ascertain the proper amount of the contractor's costs. The contract shall also provide for appropriate means of carrying out such inspection, verification and supervision.

Article 26.- Penalties /liquidated damages

- 26.1 Contracts shall provide that if the contractual period for performance, extended or not as the case may be in accordance with the provisions of Article 28 below, is exceeded, the contractor shall incur a penalty and in addition may be liable for liquidated damages.
- 26.2 In exceptional and duly justified cases, the Director General may waive the rule embodied in paragraph 1 above where its application would be against the interests of the Organisation.

Article 27.-. Waiver of penalties

- 27.1 Where appropriate, upon finalisation of the contract, the Unit responsible for contracts shall, after consultation of the technical service concerned, submit to the Director General for a decision a substantiated proposal relating to the penalties or liquidated damages that might be applicable pursuant to Article 26 above.
- 27.2 In the following cases, the Director General may decide whether penalties shall be waived wholly or in part:
- (a) where the contractor clearly proves that the delay is due to causes beyond his control;
 - (b) where it is clear that the steps taken by the contractor have made it possible to obviate wholly or in part the consequences of the delay for the Organisation;

- (c) where it is shown that the Organisation has not suffered a loss as a result of the delay;
- (d) where the penalties are less than 500 euro.

27.3 In other cases, where it is in the interest of the Organisation, the Director General may decide to waive penalties or liquidated damages wholly or in part, on condition that the Provisional Council is informed if the total amount of the penalties or liquidated damages to be waived exceeds 25,000 euro.

Article 28.- Extension of period of performance

Where the contractor is, for reasons beyond his control, prevented from executing the contract within the specified contractual period, the Director General may, at the contractor's request, and provided that the request has been received in time and taking into account the nature of the facts or events notified, grant an extension of the period for performance of the contract on condition that the extension does not entail any increase in the contract price.

Article 29.- Duration of contracts

- 29.1 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 object of the contract, this rule cannot be applied, the duration of the contract shall be fully justified and documented in writing.
- 29.2 Consultancy contracts shall be concluded for a maximum duration of five years and may only be extended in exceptional and duly justified cases.

Article 30.- Law applicable and competent courts

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

Article 31.- Intellectual property rights

- 31.1 Where appropriate, contracts let by the Organisation shall provide for payment of a consideration to the Organisation in the event of the commercial application of intellectual property rights (such as patents, design rights or inventions) which the Organisation owns or has acquired through financial participation, whether direct or indirect, or through its representatives.

- 31.2 Products created, developed and produced in the course of or in connection with the performance of a contract let by the Organisation shall be the exclusive property of the Organisation, which shall have free use thereof. Contractors shall not dispose of, utilise, or copy any product or any part thereof without the Organisation's prior written consent.
- 31.3 The Organisation shall have the right to seek appropriate legal protection for the intellectual property rights attaching to the product.
- 31.4 Where it is in the interest of the Organisation, contractors may be granted a licence to use the product for their own purposes, subject to the conclusion of a licence agreement taking due account of the interests of the Organisation. Contractors shall be prohibited from communicating any information relating to the product to third parties without the prior written approval of the Organisation before the Organisation publishes it for the first time.
- 31.5 In exceptional duly justified cases and where it is in the interest of the Organisation, ownership of the product may remain with contractors. In this event, however, the Organisation shall normally be granted an unlimited, royalty-free and transferable exclusive licence to use the product for any purpose it deems fit.

Article 32.- Transfer of ownership and payment clauses

The conditions governing transfer of ownership and payment shall be laid down in each contract.

III. Conclusion of contracts

Article 33.- Approval of contracts

- 33.1 The Director General shall have the authority to conclude contracts on behalf of the Organisation.
- 33.2 Contracts of a value exceeding 1,000,000 euro, calculated in accordance with Article 4 above, shall require the prior approval of the Provisional Council.
- 33.3 In the event of approval by the Provisional Council, the Director General shall have the authority to conclude amendments to the approved contract up to an additional amount not exceeding 5% of the value of the contract concluded following prior approval by the Provisional Council.

PART II: CONTRACTS FOR THE SUPPLY OF SERVICES AND SALE OF PROPERTY

A) CONTRACTS FOR THE SUPPLY OF SERVICES BY THE ORGANISATION

Article 34.- Supply of services by the Organisation

- 34.1 Contracts concluded for the supply of services by the Organisation shall include the costs stipulated in paragraphs 2 and 3 below.
- 34.2 The following identifiable direct costs shall be taken into account :
- (i) personnel costs;
 - (ii) cost of hiring personnel, if specifically required for the task;
 - (iii) mission expenses (fares and daily subsistence allowances);
 - (iv) charge for use of the Organisation's equipment;
 - (v) charge for use of software developed by, or on behalf of, the Organisation, having regard to current market prices;
 - (vi) cost of purchasing or hiring equipment required specifically for the task, including spare parts, maintenance and installation costs, etc., if necessary (including or excluding tax, as the case may be);
 - (vii) any other expenditure, e.g. special materials used, reproductions, drawings, translation fees, etc. (including or excluding tax, as the case may be).
- 34.3 The following indirect costs shall also be taken into account:
- a) cost of senior management in relation to the personnel costs referred to in paragraph 2 (i) above,
 - b) administrative overheads which cannot be identified, e.g. general services, telephone, personnel administration.
- 34.4 The conditions under which costs referred to in paragraphs 2 and 3 above have to be taken into account and the percentages by which the indirect costs referred to in paragraph 3 above may be increased shall be determined by the Permanent Commission.

B) CONTRACTS FOR THE SALE OF REDUNDANT PROPERTY AND ASSETS OF THE ORGANISATION

Article 35.- Sale of redundant property and assets

- 35.1 Contracts for the sale of property and assets of the Organisation for which the latter has no further use shall be in written form. They shall be concluded following the issue of an invitation to submit competitive tenders, or may, exceptionally, subject to the opinion of the Advisory Committee, be concluded without recourse to invitations for competitive tender.
- 35.2 The Organisation shall endeavour to obtain the most advantageous offer, *inter alia* by using appropriate means of advertising and to conclude the sale in the shortest possible time.
- 35.3 The staff of the Organisation shall be able to bid for the redundant property and assets of the Organisation only where the sale thereof is made after recourse to competitive tenders.

Article 36.- Contract award

The award of a sales contract shall be referred to the Advisory Committee for an opinion where the highest bid is not accepted following an invitation to tender or where the Director General, the Director Finance or the Head of the Unit responsible for contracts considers the Advisory Committee's opinion to be necessary.

PART III: GENERAL PROVISIONS

Article 37.- Delegation of powers

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

Article 38.- Rules of Application

The Director General shall draw up Rules of Application of these Regulations and amendments thereto and, having sought the prior advice of the Advisory Financial Group, shall communicate these to the Provisional Council.

Article 39.- Languages

These Contract Regulations shall be published in each of the languages of the Member States. In the case of inconsistency between the texts, the text in the French language shall prevail.

Article 40.- Entry into force

The present Contract Regulations supersede and replace as from DD/MM/YY the Contract Regulations of the EUROCONTROL Organisation as variously amended and for the last time by Measure No. 86/61 of 13 November 1998.

RULES OF APPLICATION OF THE CONTRACT REGULATIONS OF THE
EUROCONTROL ORGANISATION

TABLE OF CONTENTS

TABLE OF CONTENTS..... 22

ARTICLE 1.- CONFIDENTIALITY OBLIGATION ON THE PART OF THE ORGANISATION'S OFFICIALS 23

ARTICLE 2.- PUBLICITY..... 23

 2.1. *Tender notice in open procedures*.....23

 2.2. *General list of potential suppliers*.....23

 2.3. *Selection of potential tenderers in the restricted procedure provided for in Article 7 of the Contract Regulations*.....23

ARTICLE 3.- INVITATION OF ADDITIONAL POTENTIAL TENDERERS 24

ARTICLE 4.- PRICE DECLARATION FORM 24

ARTICLE 5.- STATISTICS 24

ARTICLE 6.- RECEIPT AND HANDLING OF TENDERS..... 24

 6.1 *Receipt of tenders*.....24

 6.2 *Safekeeping of tenders*.....24

 6.3 *Return of unopened tenders*.....25

 6.4 *Official responsible*.....25

ARTICLE 7.- TENDER BOARD..... 25

 7.1 *Constitution*.....25

 7.2 *Rules of Procedure*.....25

 7.3 *Duties*.....25

 7.4 *Admissibility of tenders*.....26

ARTICLE 8.- SIMPLIFIED PROCEDURE 26

ARTICLE 9.- CONFIDENTIALITY OF TENDERS 27

ARTICLE 10.- COMMUNICATION WITH TENDERERS..... 27

ARTICLE 11.- ADVISORY COMMITTEE ON PROCUREMENT AND SALES CONTRACTS..... 27

 11.1 *Participation in and assistance to the Advisory Committee*27

 a) Assistance to the Members of the Advisory Committee..... 27

 b) Rapporteur..... 28

 c) Secretariat 28

 d) Incompatibility of functions..... 28

 11.2 *Rules of procedure*28

ARTICLE 12.- ACCEPTANCE OF OFFERS..... 29

ARTICLE 13.- TERMS AND CONDITIONS APPLICABLE TO CONTRACTS..... 30

ARTICLE 14.- LAW APPLICABLE TO CONTRACTS..... 30

ARTICLE 15.- DISPOSAL BY SALE..... 30

ARTICLE 16.- USE OF THE RULES OF APPLICATION 30

Article 1.- Confidentiality obligation on the part of the Organisation's officials

The provisions of Title II of the Staff Regulations governing Officials of the EUROCONTROL Agency are particularly relevant with regard to facts and information relating to procurement actions and contracts. The Organisation's officials must exercise the greatest discretion in all matters falling within the scope of the Contract Regulations and the Rules of Application thereof.

Article 2.- Publicity

2.1. Tender notice in open procedures

- a) For the purpose of the widest possible publication of the tender notice referred to in Article 11.1 of the Contract Regulations, appropriate electronic means, such as the Internet, may be used.
- b) In addition, the tender 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 200,000 euro.

2.2. General list of potential suppliers

The Unit responsible for contracts shall maintain a general list of potential suppliers further classified in accordance with different criteria relating to, *inter alia*, the main types of goods and services required by the Organisation, and the financial and technical standing of the supplier. For this purpose, the conditions under which a supplier may be included in the general list shall be given the widest possible publicity.

2.3. Selection of potential tenderers in the restricted procedure provided for in Article 7 of the Contract Regulations

- a) The list of potential tenderers to be invited to participate in a specific call for tenders shall be drawn up under the responsibility of the Unit responsible for contracts in accordance with pre-established objective criteria relating to their economic, financial and technical standing. The list shall be based on the general list referred to in Article 2.2 above and shall include any additional potential tenderers proposed by the technical service concerned, provided the proposed potential tenderers meet the same criteria.
- b) The Advisory Committee provided for in Article 21 of the Contract Regulations shall verify the conformity of the proposed list of selected potential tenderers with the pre-established criteria.

Article 3.- Invitation of additional potential tenderers

In the interest of increasing competition, the Organisation may invite other potential tenderers, in addition to those invited under the open procedure provided for in Article 6.1 of the Contract Regulations or in the list referred to in Article 2.3.a) above, if they are believed to be in a position to provide the Organisation with an advantageous tender. This invitation may be issued even if the call for tenders has already been launched. Nevertheless, the deadline for all submissions shall be identical.

Article 4.- Price declaration form

The price declaration form referred to in Article 14.2.c) of the Contract Regulations shall contain the price breakdown, where appropriate and possible, in order to allow a fair comparison of the tenders received.

Article 5.- Statistics

The Organisation shall draw up annual statistics based on the number of contracts concluded for the year concerned and the procedure followed and send them to the point of contact designated by each Member State of the Organisation.

Article 6.- Receipt and handling of tenders

6.1 Receipt of tenders

- a) Tenders sent or handed in by tenderers following a call for tenders shall be kept strictly confidential.
- b) On receipt, the sealed tenders shall be recorded in order of arrival in a special register kept by the unit responsible for contracts; the tenders shall remain sealed until such time as they are opened in the presence of the Members of the Tender Board provided for in Article 7 below.

6.2 Safekeeping of tenders

- a) In application of the confidentiality obligations laid down in Article 1 above, it is strictly forbidden to divulge information concerning the number of tenders received or the names of the firms who have submitted tenders.
- b) The tenders shall be kept safe by the Unit responsible for contracts until such time as they are to be opened by the Tender Board.

6.3 Return of unopened tenders

Tenders which have not been opened by the Tender Board because they do not meet the conditions laid down in the invitation to tender and in Articles 7.3.b) and 7.4 below, shall be returned unopened to the senders. The reasons for returning the tenders unopened must be communicated in writing to the firms concerned.

6.4 Official responsible

The above provisions shall be applied under the supervision of an official of the Unit responsible for contracts designated by the Head of this Unit.

Article 7.- Tender Board

7.1 Constitution

The Tender Board, as constituted in accordance with Article 20 of the contract Regulations, is a body advising the Director General.

7.2 Rules of Procedure

- a) The Board shall meet when convened by its Chairperson; its deliberations shall be valid only if at least two of its three members are present or represented.
- b) The opening of the tenders shall not be public and only the Members of the Board shall be admitted.
- c) The minutes of the Board shall clearly state all the proposed decisions and actions. The minutes shall be signed by all those present and submitted for the approval of the Director General.
- d) The minutes relating to the opening of tenders and all documents concerning the meetings of the Board and its deliberations shall be strictly confidential.

7.3 Duties

The Board, composed as set out in Article 20 of the Contract Regulations, shall perform the following duties:

- a) draw up a list of all tenders received;
- b) before opening the tenders, check that they are in good order and consider whether they are admissible in accordance with paragraph 4 below;
- c) draw up a list of the unopened tenders to be returned;

- d) open the tenders and check that they are admissible for further consideration in the procurement process;
- e) mark the commercial and technical parts of the tenders with the official stamp of the Organisation and the date of opening and, solely in the financial part of the tender, with the signature of the Chairperson of the Board;
- f) draw up a list of opened tenders with the comments relating to each of them;
- g) declare the admissibility or otherwise of the offers in accordance with paragraph 4 below;
- h) submit a substantiated proposal to the Director General, who shall give a final ruling on the matter in cases where the admissibility of a tender is doubtful;
- i) return to sender any tender found to be inadmissible in accordance with paragraph 4 below;

7.4 Admissibility of tenders

- a) The Tender Board shall declare admissible those tenders:
 - i) having arrived within the deadline for the submission of tenders, and
 - ii) complying with the formalities regarding the presentation of tenders as specified in the call for tenders documents.
- b) The Tender Board shall establish which tenders arrive at the Organisation after the closing date and time specified for submission of offers in the call for tenders documentation. In exceptional and duly justified cases, the Tender Board may declare admissible tenders which have arrived after the closing date if the tenderers can prove that they have taken all necessary measures to ensure that their offer arrives by the specified deadline.
- c) The Tender Board shall reject a tender which does not comply with the substantial formalities specified in the call for tenders. Where the unfulfilled formalities are minor in nature, the Tender Board may grant the minimum appropriate period to allow the tenderer to comply with them. If the tenderer does not comply within the period granted, the tender shall be rejected.
- d) Any doubtful cases shall be promptly reported to the Director General for a final ruling.

Article 8.- Simplified procedure

The price enquiry referred to in Article 10 of the Contract Regulations is a call for tenders following the procedure provided for in Article 7 of the Contract Regulations, subject to less official formalities. The tenders received following such a price enquiry shall not be opened by the Tender Board. The official responsible referred to in Article 6.4 above shall ensure compliance with the principles regarding the opening, handling and admissibility of the submitted tenders as specified in Articles 6 and 7 above.

The decision on whether or not to launch a call for tenders shall be taken by the Unit responsible for contracts. The decision shall be documented in writing.

Article 9 .- Confidentiality of tenders

- 9.1 The information contained in the tenders shall be 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.
- 9.2 All documents relating to the examination of tenders, proposals, comments, etc. shall likewise be confidential.
- 9.3 In order to preserve their confidential nature, tenders and all documents relating thereto shall be sent in a sealed envelope marked "CONFIDENTIAL-CONTRACTS - to be opened only by the addressee".
- 9.4 The addressees and the holders of the tenders and/or documents relating thereto shall be responsible for keeping them confidential.
- 9.5 Where additional copies of a tender are found to be necessary, application therefore should be made to the Unit responsible for contracts.
- 9.6 The Directors of the External Services shall be responsible for the application by their personnel of the above rules.

Article 10.- Communication with tenderers

During the procedure for the evaluation and selection of tenders received in connection with a call for tenders, relations with tenderers shall be kept to the strict minimum necessary for the purposes of objective and proper evaluation.

Article 11.- Advisory Committee on Procurement and Sales Contracts

11.1 Participation in and assistance to the Advisory Committee

The Advisory Committee established in the Contract Regulations shall have the members and perform the duties provided for in Article 21 of the Contract Regulations. In addition, the following rules shall apply regarding participation in and assistance for the Advisory Committee.

- a) Assistance to the Members of the Advisory Committee
 - i) 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.
 - ii) The Advisory Committee may also call in any expert it deems appropriate in order to ensure that it receives the best advice.

b) Rapporteur

The Head of the Unit responsible for contracts shall designate for each proposal submitted to the Advisory Committee a rapporteur, whose duty it shall be :

- to submit to the Advisory Committee a statement of the matters to be examined;
- to draft the report of the Advisory Committee's findings and the proposal.

c) Secretariat

Secretariat services for the Advisory Committee shall be provided by the Unit responsible for contracts.

d) Incompatibility of functions

No permanent member of the Advisory Committee may perform more than one of the functions in question. In cases where the Chairperson of the Advisory Committee is the official competent to authorise the letting of the contract on authority delegated to him/her in accordance with Article 37 of the Contract Regulations, he/she may not sit on the Advisory Committee. He/she may, however, arrange to be represented in such cases.

11.2 Rules of procedure

- a) The Advisory Committee shall meet at the request of its Chairperson. Its deliberations shall be valid if at least four of the permanent members are present or represented. Attendance of the Head of the Unit of the technical service concerned, or his/her representative, is required.
- b) The meetings of the Advisory Committee shall not be public and only the persons referred to in Article 21 of the Contract Regulations and Article 11.1 above shall be admitted thereto.
- c) The memorandum on each proposal to be submitted to the Advisory Committee for its recommendation shall normally be distributed no later than two working days before the date fixed for the meeting. In certain special cases, this rule may be waived with the agreement of all Members on the proposal of the Chairperson.
- d) After having heard the rapporteur and examined the documents in the file, the Advisory Committee shall give its opinion in accordance with the provisions of Article 21 of the Contract Regulations.
- e) The opinion of the Advisory Committee must be clearly shown in the minutes of the meeting as a recommendation for a decision by the approving authority. The opinion shall be adopted by a majority of Members with a right to vote, the Chairperson having the casting vote in the event of a tie.

- f) Where there is any divergence of views, the minutes must record the divergent views expressed and the arguments advanced in support thereof.
- g) The minutes shall normally be drawn up within four working days of the meeting and be signed by the Chairperson and the Rapporteur.
- h) Signature of the minutes of the Advisory Committee by the Director General shall be deemed a reasoned decision on the contractual action proposed by the Advisory Committee. Unless otherwise stated by the Director General, the decision shall be deemed based on the supporting documents presented to the Advisory Committee and the arguments expressed in its minutes.
- i) Should the Director General decide not to approve, not to follow the advice given or to add any conditions or modifications to any of the proposed contracts or procedures reflected in the minutes of the Advisory Committee, he/she shall substantiate his/her disagreement and decision in writing.
- j) All documents relating to the meetings of the Advisory Committee and its deliberations shall be strictly confidential and all appropriate measures shall be taken to ensure this confidentiality.

Article 12.- Acceptance of offers

12.1 Contracts to be let by the Organisation may be accepted :

- either by a simple letter of acceptance as specified in paragraph 2 below;
- or by a letter accompanied by a contractual document as specified in paragraph 3 below;
- or by the submission of an invoice in the cases provided for in Article 23.2 of the Contract Regulations.

12.2 The contract may be accepted by simple letter by the Organisation where the successful tenderer's offer is in conformity with the conditions stipulated by the Organisation 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.

12.3 The contract shall be accepted by a letter from the Organisation 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.

12.4 The contractual document referred to in paragraph 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 the Organisation.

- 12.5 The Unit responsible for contracts shall determine the procedure to be followed in each particular case. In particular, in the cases provided for in Article 23.2 of the Contract Regulations, the Head of the Unit responsible for the purchase shall duly inform the Unit responsible for payments before the invoice is submitted to the Organisation, and shall certify the due receipt of the goods or services thus acquired.

Article 13.- Terms and conditions applicable to contracts

- 13.1 In principle, the contracts let by the Organisation shall be governed by general terms and conditions appropriate to each type of contract to be let.
- 13.2 The Unit responsible for contracts shall determine the special clauses applicable to each contract, having particular regard to the nature and object of the contract and the technical specifications.

Article 14.- Law applicable to contracts

The law applicable to contracts shall be determined by the Unit responsible for contracts, having regard to the Organisation's interest in the various other relevant aspects. The law applicable shall, as a rule, be that of one of the Member States of the Organisation.

Article 15.- Disposal by sale

- 15.1 Contracts for the sale of redundant property and assets shall be concluded in conformity with Articles 35 and 36 of the Contract Regulations.
- 15.2 Save as otherwise provided, they shall be governed by the general terms and conditions of sale applicable to contracts for the sale of movable property and assets of the Organisation. The Unit responsible for contracts shall establish the special clauses applicable to each contract, having particular regard to the nature and object of the contract and the technical specifications.
- 15.3 In the event of disposal by sale of air traffic management equipment or other technical equipment of high value, the Member States of the Organisation shall also be invited to tender. Should one or more Member States submit an offer for the contract, they shall have precedence over any other offer. In such cases, the highest offer shall be selected.

Article 16.- Use of the Rules of Application

The present Rules of Application are intended to be for the sole use of the officials of the Organisation involved in procurement processes.