



## **OCCAR Management Procedure**

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This document replaces: Initial Issue

## Record of changes

Date	Issue	Changes
06/11/09	Issue 1	Updated to delete superfluous reference to industry in paragraph 4.1.1, to change "firm" and "fixed" prices to "non-revisable" and "revisable" in both the heading of paragraph 4.4 and the index and to include an additional sentence in paragraph 4.1.3 with regard to pricing investigations/audits being based on national practices and normally undertaken by national administrations.

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## List of acronyms

ITT	Invitation To Tender
PM	Programme/Project Manager

## **1. Introduction**

- 1.1 This annex addresses the audit and investigation of contractors' price information at different stages of a contracting process.
- 1.2 It is also applicable to the assessment of contractor's costs in the event of contract amendment or cancellation or in respect of claims for additional costs made by a contractor in accordance with the contract provisions. It does not cover the methodology for evaluation of proposals, tender assessment (see OMP 5 - Contract Placement Procedure), contract terms and conditions relating to pricing (see OMP 6 - Contract Terms and Conditions) nor application of negotiating techniques.

## **2. Scope**

- 2.1 The instruction is applicable to OCCAR-EA divisions responsible for managing contracts.
- 2.2 The instruction applies to all OCCAR-EA requirements (whether funded under the operational or administrative budgets).

## **3. Related documentation**

OMP 5	Contract Placement Procedure
OMP 6	Contract Terms and Conditions
Form OMP 1-D-1	OCCAR Request for Price Audit/Price Investigation
Form OMP 1-D-2	OCCAR Acceptance of Price Audit/Price Investigation Request
Form OMP 1-D-3	OCCAR Rejection of Price Audit/Price Investigation Request

## **4. Principles**

### **4.1 General**

- 4.1.1 Throughout the procurement process, the PM has full responsibility for negotiating the price with industry taking into account the results of a formal price investigation and/or audit undertaken by the relevant national pricing authorities/pricing audit services on behalf of OCCAR-EA.
- 4.1.2 The PM will also be required to provide up to date estimates of procurement cost for the purposes of programme approvals, financial planning and in support of contract price negotiations. The initial basis for these estimates will often be information from Contractors in the form of price estimates, price quotations (competitive and non-competitive), price audits/investigations performed in respect of previous contracts or external estimate (Nations). This annex explains the types of activity the PM and his division shall undertake to analyse the reasonableness of Contractors' price estimates and quotations.
- 4.1.3 Price investigations/audits shall be based upon the appropriate national pricing practices/regulations, accounting conventions and arrangements of the country in which the work is performed and will normally be undertaken by the relevant national pricing authorities/pricing audit services. In exceptional cases, national pricing authorities/pricing audit services, and/or OCCAR-EA after confirmation by the relevant national

pricing authorities/pricing audit services, may task other agencies or enterprises to act on behalf of OCCAR-EA.

#### 4.2 Initial price estimate

4.2.1 In the early stages of the procurement process prior to issuing of invitations to tender or single tenders, the PM will need to prepare estimates of the price of a potential contract. These will be required in support of the programme management process (Procurement Strategy, preparation of Programme Decision) and financial planning processes and will need to be reviewed and updated regularly to ensure that estimated cost is kept within approved levels. This estimate will also be the basis of the target price for the negotiation process and for the analysis of the future offers in the competitive process.

4.2.2 Whether or not there are estimates available from industry, the PM shall establish and maintain an OCCAR-EA estimate of the price of the potential contract taking into account where possible:

- Estimates from Contractors received on request by OCCAR-EA (where estimates are obtained from industry, it must be made clear that the request is without commitment and is not a request for a formal quotation);
- Modelling techniques and methods appropriate to the relevant procurement
- Estimates available within the Administrations of the Participating States;
- Prices paid for previous orders or for similar equipment on other programmes (national or collaborative);
- Catalogue/commercial prices;
- Expertise or knowledge available within the Programme Division or National Administrations specific to the type of work involved (level of technical effort required, risk factors) and the potential Contractors involved (e.g. knowledge of record of estimating accuracy, agreed charging rates etc);
- Analysis of the level of confidence in the estimate that may depend, for example, on the level of definition of the requirement when the estimate is made;
- OCCAR-EA's market share in the product and its consequent influence on OCCAR EA's ability to negotiate a keen price;
- The likely field of competition.

4.2.3 The extent to which the PM is able to apply such factors will determine the level of confidence in the estimate.

4.2.4 Where information is available from industry, the PM shall assess the realism of such estimates which is likely to involve further discussion of the requirement with the Contractor concerned. A formal investigation of the

Contractor's estimate is not usually appropriate given that such estimates are not binding on the Contractor, and are not requested for use as a basis for price negotiation.

- 4.2.5 The PM shall use the internal estimate and the information underpinning it in his decisions or, for major contracts, recommendations he shall make to the Programme Committee regarding proceeding to the subsequent phase e.g. to issue invitation(s) to tender.

#### 4.3 Price quotations - competitive

- 4.3.1 The proper and effective application of competition should produce a price which precludes a requirement for further analysis. But in practice, an assessment should be required to confirm that the competition has been effective and an analysis may be required to check the realism of tenders where doubt exists. A request in ITTs for a breakdown of price by major item and by main sub-contract should be requested where appropriate.
- 4.3.2 Such analysis does not ordinarily involve examination of information beyond that within the quote but should take into account other tenders in the competition, previous prices paid for the same or similar products and may involve further discussion with tenderers.
- 4.3.3 The PM may request the assistance of national administration experts to assess proposed stage payment plans to ensure that they are commensurate with the intended progress of work. For tenders that appear unrealistically low, it may be appropriate to clarify with the tenderer and/or request the assistance of representatives of national pricing authorities/pricing audit services or other agencies or enterprises to help verify the realism of the tender, whilst ensuring strict impartiality.
- 4.3.4 Where a competition is not deemed to have been effective and the decision is to proceed to a negotiated non-competitive contract (see OMP 5 – Contract Placement Procedures), the provisions of paragraph 4.4 apply.
- 4.3.5 Negotiation will normally be based on information in the tender and any additional information (further price breakdowns to sub-level) willingly provided by the Contractor in support of the competitive quote.

#### 4.4 Price quotations - non competitive – Non-Revisable Prices, Revisable Prices and Maximum Prices (to be converted to Non-Revisable or Revisable Prices)

- 4.4.1 Price quotations will be requested either a) prior to letting a contract for the purposes of agreeing prices or setting maximum prices, whether non-revisable or revisable, or b) during the course of the contract to convert a maximum price to a non-revisable or revisable price.
- 4.4.2 Unless there is recent information available on similar prices paid either after competition or which had been fully investigated and deemed to be fair and reasonable, formal investigation may be required. The PM shall decide a threshold above which formal price investigation and/or audit of all information relevant to the build of the quotation shall normally be required. This threshold will also need to take into account any constraints that national pricing authorities/pricing audit services may also impose on their involvement where this is to be requested. For quotations under this

value, the analysis will normally be conducted through direct discussions between the Programme Division and the Contractor without resort to formal price investigation and/or audit.

- 4.4.3 The Contractor and, where appropriate, Sub-Contractors (see paragraph 4.6) shall be required to confirm formally in writing that all information relevant to the quotation build shall be made available to OCCAR-EA and its authorised representatives in the price negotiation process and that those representatives shall have full access to and visibility of all relevant information for that purpose i.e. that there will be equality of information giving full transparency to OCCAR EA or its representatives of all relevant information available to the Contractor. For contracts with a maximum price to be converted into a non-revisable or revisable price, a contract condition shall be included to ensure that all information on actual costs to date is available to OCCAR-EA at the time of price fixing. (OMP 6. Contract terms and Conditions).

#### 4.5 Cost Re-imbusement Contracts under Maximum Price

- 4.5.1 As a general policy such Contracts should be avoided in OCCAR and, if essential, should be subject to a maximum price limit. Usually the risk associated with such contracts is very high and the resources required to manage them are so important that OCCAR will have to request a strong support of the Participating States.
- 4.5.2 Under cost reimbursement type contracts, the contract price is based on actual costs incurred on the work plus a margin for profit within a maximum price and is consequently agreed after contract completion after receipt of a final cost certificate. Contract terms and conditions shall ensure that the Contractor provides periodic certified statements showing costs to date, estimated costs to completion, and on completion of contract, a final cost certificate. The PM shall need to examine the periodic statements to ensure that they are reasonable and consistent with the level of work performed.
- 4.5.3 For contracts over the threshold as decided by the PM in accordance with paragraph 4.4.2, the PM will normally request the assistance of the relevant national pricing authorities/pricing audit services or other agencies or enterprises to investigate the costs presented on interim and final cost statements produced by the Contractor and to provide advice on whether they have been reasonably and properly incurred. For contracts under this threshold, the PM will use internal resources to conduct such an assessment of cost statements.
- 4.5.4 The Contractor and, where appropriate Sub-Contractors (see paragraph 4.6) shall be required to confirm formally in writing that all information relevant to the interim and final cost statements shall be made available to OCCAR-EA and its authorised representatives in the price negotiation process and that those representatives shall have full access to and visibility of all relevant information for that purpose i.e. that there will be equality of information giving full transparency to OCCAR EA or its representatives of all relevant information available to the Contractor.
- 4.5.5 There are other specific cases where prices are agreed on the basis of

costs incurred by the Contractor (e.g. in the event of contract cancellation, in the event of additional costs incurred/damages claims as a result of non-conformity or delay in delivery of Government Furnished Equipment/Facilities, in the event of very urgent supplementary work). In such cases, the PM shall ensure that the Contractor is reminded that such costs should be properly accounted for. Prices exceeding the threshold as decided in accordance with paragraph 4.4.2 will normally be subject to formal price audit. The PM shall decide case by case on whether to request assistance from national pricing authorities/pricing audit services or other agencies or enterprises in auditing accounts where the value falls below the threshold in the previous paragraph 4.4.2.

#### 4.6 Sub-Contractors

- 4.6.1 In order to minimise the potential for transfer of pricing risk to OCCAR-EA, the responsibility for negotiating fair and reasonable prices for sub-contracts should rest with the prime contractor. In principle, OCCAR-EA should address any queries with regard to sub-contract prices directly to the prime contractor. However, in the pursuit of best value for money it is equally important for OCCAR-EA to behave as an intelligent customer and to satisfy itself that the prices agreed for sub-contracts are indeed fair and reasonable. To this end, the PM shall agree contractual terms and conditions with the prime contractor that reserve OCCAR-EA's right to investigate non-competitive sub-contract prices directly with sub-contractors and to report the outcome to the prime contractor. Those contractual terms shall require the prime contractor to take due account of that reported outcome in negotiating and agreeing with the sub-contractor the price for the sub-contract concerned. Such right should also extend to the post costing of such sub-contracts (see OMP 6 - Contract terms and conditions), although this right shall only be exercised exceptionally in specific circumstances and shall require PM approval in all cases. Such investigations and/or audits shall be conducted in accordance with the principles set below. The PM shall verify that similar contract terms within the prime contract related to equality of information and access to costing records are included in non-competitive sub-contracts.
- 4.6.2 The thresholds relating to formal investigations and/or audits as agreed under the terms of paragraph 4.4.2. apply to sub-contracts whatever the level of sub-contracting.
- 4.6.3 Approved investigations with sub-contractors shall be arranged with the agreement of the prime contractor(s) in a way that:
- Ensures full accessibility and visibility of relevant information to the PM;
  - Addresses commercial confidentiality concerns that sub-contractors may have with regard to their prime contractor;
  - Ensures that the prime contractor is kept fully informed of the process and is involved to the extent it requires to be able to take due account of the outcome of the investigation and/or audit in negotiating and agreeing the sub-contract price;

- Ensures that the prime contractor accepts responsibility for the sub-contract price agreed and liability for any amount by which that price exceeds the outcome of the investigation and/or audit.

#### 4.7 Cost attribution/charging rates

4.7.1 Contractors' charging rates for elements such as labour and overheads are usually agreed periodically for government defence work with National Audit Administrations. These rates are ordinarily more favourable than those rates that contractors charge to commercial customers as those commercial rates include elements of cost that are not attributable to national defence work. Consequently, PMs shall ensure that in negotiation involving consideration of charging rates (usually all non-competitive contracts), it is understood and formally accepted by contractors (and non-competitive sub-contractors) that costs are attributed according to the costing structures and attribution agreed for national defence work and that those nationally agreed charging rates shall apply to OCCAR-EA work except where agreed to the contrary. Such latter cases shall be limited to those cases where, in total, it can be demonstrated that more favourable terms may be reached through application of alternative arrangements. Where national rates apply, the PM shall arrange for charging rates to be checked.

#### 4.8 Post costing

4.8.1 To verify the effectiveness and accuracy of price investigation and negotiation activities, on non-competitive contracts and as an aide for future pricing activity, terms and conditions should be included in all non-competitive firm/fixed price contracts, and sub-contracts over 250 k Euro, to ensure that Contractors maintain records of actual costs incurred against the contract for a period of five years from the date of final delivery or completion of services under the contract (OMP 6 Contract Terms and Conditions) to allow for post costing i.e. the establishment of final actual costs incurred.

4.8.2 Post costing shall only be applied selectively to contracts and sub-contracts on the decision of the PM and/or Programme Committee. OCCAR-EA Central Office may also instruct a post costing exercise to be undertaken where the results may be of benefit in the pricing of other OCCAR programmes. The outcome of all post costing exercises shall be made available to OCCAR-EA Central Office (to Programme Management Policy Section).

4.8.3 When post costing is to apply, the PM shall obtain such statement of final costs from the Contractor and shall arrange for their investigation by the relevant national pricing authorities/pricing audit services or other agencies or enterprises.

4.8.4 The Contractor and, where appropriate, Sub-Contractors (see paragraph 4.6) shall be required to confirm formally in writing that all information relevant to the final cost statement shall be made available to OCCAR-EA and its authorised representatives in the post costing process and that those representatives shall have full access to and visibility of all relevant information for that purpose i.e. that there will be equality of information

giving full transparency to OCCAR EA or its representatives of all relevant information available to the Contractor.

## **5. Use of national administration expertise**

### **5.1 General**

- 5.1.1 The services of National Administrations' price investigation or price audit experts are provided to assist the PM in negotiating a price. He shall not be bound by the outcome of such investigation.
- 5.1.2 The following instruction applies to requests for the services of national pricing authorities/pricing audit services of the Member States:
- for a contractor of a Programme Participating State, the PM shall pass the request to the relevant national programme co-ordinator,
  - for a contractor not of a Programme Participating State but of an OCCAR Member State, the PM shall pass the request to the focal point of the relevant Member State.
  - for a contractor of a non-OCCAR Member but of a NATO member nation, utilise reciprocal NATO arrangements. A national co-ordinator of a Programme Participating State who is also a NATO member shall lead discussions with the National Administrations.
  - for contractors of non-OCCAR member, non-NATO nations, endeavour to utilise any reciprocal arrangements that may exist with any OCCAR Member State. Otherwise, assess the value of utilising other national estimating services or bought in assistance.
- 5.1.3 Any request for such services is to be made using Form OMP 1-1. The national pricing authorities/pricing audit services should be given as much advance notice of future requests as is possible. The national pricing authority/pricing audit shall acknowledge the receipt of the request without unnecessary delay. The acknowledgment signifies that the request has been received and is being processed.
- 5.1.4 When accepting a request, the national pricing authority/pricing audit service should notify promptly its acceptance using the form set out in Form OMP 1-2, together with any comments or proposed amendments to the request. Any comments or proposed amendments should be dealt with to the mutual satisfaction of OCCAR-EA and the national pricing authority/pricing audit service before the price investigation or price audit commences. The PM is to ensure that the national pricing authority/pricing audit service is provided promptly with any amendments or changes in the documents forwarded with the original request.
- 5.1.5 When rejecting a request, the national pricing authority/pricing audit service should notify promptly and provide the reasons for rejection using the form set out in Form OMP 1-3.
- 5.1.6 As a principle, the national pricing authority/pricing audit service shall only investigate work performed in the country in which it is located.
- 5.1.7 The PM shall ensure that final discussion of analyses or reports with the

Contractor and, where appropriate, Sub-Contractors (where this practice applies) takes place in the presence of a member of the Programme Division with negotiating responsibility. National price investigation or price audit experts may assist in subsequent price negotiations covering the work in such reports in the role of advisors to the Programme Division negotiators where deemed useful by the PM and where such assistance has been requested and accepted by the relevant national pricing authorities/pricing audit services.

## 5.2 Cost of price investigation or price audit services performed by National Administrations

- 5.2.1 Normally, services of National Administrations' price investigation or price audit experts shall be provided by each Participating State at no additional cost to the Programme.
- 5.2.2 Where a Participating State intends to charge OCCAR for such services in relation to an administrative procurement it shall advise on the ceiling amount of those services prior to commencement of the tendering process which shall be charged to the associated administrative budget.
- 5.2.3 Where a Participating State intends to charge OCCAR for such services in relation with a Programme, it shall, prior to the signature of the Programme Decision, advise on the ceiling amount of those services for the duration of the Programme Decision, so that each Participating State can cover its own share in its Programme Operational Budget. The ceiling costs shall be defined in the Programme Decision.
- 5.2.4 Where price investigation or price audit services are provided by a Member State not involved in the Programme or by a Non Member and Non Participating State, the additional costs where applicable shall be distributed by mutual agreement on a case-by-case basis.
- 5.2.5 Where applicable, the cost of the service to be charged to Participating States shall be identified in part 7 of Form OMP1-2. The share of each Participating State of the above costs shall be included in the maximum financial commitments defined in the Programme Decision. OCCAR shall apportion the costs arising from price investigation or price audit service, in accordance with the regulations in the Programme Decision and integrate these costs in the call for funds.

## 5.3 Treatment of Information provided upon Price Audit/Price Investigation

- 5.3.1 The information provided upon Price Audit/Price Investigation shall be considered commercially sensitive and, consequently, this information shall be treated in accordance with OMP 12 (Handling of unclassified sensitive information). No confidential, commercial or financial Information shall be disclosed outside the Participating States and OCCAR-EA without the express agreement of the relevant national pricing authorities/ pricing audit services and the concerned contractor or subcontractor.
- 5.3.2 Subject to the agreement of the relevant national pricing authorities, a summary of the result of the pricing audit/pricing investigation of subcontractor may be released by OCCAR-EA to the prime contractor for negotiation purposes.