



## **OCCAR Management Procedure**

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## Record of changes

Date	Issue	Changes
04/07/04	1	Interim draft: OMP 4.6.2 final draft 4 dated 31/10/03 endorsed ex-Committee by the FTPC.
01/07/06	2	Converted to the OCCAR-EA graphical house style.
17/06/09	3	Insertion of competitive dialogue and limited competition procedures, clarification on related Programme Arrangements, change in advertising provisions and editorial/administrative changes.

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## List of acronyms

BAFO	Best and Final Offer
BoS	Board of Supervisors
IPR	Intellectual Property Rights
ITPD	Invitation to Participate in Dialogue
ITT	Invitation To Tender (also known as Request for Proposal (RFP))
JV	Joint Venture
MoU	Memorandum of Understanding
OMP	OCCAR Management Procedure
PC	Programme Committee
PD	Programme Division
PM	Programme Manager
PQQ	Pre-Qualification Questionnaire
TAP	Tender Assessment Panel

## **1. Introduction**

- 1.1 This procedure covers the process of placing a Contract.
- 1.2 Consistent with the Procurement Strategy, an identified and fully approved common requirement as specified in the Programme Arrangements (see Annex OMP5-A), will be met primarily through the placing of Contract(s) with Suppliers.
- 1.3 It is OCCAR policy that staff must:
  - a. Exercise impartiality and consistency of treatment in their dealings with potential Tenderers;
  - b. Respect commercial confidentiality;
  - c. Uphold the integrity of a Contract which requires the due performance of obligations freely entered into by both parties.

## **2. Scope**

This OMP covers Contracts (and Contract amendments) let by OCCAR-EA in accordance with the specific Programme Arrangements and funded by the Operational Budget.

## **3. Background**

### **3.1 General**

- 3.1.1 The process of awarding Contracts is based primarily on a Procurement Strategy. The Procurement Strategy generally will cover the Programme Operational Requirement or other defined requirements from the Programme Participating States, costed options, timescales, risks, industrial considerations, the procurement method and in-service support strategy. Once approved, the Procurement Strategy will lead to the placing of one or more Contracts to satisfy the Programme Operational Requirement. Each Contract will require an approved Contract Route (see paragraph 3.2 and preamble of paragraph 5) unless fully covered in the Procurement Strategy.
- 3.1.2 It is OCCAR's policy to achieve best value for money, therefore, wherever practicable, procurement will be through competition. The aim of competition is to promote keen pricing, to encourage the most efficient use of industrial resources and to stimulate innovation and new ideas. For those Contracts where competition is not proposed (see Annex OMP5-B), the aim is to replicate the incentives and disciplines imposed by competitive procurement by ensuring that prices are agreed prior to Contract placement.
- 3.1.3 Generally, a Prime Contractor will be appointed for whole systems wherever it is practicable and cost effective to do so. Prime Contractor arrangements seek to transfer responsibility, under the Contract, to the Prime Contractor for the delivery of equipment and/or services to a timescale and specification agreed with OCCAR-EA. Consequently, the Prime Contractor will be liable for any failure, including that of sub-

Contractors, to provide equipment or services required and for their fitness for purpose as specified in the Contract.

### 3.2 The Contract Route

The Contract Route will ensure that Contracts comply with the Procurement Strategy, and that the "best" method of procurement is being employed. It must address all possible contracting options and will consider the impact these options may have on the current and future Programme/Programme phase. The PM, through the Director of OCCAR-EA if appropriate, will recommend a Contract Route (see paragraph 5) to the Approving Authority in accordance with the Programme Decision.

## 4. **Methods of procurement**

Contracts can be let through:

- a. A competitive procedure;
- b. A non-competitive procedure.

### 4.1 Competitive Procedure

- 4.1.1 The use of competition is the cornerstone of OCCAR Procurement Policy because it provides the greatest leverage on Tenderers to obtain the best value for money and reasonable transfer of risk. The potential for competition in each Programme must always be given careful and early consideration by OCCAR-EA.
- 4.1.2 Exceptionally, in the circumstances detailed in Annex OMP5-C, a limited competition may be undertaken where the Approving Authority, as detailed at paragraph 5.4, has endorsed the Procurement Strategy and/or Contract Route, which includes justification for open competition being inappropriate and addresses the scope of the advertising requirements in relation to the limited competition.
- 4.1.3 When the value of the requirement is so small that the expected savings achieved through a formal competition are likely to be of a low value or outweighed by the cost, time and effort involved, an informal competition, e.g. by seeking offers by telephone or via websites, may be undertaken if such action is recommended to and endorsed by the Approving Authority in the Procurement Strategy or Contract Route. Where offers are sought by telephone or via websites, an audit trail should be kept of any related discussions or correspondence.
- 4.1.4 A flowchart depicting the competitive procedure is at Annex OMP5-D. As the competitive dialogue procedure includes additional unique features this is depicted separately at Annex OMP5-D, Appendix 1. Sufficient time must be allowed to carry out the competitive process (e.g. acquire data packs, compile specifications, advertise in the OCCAR-EA website, undertake a dialogue phase if employing a competitive dialogue procedure), invite Tenders and then analyse proposals and negotiate (if appropriate) with Tenderers.

- 4.1.5 Tenders should be sought to cover both the procurement of the required equipment and, where practicable, to provide for a substantial period of its support in-service in order to obtain best value for money in terms of Life Cycle Costs.
- 4.1.6 Consideration must also be given to the timescales involved in exercising rights of use in intellectual property and, if necessary, to the risks and costs involved in negotiating a licensing arrangement with a third party owner of intellectual property and/or the information that may be needed to run the competition.
- 4.1.7 The right to negotiate and to undertake iterative tendering must be reserved in the advertisement (see Annex OMP5-E) and in the ITT.

## 4.2 Non-Competitive Procedure

- 4.2.1 Non-competitive Tenders will be invited where the Approving Authority, as detailed at paragraph 5.4 below, has endorsed the Procurement Strategy and/or Contract Route, which includes justification for competition being inappropriate (see Annex OMP5-B). A flowchart depicting the non-competitive procedure is at Annex OMP5-F.
- 4.2.2 Each case should be examined to see whether there is any action OCCAR-EA could take which would allow a viable competition to be held. It should never be assumed that difficulties like:
  - a. Timing (with the exception of those circumstances detailed in paragraphs B.1.f. and C.1.e.);
  - b. Past practice;
  - c. Past procurement route;
  - d. Complexity of the requirement; or,
  - e. End-user pressure,are sufficient justifications for deciding to proceed non-competitively.

## 4.3 Additional Considerations

### 4.3.1 Sub-Contracting

#### 4.3.1.1 Competition

- 4.3.1.1.1 Sub-contract competition should be encouraged in all procurements to obtain best value for money. Care must, however, be exercised not to interfere with a Prime Contractor's commercial decisions where the Prime Contractor has been appointed as a result of competition.
- 4.3.1.1.2 Where a Prime Contractor has been selected non-competitively, it is essential to maximise and have visibility of the sub-contractor competition. The Prime Contractor will be required to provide evidence of how he intends to achieve the greatest competition at sub-contractor(s) level. A

procurement, which has only sub-contract competition, should be regarded as a non-competitive procurement for the purposes of approval of the Contract Route.

4.3.1.1.3 All ITTs issued must therefore include a requirement for the Tenderer to provide a Procurement Plan as part of their Tender to demonstrate maximum use of competition throughout the supply chain (see Annex OMP5-G).

#### 4.3.1.2 Other Sub-Contracting Considerations

4.3.1.2.1 Exceptionally OCCAR may require to be involved in the selection of sub-contractors to preserve the interests of the Programme Participating States.

4.3.1.2.1.1 For the purposes of restoring Global Balance, ITT/ITPDs may, on the decision of the BoS, provide guidance on work allocation.

4.3.1.2.1.2 Where either security of supply or industrial strategy matters require that specific sub-contracts be placed with a Supplier(s) of a particular nation(s), this will require approval by the appropriate PC. Approved direction of sub-contracts will form part of the ITT/ITPD and consequent Contract. Notwithstanding this direction, the Contract must specify that the Contractor is fully responsible for meeting the requirements of the Contract.

4.3.1.2.1.3 The Contracting Authority reserves the right to reject the sub-contractors selected by the Tenderer at the stage of the award procedure of the main Contract or by the successful Tenderer during the performance of the Contract, such rejection may only be based on criteria applied for Supplier selection for the main Contract. If the Contracting Authority rejects a sub-contractor, it must produce a written justification to the Tenderer or the successful Tenderer, setting why it considers the sub-contractor(s) do(es) not meet the criteria.

4.3.1.2.2 Responsibility for the apportionment and satisfactory completion of sub-contracted work is the full responsibility of the Prime Contractor. PMs therefore need to take care not to diminish in any way this responsibility by undue involvement in the selection of sub-contractors post Contract award.

#### 4.3.2 Service/Sales Level Arrangements

Where it is proposed to place work with a Government/State, an international organisation or agency then consideration needs to be given as to whether this is to be a Contract or a Service/Sales Level Arrangement. Service/Sales Level Arrangements, when used, may be let through competitive or non-competitive procedures.

### 4.3.3 Competitive Dialogue

It is not always possible to identify and define, at the outset, the technical means to satisfy complex requirements or of assessing what the market can offer in the way of technical solutions and/or financial/legal solutions. Consequently, it may not be desirable to undertake a conventional competitive Tender exercise, as it would be necessary to first explore possibilities with Industry with the aim of identifying optimal solutions. In these cases, a competitive dialogue procedure may be a more appropriate means of effective competition. A flowchart of the framework for such a procedure is held at Annex OMP5-D, Appendix 1.

## **5. The procurement process**

Contract(s) must be consistent with the Procurement Strategy, and the "best" method of procurement is to be employed to achieve value for money. The Procurement Strategy will cover the entire Programme/phase, and may result in one or more Contracts being placed. The contracting strategy for Contracts must be approved on an individual basis, unless fully covered by the Procurement Strategy. This will take the form of a document entitled the "Contract Route" (see paragraph 3.2). The scale and extent of the Contract Route should be proportionate to the scale of the investment, the risks involved and the complexity of the issues raised by the proposed procurement. Procurement Strategies and Contract Routes must be approved by the relevant Approving Authority as detailed in paragraph 5.4. Tender activities in support of a new requirement may be undertaken before the Programme Arrangements (as defined in OMP 2, paragraph 2.3) are in place, however, the extent to which these can progress and the relating requirements for prior approvals/arrangements must be in accordance with Annex OMP5-A.

### 5.1 Supplier Selection-General Principles

#### 5.1.1 Advertising

5.1.1.1 OCCAR-EA requirements with an estimated value over 750k Euro must be advertised (see Annex OMP5-E). Advertisements will be issued at the following points in the procurement process:

- a. Possible future purchase (see paragraph E3.1);
- b. Issue of ITPD or ITT (see paragraph E3.2);
- c. Award of Contract (see paragraph E3.3).

5.1.1.2 Where provided for in the Procurement Strategy and/or in the Contract Route, requirements with an estimated value under 750k Euro shall also be advertised.

5.1.1.3 Exceptionally, where a limited competition is undertaken in accordance with paragraph 4.1.2, requirements may either:

- a. be advertised with specified mandatory criteria specified to comply with the circumstances provided in Annex OMP5-C;  
or

- b. be progressed without advertising at any of the points in the procurement process detailed in paragraph 5.1.1.1 above; or
- c. be progressed without any advertising.

5.1.1.4 The Approving Authority must endorse any recommendation not to advertise a requirement in excess of 750k Euro.

## 5.1.2 Supplier Selection

5.1.2.1 The widest application of competition involves the issue of ITPDs and/or ITTs to all Tenderers who:

- a. Meet either the minimum requirements specified in any advertisement or in any pre-qualification questionnaires (see Annex OMP5-H); and
- b. Where applicable, are within the specified mandatory criteria if defined in the Procurement Strategy in accordance with paragraph 4.1.2 and Annex OMP5-C.

5.1.2.2 For larger, more complex procurements and/or where a great deal of interest has been expressed, a reduction in the numbers to be invited by means of pre-selection against published Supplier selection criteria (see Annex OMP5-H) may be desirable, provided the reduction still allows for effective competition. In respect of a competitive dialogue procedure, it is foreseen that in practice normally only three or four bidders will be invited to both maintain the associated PD activities at a manageable level and to reduce Industry's associated costs. When using a competitive dialogue process, and subject to having reserved the right to do so within the related advertisement, a reduction/further reduction in numbers may be sought during the dialogue phase if desirable. The reduction in numbers should be made on the outcome of an evaluation undertaken on the basis of the Contract award criteria published in the related advertisement or ITPD. Any reductions shall be endorsed by the Approving Authority.

5.1.2.3 Unless there are extenuating circumstances (e.g. financial weakness, lack of relevant production facilities, lack of appropriate ISO 9001 or other suitable certification etc.) the Design Authority will normally be invited to Tender in the competition for the production and/or modification and/or In Service Support of the items for which it is the Design Authority.

5.1.2.4 From the foregoing a Programme Suppliers selection list, to be submitted by the TAP to the relevant PM for approval, will result. The ITPD/ITT documents are to be issued to the Suppliers on this list.

5.1.2.5 With regard to non-competitive Tenders paragraph 4.2.1 and Annex OMP5-B apply.

### 5.1.3 Debriefing Procedure – Pre-Tender

Suppliers who expressed an interest in tendering/participating in dialogue but who are not invited to Tender/Participate in Dialogue after a pre-selection process, will be informed without delay of their exclusion and will, at their request, be de-briefed by the PM. Debriefing is not intended to lead to a review of the pre-selection decision and the Supplier(s) must be informed of this in advance.

### 5.1.4 Complaints Procedure

Complaints regarding exclusion from the Tender list will be dealt with in accordance with Annex OMP5-I.

### 5.1.5 Selection Review

The rules of fairness and equity will be strictly observed throughout the Supplier selection process. Re-consideration of any pre-selection/qualification criteria and pre-selection/qualification decisions will not occur during the tendering or Tender assessment processes.

## 5.2 Tender Procedure

### 5.2.1 General

5.2.1.1 This paragraph 5.2. principally covers the competition process from the point of preparation of ITPDs/ITTs to final recommendation for Contract award. It also covers preparation of Tenders for non-competitive requirements. The drafting and issuing of ITTs to potential Tenderers for the submission of competitive or non-competitive Tenders follow the same principles, though arrangements for their return may differ.

5.2.1.2 Throughout the tendering process, the PM will apply the following important principles:

- a. The maintenance of commercial confidentiality in all dealings with potential and actual Tenderer(s);
- b. Equal and fair treatment of all potential and actual Tenderer(s);
- c. Any complaints are dealt with in accordance with the guidance at Annex OMP5-I;
- d. National administrations (National Programme Coordinators), OCCAR-EA Central Office and the appropriate PC are kept regularly informed of progress and that whenever the approval of a PC is required and sought, the Director of OCCAR-EA receives an information copy.

5.2.1.3 The PM will issue, simultaneously, identical ITPDs/ITTs, to the companies on the approved Programme Suppliers selection list resulting from paragraph 5.1. On no account should any variation of terms of the ITPD/ITT or any different or additional

information to that contained in the ITPD/ITT be provided to any ITPD/ITT recipient at the time of issue.

- 5.2.1.4 All potential Tenderers must be informed simultaneously in writing of any change to the ITPD/ITT after issue, including extensions to time. The PM shall obtain an acknowledgement in writing of receipt of the change from the potential Tenderer.

## 5.2.2 Preparing ITPDs/ITTs

### 5.2.2.1 ITPDs

#### 5.2.2.1.1 The PM will:

- a. Include, as part of the Contract Route, the details of the competitive dialogue process e.g the number of stages of the process depending on the intended combination of discussion and tendering i.e. requirements for outline proposals/priced proposals/fully developed proposals, whether a draft Contract should be issued at outset with the ITPD, whether it is the intention to reduce the number of Tenderers during the dialogue stage etc. The aim of the dialogue stage of the process is to identify and define optimal solution(s), which can be achieved via solely dialogue or a combination of dialogue and tendering; the latter can be carried out to varying degrees. It is therefore essential that a process is tailored, defined and disseminated as appropriate for individual requirements. The dialogue stage is not prescriptive, and allows for open discussion on all aspects of the Contract, however, the fundamental principle of equality of treatment of Suppliers must be maintained throughout;
- b. Check that entries have been/are being produced to advertise on the OCCAR-EA website in accordance with Annex OMP5-E;
- c. Issue the ITPD, which should detail both the dialogue process and Contract award criteria, and draft Contract, if applicable, to the selected Suppliers;
- d. Conduct the dialogue phase until such time acceptable solutions have been identified. During the dialogue phase the Contracting Authority may wish to disclose, in general conceptual terms, part of one Tenderer's proposed solution for use by the other Tenderers. The PM shall ensure that such confidential information is only divulged with the prior consent of the originating Tenderer;
- e. Formally conclude the dialogue phase and issue an ITT to request the submission of final Tenders, on the basis of the solution(s) specified during the dialogue, which should include all elements required for the performance of the Contract.

## 5.2.2.2 ITTs

### 5.2.2.2.1 The PM will:

- a. Check that entries have been/are being produced to advertise the issue of the Tender on the OCCAR-EA website as required. This is not necessary in respect of a competitive dialogue procedure for which the related advertisement will have been previously published with the issue of the ITPD;
- b. Prepare the ITT, comprising a request for offer against a specified requirement together with terms and conditions of the potential Contract (see OMP 6 - Contract Terms and Conditions for guidance).

### 5.2.2.2.2 The ITT will, inter alia:

- a. Reflect the approved Procurement Strategy and/or Contract Route;
- b. Be consistent with the Convention and OMPs;
- c. Provide sufficient scope to allow for and encourage the submission of innovative Tenders;
- d. Require Tenderer(s) to disclose details of their industrial organisation;
- e. Require Tenderer(s) to provide a procurement plan (see Annex OMP5-G) specifying and identifying the extent of competition at sub-contract levels;
- f. Require Tenderer(s) to provide other plans as required by the PM to assist OCCAR-EA in its management role and allow visibility of Contract progress;
- g. Require any Government Furnished Supplies, Information or Facilities (GFX) supplied for the Programme be kept to an absolute minimum;
- h. Address IPR Requirements;
- i. Require Tenderer(s) not to disclose information provided by OCCAR-EA other than to the appropriate Tenderer's employees without the written authority of OCCAR-EA;
- j. Require special arrangements to safeguard commercially sensitive information;
- k. Advise Tenderer(s) on the form and process of the Tender assessment guidance on the Contract award criteria and technical marking scheme to be used by the Tender Assessment Panel (TAP) (see Annex OMP5-J). This is not necessary in respect of a competitive dialogue

procedure where this will have previously been addressed within the ITPD;

I. Specify the date, time and place for return of Tenders.

5.2.2.2.3 If from the Tender(s) received, there appears not to have been effective competition, the Approving Authority must still be satisfied that the price quoted in the preferred or only available offer is acceptable. The ITT must therefore include a warning that if competition proves ineffective, it may be necessary to carry out a comprehensive investigation of both Prime Contractor and sub-contractor prices prior to any award of Contract.

5.2.2.2.4 For Minor Contracts (see paragraphs 5.4.1 and 5.4.3) and/or sub-contracts, some of the requirements of paragraphs 5.2.2.1 and 5.2.2.2 may be relaxed, however the spirit should be retained. Any relaxation should be justified in the Contract Route.

### 5.2.3 Tendering Phase

5.2.3.1 During the tendering phase (i.e. following issue of ITTs, but before the deadline for receipt of Tenders and before the final selection has been made), the PM through the TAP (see Annex OMP5-J) will ensure that communication with the potential Tenderer(s) is strictly controlled. To this end the PM should nominate a person usually the PD Contracts Officer as the sole point of contact who will also be responsible for ensuring that any communication takes place on an equitable basis. Tenderer(s) are to be informed that all questions of clarification must be in writing and such questions and any responses may be sent to all other potential Tenderer(s). Any communication of a material nature initiated by OCCAR-EA must be conveyed to all potential Tenderer(s).

5.2.3.2 A Tenderers conference may be held. This is unlikely to be required in respect of a competitive dialogue procedure where the necessary exchange of information will have taken place during the dialogue phase. The proceedings will be recorded in writing together with any additional information provided by OCCAR-EA and these will be distributed to any (all) potential Tenderer(s).

### 5.2.4 Receipt of Tenders

The PM will ensure competitive Tenders are received in accordance with the requirements at Annex OMP5-K. Non-competitive Tenders are to be returned directly to the PD.

### 5.2.5 Late, Incomplete and Amended Tenders

5.2.5.1 Technically late, genuinely late, incomplete and amended Tenders are to be treated in accordance with the procedures at

Annex OMP5-J and OMP5-K. All such Tenders must be treated with caution.

5.2.5.1.1 A technically late Tender is one which has been despatched in a timely manner to meet the Tender return date but for reasons outside the Tenderers control arrives after the due time and date. The Tender Board therefore should ascertain the circumstances surrounding the receipt of a Tender that appears to be technically late and if, following investigation, it is deemed that it is indeed technically late the Tender should be opened and passed to the PD for assessment.

5.2.5.1.2 A genuinely late Tender is one that can be clearly identified as not to have been despatched in time to meet the due date. The Tender Board will not open such Tenders but will return them unopened to the Tenderer.

5.2.5.2 The decision whether to include incomplete or amended Tenders rests with the PM for Minor Contracts and the Director of OCCAR-EA for Major Contracts (see paragraph 5.4).

#### 5.2.6 Tender Assessment.

The PM will establish and will be responsible for a TAP to evaluate all Tenders to determine compliance and value for money. If it is requested in the ITT that the Tender is to be provided in separate commercial and technical parts, the Contracts Officer will retain a complete copy of the Tender. A record should be maintained of the recipients of each of the parts. All recipients are responsible for ensuring that only personnel who have a "need to know" for Programme purposes have access to the copy or the information contained therein. The procedure for Tender assessment is given in Annex OMP5-J.

### 5.3 Recommendation of the TAP and Contract Award

#### 5.3.1 General

5.3.1.1 On completion of the Tender assessment the TAP will submit a report with its recommendations to the PM. Based upon this report, the PM will make a recommendation proposing one of the actions detailed in paragraphs 5.3.2, 5.3.3, 5.3.4 and 5.3.5 to the Approving Authority.

5.3.1.2 Should it become apparent that validity of any of the Tenders will expire during any of the following procedures the PM will contact the Tenderer(s) to seek an appropriate extension to the validity of the Tender(s). If the Tenderer(s) cannot extend the validity or there is an impact on, for example, price, the PM will advise the Approving Authority immediately and seek further guidance.

#### 5.3.2 Immediate Award of Contract

5.3.2.1 Where there is a fully compliant and outright winning Tender at the end of the Tender assessment the recommendation of the

TAP will be to accept the Tender and award the Contract. The recommendation must be supported by a report describing the history and detailing the reasons for the proposal. The report must also specify any time limit for Contract signature/Tender acceptance after which the validity of the offer will expire. The PM will use the report as background when seeking approval from the Approving Authority to place the Contract.

5.3.2.2 Once the Approving Authority (see paragraph 5.4) has agreed the PM's recommendation for Contract award (see paragraph 5.3.2.1 above), OCCAR-EA will award the Contract. The process is described at paragraph 5.3.6 below.

### 5.3.3 Negotiations with Fully Compliant Tenderer(s)

5.3.3.1 Where one or more fully compliant Tender(s) exist, but there may be scope for improving the outcome (e.g. the offer may exceed the specification in some areas and there may be scope for price reduction, or there is an affordability issue), the PM will notify such Tenderer(s) that he wishes to commence negotiations. Where negotiations are carried out with more than one Tenderer, care must be taken to ensure impartiality and equality are maintained. The PM will nominate a team to carry out the negotiations which in most cases will be a continuation of the TAP, since they assessed the Tenders they are best placed to carry out the negotiations (see Annex OMP5-J for the process). The PM will also notify any unsuccessful Tenderers and as necessary, arrange for debriefing when requested. Any complaints received will be dealt with in accordance with the procedures at Annex OMP5-I.

5.3.3.2 Throughout negotiations it must be made clear that OCCAR-EA will not be held accountable for any costs incurred by Tenderer(s). The PM should also remind the negotiating team and the PD staff that it is strictly forbidden to encourage the preferred Tenderer(s) to start work prior to the signature of the Contract. If a Tenderer carries out any work prior to Contract award it must be made clear it is entirely at its own risk.

5.3.3.3 The negotiations will end when the PM considers that the optimum trade-off has been secured. The PM will make a recommendation to the Approving Authority either to award the Contract or in order to retain the propriety of the tendering process seek best and final offers (BAFOs) (see paragraph 5.3.4 below). Where the recommendation is for Contract award the procedure under paragraph 5.3.6 is to be followed.

5.3.3.4 Where it becomes clear during negotiations that the requirement cannot be met as it currently stands further instruction should be sought from the Approving Authority. Where the Approving Authority decides to close the competition the PM will inform all Tenderers of this decision within 2 weeks.

#### 5.3.4 Iterative Tendering

- 5.3.4.1 The concept behind iterative tendering is the search for better value for money and/or a better technical solution through a further round of tendering. This can take the form of inviting Tenderers to revise or confirm their Tenders or to submit BAFOs (see paragraph J6).
- 5.3.4.2 The PM will notify all Tenderers accordingly and arrange, when requested, for debriefing in respect of those Tenderers not invited to take part in the iterative tendering procedure.
- 5.3.4.3 Following completion of its assessment of the Tenders/offers, the PM will make a recommendation to the Approving Authority either to award the Contract (see paragraph 5.3.6) or repeat the process.
- 5.3.4.4 In the event the recommendation is for Contract award following negotiation and/or iterative tendering, the baseline for preparation of the final draft Contract is:
  - a. The content of the ITT and Tender response received as well as any clarification letters;
  - b. Changes resulting from the iterative tendering procedure(s), if carried out; and
  - c. Negotiated changes.

#### 5.3.5 Process Deemed Ineffective

- 5.3.5.1 Where the process is considered to have been ineffective (for example where no fully compliant Tender(s) have been received) the PM will propose to the Approving Authority one of the following courses of action:
  - a. Re-issuing ITTs, after re-consideration of ITT content (the specification and/or nationality/mandatory criteria may have to be reviewed if indications are it cannot be met);
  - b. For a competitive procedure, negotiation with more than one of the Tenderer(s), where there are no fully compliant Tenders, but more than one of the Tenders might be acceptable after negotiation. Where it is deemed that only one of the Tenders might become acceptable after negotiation, the process will be closed and recommenced in accordance with the procedure for non competitive procurement at paragraph 4.2.1. For a non competitive procedure, the Tender shall always be subject to negotiation and consequently, this action does not require to be proposed by the PM to the Approving Authority; or
  - c. Close the process.

- 5.3.5.2 Where the recommendation is to re-issue the ITT the process described at paragraph 5.2.2 is to be followed.
- 5.3.5.3 Where the recommendation is to negotiate, the process described at paragraph 5.3.3 (treating the Tenders as fully compliant) is to be followed.
- 5.3.5.4 For a competitive procedure, where only one Tender has been received in response to the ITT the PM must determine whether the competition has been effective. In the event the PM considers the competition to have been effective and the Tender is compliant he will recommend to the Approving Authority award of Contract. Where the PM determines that competition has not been effective, regardless of whether the Tender was compliant or not, the Tender should be regarded as non-competitive and be subject to negotiation prior to a recommendation to the Approving Authority.

#### 5.3.6 Award of Contract

- 5.3.6.1 OCCAR-EA will be empowered to sign the Contract upon the Approving Authority's acceptance that the Contract should be awarded.
- 5.3.6.2 After award of the Contract the PD will distribute copies of the Contract to all members of the appropriate PC and any addressees nominated by that PC or OCCAR-EA Central Office. Provision of such copies is to be on a strictly need to know basis.
- 5.3.6.3 In parallel, the PM must notify the unsuccessful Tenderers and, as necessary, arrange for debriefing when requested. Tenderer debriefing will normally be carried out within two weeks of the request and will not normally extend to sub-contractor level. Any complaints received will be dealt with in accordance with the procedures at Annex OMP5-I.
- 5.3.6.4 The award of the Contract must be advertised in accordance with Annex OMP5-E.

#### 5.3.7 Additional Considerations for Non-Competitive Tenders

- 5.3.7.1 For non-competitive Tenders, the price quoted will have to be demonstrated to be fair and reasonable. This will normally entail a price investigation using appropriate national experts, however, the total price agreement rests with the PM supported by the PD Contracts Officer (see paragraph J.7).

### 5.4 Approving Authority

- 5.4.1 Major and Minor Contracts/amendments will be defined in the Programme Decision.
- 5.4.2 Approving Authority for Major Contracts

The appropriate PC will be the Approving Authority for Major Contract action and major modifications (amendments) to the existing Contracts that affect the high level objectives (performance, time and cost). The Director of OCCAR-EA will submit the recommendation for Contract award and major modifications to the appropriate PC.

#### 5.4.3 Approving Authority for Minor Contracts

The Director of OCCAR-EA will be the Approving Authority for Minor Contract action and minor modifications to the existing Contracts. The Director of OCCAR-EA must keep the appropriate PC informed and provide PC members with copies of all such Contracts and amendments. In the event that this authority is delegated, the Director of OCCAR-EA and the PC must be kept informed of any Contract or amendments issued and be provided with copies of the Contract or amendments. The PC will be the Approving Authority for novel or contentious Minor Contracts and amendments.

### 5.5 Contract Amendments

- 5.5.1 Either the Contractor or OCCAR-EA may request an amendment to a Programme Contract. Amendment to Contracts must be approved by both parties. Any change will become effective upon signature of the Contract amendment by both parties or on and from a later date specified in the Contract amendment. Increases in quantity are covered by the additional orders process (see Annex OMP5-B).
- 5.5.2 Amendments to the Contract will be subject to the approval process in paragraph 5.4.
- 5.5.3 Once any change to the Contract has been defined, the PM will approach the Contractor and depending on the impact of the change will request:
  - a. Acceptance of the amendment if it has no cost, time or performance implications; or
  - b. Production of a quotation together with the implications of the change if it does have an effect on cost, time or performance.
- 5.5.4 The Contractor's response must be checked by the appropriate PD Contracts Officer (or OCCAR-EA Central Office Contract specialist).
- 5.5.5 If necessary the PM may designate a team to check and negotiate the amendment to the Contract in accordance with paragraph 5.3.3.
- 5.5.6 The amendment to the Contract will only contain the agreed changes.
- 5.5.7 Once approved the amendment to the Contract will be issued as described in paragraphs 5.3.6.1 and 5.3.6.2.
- 5.5.8 An updated master version of the Contract should be maintained. At times to be agreed with the Contractor, the master version may be re-issued as an update of the original Contract.

## 5.6 Inadvertent Contract Commitment

- 5.6.1 OCCAR personnel could inadvertently commit OCCAR contractually where they are not authorised, or do not intend, to do so. Safeguards must therefore be taken to avoid incurring contractual obligations inadvertently.
- 5.6.2 All **pre-contract** discussions and correspondence with Tenderers must make plain that all such discussions/correspondence are **without commitment** i.e. a statement to that effect must be included in any correspondence and prior to meetings and/or conversations.
- 5.6.3 Though a formal procedure for Contract amendments (that amendments must be by written agreement only) may have been included in a Contract they do not provide complete protection in law.
- 5.6.4 A general notice to Contractors will normally have no effect in law unless it is specifically called-up in Contracts (although it might convince some Contractors). Care is to be taken when negotiating Contracts to avoid inadvertent incorporation of expressions of intent either into a Contract or into pre-contractual representations.

## 6. Reference documents

This OMP is associated with the following documents:

OCCAR Convention

OMP 1: Principal Programme Management Procedure

OMP 2: Programme Integration Procedures

OMP 4: Legal Aspects

OMP 6: Contract Terms and Conditions

## 7. Review of this OMP

This document is under continuous review as experience and best practice impact on it and changes will be made as appropriate, however a formal review will be carried out every three years.

## 8. Annexes

Annex OMP5-A	Programme Arrangements
Annex OMP5-B	Competition Inappropriate
Annex OMP5-C	Limited Competition
Annex OMP5-D	Flowchart of a Competitive Procedure
Annex OMP5-D, Appendix 1	Flowchart of a Competitive Dialogue Procedure
Annex OMP5-E	Advertising
Annex OMP5-F	Flowchart of a Non-Competitive Procedure
Annex OMP5-G	Procurement Plan
Annex OMP5-H	Pre-Qualification Questionnaire
Annex OMP5-I	Complaints Procedure
Annex OMP5-J	Tender Assessment Panel (TAP)
Annex OMP5-K	OCCAR Tender Board Procedure

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## Programme Arrangements

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A.1 Ideally, prior to commencing any Tender activities in support of a new requirement the following Programme Arrangements should be in existence, namely:

- a. An agreed (between Programme Participating States) requirement, this may be in the form of a capability shortfall or as a defined equipment;
- b. A signed MoU between the Participants or an amended MoU when OCCAR is to manage the Programme (see OMP 1 and 2) where applicable;
- c. A BoS Integration Decision, signed by all BoS members and, where appropriate, agreement of Programme Participating Non-Member State(s) (see OMP 1 and 2);
- d. A Programme Decision signed by all Programme Participating States (see OMP 1 and 2);
- e. A PC (or its equivalent) consisting of the nationally empowered representatives involved in the Programme (see OMP 1). With the BoS Integration Decision, and where appropriate in conjunction with the agreement of Programme Participating Non-Member State(s), the PC is deemed to be established;
- f. A PD set up to manage an individual Programme;
- g. A Procurement Strategy approved by the Approving Authority. The content of the Procurement Strategy depends on the nature, maturity, phase and value of the requirement.
- h. A Contract Route (if not covered in the Procurement Strategy) approved by the Approving Authority.

A.2. It is recognised that it will sometimes be necessary to commence Tender activities in parallel with the drafting/staffing of some of the above arrangements (see also OMP 2, paragraph 2.3.4). Internal preparatory work may be carried out subject to the full knowledge and express authority from the Director of OCCAR-EA and the PC (or its equivalent). The extent to which external activity can progress is dependent on which arrangements are in place and is as follows:

- a. An RFI may be issued **only** where a signed BoS Integration Decision or, BoS decision (and where appropriate agreement of Programme Participating Non-Member State(s)) related to the preliminary and temporary work by OCCAR-EA and an agreed (between Programme Participating States) requirement is in place and subject to the full knowledge and express authority from the PC (or its equivalent);
- b. An ITPD/ITT may be issued **only** where a signed BoS Integration Decision or, BoS decision (and where appropriate agreement of Programme Participating Non-Member State(s)) related to the preliminary and temporary work by OCCAR-EA, is in place together with an agreed requirement and a Procurement Strategy (or its

equivalent) approved by the Approving Authority (or its equivalent) and subject to the full knowledge and express authority from the PC (or its equivalent);

- c. Award of Contracts **is strictly subject to** all relevant Programme Arrangements being in place.

A.3 In all cases where external activity commences prior to all relevant Programme Arrangements being in place care must be taken **not** to:

- a. Commit OCCAR to any work;
- b. Give a company an unfair advantage.

## Competition Inappropriate

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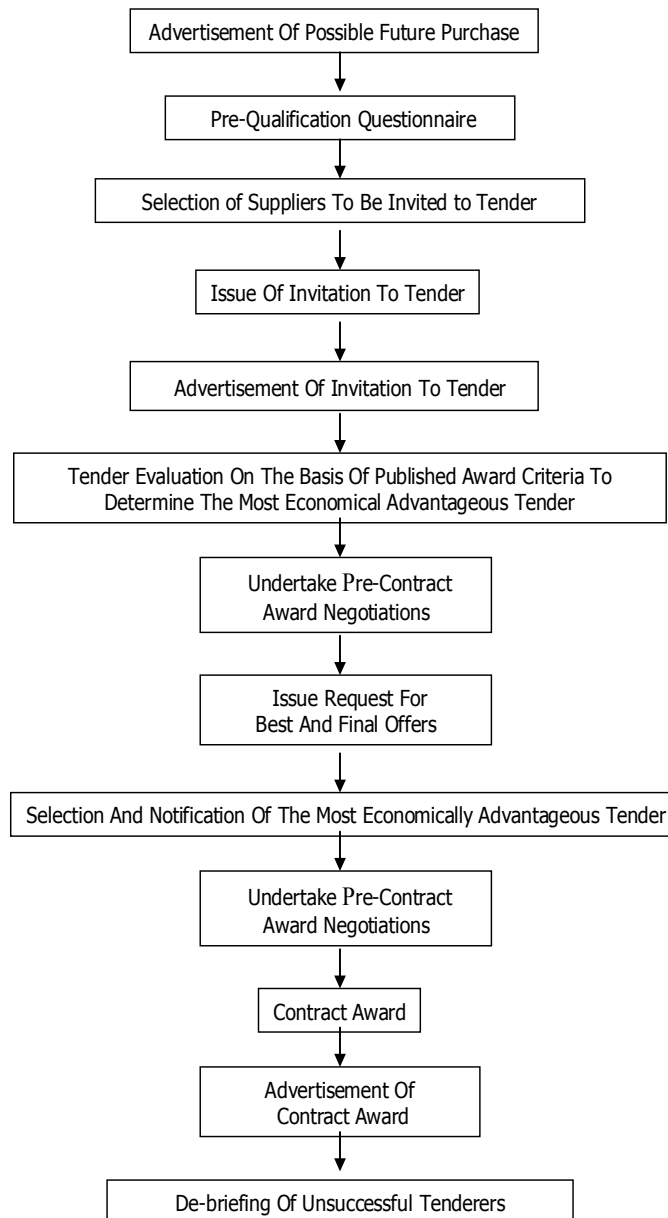
- B.1 Competition may be considered inappropriate in the following circumstances (this list is not exhaustive nor mutually exclusive):
- a. When the supplies or services are unobtainable from any other source (e.g. where they are proprietary and there are no suitable alternative proprietary or commercial articles which meet the requirement) and there are no economic grounds for developing an alternative or no prospect of securing licensing rights, or when there is only one known Supplier who possesses unique or specialised capability in relation to the requirement;
  - b. When the requirement is for spares which must be ordered from the original equipment manufacturer e.g. for safety, testing reasons;
  - c. Where in accordance with the agreed Procurement Strategy, and following a Definition Contract placed under competition, with the purpose of exploring the technical feasibility and commercial conditions for establishing a Production Contract for the requirement, it is decided to place the follow-on Production Contract with the Supplier of the chosen definition solution. Where it is intended to rely on this provision, the ITT for the Definition Contracts shall have mentioned the possibility of placing the follow-on Production Contract without further competition;
  - d. When the requirement is for additional orders and the circumstances support non-competitive action, for example:
    - Orders are to be placed within 12 months of the original Contract placement;
    - The quantity in relation to the original is such that no useful purpose is likely to be served by ITTs;
    - The Supplier is willing to reduce or maintain his price;
    - No other relevant circumstances have changed;
  - e. When precluded by the specified mandatory criteria approved in the Procurement Strategy and/or Contract Route;
  - f. When the periods required (this does not include circumstances where time constraints are caused by either OCCAR-EA or a Programme Participating State(s)) for a competitive procedure are incompatible with the urgency resulting from a crisis (any situation in a Participating State or third country in which a harmful event has occurred which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or has a substantial impact on property values, or requires measures in order to supply the population with necessities; a crisis shall also be deemed to have arisen if the occurrence of such a harmful event is deemed to be impending; armed conflicts and wars shall be regarded as crises).

## Limited Competition

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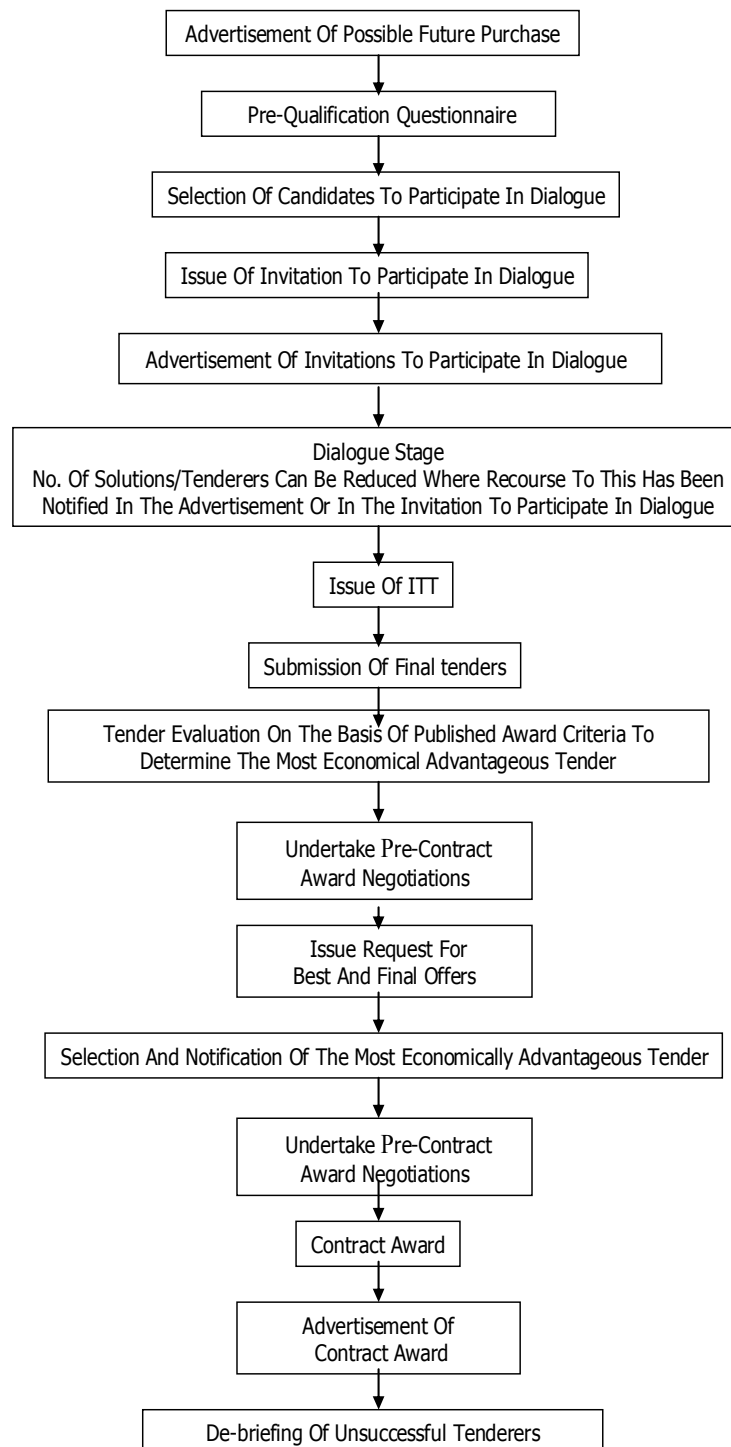
- C1 A limited competition may be undertaken only in the following circumstances:
- a. Where security aspects dictate the performance of specific classified requirements, by only those companies holding the appropriate security clearance;
  - b. Where Contracts placed to increase the capabilities and competitiveness of the EDTIB, tendering may be limited to companies, institutes, agencies or appropriate institutions under the jurisdiction of Programme Participating State(s);
  - c. Where security of supply aspects dictate the performance of requirements, by only those companies whose organisation and location of their supply chains will allow them to comply with the requirements concerning the security of supply set out in the Contract documents, and a commitment to ensure that possible changes in their supply chains during the execution of the Contract will not affect adversely compliance with these requirements;
  - d. Where extraordinary technical experience/capability to perform and reliability are mandatory requirements which can only be achieved by a limited number of companies;
  - e. Where open competition would not meet an essential urgent requirement e.g. operational urgency (this does not include circumstances where time constraints are caused by either OCCAR-EA or a Programme Participating State(s));
  - f. In circumstances outside a to e where authorised by the BoS (e.g. for the purposes of restoring Global Balance).

## Flowchart of a Competitive Procedure



Note: The above denotes a high level framework of a competitive procedure. It may not be necessary to undertake all steps depicted in this flowchart which should be read in conjunction with the related paragraphs of the document. In particular regarding advertising, see paragraphs 5.1.1.3.b, 5.1.1.3.c and 5.1.1.4.

### Flowchart of a Competitive Dialogue Procedure



Note: The above denotes a high level framework of a competitive dialogue procedure. It may not be necessary to undertake all steps depicted in this flowchart which should be read in conjunction with the related paragraphs of the document. In particular regarding advertising, see paragraphs 5.1.1.3.b, 5.1.1.3.c and 5.1.1.4.

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## Advertising

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### E.1 Introduction

The PM will ensure the advertisement of all requirements on the OCCAR-EA website [www.occar-ea.org](http://www.occar-ea.org). These adverts gain exposure in the Member States by a link from their national electronic bulletins. Additionally, the relevant PC (or its equivalent) may endorse such links to be implemented by Programme Participating Non-Member States on their national electronic bulletins. Specified mandatory criteria constraints as defined in the Procurement Strategy and/or Contract Route must be stated in the advertisements. Such advertising will include possible future requirements, ITPDs/ITTs issued, and non-competitive and competitive Contracts awarded.

### E.2 Coverage

See paragraph 5.1

### E.3 Stages

#### E.3.1 Possible Future Purchases

E.3.1.1 The intention is to provide as much advance notice as possible of all forthcoming OCCAR ITPD/ITT and requirements within the laid-down thresholds, to enable companies to register an interest. The announcement of a future requirement is not to be construed as confirmation that a Tender/Contract will subsequently be issued. Announcements are for information only.

E.3.1.2 Such advertisements should:

- a. Summarise the requirements, (including general qualification requirements);
- b. Give an estimated date for ITPD/ITT issue;
- c. Invite expressions of interest within a reasonable period of time (for Major Contracts, normally no later than six months before estimated date of ITPD/ITT issue);
- d. Give details of any intended Tenderers conference to take place prior to ITPD/ITT;
- e. Give points of contact for further information;
- f. Where appropriate, specify the mandatory criteria as defined in the Procurement Strategy and/or Contract Route;
- g. Provide any Supplier selection criteria;
- h. Give any other relevant information if available;

- i. Where a competitive dialogue procedure is being used, notice must be given in the advertisement, if it is the intention that recourse may be taken for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue phase by applying the Contract award criteria;
- j. Additionally, where a competitive dialogue procedure is being used and the Contract award criteria is known at the time of publication of the advertisement then these should be specified in the advertisement, with weightings. When weightings cannot be determined the Contract award criteria should be listed in descending order of importance. If the Contract award criteria are not defined at this time then this should be detailed in the ITPD.

E.3.1.3. The principal objective of the above is to facilitate consideration by Supplier(s) as to whether a requirement falls within the scope of their present or potential capabilities. It will assist where necessary in establishing initial contacts between Supplier(s) to explore the potential for industrial teaming arrangements.

#### E.3.2. Invitations to Tender/Participate in Dialogue (ITT/ITPD)

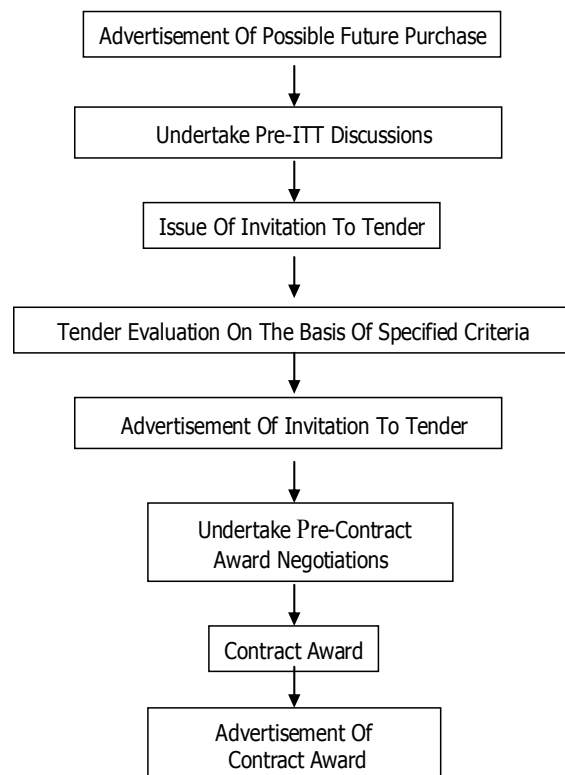
E.3.2.1. Advertisements for ITPD/ITTs issued, including the list of invited Tenderer(s), should follow the appropriate publication pro forma. The advertisement should be made available on the OCCAR-EA website as soon as possible after the issue of such invitations. This also applies to non-competitive Tenders issued.

#### E.3.3 Non-Competitive and Competitive Contracts Awarded

E.3.3.1. Contracts awarded following non-competitive action or competitive action should also be advertised. This is primarily for the benefit of potential sub-contractors and provides feedback to sub-contractors and to industry generally.

## Flowchart of a Non-Competitive Procedure

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Note: The above denotes a high level framework of a competitive procedure. It may not be necessary to undertake all steps depicted in this flowchart which should be read in conjunction with the related paragraphs of the document. In particular regarding advertising (see Paragraph 5.1.1.4).

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## Procurement Plan

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### G.1. General

- G.1.1 Competition is the cornerstone of OCCAR's procurement policy. It provides the greatest leverage on Suppliers to provide value-for-money proposals and, where appropriate, it can provide a useful means of transferring risk. Competition must therefore be encouraged throughout the supply chain.
- G.1.2 All ITTs issued must include a requirement for the Tenderer to provide a Procurement Plan to demonstrate that the maximum use of competition throughout the supply chain, including all sub-contractors, will be made. This is not a means for OCCAR to influence sub-contractor selection.
- G.1.3 The Procurement Plan will form part of the TAP assessment in a competition. It will also assist in the analysis of non-competitive Tenders to demonstrate the extent to which the Tenderer has taken sub-contract competition into consideration.

### G.2 Procurement Plan

- G.2.1 The Procurement Plan must provide the policy and process for competing sub-contracts and any criteria or justification where competition is not being proposed. The Procurement Plan will become part of any resultant Contract. Subject to paragraph 4.3.1.2, care must, however, be exercised not to interfere with the Tenderer's decisions.
- G.2.2 The ITT must call for the Procurement Plan to provide the following information:
- a. The lists of services/items to be procured (sub-contracted);
  - b. The items/services should then be identified as to those that will be placed with or without competition;
  - c. For each services/item to be sub-contracted under competition, the list of the companies to be invited to compete as established by the Tenderer;
  - d. The methodology of competition including the Supplier selection criteria, the means of informing potential bidders (schedule, advertising,) and the Contract award criteria and procedure;
  - e. For those items not to be competed the Tenderer must provide the rationale as to why a competition is not being carried out. The Tenderer must demonstrate that the offered solution will give OCCAR the best value for money.
- G.2.3 With this Procurement Plan the Tenderer will reassure OCCAR and the Programme Participating States of a fair and transparent process between all

the sub-contractors. OCCAR will not intervene in the competition process but the ITT is to reserve OCCAR's right to monitor the process.

- G.2.4 Once appointed it is the responsibility of the Prime Contractor to select the sub-contractors. In exceptional circumstances, such as for the purposes of the restoration of Global Balance, OCCAR may wish to direct a Contractor towards a specific sub-contractor (see paragraph 4.3.1.2.1).

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Pre-Qualification Questionnaire

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H.1. The selection of Tenderers is a critical element of competitive tendering, only Suppliers capable of carrying out the work and with which OCCAR would be prepared to place a Contract should be invited to Tender. In order for the PM to evaluate the suitability of the potential Supplier to meet the requirement a Pre-Qualification Questionnaire (PQQ) may be required to be completed. The advertisement for the requirement and/or the PQQs should set out the minimum standards in some detail and the criteria that will be used in the process to select Suppliers to be invited to Tender. Only Supplier(s) who meet the minimum standards should be invited to Tender.

H.2. A PQQ will normally be split into two parts as follows:

Part 1 Company Generic Information

- a. Company information including:
  - i. Company details (biography and history);
  - ii. Financial status (including copies of the audited published accounts for the last 3 financial years);
  - iii. Organisation and management structure;
  - iv. Compulsory (if a national requirement) registration in a trade register;
- b. Technical competence including:
  - i. Quality and certification;
  - ii. Risk Management;
  - iii. Capability;
  - iv. Industrial competence;
  - v. Past performance (references if appropriate).
- c. Security clearances (if required).

Part 2 Requirement Specific Information such as:

- a. Identify key resources including management structure;
- b. Changes to any of the existing processes e.g. Quality, Risk;
- c. Major elements that might be sub-contracted and outline of how the process will be carried out;
- d. Describe the tools, material and technical equipment, staff numbers, know-how and/or sources of supply, as well as any geographical location(s)

outside the territory of the Programme Participating States where the Tenderer may intend to perform all or part of the proposed Contract;

- e. Describe any additional capacity that would be available to the Tenderer in order to cope with additional requirements raised by Participating States as a result of a crisis, or the requirement to carry out the maintenance, modernisation or adaptation of the supplies covered by the Contract;
- f. Describe the technical facilities and processes employed by the Tenderer for ensuring quality, undertaking studies and research as well as the Tenderers approach regarding the employment and ownership of intellectual property;
- g. Financing of any capital investment;
- h. Details of projects of a similar size and nature or relevance to this requirement undertaken in the last 3 years (OCCAR may wish to approach these customers);
- i. Other specific detail.

### H.3. Joint Ventures /Consortium Management Companies/minimally capitalised Companies

H.3.1. The following guidance should be applied where any of the above mentioned Suppliers are proposed:

- a. Suppliers should not be encouraged to create JVs only to meet specific requirements for a limited period;
- b. OCCAR will not normally consider such Suppliers to be invited to Tender or to provide a proposal unless they assist in the creation of a pan-European defence industry;
- c. Exceptionally, they may be considered where no other competent Supplier(s) have been identified.

H.3.2 It must be ensured that the "parent" companies agree unconditionally to provide all resources and facilities to enable the joint venture company to fulfil its contractual obligations or to step-in in the event the JV fails to perform. This must be enforced through joint and several guarantees to be annexed to the Contract. OCCAR Templates are available from Central Office.

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Complaints Procedure

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I.1 Complaints from Suppliers excluded from a Tender list

If a Supplier(s) wishes to lodge a complaint regarding their exclusion from a Tender list, they must write to the Director of OCCAR-EA within two weeks of the notification by OCCAR of their exclusion or within two weeks of any requested debrief (see paragraph 5.1.3).

I.2 Complaints from Suppliers during the Dialogue/Tender period and/or from unsuccessful Tenderers

Any Tenderer who considers himself to have been disadvantaged in any particular respect in the ITPD/ITT or Tender assessment process relating to an OCCAR procurement has the right to make a complaint. Any such complaint must be in writing direct to the Director of OCCAR-EA who will deal with the matter promptly, fairly and objectively. Complaints received three months after the Tenderer's debrief (see paragraph 5.3.6.3) will be rejected.

I.3 Recourse to the BoS

In the event that a Supplier maintains his complaint after the Director of OCCAR-EA's decision, the matter will be referred to the BoS. The BoS will decide whether the decision of the Director of OCCAR-EA will stand or whether there is a need to carry out its own investigation by whatever means it deems appropriate.

I.4 In the event of a complaint, the normal course of business should continue, until the Director of OCCAR-EA or the BoS has ruled on the matter.

I.5 Successful Complaint

Where a complaint to the Director of OCCAR-EA is successful, the Director of OCCAR-EA will refer the matter to the BoS with recommendations for possible forms of redress. Complaints upheld by the BoS will be notified to the Director of OCCAR-EA with guidance on what form of redress is to be offered.

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## Tender Assessment Panel (TAP)

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### J.1. Tender Assessment Panel

J.1.1. Once the Procurement Strategy and/or Contract Route has been approved by the Approving Authority, the PM or delegated representative will establish a TAP. The TAP should take the requirement from its inception to Contract award. The TAP is responsible for drafting the ITPD/ITT and the evaluation of any Tender responses. The PM will:

- a. Nominate the chairman of the TAP (the PM may assume this role);
- b. Decide the terms of reference of the TAP;
- c. Decide on the composition of the TAP (this should always include the PD Contracts Officer or a OCCAR-EA Central Office Contract specialist from Central Office);
- d. Prepare a plan of the resources required to evaluate the technical and commercial aspects of the Tenders;
- e. Inform the Director of OCCAR-EA on progress at agreed intervals;
- f. Through the Director of OCCAR-EA, inform the appropriate PC on progress at agreed intervals.

J.1.2. The TAP will report to the PM or where the TAP is chaired by the PM, to the Director of OCCAR-EA.

### J.2. Tender Preparation and Drafting

The TAP must ensure the ITT includes the technical requirement/specification and the Contract terms and conditions for the proposed Contract (see OMP 6). The ITT should provide the Contract award criteria and technical marking scheme, (including, where appropriate, the weighting) identifying relative importance of each criterion and minimum requirements below which Tenders will be classified as non-compliant. Where the competitive dialogue process is used the Contract award criteria to be applied during the dialogue phase and/or on receipt of final Tenders will be those previously published in either the advertisement or ITPD.

### J.3. Tender Assessment Process

J.3.1 During the Tender assessment process the chairman of the TAP, is responsible for:

- a. Receiving the Tender documents from the Tender board secretary (see Annex OMP5-K);

- b. Ensuring that only Tenders received on time or any technically late Tenders are included in the assessment;
- c. Formally recording the work of the TAP including its evaluations, recommendation(s) and reasoning;
- d. Evaluating Tenders fairly and equally and strictly in line with the advertised Contract award criteria and any supporting information or guidance supplied;
- e. Undertaking the initial assessment of the technical aspects of competitive Tenders without knowledge of price information (see Annex OMP5-K) and entirely separately from the evaluation of the commercial aspects, albeit that all aspects will be taken into account in the final assessment;
- f. Ensuring that clarification questions (both technical and commercial) to a Tenderer(s) are made in writing. If necessary, clarification meetings with Tenderer(s) may be held. Under no circumstances, in clarification communications, should the content of other Tenders be discussed or the subject Tender be discussed in relation to other Tenders. OCCAR-EA must provide any written clarification to all Tenderer(s) unless commercial confidentiality would be compromised;
- g. Investigating Tenders which are significantly lower than other Tenders to check that the Tenderer has fully understood the requirement. Any amendments from Tenderer(s) resulting from such investigations will be treated with extreme caution to avoid allegations of malpractice or collusion;
- h. Excluding from further assessment Tenders which are non-compliant. Tenders will be judged non-compliant if they deviate from the fundamental requirements of the ITT;
- i. Carrying out a risk assessment as part of the formal Tender assessment e.g. where GFX is requested or assumed by Tenderer(s) as part of their Tender;
- j. Making recommendations to the Approving Authority to include alternative or unsolicited Tender(s) (see paragraphs J3.2 and J3.3) in the assessment where in his judgement they offer significant advantages;
- k. Assessing the effectiveness of the competition i.e. that market forces have been sufficiently brought to bear in the tendering process to produce a competitive price;
- l. Ensuring that competition has been/will be flowed down the supply chain by evaluating the Procurement Plan (see Annex OMP5-G);
- m. Consulting the OCCAR-EA Legal Advisor prior to entering into any arrangement where a Tenderer requires any documents to be signed to meet its own national export laws e.g. Export Control Laws/Technical Assistance Agreements;
- n. Submitting a report with recommendations to the PM or where the TAP is chaired by the PM, to the Director of OCCAR-EA.

- J.3.2 As part of the standard ITT Tenderers will be invited to provide innovative bids, this may result in a Tenderer providing two or more Tenders (Alternative Tender(s)) for the same requirement. If more than one Tender is received from a Tenderer this will be brought to the attention of the chairman of the TAP by the Tender Board. Inclusion of Alternative Tenders in the assessment will be subject to the PM's recommendation and Approving Authority's approval.
- J.3.3 In some instances Tenders might be received from Tenderers not invited to Tender. The Tender Board will bring this to the attention of the chairman of the TAP. The circumstances must be considered prior to including such Tenders in the Assessment e.g. in some cases this may be due to a company name change during the tendering period or where the recipient of the ITT has passed it to a sub-contractor. All such instances shall be dealt with in accordance with paragraph K4.8.

#### J.4. TAP Recommendation

- J.4.1. The TAP will recommend the award of a Contract when:
- a. A tendering process has been considered effective, and;
  - b. At least one fully compliant Tender has been received (or in the event of a non-competitive Tender a fully compliant draft Contract, including an acceptable price deemed by the PD Contracts Officer to be fair and reasonable (see paragraph J.7 below), has been agreed), or
- J.4.2. In certain circumstances, the TAP may recommend iterative tendering (see paragraph J6 below).
- J.4.3. If an immediate recommendation for Contract award, in accordance with paragraph J4.1 above, is not possible, the Approving Authority's direction must be obtained in accordance with paragraph 5.3.5.1.

#### J.5. Pre Contract Award Negotiations

- J.5.1. Where direction has been sought in accordance with paragraph 5.3.5.1.b and the Approving Authority agrees that negotiations may commence with one or more of the Tenderers, the PM on behalf of the Director of OCCAR-EA will notify all Tenderers accordingly. The following paragraphs cover the principles to be used in respect of such negotiations.
- J.5.2. The PM may designate a team to carry out the negotiation with the Tenderer(s).
- J.5.3. Prior to any negotiation, the PM or, where different, the Team Leader must agree the aims of the negotiation. The aims should take into account factors already approved within the Procurement Strategy document, the Contract Route, the ITT and the Tender response(s) including:
- a. Schedule for negotiation;
  - b. Type of Contract;
  - c. Price (value, type);
  - d. Annual/total funds provided by Programme Participating States;

- e. Timescale for execution of the Contract;
- f. Technical/operational specifications;
- g. Assumptions for main clauses (e.g. pricing and payment arrangements, performance milestones, penalties/liquidated damages, subcontracting, work allocation and IPR);
- h. Involvement of other organisations, especially of national experts;
- i. Timescale and level for official approval before signature.

#### J.5.4. Commencing Negotiations

The Team Leader will:

- a. Inform the Tenderer(s) in writing that negotiations are without commitment (see paragraph 5.3.3)
- b. Specify in this letter any details concerning the provisions of the Contract for negotiation;
- c. Inform the Tenderer(s) of the composition of the OCCAR-EA negotiation team and ask for the details of the Tenderer(s)' team;
- d. Outline any requirements for further negotiation (e.g. date/place of meetings, estimated date for signature, level of approval, working language, secretariat function etc.) in order to finalise the Contract.

#### J.5.5. Concluding Negotiations

J.5.5.1. Negotiations end when either the negotiating team has reached a common agreement with the potential Supplier on a final draft of the Contract, subject to final approvals as appropriate (see paragraph 5.3.6.1) or no agreement can be reached.

J.5.5.2 If the negotiations fail to achieve their objectives the PM must inform the Approving Authority and set out proposals for a way forward.

### J.6 Iterative Tendering

J.6.1 There are two types of iterative tendering: revise or confirm and BAFOs (see paragraphs J6.4 and J6.5 below). Generally speaking revise or confirm procedures are used for clarification of Tenders, or notification to Tenderers of amendments to the requirements by OCCAR, whereas BAFOs are used to improve value for money in a close run competition between compliant Tenderers. Where the results of the original competition show that extensive clarification of offers is required it might be appropriate to consider whether to combine the revise or confirm process with a request for best-and-final offers.

J.6.2 Invitations to some or all of the Tenderers to revise or confirm their Tenders or to submit best-and-final offers should be communicated to the Tenderers concerned in writing, (those not being invited being suitably notified also). Any changes in the requirement and the time and date by which revised Tenders/offers are to be received should be stated clearly. The notification should state the Tender board address and the use of the same Tender number

as for the first round. The notification should also designate by name and title the officer in the PD (normally the Contracts Officer or TAP Chairman) to whom any enquiries, written, telegraphic or oral, should be directed. All PD staff should be reminded, as necessary that they must not enter into any discussion or correspondence with the Tenderers during this period unless authorised by the TAP Chairman.

J.6.3 Tenders and offers received under iterative Tender procedures should be handled as normal Tenders. There is no intention that the usual rules of commercial confidentiality should be breached. To that end price and other commercial data should not be divulged by PD staff other than on a strict need-to-know basis until any negotiations are complete.

#### J.6.4 Revise or Confirm

Where there are many issues to be resolved and it is proposed to keep all, or most, of the original Tenderers in the field, formal "revise or confirm" letters should be issued. The letters should detail the specific areas of the Tenders requiring attention i.e. tailored if necessary to suit each Tenderer and/or additional or amended information from OCCAR-EA which the Tenderer needs to consider when re-submitting a Tender. In the latter case this information should be forwarded to all original Tenderers to ensure that there can be no claims of unfairness. The Tenderer is thus given the opportunity to revise a Tender accordingly or confirm the original Tender.

#### J.6.5 Best-and-Final Offers

J.6.5.1 The concept behind best-and-final offers is the search for better value for money and/or better technical solution through a further round of tendering with all the compliant Tenderers in the preceding round. There may be scope for achieving a better outcome in the following cases:

- a. Where there is more than one fully compliant Tender from the preceding round;
- b. Where there is more than one fully compliant Tender and negotiations have been carried out;
- c. Where there are no fully compliant Tenders and negotiations have been carried out with more than one Tenderer.

J.6.5.2 The emphasis will be on securing a reduction in the quoted prices, but this should not preclude seeking other improvements, for example in delivery or performance. In cases in paragraph J.6.5.1 b and c this may be used to preserve the propriety of the exercise. Under no circumstances should best-and-final offers be used where there is only one fully compliant Tender.

J.6.5.3 Other factors which might lead to a decision to seek best-and-final offers include:

- a. The possibility a further round of tendering might improve the ranking of a technically attractive Tender which does not appear to represent value for money;

- b. The need to bring Tenders on to a more directly comparable basis;
- c. The closeness of initial bids in a fiercely competitive environment;
- d. Wider considerations associated with the circumstances of the particular supply (e.g. affecting industrial structure).

J.6.5.4 As indicated at paragraph J.6.5.3, the choice of Tenderer is not always clear cut. In such cases the responses from a further round of tendering could make the final selection simpler. Alternatively a further round of Tenders might be useful in assessing the options where there has been difficulty in comparing Tenders adequately because of the differing characteristics of the competing equipment offered.

J.6.5.5 Given the additional resources involved in calling for best-and-final offers, it is unlikely to be practicable for the procedure to be followed - other than on an exceptions basis - for purchases valued below 1M Euro.

J.6.5.6 Best-and-final offers should be sought on a selective basis taking account of the foregoing. PD Contract Officers will need to ensure that Tenderers do not come to expect such an approach as the norm, and consequently to build allowances into their initial bids to cover the eventuality. While pressure of keen and effective competition can be assumed to offer some deterrence against such a possibility, this cannot be a complete safeguard where complex judgements about the relative merits of competing offers and value for money are involved.

J.6.5.7 The term 'best-and-final' implies only one reiteration, but, exceptionally, where the PM considers there would be advantage, it may be necessary to go through further rounds.

## J.7 Non-Competitive Tender Pricing

J.7.7 It is the PD Contracts Officer's responsibility normally, with expert help from national pricing authorities/pricing audit services, to determine if the quoted price is fair and reasonable, taking into account factors such as quantity, quality, delivery requirements, market forces, and a reasonable profit margin. The PD Contracts Officer should consider the following when assessing the fairness and reasonableness of a quoted price (obtaining, as necessary, information from the Tenderer):

- a. Obtaining a price breakdown for examination. The price breakdown will provide labour rates, hours, material costs, overheads, profit etc. However, there is little point in requesting a breakdown for low value items since any savings may well be outweighed by the cost of the resources expended in obtaining and verifying the breakdown and negotiating a reduced price. In instances of high value requirements expert price examination and/or investigation may be sought through or with assistance/data from national pricing authorities/pricing audit services;
- b. Whether or not the price is based on a commercial price list and is comparable with that paid to the Supplier by other customers of similar standing;

- c. Whether the price compares favourably with previous prices paid by OCCAR, taking into account price inflation in the relevant sector of the market etc;
- d. Whether the price compares favourably with an informal market survey of the same or similar items.

#### J.8 Involvement of non PD Personnel

##### J.8.1 Involvement of OCCAR-EA Central Office

For Programme Contracts the TAP Chairman may request the involvement of OCCAR-EA Central Office at any time.

##### J.8.2 Involvement of National Experts or Representatives

Unless otherwise agreed by the PM, there is to be no direct contact between national experts or representatives and the Tenderers' representatives. Any involvement of national experts or representatives will be arranged by the PM with the PC and where possible should be identified in the Procurement Strategy and/or Contract Route.

#### J.9 Records

In view of the importance attached to Tender assessment and the work of the TAP detailed records must be maintained to provide a clear audit trail of the process from start to Contract award.

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## OCCAR Tender Board Procedure

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### K.1. General

The Tender board procedure is designed to avoid irregularity or any allegation of irregularity during the period between receipt of Tenders by OCCAR and their official opening. Consequently, the following procedures are designed to ensure that Tenders are safeguarded, until they are opened at the Tender board.

### K.2 Tender Board

K.2.1 A Tender board will be set up comprising of personnel within OCCAR-EA who have no professional or personal interest in the Tenderers. The Tender board is set up for the purpose of

- a. Receiving Tenders;
- b. Opening Tenders;
- c. Recording receipt of Tenders and Tender sheets;
- d. Checking contents of Tenders;
- e. Recording any irregularities; and
- f. Distribution of Tenders received to the TAP chairman.

K.2.2 Where possible the persons nominated are to be independent from the Programme and should represent at least two nationalities and have the same nationality as the Programme Participating States. The representation on Tender boards should be as high as resources permit. The Tender board will comprise:

- a. A chairperson – usually a Contracts Officer not normally below the rank of A3.
- b. A Tender board secretary
- c. Third member – rank of A2 or above

### K.3 Tender Requirements

K.3.1 As part of the ITT instructions for the return of the Tenders will be provided. These instructions will include the Tender due date, the number of copies required, the required date for the copies if different from the Tender due date, the consignees and the medium to be used. There must always be an originally signed (by appropriate company representative(s)) front sheet with the total Tender price.

K.3.2 The ITT will normally call for the Tender to be presented in two parts i.e. commercial and technical, respectively priced and unpriced.

K.3.3 The ITT will provide a pre-printed label providing the address of the Tender board and the Tender due date. Responsibility for including in the ITT clear instructions to potential bidders on the foregoing requirements rests with the PD.

#### K.4 A Tender Board Session

K.4.1 The convening of a Tender board will be dependent on the due date of return of Tenders

K.4.2 On the opening date, in the presence of the Tender board, the Tenders will be removed from the secure container in which they have been stored. Tenders will be opened, embossed, and examined for irregularities. Any irregularities will be noted in the "Unusual Incidents and Irregularities" book.

K.4.3 On completion of the Tender board, each member of the Tender board must sign the Tender sheet containing the information as set out in paragraphs K2.1 a to e.. This document must also be embossed.

K.4.4 The Tender board secretary will arrange for the Tender sheet, the Tenders and any other correspondence to be sent to the TAP chairman. The secretary will retain the Tender summary. The secretary retains the "Unusual Incidents and Irregularities" book.

K.4.5 Any unusual incidents that occur whilst the Tender board is in session are to be recorded by the Tender board chairman in the "Unusual Incidents or Irregularities" book and signed by the chairman at the end of the session.

K.4.6 Examples of incidents may include:

- a. Telephone messages about prices;
- b. Interruptions of the session.

K.4.7 Examples of irregularities may include:

- a. No original signature on Tender (omission to be recorded);
- b. No total value of the Tender (omission to be recorded);
- c. Any price alterations and erasures, no matter how trivial, (alterations/erasures must be recorded);
- d. Not all the Tender documents have been returned. (Some Tenderers may return only the cover sheet, and some quote by ordinary letter). Any omissions should be recorded;
- e. Difference in the name of the Tenderer to which Tender was issued and the name of the firm signing the Tender.

K.4.8 Any incident/irregularity and/or failure in the Tender board procedures must immediately be reported to both the PM and the Director of OCCAR-EA.

## K.5 Late Tenders

- K.5.1 Late Tenders (i.e. those which are received by the Tender board after the due date on the return label) must be recorded as LATE, irrespective of when they were posted or when actually received in OCCAR-EA. Those that are considered to be technically late may be opened, those considered genuinely late must be immediately returned to the Tenderer unopened. If a Tender arrives late (after closure of the Tender board) and the next anticipated board will not meet for some time, the Tender board secretary may call a special board to record the receipt of any such Tender.
- K.5.2. Late Tenders are classed as "technically late" (ie posted prior to the due time but received after the due time) or as "genuinely late" (i.e. posted on or after the due time). After an initial check by the third member of the Tender board, the Tender board secretary should enter the particulars of each technically late Tender on the Tender sheet. The chairperson must check every technically late Tender, particularly for price and other alteration and ensure that the Tender board secretary marks it as a "Late Tender" and that the envelope is firmly attached to the Tender papers and that both Tender and envelope are embossed. It is the Tender board secretary's responsibility to return genuinely late Tenders to the Tenderer unopened.

## K.6 Alternative Offers/Unsolicited Tenders

These are to be treated as "Tenders" but the TAP chairman's attention should be specifically drawn to them by means of a "flag" and the "Unusual Incidents or Irregularities" book duly annotated (see paragraphs J.3.2 and J.3.3).