

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

**EUROCONTROL**

**CONTRACT REGULATIONS  
OF THE EUROCONTROL ORGANISATION**

Text approved by Measure No. 10/170 of the Permanent Commission,  
dated 1 December 2010

## CONTRACT REGULATIONS OF THE EUROCONTROL ORGANISATION

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## **PREAMBLE**

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

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

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

The present Regulations shall be available to the general public.

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

### **A) GENERAL PROVISIONS**

#### **Article 1 – Principles of fair competition and non-discrimination**

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

#### **Article 2 – Conflicts of interest**

- 2.1. A conflict of interest, for the purposes of the present Regulations, shall be deemed to mean any situation in which an individual or entity (public or private) is in a position to exploit his/her/its professional or official capacity or information in some way for his/her/its benefit.
- 2.2. The Organisation shall take all appropriate preventive measures to avoid situations which may lead to conflicts of interest. Contracts shall not be awarded to tenderers who at the time of the procurement procedure:
  - a) have a conflict of interest;
  - b) make false declarations when supplying the information required by the Organisation as a prerequisite for participating in the procurement procedure, or fail to supply such information.

2.3. Code of conduct

- a) The Organisation shall draw up a code of conduct setting out the rights and obligations of the Organisation and other interested third parties (public or private).
- b) The code of conduct shall as a minimum cover the following aspects:
  - (i) scope and application (usually limited to one particular procurement project);
  - (ii) addressees;
  - (iii) confidentiality;
  - (iv) exclusion from procurement procedures for the duration of the conflict of interest.
- c) The code of conduct shall be signed by the participating individuals and/or entities.

2.4. In specific cases in which EUROCONTROL proceeds with a common procurement and acts on behalf of one or more Member State(s) or air navigation service provider(s) where the various parties might have a conflict of interest, a specific code of conduct shall be established and agreed by all the parties.

2.5. The provisions of Title II of the Staff Regulations governing Officials of the EUROCONTROL Agency are particularly relevant with regard to facts and information relating to tenders and contracts.

The Organisation shall ensure that no member of its staff and no person under contract with the Organisation is involved in a procurement procedure if that person or someone closely connected to him/her, such as family members, relatives, partners or spouses, has an interest in the result of that procedure.

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

**Article 3 – Exclusion from participation in the procurement procedure**

Tenderers shall be excluded from participation in procurement procedures if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for under national legislation or regulations;
- b) they have been convicted of an offence involving their professional conduct in a judgment which has the force of res judicata;
- c) they have been guilty of serious professional misconduct proven by any evidence duly substantiated by the Organisation;
- d) they have not fulfilled obligations relating to the payment of social security contributions or taxes in accordance with the legal provisions of the country in which they are established or the country in which the Organisation is established or the country in which the contract is to be performed;
- e) they have been convicted, in a judgment having the force of res judicata, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Organisation's financial interests;

- f) they are currently subject to an administrative penalty owing to a serious breach of contract.

Paragraphs a) to d) above shall not apply to any purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

#### **Article 4 – Confidentiality of procedures**

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

#### **Article 5 – Contract amounts**

5.1. The calculation of the value of a contract for the purposes of the application of the thresholds provided for in the present Contract Regulations shall take into consideration the entire duration of the contract.

- 5.2. a) In the case of regular and recurring contracts (such as utility contracts and/or maintenance contracts), the aggregate value for the purpose of the application of the thresholds provided for in the present Contract Regulations shall be based on the forecast annual amount of such contracts, or the aggregated value over the previous budgetary year or 12-month period.
- b) If a contract as referred to in paragraph 5.2 a) above cannot be terminated early, the aggregate value for the purpose of application of the thresholds provided for in the present Contract Regulations shall be based on the amount for the entire duration of the contract.

#### **Article 6 – Breakdown of contracts**

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

### **B) PROCEDURES**

#### **Article 7 – Procurement procedures**

- 7.1. Calls for tenders shall be issued by means of an open procedure, where issued in accordance with Article 14.1 below.
- 7.2. In exceptional cases and under the specific conditions laid down in Articles 8, 9, 10 and 11 below, the following procedures may be used:
- a) the competitive dialogue procedure, in accordance with Article 8 below, where, owing to the particular complexity of a procurement procedure, use of the other procurement procedures does not allow a contract to be awarded to the tender offering the best value for money;
- b) the framework contract procedure, as detailed in Article 9 below;
- c) the restricted procedure, where, in accordance with Article 10 below, a call for tenders is issued only to a limited number of potential tenderers;
- d) the private treaty procedure, in accordance with Article 11 below, where the unit responsible for contracts issues a direct invitation to the potential supplier(s) to submit a tender and negotiate a contract.

- 7.3. The launching of a procedure as referred to in paragraph 7.2 above shall be duly justified in writing.

#### **Article 8 – Competitive dialogue procedure**

- 8.1. In the case of particularly complex contracts, where the Organisation considers that the direct use of the open procedure or the existing arrangements governing the restricted procedure will not allow the contract to be awarded to the tender offering the best value for money, the competitive dialogue procedure may be used.
- 8.2. A contract shall be deemed ‘particularly complex’ where the Agency is not objectively able to define the technical means capable of meeting the needs or objectives, or to specify the legal or financial make-up of the project.

#### **Article 9 – Framework contracts**

- 9.1. The Organisation may conclude framework contracts with a view to establishing a list of preferred potential tenderers in a particular domain.

The selection of such preferred potential tenderers shall be made following a call for tenders subject to the positive opinion of the Advisory Committee provided for in Article 25 below.

- 9.2. The Organisation may invite the preferred potential tenderers under a framework contract to submit competitive tenders in accordance with the particular procedure laid down in that framework contract. The principle of fair competition and equal treatment of the preferred potential tenderers shall be respected at all times.
- 9.3. The duration of these contracts may not exceed four, or in exceptional duly justified cases, five years. At the end of every term, the Organisation shall re-launch a full and open competitive tender procedure.

#### **Article 10 – Restricted procedure**

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

- a) where, for technical or legal reasons, the goods or services can be supplied by a limited number of suppliers only, especially when there is a need for extraordinary expertise, serviceability or reliability;
- b) where publication as referred to in Article 14.1 below would entail, for the Organisation and/or potential tenderers, expenditure disproportionate to the value of the goods or services to be purchased or to any potential commercial advantage which could be achieved by wider publicity;
- c) where the open procedure referred to in Article 6.1 above produces no result or the result produced is not acceptable from a technical and/or financial point of view and it is still possible to invite more than one supplier to tender;
- d) where, for reasons beyond the Organisation’s control, the purchase or hire of goods or the provision of services is a matter of such urgency that it is not possible to wait for an open procedure as referred to in Article 7.1 above to be carried out, but there is still time for a restricted procedure;
- e) as a result of a call for interest, where the selection and weighting criteria for choosing possible suppliers are clearly defined.

### **Article 11– Private treaties**

Contracts may be let by the private treaty procedure laid down in Article 7.2.d) above in the following exceptional cases:

- a) where, for reasons beyond the Organisation's control, the purchase or hire of goods or the provision of services is a matter of such urgency that it is not possible to wait for one of the other procurement procedures specified in Article 7 above to be carried out;
- b) where, after having launched other procurement procedures as referred to in Article 7 above, no tenders have been submitted or where the tenders submitted did not comply with the mandatory requirements of the initial procurement procedure, provided that these requirements were not substantially altered by the Organisation;
- c) where, for reasons of technical compliance and compatibility or for legal reasons, the goods or services can be supplied by one particular supplier only;
- d) for additional goods or services which were not included or considered in the initial contract and which, owing to unforeseeable circumstances, have become indispensable for the satisfactory completion of the project, where such additional goods or services cannot be technically separated from the main contract without major disruption to the project;
- e) where the contract for the purchase of goods or for the provision of services involves an amount not exceeding 15,000 euros;
- f) where the contract concerns services and/or advice in the medical and/or legal domain and/or is related to advice on organisational matters requiring a particular relationship of trust and confidence.

### **Article 12 – Electronic auctioning - conditions and scope**

- 12.1. In the open procedure and the restricted procedure, the Organisation shall be entitled to use electronic auctioning as a means of evaluating tenders.
- 12.2. Use of this procedure shall be conditional upon due notification thereof in the tender notice or the call for tender.

### **Article 13 – Simplified procedures**

Contracts relating to goods or services for a value of less than 100,000 euros may be let following a price enquiry constituting a less formal competitive procurement procedure as laid down in the Rules of Application provided for in Article 42 below.

## **C) PUBLICITY**

### **Article 14 – Publication**

- 14.1. Calls for tenders and price enquiries shall be published as widely as possible by the Organisation, in particular by post or electronic means, in a tender notice prepared by the unit responsible for contracts.

The notice shall contain the technical subject-matter, the main selection, weighting and award criteria, the admissibility conditions, the nature of the contract to be let, the closing date and the contact person within the Organisation responsible for the call for tenders or price enquiry.

- 14.2. Publication may be restricted in the cases provided for in Article 10 above.

### **Article 15 – Calls for interest**

Calls for tenders may be preceded by calls for interest, to which the same publication principles as established in Article 14 above shall apply.

## **D) CONTENT OF CALLS FOR TENDERS**

### **Article 16 – Tenders**

A tender is the written commitment, delivered by post, by electronic means or by hand, on the part of the tenderer in response to a call for tenders issued by the Organisation.

### **Article 17 – Tender documents**

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

17.2. Calls for tenders shall:

- a) include the technical specifications, which shall specify the requirements which are part of the award criteria;
- b) include the appropriate terms and conditions;
- c) include the official tender forms, including the price declaration form, to be completed by the tenderer;
- d) specify the items/documents to be included in the tender and the period for which the tenders are to remain valid;
- e) establish the main selection and award criteria and their weighting;
- f) include a request for proof of the economic and financial standing of the tenderer, for contracts the total value of which exceeds 1,000,000 euros;
- g) specify the cases in which tenderers will be excluded from participation;
- h) stipulate that the Organisation reserves the right not to accept an offer, or to accept only one or more items, or to accept only parts of items of one or more offers, provided that the possibility of such subdivision into items or parts of items is clearly stated in the call for tenders documents;
- i) clearly establish the date for the submission of tenders, which shall be calculated in the light of the complexity of the subject of the call for tenders. In duly justified cases, this date may be extended for all potential tenderers;
- j) include a notice to tenderers giving practical information concerning the presentation and dispatch of tenders, incorporating, inter alia, the instructions contained in this Article.

## **E) NEGOTIATIONS**

### **Article 18 – Negotiations**

18.1. Where opportunities are noted for price reductions and/or technical improvements as a result of the technical and commercial evaluation of the offers received, the unit responsible for contracts may, with the appropriate assistance of the technical services, undertake negotiations with the tenderer(s) on the list of offers meeting the technical requirements, for the purpose of obtaining the best terms and conditions.

These negotiations may result in a request for a 'best and final offer', which shall comply with the general rules relating to the submission of tenders.

- 18.2. Under no circumstances shall these negotiations lead to a reduction in the technical requirements of the call for tenders below the minimum threshold for compliance. If such a reduction is necessary, a new call for tenders shall be issued.
- 18.3. In these negotiations, special emphasis shall be placed on equal and fair treatment of the tenderers.
  - a) In particular, all modifications to administrative, technical or legal requirements shall be transmitted in writing to all tenderers complying with the technical requirements.
  - b) Following the end of the negotiations, all tenderers meeting the technical requirements shall be given the opportunity, by a deadline fixed by the Organisation, to submit new or amended tenders on the basis of the revised requirements despatched by the Organisation.
  - c) These negotiations shall under no circumstances invalidate the initial elimination of tenderers on technical grounds.

## **F) CONTRACT AWARD**

### **Article 19 – Selection, weighting and award criteria**

- 19.1. The selection, weighting and award criteria, such as the cost of performance, running costs entailed, quality, technical merit, delivery date and period of completion, as well as the financial and technical guarantees of the tenderer, shall be determined in the tender notice and documents.
- 19.2. The relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria shall be established except in duly justified cases for which reasons must be provided, where the weighting cannot be established in advance, in particular on account of the complexity of the contract.
- 19.3. These criteria shall remain unchanged throughout the procedure.
- 19.4. Upon completion of the procedure, the offer judged to be the most economically advantageous for the Organisation on the basis of the award criteria shall be selected.
- 19.5. The decision as to what is most economically advantageous from the point of view of the Organisation shall be based on criteria linked to the subject-matter of the contract in question, such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion.
- 19.6. The final choice shall be duly justified in writing.

### **Article 20 – Notification to unsuccessful tenderers**

- 20.1. Once a decision has been reached on the tender to be selected and after conclusion of the contract, the other tenderers shall be notified that their tenders have not been selected and they shall be informed of the name of the successful tenderer.

- 20.2. The Organisation may decide to withhold certain information on the award of the contract, where the release of such information would impede law enforcement or be otherwise contrary to the public interest or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

**G) PROCUREMENT IN THE FRAMEWORK OF SPECIAL AGREEMENTS**

**Article 21 – Procurement by the Organisation under special agreements**

- 21.1. Procurement procedures which may be required in the framework of agreements concluded by the Organisation in accordance with the provisions of Article 2 of the amended Convention shall be conducted in accordance with the present Regulations.
- 21.2. Agreements as referred to in paragraph 21.1 above may, in exceptional and duly documented cases, make provision for other regulations guaranteeing the principles of fair and open competition which shall under no circumstances contradict the present Regulations.

**Article 22 – Procurement in accordance with Article 13 of the amended Convention**

- 22.1. Procurement action which may be required under Article 13 of the amended Convention shall be the subject of a written agreement between all parties concerned and shall be conducted in accordance with regulations guaranteeing the principles of fair and open competition which shall not contradict the present Regulations.
- 22.2. The interest of the Organisation in proceeding with procurement action under Article 13 of the amended Convention shall be duly documented.
- 22.3. Under no circumstances shall the procedure provided for in the present Article be used for the sole purpose of circumventing procurement regulations applying in the Member States. Should any such circumvention come to light, the Organisation may terminate the relevant procurement action and any agreement between the parties in connection therewith.

**Article 23 – Common procurement**

- 23.1. At the request of one or more Member State(s) and/or appropriate air navigation service provider(s), the Organisation may be mandated to procure identical goods and services on behalf of one or more Member State(s), air navigation service provider(s) and itself.
- 23.2. In such event, the Organisation and the relevant Member State(s) or the appropriate air navigation service provider(s) shall enter into an agreement which shall determine:
- a) the applicability of the contractual procedures of the present Regulations and/or other regulations guaranteeing the principles of fair and open competition, which shall not contradict the present Regulations;
  - b) the respective roles of the parties;
  - c) the participation of the other party/ies in the Organisation's procurement procedures (i.e. drafting of specifications, evaluation of offers, negotiations, participation in the Organisation's internal bodies/meetings);
  - d) the applicability of third party regulations, provided that they are at least as stringent as the present Regulations;

- e) a code of conduct and the avoidance of conflicts of interest.
- 23.3 The interest of the Organisation in proceeding with common procurement action shall be duly documented.
- 23.4. Under no circumstances shall the procedure provided for in the present Article be used for the sole purpose of circumventing procurement regulations applying in the Member States. Should any such circumvention come to light, the Organisation may terminate the relevant procurement action and any agreement between the parties in connection therewith.
- 23.5. Where there are possible synergies in procuring identical goods and services with a party which is not a Member State or an air navigation service provider, the Organisation may proceed with common procurement action.

In such event, the same rules and principles as stipulated in paragraphs 23.2, 23.3 and 23.4 shall be applicable.

## **H) CONSULTATIVE BODIES**

### **Article 24 – Tender Board**

- 24.1 A Tender Board shall be established to open and to verify the admissibility of the tenders received in hard copy following a call for tenders.
- 24.2. The Tender Board shall be composed as follows:
- a) the Head of the unit responsible for contracts, or his/her representative: Chairperson;
  - b) the Head of the unit responsible for management of the budget, or his/her representative;
  - c) the Head of the Legal Service, or his/her representative.
- 24.3. Secretariat services for the Tender Board shall be provided by the unit responsible for contracts, under the supervision of the head of that unit.
- 24.4. The Head of Internal Audit may, if he/she sees fit, attend or be represented at Tender Board meetings.

### **Article 25 – Advisory Committee on Procurement and Sales Contracts**

- 25.1. An Advisory Committee on Procurement and Sales Contracts, hereinafter called the "Advisory Committee", shall be established. It shall comprise:
- a) with voting rights:
    - (i) the Head of the unit responsible for contracts, who shall be the Chairperson;
    - (ii) the Head of the unit in charge of economic and financial analysis;
    - (iii) one or more officials nominated by the Director General;
  - b) with consultative status:
    - (i) the Head of unit of the technical service concerned;
    - (ii) the Head of the Legal Service.

- 25.2. The Members of the Advisory Committee may arrange to be represented. In such event, they shall designate a representative. The representative must be an official of the Organisation.
- 25.3. The Head of Internal Audit may, if he/she sees fit, attend or be represented at Advisory Committee meetings.
- 25.4. a) Proposals for procurement action and contracts for amounts equal to or exceeding 100,000 euros, calculated in accordance with Article 5 above, shall, before they are signed, be submitted for the opinion of the Advisory Committee. The Director General, the Director Resources, the director or Head of unit of the technical service concerned or the Head of the unit responsible for contracts may request that any contract below the 100,000 euro limit or concluded in accordance with the procedure referred to in Article 9 above be submitted to the Advisory Committee for its opinion.
- b) If the Advisory Committee issues a positive opinion, the Director Resources shall have the authority to conclude amendments to the approved contract up to an additional amount not exceeding 10% of the value of the contract concluded.
- 25.5. The Advisory Committee shall issue its opinion to the Director General, in particular on matters referred to in Articles 5, 7, 18, 19, 28.4, 39.1 and 40, and in general on such other matters within the ambit of the present Regulations as the Director General may submit to it for advice.
- 25.6. In formulating its opinion, the Advisory Committee shall, inter alia, advise:
- a) before initiating the procurement action provided for in Article 7 above:
- (i) on the procedure to be followed;
- (ii) on the list of potential tenderers to be invited to take part in a restricted procedure as referred to in Article 10 above;
- b) at the end of the procedure and before signature of the contract:
- (i) on the choice of contractor and on the advantageous nature of the offer, taking into consideration the award criteria laid down in Article 19 above;
- (ii) on the technical, administrative and financial principles which will govern the contract;
- (ii) on the award of sales contracts in accordance with Article 40 below;
- c) at any time during the procedure:
- (i) on the possibility of negotiating in accordance with Article 18 above;
- (ii) on the waiving of the need for financial guarantees as laid down in Article 28.4 below;
- d) and on any other related item it may deem appropriate, without prejudice to any advice or decision of any other body which may have been established by the Director General.

#### **Article 26 – Rules of procedure of the Advisory Committee and of the Tender Board**

The rules of procedure of the Advisory Committee and of the Tender Board shall be laid down in the Rules of Application provided for in Article 42 below.

## **I) CONTRACTUAL PROVISIONS**

### **I. CONTRACT FORMATS**

#### **Article 27 – Contract formats**

- 27.1. The acceptance of an offer shall lead to the conclusion of a written contract. The formats for acceptance of the offers by the Organisation shall be laid down in the Rules of Application provided for in Article 42 below.
- 27.2. Contracts may be concluded between EUROCONTROL and a natural person or between EUROCONTROL and legal entities. For the conclusion of a contract between EUROCONTROL and a natural person, the prior approval by the Director General shall be required.
- 27.3. Notwithstanding the provisions of paragraph 27.1 above, a transaction may be effected on the strength of an invoice or an equivalent document where:
- a) the cost of the goods or services is less than 1,500 euros;
  - b) the cost relates to the participation of the Organisation's staff or staff seconded from national authorities in seminars, conferences, missions, or to related expenses such as for hotels or restaurants, or rail or air travel;
  - c) the cost relates to external translation work or legal advice.
- 27.4. This Article does not release EUROCONTROL from the obligations contained in the present Regulations regarding the organisation of competitive tender action as and where appropriate.
- 27.5. Transactions as referred to in paragraph 27.2 above shall be subject to the prior authorisation of the Head of the unit responsible for the transaction.

### **II. CONTRACT PROVISIONS**

#### **Article 28 – Financial guarantees**

- 28.1. Contracts which provide for payments to the contractor in advance of the provisional acceptance of goods or services shall include a clause stipulating that the contractor shall, before any payment is made, arrange for a bank or other institution acceptable to the Organisation to stand surety. The surety shall guarantee jointly and severally with the contractor the repayment of the total sum advanced pending provisional acceptance of the goods by the Organisation or performance of the services.
- 28.2. No such surety shall be required for contracts to be let with national authorities of the Organisation's Member States and with entities owned by the national authorities of the Organisation's Member States, international governmental organisations and or other public or semi-public entities which are prevented by law, regulation or rule of a statutory nature from providing financial guarantees.
- 28.3. In addition to the surety laid down in paragraph 28.1 above, contracts may require contractors to provide a financial guarantee pending the final acceptance of the goods or services. This guarantee may be in the form of either a cash deposit or a joint and several surety from a bank or other institution acceptable to the Organisation. The amount of the guarantee shall be fixed with due regard to standard commercial practice.

- 28.4. In exceptional and duly justified cases, and after having sought the advice of the Advisory Committee established under Article 21 above, the Director General may waive all or some of the provisions regarding financial guarantees laid down in paragraph 28.1 above.

#### **Article 29 – Contract price**

- 29.1. Contracts shall be concluded at firm, non-revisable prices, or in exceptional cases at firm ceiling prices.
- 29.2. A modification of the agreed price may be accepted in the event of fluctuations occurring in the cost of labour and materials between the date of the tender and the date of completion of the contract. To provide for such circumstances, the contracts shall specify in detail the conditions under which the agreed price may be modified and the formula to be applied to calculate the modified price
- 29.3. In duly justified cases, contracts may provide for the reimbursement of relevant, properly substantiated costs incurred by the contractor. Such contracts shall contain a clause authorising the Organisation to carry out the inspection, verification and supervision necessary to ascertain the proper amount of the contractor's costs. The contract shall also provide for appropriate means of carrying out such inspection, verification and supervision.

#### **Article 30 – Penalties/liquidated damages**

- 30.1. Contracts shall provide that if the contractual period for performance, extended or not as the case may be in accordance with the provisions of Article 32 below, is exceeded, the contractor shall incur a penalty and in addition may be liable for liquidated damages.
- 30.2. In exceptional and duly justified cases, the Director General may waive the rule embodied in paragraph 1 above, where its application would be against the interests of the Organisation.

#### **Article 31 – Waiver of penalties**

- 31.1. Where appropriate, upon finalisation of a contract, the unit responsible for contracts shall, after consultation of the technical service concerned, submit to the Director General for a decision a substantiated proposal relating to the penalties or liquidated damages which might be applicable pursuant to Article 30 above.
- 31.2. In the following cases, the Director General may decide whether penalties are to be wholly or partly waived:
- a) where the contractor clearly proves that the delay is due to causes beyond his/her control;
  - b) where it is clear that the steps taken by the contractor have made it possible to wholly or partly obviate the consequences of the delay for the Organisation;
  - c) where it is demonstrated that the Organisation has not suffered any loss as a result of the delay;
  - d) where the penalties are less than 5,000 euros.
- 31.3. In other cases, where it is in the interest of the Organisation, the Director General may decide to wholly or partly waive penalties or liquidated damages, on condition that the Provisional Council is informed where the total amount of the penalties or liquidated damages to be waived exceeds 50,000 euros.

### **Article 32 – Extension of period of performance**

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

### **Article 33 – Duration of contracts**

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

### **Article 34 – Law applicable and competent courts**

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

### **Article 35 – Intellectual property rights**

- 35.1. Deliverables created, developed and produced in the course of or in connection with the performance of a contract let by the Organisation shall become the exclusive property of the Organisation, which shall have free use thereof.
- 35.2. In exceptional and duly justified cases and where it is in the interest of the Organisation, ownership of a deliverable may remain with the contractor provided that this is explicitly stated in the terms of the relevant contract. In such event, however, the Organisation shall normally be granted an unlimited, royalty-free and transferable licence to use the deliverables for any purpose it deems fit.
- 35.3. Contractors shall not dispose of, utilise, or copy the deliverables or any part thereof without the Organisation's prior written consent.
- 35.4. Where it is in the interest of the Organisation, contractors may be granted a licence to use the deliverables for their own purposes, subject to the conclusion of appropriate licensing agreements taking due account of the interests of the Organisation.
- 35.5. Contractors shall be prohibited from communicating any information relating to the deliverables to third parties which are not involved in the associated procurement action without the prior written approval of the Organisation, before the Organisation publishes it for the first time.

### **Article 36 – Transfer of ownership and payment clauses**

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

### **III. CONCLUSION OF CONTRACTS**

#### **Article 37 – Approval of contracts**

- 37.1. The Director General shall have the authority to conclude contracts on behalf of the Organisation.
- 37.2. Contracts aimed at the supply of utilities (as defined in the list of Definitions set out at Annex of the Contract Regulations) of a value exceeding 7,000,000 euros, and contracts aimed at the supply of products and services other than utilities of a value exceeding 2,000,000 euros, calculated in accordance with Article 5 above, shall require the prior approval of the Provisional Council.
- 37.3. In the event of approval by the Provisional Council, the Director General shall have the authority to conclude amendments to the approved contract up to an additional amount not exceeding 5% of the value of the contract concluded following prior approval by the Provisional Council.

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

### **A) CONTRACTS FOR THE SUPPLY OF SERVICES BY THE ORGANISATION**

#### **Article 38 – Supply of services by the Organisation**

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

- 38.4. The conditions under which costs as referred to in paragraphs 38.2 and 38.3 above have to be taken into account and the percentages by which the indirect costs referred to in paragraph 38.3 above may be increased shall be determined by the Permanent Commission

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

**Article 39 – Sale of redundant property and assets**

- 39.1. Contracts for the sale of property and assets of the Organisation for which the latter has no further use shall be in written form.

They shall be concluded following the issue of an invitation to submit competitive tenders.

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

- 39.2. The Organisation shall endeavour to obtain the most advantageous offer, inter alia by using appropriate means of advertising, and to conclude the sale in the shortest possible time.
- 39.3. The staff of the Organisation shall be entitled to bid for redundant property and assets of the Organisation only where sold in accordance with the competitive tendering procedure.
- 39.4. Subject to a positive opinion obtained in advance from the Advisory Committee, redundant property may be sold to the staff of the Organisation without recourse to competitive tendering outside the Organisation.

**Article 40 – Awarding of contracts**

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

**PART III: GENERAL PROVISIONS**

**Article 41 – Delegation of powers**

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

**Article 42 – Rules of Application**

The Director General shall draw up Rules of Application of the present Regulations and amendments thereto and shall communicate these to the Provisional Council for information.

**Article 43 – Languages**

The present Contract Regulations shall be published in each of the languages of the Member States. In the event of any inconsistency between the texts, the text in the French language shall prevail.

**Article 44 – Entry into force**

The present Contract Regulations shall supersede as from 1 January 2011 the Contract Regulations of the EUROCONTROL Organisation as variously amended, for the last time by Measure No. 10/166 of 18 October 2010.

**DEFINITIONS**

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

<b>Advisory Committee</b>	The Advisory Committee on Procurement and Sales Contracts.
<b>Agency</b>	The EUROCONTROL Agency.
<b>Common procurement</b>	Procurement involving EUROCONTROL and one or more Member State(s), appropriate air navigation service provider(s) or other third parties.
<b>Code of conduct</b>	Statement and description of required behaviours, responsibilities, and actions expected
<b>Competitive dialogue</b>	Procedure in which any economic operator may request to participate and whereby the Organisation conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.
<b>Conflict of interest</b>	Any situation in which an individual or an entity (public or private) is in a position to exploit his/her/its professional or official capacity or information in some way for his/her/its benefit.
<b>Contract</b>	The contract to be let with the successful contractor.
<b>Contract Regulations</b>	The administrative and financial rules governing the Organisation's operations in regard to contracts.
<b>Contract price</b>	The overall maximum price of the contract.
<b>Contractor, supplier and service provider</b>	The terms contractor, supplier and service provider mean any natural or legal person or public entity, or group of such persons and/or bodies, which offer(s) on the market to carry out work(s) and/or provide products or services.
<b>Electronic auctioning</b>	A repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which is applied after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.
<b>Electronic means</b>	Electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, or by optical or other electromagnetic means.
<b>EUROCONTROL</b>	The European Organisation for the Safety of Air Navigation represented by the EUROCONTROL Agency for the Safety of Air Navigation itself represented by the Director General and/or his authorised representative.
<b>Framework contract</b>	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

<b>Intellectual property</b>	Creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.
<b>Member State</b>	A Member State of EUROCONTROL.
<b>Open procedures</b>	Those procedures under which any interested economic operator may submit a tender.
<b>Organisation</b>	The EUROCONTROL Organisation.
<b>Private treaty procedure</b>	Those procedures under which the Organisation consults the economic operators of its choice and negotiates the terms of a contract with one or more of them.
<b>Restricted procedure</b>	Those procedures under which any economic operator may request to participate and under which only those economic operators invited by the contracting authority may submit a tender.
<b>Tender Board</b>	Board responsible for opening and for verifying the admissibility of the tenders received following a call for tenders which was not issued by electronic means.
<b>Tender documents</b>	All documents forming part of a EUROCONTROL tender.
<b>Utilities</b>	Utilities encompass the following supplies: gas, electricity, water, telephone, security/safety/reception services, catering services, building-related infrastructure and building-related maintenance.
<b>Written or in writing</b>	Written or in writing means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.