

## GENERAL CONDITIONS FOR CALLS FOR TENDER

The following general conditions apply to calls for tender relating to the supply of goods in an open tender procedure and where appropriate.

### Principles strictly adhered to during the Tendering Process

- Transparency
- Proportionality
- Equal Treatment
- Non-Discrimination

To be eligible for participation in the Tendering Process, a Bidder must get registered and prove to the satisfaction of the Contracting Authority that it complies with the necessary legal, technical and financial requirements and has the capacity and know-how to carry out the Contract effectively.

**BEGECA** Beratung – Beschaffung – Logistik gGmbH

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## GENERAL CONDITIONS FOR CALLS FOR TENDER

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## **Article 1. Definitions**

In this document:

- (1) **Bidder** means any natural person or legal entity and partnership that provides a Tender in response to a Call for Tender;
- (2) **Call for Tender** means a request for Tender by the Contracting Authority;
- (3) **Closing Date** means the final date for submission of a Tender as specified in the Call for Tender;
- (4) **Contract** means the contract between the Contractor and the Contracting Authority for the supply of the Goods, the terms of which are further contained in the Call for Tender and the General Purchase Conditions of BEGECA (GPC);
- (5) **Contracting Authority** means the counterpart of the Bidder and Contractor in connection with the Call for Tender and the Contract;
- (6) **Contractor** means the Bidder awarded the Contract to supply the Goods as specified in the Contract (also: the successful Bidder);
- (7) **General Conditions for Call for Tender** means the general conditions that are the subject of this document;
- (8) **General Purchase Conditions of BEGECA (GPC)** means the general conditions of contract that are applicable to the Contract and the supply of Goods pursuant thereto;
- (9) **Goods** means the goods and/or services set out in the Call for Tender;
- (10) **Schedule** means(a) schedule(s) to the Call for Tender;
- (11) **Tender** means the reply of the Bidder to the Call for Tender with the offer to supply the Goods under the Contract;
- (12) **Tender Committee** means the commission appointed by the Contracting Authority for the purpose of opening, examination, evaluation, comparison of and giving recommendations with respect to the Tender;
- (13) **Tender Guarantee** means the guarantee, certified bank cheque or cash deposit as part of the Tender that is to guarantee to the Contracting Authority the (financial) obligations of the Bidder connected to or arising from its participation in the Tendering Process;
- (14) **Tendering Process** means the process commencing with the Call for Tender and, if not cancelled before by the Contracting Authority, concluding on either the receipt by the Contracting Authority of the Contract signed by the successful Bidder or withdrawal of the Tender by the Bidder.

## **Article 2. Subject of the Call for Tender**

The subject of the Call for Tender is the manufacture and/or delivery and/or installation and/or commissioning and/or maintenance and/or after-sales service by the Contractor of the Goods as described in the Call for Tender.

## **Article 3. Eligibility and participation**

### **3.1 Eligibility criteria**

**3.1.1** Participation in the Call for Tender is open on equal terms to all natural and legal persons as specified in the Call for Tender.

**3.1.2** The General Conditions for Calls for Tender refer to all nationals of the said states and to all legal entities, companies or partnerships constituted under and governed by the laws of such states and having their domicile, statutory seat or offices, central administration or principal place of business there. The legal entity, company or partnership having its statutory seat or offices in such state only, must be engaged in an activity which has an effective and continuous link with the economy of the state concerned.

### **3.2 Non-eligibility**

Bidders are or will be excluded from participation in the Tendering Process if

- (a) they are bankrupt or being wound up or 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 in any applicable national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- (c) they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are domiciled or established, with those of the country of the Contracting Authority, those of the country of the beneficial state as mentioned in the Call for Tender and/or those of the country where the Contract is to be performed;
- (e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Contracting Authority or European Community's interests;
- (f) following another procurement procedure or grant award procedure financed by the budget of the European Community, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Moreover, Bidders shall be disqualified from the Tendering Process if, during this process, they:

- (g) are subject to conflict of interests;
- (h) are guilty of misrepresentation in supplying or failing to supply information that may be required by the Contracting Authority.

### **3.3. Proof**

**3.3.1** The Bidder must provide evidence of its status by getting registered with the Contracting Authority as a pre-condition to participate in the Tendering Process. The Tender shall be accompanied by the completed and signed Supplier Registration Form which contains a declaration with regards to the exclusion criteria. The form can be downloaded under [www.begeca.de](http://www.begeca.de) in the section *supplier/registration*.

**3.3.2** In addition to the standard registration of suppliers, the Contracting Authority has the right to ask for additional proof that the Bidder is not in one of the situations described in Article 3.2

### **3.4 Penalty**

A Bidder who has been found guilty by the Contracting Authority of making false declaration and/or misrepresenting information with respect to its eligibility will incur financial penalties representing up to 5% of the total value of the Contract being awarded. That rate may be increased in the event of a repeat offense within five years of the first infringement.

## **Article 4. The Bidder**

**4.1** By submission of the Tender, the Bidder shall be deemed and certifies to have:

- (a) obtained and examined the Call for Tender, the General Conditions for Calls for Tender, the General Purchase Conditions of BEGECA (GPC) and any other information available to the Bidder for the purpose of and prior to submitting the Tender;
- (b) examined all further information relevant to the risks, contingencies and other circumstances having an effect on the submitting of the Tender which is obtainable by the making of reasonable inquiries;
- (c) satisfied itself as to the correctness, completeness and sufficiency of the Tender including but not limited to rates and prices submitted which shall be deemed to cover the costs of complying with all of the conditions of responding and all matters and things necessary for the due and proper performance of the Contract eventually to be awarded; and fixed the prices independently without consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or competitor.

**4.2** Failure by the Bidder to have done all or any of the foregoing section of this Article shall not relieve the successful Bidder of its obligations to perform the Contract in accordance with the terms of the Contract.

**4.3** The Bidder:

- (a) agrees that the Call for Tender contains no contractual offer of any kind;
- (b) agrees that, other than in connection with its entry into the Tendering Process, there is no intention on the part of the Contracting Authority to enter into or create any other legal relationship with the Bidder; and
- (c) acknowledges that in entering the Tendering Process, it has not relied on any information, representation or warranty except as expressly provided in the Call for Tender and in particular that it has not relied, and may not rely, on any verbal advice, statement, representation or warranty of any office employee, agent or contractor of the Contracting Authority.

**4.4** The identity of the Bidder and candidate Contractor is fundamental to the Contracting Authority. The Bidder shall be the person(s), legal entity or partnership named as the Bidder in the Call for Tender and whose execution appears on the Tender. The Bidder shall be the (contractual) counterpart of the Contracting Authority.

**4.5** The Bidder must state when the party submitting the Tender is acting as the agent of a third party, as trustee of a trust or acting for other beneficiaries and provide the details of such third party, trust and/or beneficiaries.

- 4.6 The Bidder that can not demonstrate, in the sole discretion of the Contracting Authority, sufficient capacity to fulfill the Contract eventually to be awarded will not be considered as a Contractor.
- 4.7 The Bidder shall have in place and maintain management practices and processes that ensure that the Goods are supplied in accordance with the specified requirements detailed in the Call for Tender and in the General Purchase Conditions of BEGECA (GPC) and to the complete satisfaction of the Contracting Authority.
- 4.8 The Contracting Authority reserves the right to inspect the premises/facilities of the Bidder for the purpose of determining its ability to fulfill the Contract, if awarded. The Contracting Authority may in its sole discretion reject the Tender if, the Contracting Authority determines that any premises/facilities are unsuitable for the purpose of the Call for Tender and/or Contract.

## **Article 5. Structure of the Tender**

- 5.1 The Bidder shall present the information required, in the form specified hereafter and in accordance with any specific provision of the Call for Tender.
- 5.2 The Tender should be precise and concise. Unless expressly stated in the Call for Tender, there is no limitation on the number of pages, but it should be born in mind that the quality of the Tender will not be increased by unnecessary length or by needlessly detailed descriptions. Mere repetitions of the Call for Tender's requirements or terms should be avoided.
- 5.3 The Tender, all correspondence and other documents related to the Tender, exchanged by and between the Bidder and the Contracting Authority shall be in the language of the Call for Tender. Languages used in Call for Tender are German, English, French or Spanish.
- 5.4 Supporting documents and printed literature furnished by the Bidder may be in another language, provided they are accompanied by an accurate translation into the language of the Call for Tender.
- 5.5 For the purpose of interpretation of the Tender the language of the Call for Tender will prevail.
- 5.6 The Tender shall be deemed to have been submitted on the basis of and to have incorporated the terms of the Call for Tender and the General Conditions for Calls for Tender and, if and to the extent the Contract is subsequently awarded, the Contract shall be deemed to have been entered into on the basis of and to have incorporated the terms of the General Purchase Conditions of BEGECA (GPC).
- 5.7 The failure or omission by the Contracting Authority at any time to enforce or require strict or timely compliance with any provision or condition of the Tendering Process or of the General Conditions for Calls for Tender shall not affect or impair that provision or condition in any way or the Contracting Authority's right to avail itself of the remedies it has in respect of a breach of any such provision or condition.

## **Article 6. Content of the Tender**

The Tender must comply with the requirements in the Call for Tender and the General Conditions for Calls for Tender and comprise:

- a technical bid specifying all details of the Goods offered;
- one or more representative sample(s) if requested in the Call for Tender\*;
- financial bid specifying and submitting all details as mentioned in the Call for Tender, inclusive of the details of the bank and the bank account into which payment should be made;
- statement by the Bidder, attesting the origin of the Goods offered (or other proofs of origin);
- the Tender Guarantee for the amount as indicated in the Call for Tender in accordance with the template contained in the Call for Tender\*;



- duly signed completed and signed Supplier Registration Form Form;
- duly authorised signature of the Bidder.
- any additional documents required as per Call for Tender\*;

*\*only if applicable*

### **Article 7. Terms and conditions of the Bidder not applicable**

The Bidder must not include as part of the Tender its own standard, general or special conditions or terms of contract or business. No Contract awarded shall include or be deemed to be subject to the successful Bidder's standard, general or special conditions of contract or terms of contract or business unless specifically incorporated therein by an express term or provision of the Contract. Any Contract resulting from the Call for Tender will include and must be deemed to be subject to the General Conditions for Contract.

### **Article 8. The Tender Guarantee**

- 8.1** It will be specified in the Call for Tender if a Tender Guarantee is required.
- 8.2** The Tender Guarantee is set at the amount specified in the Call for Tender. It must remain valid for at least one year beyond the Closing Date. The Tender Guarantee of the successful Bidder shall automatically be converted into the Performance Bond for the Contract.
- 8.3** The Tender Guarantee must be made in the form of a bank guarantee or a certified bank cheque issued by a first class national or international bank, or by a cash deposit at the offices of the Contracting Authority. The Tender Guarantee, if a bank guarantee, shall be in the format as per the template contained in the Call for Tender.
- 8.4** The Tender Guarantee converted into the Performance Bond shall be released after all contractual obligations and liabilities deriving from the Contract of the successful Bidder/Contractor towards the Contracting Authority have been concluded and fulfilled.
- 8.5** Notwithstanding Article 3.4 the Tender Guarantee provided by the unsuccessful Bidders shall be released within 60 days after the Closing Date.
- 8.6** No interest will be payable by the Contracting Authority on or in connection with the Tender Guarantee.

### **Article 9. Validity period of the Tender**

The Tender remains valid for 30 days after the Closing Date, if not specified differently in the Call for Tender. Extension of the validity period may be agreed with the Bidder at the written request of the Contracting Authority.

### **Article 10. Alteration or withdrawal of the Tender**

- 10.1** The Bidder may alter or withdraw the Tender by written notification prior to the Closing Date. No Tender may be altered or withdrawn after the Closing Date and no such alteration or withdrawal will be effective and accepted. The written notification must be marked "Alteration" or "Withdrawal" as appropriate. Withdrawals are considered to be unconditional and will end participation of the Tender in the Tendering Process. Article 25 applies, be it that withdrawal of the Tender may be dispatched in a single envelope.

- 10.2** Withdrawal of the Tender during the interval between the Closing Date and the date of expiry of the validity period of the Tender exposes the Bidder to forfeiture of the Tender Guarantee.
- 10.3** Withdrawal of the Tender will not relieve or release the Bidder from any of its financial obligations or liabilities towards the Contracting Authority in connection with or arising from the Tendering Process prior to the date of withdrawal.

**Article 11. No assignment of the Call for Tender**

- 11.1** The Call for Tender and the rights pertaining thereto are strictly personal to and not assignable or transferable by the Bidder without the prior written consent of the Contracting Authority which consent may be given or withheld in the Contracting Authority's discretion.
- 11.2** No (alleged) claims, rights, title or interest whatsoever by or of undisclosed participants will be recognized by the Contracting Authority, be it in or arising from the Tendering Process or under the Contract.

**Article 12. Ownership of the Tender**

Notwithstanding the provision of Article 8.4 - return of the Tender Guarantee to unsuccessful Bidders - all documents, materials, articles and information submitted by the Bidder as part of or in support of the Tender shall:

- (a) become the absolute property of the Contracting Authority upon submission; and
- (b) not be returned to the Bidder at the conclusion of the Tendering Process.

The Bidder shall be entitled to retain any copyrights and/or other intellectual property rights contained in or attached to the Tender unless otherwise provided in the Call for Tender.

**Article 13. Conformity and supply of the Goods and samples**

- 13.1** Goods and samples must comply with the technical specifications set out in the Call for Tender and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions and requirements.
- 13.2** Where requested in the Call for Tender, representative samples of the Goods are to be made available to the Contracting Authority before the Closing Date, such together with all further documents and information required for participation in the Tendering Process. Samples form part of the Tender and Article 12. applies.

**Article 14 Size and seal of samples**

- 14.1** It will be specified in the Call for Tender if samples are required.
- 14.2** Failure to provide the sample(s) as requested in the Call for Tender excludes the Tender from participation in the Tendering Process.



### **Article 15. Conformity to product standards**

- 15.1** Whereas the (product) specifications in the Call for Tender may deviate from official local minimum quality standards in the country of destination of the Goods, the Bidder is to indicate deviations in product specifications in the Tender. The Bidder, in such cases, must make the relevant text of the national authority regulation available to the Contracting Authority as part of the Tender.
- 15.2** The Bidder may offer in the Tender a product variety, being of the same product category, of the same quality, consumption acceptance, use, yield and effectiveness as an alternative for the Goods as specified in the Call for Tender. The Bidder offering alternative varieties must include in the Tender the details and technical specifications, separately for each alternative variety.
- 15.3** The Tender consisting of an offer for alternative varieties shall only be considered if an eligible Tender is received for the product variety specified in the Call for Tender. Acceptance of alternative varieties shall be the prerogative of the Contracting Authority.

### **Article 16. Origin of the Goods**

- 16.1** Unless otherwise provided in the Call for Tender and notwithstanding the provision of Article 16.2 hereafter, the Goods must originate as specified in the Call for Tender.
- 16.2** The origin of the Goods - origin to be understood as the country of production or manufacturing - has to be from the country of destination if the Call for Tender is launched with a call for local Goods. The country of origin is deemed to be the country in which the goods have undergone their last, economically justified, substantial transformation
- 16.3** When submitting the Tender, the Bidder must expressly state that the Goods meet the requirements concerning origin besides stating the countr(y)(ies) of origin. The Bidder may be requested to provide additional information and proof with respect to the origin of the Goods.

### **Article 17. Packaging and marking of the Goods**

- 17.1** Specifications as to packaging in the Call for Tender are usually standard specifications. They are not necessarily identical with local available packaging specifications. Any deviation must be expressly and clearly described in the Tender.
- 17.2** The Contracting Authority is not obliged to accept packaging deviating from the specifications in the Call for Tender. Packaging quality below the requested standards shall be rejected.
- 17.3** Markings on individual items, bags, cans and bottles as well as outer packaging such as cartons , crates and pallets are to be marked as per the making instructions of the contract , inclusive of a logo.

## **Article 18. Quantity of the Goods, Lots**

- 18.1** Quantities requested in weight must always be offered the net weight.
- 18.2** If the Call for Tender quantity is divided into lots, each lot will be awarded separately and the quantities indicated for different lots will be indivisible. The Bidder must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances shall a Tender for part of the quantities required, be taken into consideration. If the Bidder is awarded more than one lot, a single Contract shall be concluded with respect to all the lots awarded.
- 18.3** If the Goods have not been divided into lots, the Tender must be for the entirety of the quantities indicated.

## **Article 19. Delivery and shipment of the Goods: conditions**

- 19.1** The Call for Tender may apply for any of the delivery conditions of INCOTERMS 2010 (always meaning the latest version available of these conditions).
- 19.2** The delivery condition(s) specified in the Call for Tender may have additional delivery requirements over and above the INCOTERMS 2010 and may specify special performances to be included. The delivery condition(s) mentioned in the Call for Tender must be applied and respected.
- 19.3** The following requirements apply to the supply of Goods transported by making use of sea transport or combined sea/(in)land transport. Prices offered are to include:
- for delivery in containers
    - 30 days free of container storage and container rent at destination
    - return costs of the container to the carrier's depot
  - for delivery as break bulk
    - 30 days free storage in the port of discharge
- 19.4** Part shipments of Goods are not allowed without the written authorisation of the Contracting Authority. The Tender shall not provide for or relate to part shipments.
- 19.5** Where the Call for Tender requires prices for more than one delivery condition, the awarded delivery condition in the Contract is decided in the Contracting Authority's option and discretion.
- 19.6** The publication *INCOTERMS 2010* of the International Chamber of Commerce (in its latest version available) is to be obtained by the Bidder on its own initiative and cost. Articles 4.1 and 4.2 apply.

## **Article 20. Pricing**

- 20.1** Prices quoted must contain all cost as required Incoterm.
- 20.2** Prices are to be quoted in the currency stated in the Call for Tender.
- 20.3** Whatever the origin of the Goods, the contract is exempt from import duties , stamp duties and registration duties..

## **Article 21. Firm offers and prices**

Only Tenders with firm and unconditional offers are accepted. Quotations, pro-forma prices or offers subject to "unsold" or any other reservations shall not be considered. Prices in the Call for Tender are fixed and not subject to revision.

## **Article 22. Type of the Contract**

The type of the Contract may be on the basis of a lump sum or on the basis of unit-price and will be specified in the Call for Tender.

## **Article 23. Environmental considerations**

The Contracting Authority is concerned with the environmental issues affecting many of its contracts and with this in mind is promoting the recycling of products, such as paper, plastics, glass and metal.

The Bidder is therefore encouraged to submit any relevant information in the Tender;

- (a) relating to the respective manufacturing, packaging and disposal process of their products offered;
- (b) with respect to proposed, trialled or current recycling programs performed by the Bidder; and
- (c) any other criteria available.

## **Article 24. Additional information before the Closing Date**

**24.1** Any request for clarification from the Bidder must be in writing and be received by the Contracting Authority at least five days before the Closing Date. The Contracting Authority endeavours to reply to the request at least two days before the Closing Date.

**24.2** If the Contracting Authority, either on its own initiative or in response to a request from the Bidder, provides essential additional information with respect to the Call for Tender, it will make such information available to all Bidders on the Contracting Authority's website. Such additional information may consist of an extension of the period of submission of the Tender beyond the Closing Date.

## **Article 25. Dispatch and receipt of the Tender**

**25.1** The Call for tender specifies whether the tender shall be dispatched to the Contracting Authority by means of an Email message to a dedicated Email address, or by delivery by envelope.

**25.2** In case of dispatch by envelope the Tender shall be dispatched in double envelope. The inner envelope shall be sealed and shall be without indication of origin but marked with the reference number of the Call for Tender and the definition of the Goods. Both sides of the envelope shall be marked as follows:

*"CONFIDENTIAL - TO BE OPENED BY THE TENDER OPENING COMMITTEE ONLY"*

The outer envelope, carrying the Bidder's name and address, shall be sent to the address mentioned in the Call for Tender.

- 25.2** In case of delivery by envelope, the Tender shall be sent by registered mail, by commercial courier or delivered by hand (and not by electronic means).
- 25.3** The Closing Date has imperatively to be respected. It is under the responsibility of the Bidder to proceed with the dispatch of the Tender in such way that the delivery date of the Tender falls before the Closing Date. The Contracting Authority accepts no liability for late delivery of the Tender. The Tender delivered after the Closing Date will be rejected.
- 25.4** Only personnel nominated within the Contracting Authority are authorised to issue a receipt upon delivery of the Tender or to issue an official signature in the case of registered delivery of the Tender.

### **Article 26. Opening of the Tender**

- 26.1** The opening and examination of the Tender is for the purpose of checking whether the Tender is complete, whether the requisite Tender Guarantee has been furnished, whether the documents have been properly signed and whether the Tender is generally in order.
- 26.2** The Tender will be opened by the Tender Opening Committee. The Tender Opening Committee will draw up minutes of its opening meeting, which will be available on request. Where and when indicated in the Call for Tender this opening session shall be public.
- 26.3** Tender opening is not a public opening session unless stated otherwise in the Call for Tender.
- 26.4** After the opening and examination of the Tender, no information relating to the evaluation, clarification and comparison of the Tender or recommendations concerning the award of the Contract can be disclosed.
- 26.5** In the interests of transparency and equal treatment and without being able to modify the Tender the Bidder may be required, at the written request of the Tender Committee, to provide clarifications within 48 hours after such request. Any such request for clarification shall not seek the correction of formal errors or of major restrictions affecting performance of the Contract.
- 26.6** Any attempt by the Bidder to influence the Tender Committee, to obtain information on how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the Contract may result in the immediate rejection of the Tender.
- 26.7** The Tender received after the Closing Date will be kept by the Contracting Authority, associated guarantees shall be returned to the Bidder on request.

### **Article 27. Evaluation of the Tender and award criteria**

#### **27.1 Administrative conformity**

- 27.1.1** Any minimum qualification required with respect to the Tender is to be evaluated. The aim at this stage is to check that the Tender complies with the essential (administrative) requirements of the Call for Tender.
- 27.1.2** The Tender is deemed to comply from an administrative point of view if it satisfies all the conditions, procedures and specifications in the Call for Tender without substantially departing from or attaching restrictions to them.
- 27.1.3** Substantial departures or restrictions are, those which affect the scope, quality or execution of the Contract, differ widely from the Call for Tender, limit the rights of the Contracting Authority or

the Bidder's obligations under the Contract or distort competition for Bidders whose tenders do comply. Decisions to the effect that a Tender is not administratively compliant must be duly justified in the evaluation minutes.

**27.1.4** If the Tender does not comply with the administrative requirements of the Call of Tender, it will be rejected immediately and may not subsequently be made to comply by correcting it or withdrawing the departure or restriction.

## **27.2 Technical evaluation**

**27.2.1** After analysing the Tender deemed to comply with administrative terms, the Tender Committee will evaluate the technical admissibility of the Tender, classifying it as technically compliant or non-compliant.

**27.2.2** To facilitate the technical evaluation of the Tender, the Tender Committee may ask the Bidder for clarification of the Tender, including breakdowns of prices. The request for clarification and the response must be in writing, but no change in the price or substance of the Tender may be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of the Tender. Decisions to the effect that a Tender is not technically compliant must be duly justified in the evaluation minutes.

**27.2.3** If the Tender is deemed to include any arithmetical errors in computation and/or summation these errors will be corrected by the Tender Committee as follows:

- where there is a discrepancy between amounts in figures and in words, the amount in words will be the amount taken into account, except for lump-sum Contracts;
- where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will be the price taken into account.

Amounts corrected as such will be binding on the Bidder. If the Bidder does not accept them, the Tender will be rejected.

## **27.3 Variant solutions**

If the Call for Tender provides for variants to be submitted, the technical specifications must specify the subject, limits and basic conditions applicable. Should the Bidder wish to submit variant technical proposals, he may do so. Variant solutions must include all the details necessary for their full evaluation, including the technical specifications and prices. The Contracting Authority will consider only variants proposed by the Bidder submitting the lowest technically admissible Tender. The Contracting Authority is not obliged to accept variant solutions.

## **27.4 Award criteria**

Contracts are awarded on the basis of award criteria established in the Call for Tender in one of the following two ways:

- The price is the sole award criterion. The contract is **awarded to the lowest compliant Tender**. This is the standard procedure.
- **The most economically advantageous tender** under the best-value-for-money procedure is awarded the contract. This award procedure is applicable for contracts involving complex service components.

## **Article 28. Awarding and entering into force of the Contract**

- 28.1** The Contract will be awarded by the sending of the duly signed Contract by the Contracting Authority to the successful Bidder.
- 28.2** Within three days of receipt of the Contract the successful Bidder shall sign and date the Contract and return it to the Contracting Authority. Only after receipt of the countersigned Contract by the Contracting Authority, the successful Bidder becomes the Contractor and the Contract enters into force.
- 28.3** If the Bidder fails to sign and/or return the Contract within three days after receipt of written notification by the Contracting Authority, the Contracting Authority is entitled to immediately withdraw the acceptance of the Tender of the Successful Bidder and reject the Tender without further notice without prejudice to the Contracting Authority's right to seize the Tender Guarantee, claim compensation or pursue any other remedy in respect of the successful Bidder's failure. The successful Bidder will have no claim against the Contracting Authority in this respect whatsoever.

## **Article 29. Cancellation of the Tendering Process**

- 29.1** The launching of the Call for Tender does not commit or oblige the Contracting Authority to implement the subject of the Call for Tender and to award the Contract.
- 29.2** The contracting Authority may, in its sole discretion, decide to suspend or cancel the Call for Tender and Tendering Process. Reasons for cancellation may be, however, are not limited to:
- The Tendering Process is deemed to be unsuccessful, namely where no qualitatively or financially acceptable Tender has been received or there has been no response at all.
  - The economic and/or technical parameters of the project/subject of the Call for Tender have been substantially altered.
  - Exceptional circumstances or *force majeure* render performance of the project impossible.
  - There have been irregularities in the Tendering Process, in particular where these have prevented fair competition.
- 29.3** In the event of cancellation of the Call for Tender and Tendering Process the (candidate) Bidder will be notified by the Contracting Authority. If the Call for Tender and Tendering Process are cancelled before opening of the outer envelope of the Tender, the Tender will be returned (unopened) to the Bidder.
- 29.4** In case of cancellation of the Call for Tender and Tendering Process the Contracting Authority is under no circumstances liable for any damages, whatsoever their nature (in particular, consequential damages, such as but not limited to loss of profit/opportunity) or relation to the cancellation may be, even if the Contracting Authority was advised of the possibility of damages prior to cancellation.

## **Article 30. Ethics Clauses**

- 30.1** Any attempt by the (candidate) Bidder to obtain confidential information, to enter into unlawful agreements with competitors or to influence the Contracting Authority or the Tender Committee during the Tendering Process will lead to the rejection of the candidacy of the Bidder or the Tender and may result in administrative or financial penalties.

- 30.2** Without the Contracting Authority's prior written authorisation, a Bidder or any person or legal entity with whom or which the Bidder is associated or linked, may not, not even on an ancillary or subcontracting basis, supply other services or goods or carry out works for the project and/or the subject of the Call for Tender. This prohibition also applies to any other projects that could, owing to the nature of the Call for Tender and/or the Contract, give rise to a conflict of interest on the part of the Bidder.
- 30.3** By submitting the Tender, the Bidder has declared that it is not affected by any potential conflict of interest and has no particular link with other Bidders or parties involved in the Tendering Process and/or the subject of the Call for Tender. Should such a situation arise during the Tendering Process, the Bidder must immediately inform the Contracting Authority.
- 30.4** The Bidder must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession or business.
- 30.5** The Bidder shall respect human rights and undertake not to offend the political, cultural and religious mores of any country of destination and/or beneficiary state during the Tendering Process and, upon eventual awarding, for the duration of the Contract.
- 30.6** The Bidder may accept no payment connected with the Call for Tender and/or the Contract possibly to be awarded other than that provided for therein. The Bidder may not exercise any activity or receive any advantage inconsistent with its obligations to the Contracting Authority.
- 30.7** The Bidder is obliged to maintain (professional) secrecy for the entire duration of the Tendering Process and, upon eventual awarding, of the Contract and after its completion. All reports and other documents drawn up or received by the Bidder shall be confidential.
- 30.8** The Call for Tender and the General Conditions for Call for Tender shall govern the parties' use of all reports and documents drawn up, received or presented by them during the Tendering Process.
- 30.9** The Bidder shall refrain from any relationship likely to compromise its independence or that of its staff. If the Bidder ceases to be independent, the Contracting Authority may reject the Tender or the candidacy of the Bidder with immediate effect without further notice and without the Bidder having any claim to compensation.
- 30.10** The Contracting Authority reserves the right to suspend or terminate the Tendering Process as regards the Tender or Bidder if corrupt practices of any kind are discovered at any stage of the Tendering Process and that are related to the (candidate) Bidder. For the purposes of this provision, corrupt practices comprise but are not limited to the offer of a bribe, gift, gratuity or commission to any person or entity as an inducement or reward for performing or refraining from any act relating to the Tendering Process or implementation and/or execution of the Contract to be awarded.
- 30.11** The Bidder represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, particularly Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with a child's education, or to be harmful to a child's health or physical, mental, spiritual, moral or social development. Any breach of this representation and warranty entitles the Contracting Authority to immediately exclude the Tender from participation or terminate participation of the Bidder in the Tendering Process without further notice.

### **Article 31. Public disclosure of the Tendering Process and Contract**

The Bidder will not use the name of the Contracting Authority or refer to any subject of the Tendering Process for promotional purposes or make any public statements or disclosures in relation to the Tendering Process or to the possible subsequent awarding of the Contract without the prior written permission of the Contracting Authority.

### **Article 32. Precedence of documents**

In the event of there being any conflict between the terms and conditions in the Call for Tender and the General Conditions for Calls for Tender, the terms and conditions appearing in the Call for Tender shall have precedence.

### **Article 33. Applicable law and arbitration**

**33.1** The Call for Tender, the General Conditions for Calls for Tender and any of the procedures connected with or pertaining to the Tendering Process are construed and shall be governed by the law of Germany.

**33.2** Contracts awarded to suppliers under these *General Conditions of Tender* are subject to the Contracting Rules for Awarding Public Contracts for Supplies and Service Part B : "Verdingungsordnung für Leistungen" - "Allgemeine Vertragsbedingungen für die Ausführung von Leistungen (VOL/B)" in the version valid at the time the offer is submitted and the contract is concluded and by the Seller.

**33.3** In the event of failure to resolve a dispute resulting from (the interpretation or application of) the Tendering Process, such dispute shall exclusively be submitted to and resolved by the nominated Arbitration Committee of the Netherlands TAMARA Arbitration Foundation in Amsterdam/Rotterdam, The Netherlands (see [www.tamara-arbitration.nl](http://www.tamara-arbitration.nl))

**33.4** Complaints about specific tenders should be sent in writing by post to the BEGECA Ombudsperson, Dr Claudia Lücking-Michel, c/o AGIAMONDO, Ripuarenstr. 8, 50679 Cologne. The ombudsperson will examine the complaint and inform the complainant about the result and possible consequences.