

BEST PRACTICES

**" For the Selection of Subcontractors by
Prime Contractors in the frame of ESA 's
Major Procurements"**

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INTRODUCTION

In the framework of its procurements the Agency has persistently been driven by the objective of ensuring fairness of competition at all levels and in particular between Prime Contractors and subcontractors.

The purpose of this document is to ensure that Prime Contractors¹ together with their Major Subcontractors when required to perform the selection of subcontractors in the framework of an Agency Programme, be it prior or subsequent to their selection by the Agency, conduct their procurement in line with the principles of fairness and equity outlined herein.

The objective is to establish the minimum BEST PRACTICES requirements to be implemented by a Contractor in order to achieve a fair and equitable treatment of non primes.

Such requirements are approved by the Agency's Industrial Policy Committee in accordance with Council Resolution ESA/C/CLXXI/Res. 2 (Final) sect 8.6.

Any modification of such requirements in order to take account of individual Programme constraints shall be authorised and implemented by the Procurement Department in co-operation with the responsible Programme Directorate and IPC and the Industrial Ombudsman shall be kept informed.

BEST PRACTICES form an integral part of the contractual and management requirements of the Agency's ITT/RFQ for the selection of the Prime Contractors and shall therefore require from the Tenderers an explicit statement to the effect that such requirements are read, understood and accepted. Any modification to the requirements in the course of the contract shall be dealt through the established contractual Change Procedure.

Although specifically targeted at major procurements such as space and/or ground segment, these requirements are not to be construed as being restricted to such procurements and shall be applied in the framework of any competition, independent of its nature or magnitude, should the Agency feel it adequate and in such a way that it will not bring unnecessary burden on industry.

¹ For the purpose of this document the term contractor is to be understood as a company who has received either directly or indirectly a contract from the Agency and this independently of its size or role in the procurement in subject.

GENERAL PRINCIPLES

1. In order to ensure impartiality in the overall selection process be it in the framework of competition or direct negotiation, the Agency shall be given full visibility in the ITT/RFQ preparation, evaluation process and selection of tenders, including the right to perform an audit of the overall assessment procedure.

The above shall also be granted in the cases where the selection of subcontractors is made prior to the submission of the Offer in response to the Agency's ITT or RFQ.

2. In order to further guarantee the impartiality of industry in the implementation of these principles potential tenderers and the Contractor shall be required to recognise, accept and co-operate with the Agency's Industrial Ombudsman should the latter be asked to intervene.
3. The tailor made BEST PRACTICES Tender Evaluation Manual, reference *RES-PG/BPTM-REY-1 dated 18 June 2005 (APPENDIX 1)* which is derived from the Agency's Tender Evaluation Manual, is applicable to the procedures, the Contractor shall comply with these procedures.
4. In the event the Contractor and/or any subcontractor wish to bid for any Element, they shall be excluded from the evaluation of offers submitted, this in the interest of impartiality. This shall also apply in case of companies belonging to the same industrial and/or legal organisation, or affiliated companies, meaning any form of association giving a company a vested interest in the outcome of the evaluation. In both cases the Contractor shall be authorised to participate as an Observer in a Tender Evaluation Board specifically appointed and run for that event by the Agency. This procedure shall in no way absolve the Contractor from his overall responsibility as Prime vis-à-vis the sub contractor selected under this procedure.
5. In the event that the rule established under point 4 above results in the Agency not being in a position to carry out the evaluation itself due to a lack of resources, upon written authorisation of the Head of the ESA Procurement Department, the Tender Evaluation Board shall be composed of Contractor personnel but as a minimum the Chairman of the TEB shall be an ESA staff and no proceedings of the TEB may take place in the absence of the Chairman.
6. The Agency at any moment reserves the right to initiate a parallel evaluation performed by its staff in accordance with the ESA tender evaluation process.

7. The Contractor shall submit an “Industrial Procurement Plan” (IPP) to establish and describe the approach. This will be used by the Agency for identifying and assessing activities in order to determine if they should be produced directly through the Prime Contractor (make) or from sources outside (buy) either through open or restricted competition or direct negotiations.
8. A summary description of the Contractor's intended Invitations to Tender with a budget indication or target of each element /activity shall be prepared by the Contractor and sent to the Agency for announcement in the ESA's EMITS for External Entities (EMITS.EE) system.
9. ITT/RFQ's will be prepared in accordance with the special instructions and documentation provided by the Agency in advance of the ITT process. (if any).
10. The ITT packages shall comprise, as a minimum, the following:
 - * Cover Letter
 - * Statement of Work
 - * Specification (technical, management etc..)
 - * Draft Sub-contract
 - * Conditions of Tender
 - * Evaluation Criteria
 - * Closing date for the receipt of Offers.

I. THE INDUSTRIAL PROCUREMENT PLAN (Make or Buy)

The Plan will be established by the prime Contractor as part of his proposal at the date required by the Agency and will take into account all pertaining aspects such as, but not limited to, geographical distribution, Industrial policy and special measures introduced by the Agency at the time of its request.

The Plan will be evaluated as part of the proposal evaluation process against a separate evaluation criteria and will be part of the contractual baseline to be negotiated by the Agency with the Contractor.

a. Guiding principles of the Industrial Procurement Plan:

The objective of the plan is to ensure taking due account of the overall financial and technical constraints of the project, that the build up of the industrial consortium by the prime Contractor under the Agency's control:

- makes maximum use of established technology harmonisation policies in the framework of the Agency;
- makes use of the technologies developed under ESA programmes;
- makes maximum use of European existing industrial competences;
- identifies technologies/products proposed to be procured outside Europe;
- identifies strategic technologies procured from European suppliers;
- avoids ad hoc developments which would create redundant competences in European Industry detrimental to international competition; and,
- respects the respective technical, financial, schedule and geographical return requirements and industrial policy directives of the given programmes.

b. Definitions to be used for the establishment of the Plan:

When establishing its plan the Contractor in order to categorise activities as Make or Buy shall use the following definitions:

- **Buy:** A work activity, supply, or service to be produced or performed by a Subcontractor through a procurement or purchase initiated by the Prime Contractor. Such subcontractor can be an affiliate company or in-house consultant of the Prime Contractor.
- **Make:** A work activity, supply, or service to be produced or performed by the Prime Contractor or one of its divisions.
- **Core Capabilities:** Capabilities which cannot be «buy» since considered either as critical to Business operations Capabilities or critical Project capabilities which have to be executed by the contractor's staff and which if they were to be «buy», would have a considerable cost and/or schedule impact on the programme or the future of the company.

c. Content of the Plan

The ITT/RFQ will require the contractor to generate an Industrial Procurement Plan containing the following data to be connected to the product tree :

- The categorisation of each " make" or " buy" proposal with the justification for such categorisation in consideration of the programme specific criteria (including geographical requirements);
- Identification of proposed subcontractors for restricted competition, if known, their nationality and affiliation to the prime or the subcontractor in charge of the procurement;
- For each " buy" item, identification of the procurement schedule (including the necessary tendering and evaluation periods derived from the Best practices);
- A recommendation to defer a make or buy decision where categorization of an identifiable item is not feasible at the time of the initial submission of the plan and a schedule for future re-evaluation;
- For activities/products categorized as "buy" outside Europe, a detailed justification of the reasons why it cannot be " buy" in Europe.

II . ISSUING OF ITT/RFQs AND TENDERING PERIOD

1. In issuing open competitive tenders (ITTs) the Contractor shall use the Agency's EMITS FOR EXTERNAL ENTITY (EMITS.EE)
2. The Agency will review the ITT/RFQ's documentation prepared by the Contractor, in particular the technical and management requirements, to ensure its "impartiality" in term of guaranteeing in the case of ITT's a fair competition.

The Agency shall also assess the validity of the budgetary estimate or target given for each activity in question.

Only upon written authorisation by ESA shall the ITT/RFQ packages be released by the Contractor.

3. Two copies of the issued packages including the cover letter(s) shall be sent to the Agency's Responsible Contracts Officer.
4. All relations with the tenderers during the tendering period will be governed by the rules laid down in Appendix 1.

Any correspondence from or to the tenderers will be copied to the Agency's Responsible Contracts Officer.

Answers to questions raised by potential tenderers shall be published and disseminated through the Agency's EMITS.EE together with the original questions following their check by ESA .

5. In parallel to sending the tenders to the Contractor, the tenderers will be required to send at least 2 sets of their tenders to the Agency's Responsible Contracts Officer.
6. The response time for submission of offers shall not be less than six weeks. However in exceptional cases and following a properly documented written request addressed to the Agency's Responsible Contracts Officer this response time may be shortened following written approval by the Agency's Responsible Contracts Officer .
7. Once decided evaluation criteria shall not be altered or sub-divided.

III. RECEIPT, OPENING AND DISTRIBUTION OF BIDS

1. The receipt, opening and distribution of bids shall be done by the Tender Opening Board (TOB) and in conformity with the procedure laid down in Appendix 1
2. In the case the TOB finds that one or more tenders cannot be accepted for evaluation, the distribution to the Tender Evaluation Board (TEB) of the tenders received in answer to the ITT, shall not take place until the Agency's Responsible Contracts Officer has given a decision in writing.
3. No additional information received from bidders is to be admitted for evaluation after the formal opening of the offers unless expressly foreseen in Appendix 1.

IV. EVALUATION OF TENDERS.

1. Nomination and Appointment of Tender Evaluation Boards (TEB)

For each ITT/RFQ the Prime Contractor will appoint a Tender Evaluation Board the composition of which is described in Appendix 1 within the following boundaries:

- a. All persons nominated shall be allowed to exercise their independent professional judgement independently from their hierarchy.

- b. (A) representative(s) of ESA will be designated by the ESA Project Manager to participate as member(s) of the TEB.

Further to the above Agency's representative (s), the Agency's Responsible Contracts Officer shall have the right at his own request to participate in any such TEB as a Member.

- c. The appointment and nomination of the evaluation personnel shall be recorded by using the form indicated in Appendix 1 and shall be submitted to the Agency's Responsible Contracts Officer.

2. Declaration of Secrecy and Disclosure of Interest

The Contractor shall demonstrate the measures he has taken in order to ensure that all tenders submitted and all documents arising from the evaluation are treated as highly confidential and that access to such documents is limited to those persons directly involved in the evaluation.

The following shall therefore apply:

- a. Section 6 of Appendix 1 shall not be altered
- b. No evaluation participant may discuss topics related to the work of the board with any person who is not a nominated participant in the evaluation.
- c. No person who is not a nominated evaluation participant may be present when the TEB discusses the tender proposal.
- d. Contacts with tenderers concerning the tender under evaluation shall be regulated by paragraph 8 of Appendix 1.

3. Proceedings of the TEB and Evaluation

- a. The Contractor's authorised Representative in consultation with ESA shall decide a schedule for each evaluation commensurate with the dates by which a final decision is needed.
- b. The TEB shall conduct its independent evaluation against the criteria established in the ITT and marks shall be awarded as provided for in Appendix 1, weighting factors shall be applied.

Each and every Proceeding of the TEB shall be recorded in minutes in such form as the chairman directs, but shall, in any event always be in conformity with the requirements contained in Appendix 1.

- c. Each TEB shall produce a report of the evaluation, containing inter-alia a matrix of the offers received and the marks awarded and prices.
- d. The Chairman and all TEB Members shall sign the Evaluation Report.
- e. Three copies of the Evaluation Report shall be sent in a sealed envelope to the Agency's Responsible Contract Officer, within two working days following the end of the evaluation.

V. RECOMMENDATION AND DECISION

1. Recommendation

- a. The Contractor's recommendation for selection will be made on the basis of the evaluation results of the TEB and any other constraints and considerations of the programme, including the geographical distribution objectives defined by the Agency.
- b. No tender having obtained an overall marking below 60 shall be put forward by the Contractor to the Agency unless such recommendation specifically identifies the necessary measures which have to be taken in order to bring the recommended tender to such a level and to further optimise the best combination of technical quality and price.
- c. This recommendation shall be send to the Agency's Programme Manager and Agency's Responsible Contracts Officer in a sealed envelope addressed to the Agency's Responsible Contracts Officer.

2. Decision

- a. Upon receipt of the recommendation, the Agency shall decide within a period of five working days, (unless justified circumstances prevent such response) either to endorse the recommendation or to request that it be submitted for decision to a Joint ESA/Industry Senior Procurement Board with a possibility of appeal at higher management level in case of persisting disagreement.
- b. The Agency shall always have the right to request, if so desired, a new evaluation, in such case the Agency shall notify the Prime Contractor of the reasons for its decision.
- c. The above procedure for decision is described in ANNEX A.

VI. THE ESA INDUSTRIAL OMBUDSMAN

In order to guarantee the principle of fair competition and fair access to ESA's procurements at all levels, the Agency has established an Industrial OMBUDSMAN. In the frame of Best Practices companies are required to recognise, accept and cooperate with the Agency's Industrial Ombudsman should the latter be asked to intervene.

1. Competence

The OMBUDSMAN is competent in :

- Facilitating the solving of disputes among industry in the framework of European Space Agency's (ESA) project procurements and technology development procurements, in order to ensure that all contractors are given a fair opportunity of participation in ESA Programmes.
- Listening to concerns from industry about specific issues of competitiveness / competence and consult the appropriate persons within ESA to resolve such concerns before they become a major problem
- Facilitating communications between bidders, potential bidders, contractors and industry representatives in the resolution of matters arising in the course of an Agency's procurement.

2. Scope

The request for the intervention of the Ombudsman shall only be receivable for companies which have provided evidence that they have tried to resolve their concerns amongst themselves and have therefore exhausted the normal channels allowing such resolution within the industrial structure concerned.

The Ombudsman shall not be competent for receiving complaints concerning disputes between the Agency and Industry.

The Ombudsman shall not be competent to receive and investigate complaints based on questions of Industrial Return and Geographical Distribution.

The Ombudsman shall not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contracts disputes.

3. Investigation

Any company requesting the intervention of the Ombudsman shall in parallel notify the Head of the ESA's Procurement Department.

The Ombudsman can only investigate a procurement process where a complaint has been made to him and, having carried out a preliminary examination of the matter, it appears to him that the procurement process was or may have been:

- carried out contrary to the procurement instructions and/or rules established by the Agency either in general or for the specific purposes of the procurement under investigation,
- improperly discriminatory,
- based on an undesirable procurement practice, or otherwise contrary to faire and sound procurement practices.

4. Conduct of Investigation

The procedure for conducting an investigation is such that the Ombudsman himself considers appropriate.

All investigations shall be carried out in strict confidentiality.

When conducting an investigation the Ombudsman may call for and collect all relevant facts to resolve such issues raised by the parties.

To that effect the Ombudsman,

- will maintain strict confidentiality as to the source of the concern,
- will be granted access to source selection and proprietary information, the collection of which will be co-ordinated through the designated ESA support staff, and
- will be granted access to all technical specifications and requirements either established by the Agency or by the Company carrying out the procurement in the frame of an Agency's programme.

In order to avoid as far as possible "fait accompli" situations, the Ombudsman when referred to by a complainant company, has the right to recommend to the Head of the ESA's Procurement Department any conservatory measures he deems necessary to be taken.

5. Findings and reports

When the Ombudsman carries out an investigation he must inform the complainant company and the company complained against of the result of the investigation and of his proposed recommendations.

When it appears to the Ombudsman that the response to a recommendation which he has made to a company is not satisfactory he shall make a special report on the matter to the Head of the ESA's Procurement Department. This report shall contain the representations of this company in relation to the matter.

Although not competent to receive complaints concerning disputes between the Agency and Industry, should the findings of the Ombudsman conclude that the situation was caused by actions or omissions of the Agency he shall first report the matter to the Head of the ESA's Procurement Department.

ANNEX A

DECISION.

Upon receipt of the recommendation made by the Contractor, the Agency may decide that it be submitted for decision to a Joint ESA/Industry Senior Procurement Board

1.1 Composition of the SPB *

Chairman: - ESA Head of

Members : - ESA Project Manager
- ESA Head of Procurement Division/Department*
- ESA Industrial Policy officer
- Prime Contractor Head of
- Prime Contractor Project Manager
- Prime Contractor Head of Contracts

Members & Secretaries:
- Agency's Responsible Contracts Officer
- Prime Contractor Contracts Officer

Plus any advisors (experts) considered necessary by each project manager.

1.2 Proceedings of the SPB**

The Board shall convene as required.

Based on the TEB report, the recommendation made by the Contractor and any other documents (including risk assessment and mitigation) the essence of which do not constitute an amelioration or update of the offers under discussion, the Board shall render a decision as to the award of the contract.

1.3 Decision

The decision of the SPB as to the award of a contract shall be recorded in writing and forwarded to the respective Project Managers for implementation.

After completion of the evaluation process by the SPB one copy of each offer concerned shall be archived. Unwanted copies of the offers shall be disposed of in a secured manner. The records of the proceedings and the accompanying documentation submitted to SPB will be kept by the ESA Contracts Officer in the contracts file)

* The Head of the ESA Procurement Department reserves the right to participate should he feel it appropriate.

** Rules applicable to the TEB on secrecy and confidentiality apply in extenso to the proceedings of the SPB.

APPENDIX 1

**BEST PRACTICES TENDER EVALUATION
MANUAL**

(RES-PG/BPTEM-REY.01 dated 18 June 2005)

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1. SCOPE

- 1.1 The present manual has been based on the Contract Regulations of the European Space Agency, as adopted by the ESA Council
- 1.2 Its purpose is to define procedures for tender actions taking place at the level of sub-contractors, and carried out by the prime contractor (Contractor) under the supervision of the Agency in the frame of its BEST PRACTICES. The purpose of such a procedure is to ensure that open competition plays its part in achieving a realistic and suitable overall procurement and to allow European industry to participate in Agency programmes on a fair and equal footing. And in the case of non competitive tender actions that tenderers are treated fairly

The following principles shall be followed:

Fair and equal competition shall be maintained. It shall be borne in mind that in some circumstances the prime contractor may also be a sub-contract tenderer. In such cases the Contractor in the interest of impartiality shall be excluded from the evaluation of offers submitted, and the evaluation shall be carried out directly by the Agency, except if the Agency is not in a position to carry out the evaluation itself. In such cases the exception foreseen under section 6.1.1 of the present manual shall apply.

The above shall also apply in case of companies belonging to the same industrial and/or legal organisation, or affiliated companies, meaning any form of association giving a company a vested interest in the outcome of the evaluation.

- Invitations to tender by the Contractor shall be published on EMITS-EE. Restricted tender actions shall only be allowed in agreement with the Agency based on the Industrial Procurement Plan (Make or Buy) submitted by the Contractor.
- The Invitations To Tender (ITT) package shall be established by the Contractor, but approved by the Agency, so as to ensure that they correspond to the requirements and procedures. Approval shall not be taken as lessening the Contractor's overall responsibility. Invitations to tender shall describe the procedure being followed.

The ITT package shall comprise, as a minimum, the following:

- * Cover Letter (s)
 - * Statement of Work
 - * Specification
 - * Draft Sub-contract
 - * Conditions of Tender
 - * Evaluation Criteria
 - * Closing date for the receipt of Offers
-
- Tenders shall be sent to the Contractor and at least two copies to the Agency simultaneously. If so required by the Agency a representative of the Agency's responsible procurement division will witness the Contractor's tender opening board (TOB).
 - Any negotiation with tenderers shall be conducted by the Contractor, the Agency reserves the right to participate in such negotiations. Rules for negotiation established as foreseen under section 8.4 herein shall be followed
 - The result of the evaluation and any discussions arising therefrom between the Agency and the Contractor, shall be a formal offer from the Contractor to include selected sub-contractors in the industrial team, under the Contractor's responsibility.
 - Independently of the procedure laid down in this manual the Agency shall have the right to conduct a parallel evaluation of the offers.

Any deviation from these procedures to suit the needs of a particular procurement should be considered as exceptional, and must receive the prior written agreement of the Agency's Responsible Contracts Officer .

- 1.3 In addition to these principles it is the aim of this manual to ensure that, in the evaluation of competitive tenders, the principle of fair and open competition is maintained and seen to be maintained. Should any interpretation of any particular provision be required, it shall be made in accordance with this principle and after consultation with the Agency's Responsible Contracts Officer. Any agreed interpretation, shall be recorded in the records of the evaluation and communicated to the chairman of the Tender Evaluation Board (TEB).

1.4 Applicability

The procedure laid down in section 2 - 8 of this manual shall apply, in full, to all competitive tender actions

For non-competitive tender actions a procedure is laid down in section 9.

If necessary this procedure may be adapted ad hoc by agreement between the Agency and the Contractor to lower level of procurements if any.

2. ISSUING OF ITTS and USE OF THE AGENCY'S EMITS SYSTEM.

ITT packages will be published and disseminated by the Contractor .

They shall be announced through the Agency's EMITS. EE system at least two weeks prior to the Contractor's planned issue date. To that effect a summary description of the Contractor's intended Invitations to Tender for each competitive tender action shall be prepared by the Contractor and sent to the Agency for authorisation to publish on EMITS.EE.

In the case of restricted tender actions the Contractor shall submit to the Agency for approval his intended bidders list. The Agency shall have the right to modify this list. Once returned and agreed by the Agency this list will be considered as the final list

The final list will be copied to the Agency for the ITT release.

Two copies of the issued ITT package together with copy of the cover letter(s) shall be sent to the Agency's Responsible Contracts Officer.

All relations with the tenderers during the tendering period will be governed by the rules laid down herein under section 8.

Any correspondence from or to the tenderers will be copied to the Agency's Responsible Contracts Officer and to the Agency's Project Manager (APM) when so required.

Answers to questions raised by potential tenderers shall, following their approval by the Agency, be published and disseminated through the Agency's EMITS.EE system together with the original questions.

3. **RECEIPT AND OPENING OF TENDERS**

3.1 Principles

The procedures regulating the receipt and opening of tenders are primarily to ensure that no distortion of competition or unfair advantage to a particular tenderer occurs, and that tenderers have complied with the conditions of tender.

In parallel to sending the tenders to the Contractor, the tenderers will be required to send at least 2 technical sets and 2 commercial sets of their tenders to the Agency's Responsible Contracts Officer. (This number may be modified if so required)

3.2 Appointment of the Tender Opening Board (TOB)

A TOB shall be appointed by the Contractor prior to the closing date stated in the ITT.

The TOB shall consist of at least the Contractors Contracts Officer (PCCO) and the Contractor Programme Manager (PCPM), or a person to whom he had delegated his authority. The PCCO shall be chairman of the TOB. Members of the TOB shall be indicated as such on the form for nomination and appointment of the Tender Evaluation Board (TEB) Annex I .

3.3 Duties of the Tender Opening Board

3.3.1 The TOB shall convene as soon as possible after the closing date and time. The TOB shall, first, verify that the dispatch conditions have been met. The TOB shall then open the tenders.

3.3.2 The TOB shall assess the admissibility of tenders. Tenders shall be admitted if they were received before the closing date and time and do not show prima facie evidence of a major non-compliance with the substantive tender conditions, which would impair the fairness or secrecy of the competition. Specifically, each tender must contain a technical description, a price of the type stipulated in the ITT, a delivery date and a signature validating the offer.

Tenders shall be admitted if they were received after the closing date and time, provided that the tenderer has dispatched the tender in time to meet the closing date and informed the Contractor of the dispatch.

The Contractor and the Agency shall cross-check as to which offers have been received by each party by the closing date and time. If any offer has been received by one of the parties by the due date and time, the offer shall be deemed to have been received in time.

If a tender, having been dispatched in time, with proper notification, appears to be lost or delayed in transmission, the Contractor in consultation with the Agency may grant the tenderer an extension in order to forward duplicates. The tenderer shall, in such case, be requested immediately to send simultaneously to the Contractor and the Agency a telefax giving the summary technical description, price and delivery date. A time limit for submission of the telefax and of the duplicates shall be given. Tenders arriving after the expiry of this extension will not be taken into consideration and will be returned unopened. The decision of the TOB shall be taken unanimously.

In the case of a restricted tender action, a tender received from a tenderer not invited shall not be admitted for evaluation, unless it is decided, by the Agency's Responsible Contracts Officer following consultation with the Contractor, that the tenderer falls within the terms of the restriction (eg geographical) and that the fairness of the tender action is not jeopardised by admitting the tender.

- 3.3.3 If a decision cannot be taken unanimously or if a tender is considered non-admissible, the chairman of the TOB shall inform the chairman of the TEB and submit the matter to the Agency's Responsible Contracts Officer for decision. If the tender following consultation with the Agency's Responsible Contracts Officer is ruled non-admissible, the Contractor will inform the tenderer stating the reason, such notification shall be kept in the contract file and copied to the Agency's Responsible Contracts Officer.
- 3.3.4 The TOB shall draw up a report (see Annex II) showing the names of the tenderers, stating whether the tenders have been admitted or not, and, in the latter case, the reason of non-admissibility. Where appropriate, the different volumes of a tender should be identified. The report shall be signed by the members of the TOB and shall be submitted by the chairman of the TOB to the chairman and members of the TEB, to the PCPM and to the Agency's Responsible Contracts Officer. A copy shall be kept in the contract file.

4 RE-ISSUE OF THE INVITATION TO TENDER

4.1 ITT's may have to be re-issued in the following circumstances.

4.1.1 Where no tender has been admitted, the Contractor shall submit the matter to the Agency's Responsible Contracts Officer for joint decision on whether to re-issue the ITT, either unchanged or amended. If it is considered that re-issue of the ITT, even with amended specification, would be unlikely to result in the submission of an acceptable tender, the tender action shall be cancelled. The Contractor shall implement the decision accordingly and record it in the contract file with copy to the Agency's Responsible Contracts Officer.

4.1.2 Where only one tender has been admitted, the Contractor shall submit the matter to the Agency's Responsible Contracts Officer after consultation with the chairman of the TEB on either re-issuing the ITT or evaluating the admitted tender. A decision to evaluate the admitted tender may only be taken if a re-issue of the ITT would be unlikely to result in more than one acceptable tender being received or would not be feasible due to extreme urgency. The Contractor shall implement the decision accordingly and record it in the contract file with copy to the Agency's Responsible Contracts Officer.

5 DISTRIBUTION OF ADMITTED TENDERS

The joint secretaries of the TEB (see section 7.3 below) shall distribute a complete copy of each admitted tender to each member of the TEB

Tenders shall not be distributed to any other persons until completion of the evaluation.

The distribution of cost information shall be restricted to that information relevant to the aspect being evaluated by the individual concerned.

6 APPOINTMENT OF THE TENDER EVALUATION BOARD (TEB)

6.1 Composition of the Tender Evaluation Board

The Contractor shall appoint a TEB for each tender action. The composition of the board shall be left to the Contractor's discretion within the following boundaries.

6.1.1 Membership of the TEB

The TEB shall be composed of Contractors personnel with an overall appropriate experience and qualified in the appropriate technical and administrative disciplines.

A technical representative(s) of the Agency will be designated by the ESA Project Manager to participate as member(s) of the TEB.

In the event the Agency is not in a position to carry out the evaluation itself the Tender Evaluation Board upon authorisation of the Agency's head of the Procurement Department shall be composed of Contractors personnel but as a minimum the Chairman of the TEB shall be an Agency staff.

The Agency's Responsible Contracts Officer shall have the right to participate and vote in any TEB as a member .

It shall, normally, not include more than eight members including the chairman. and the designated representative(s) of the Agency .

Appointment to, and membership of, a TEB is personal, and cannot be delegated.

All persons nominated shall be allowed to exercise their independent professional judgement independently from their hierarchy.

The PCPM or his designated technical initiator for the subject tender action and the PCCO shall always be members and ex-officio joint secretaries of the TEB and they shall ensure the rules laid down in the present Tender Evaluation Manual and /or in any specific instructions issued by the Agency are followed.

The appointment and nomination of the TEB Members shall be recorded by using the form indicated in Annex I and shall be submitted to the Agency's Responsible Contracts Officer.

6.1.2 Secrecy and non-interest

It is paramount that all tenders submitted and all documents arising from the evaluation be treated as highly confidential and that access to such documents must be limited to those persons directly involved in the evaluation. The following shall therefore apply:

Before the distribution of tenders is performed, each person participating in the evaluation shall complete and sign the " Declaration of secrecy and non interest form" attached as Annex III of the present Tender Evaluation Manual.

These forms shall be attached to the TEB nomination form and kept in the evaluation files of the Contractor and copied to the Agency's Responsible Contracts Officer.

At the time of their nomination TEB Members shall be informed by the TEB chairman of their duty to preserve secrecy concerning the contents of any tender and the proceedings of meetings of the TEB. Emphasis shall be placed on the fact that hierarchical superiority alone does not entitle any staff member to have knowledge of tenders or to be informed of the proceedings of TEBs.

7 RESPONSABILITIES OF THE TENDER EVALUATION BOARD

7.1 Duties of the chairman of the Tender Evaluation Board

The chairman of the TEB shall be responsible for the correct proceedings of the evaluation. He shall convene its meetings. In case of his absence, the meeting shall be chaired by a deputy, appointed under the provisions of section 6.1 above.

No meeting of the TEB may take place without the presence of at least one ESA nominated TEB Member or in the cases foreseen under section 6.1.1 in the absence of the nominated Agency Chairman unless the Deputy Chairman is himself a staff of the Agency.

7.2 Proceedings of the tender evaluation board

The decisions of the TEB shall be taken by majority vote of members present. The chairman shall, in the case of equality of votes, have a casting vote. The quorum of the TEB for taking decisions shall be two thirds of its members entitled to vote including the Joint secretaries. Should Agency's Responsible Contracts Officer notify in writing his decision not to participate in the TEB the quorum shall be revised accordingly

No member of the TEB shall be subject to the instructions of his hierarchical superiors in respect of his activities as a member of the TEB.

Proceedings of the TEB shall be recorded in minutes in such form as the chairman directs, but shall, in any event always contain the ITT reference, the ITT subject, the date, time and number of the meeting, a list of those present, a brief statement explaining the absence of any member not present, a record of decisions taken, any other matters which any member may ask to have recorded in the minutes.

7.3 Duties of the joint secretaries of the tender evaluation board

The joint secretaries shall be responsible for keeping the minutes of the meetings. The minutes shall contain the date and time of the meetings of the TEB, the names of those present, a record of any decisions taken by the TEB, specifically concerning approval of specifications, establishing of evaluation criteria, establishing of time schedule, fixing of weighting factors, elimination of tenders, negotiation with tenderers and recommendation to place a contract.

The joint secretaries of the TEB shall, furthermore, be Responsible for making the necessary arrangements for distributing copies of admitted tenders in accordance with section 5 above.

7.4 Duties of the tender evaluation board are as follows:

7.4.1 Duties of the TEB prior to issue of the ITT

A first meeting of the TEB shall be held prior to the issue of the ITT. At the beginning of this meeting, the chairman of the TEB shall remind participants that they must declare any personal interest in the subject of the ITT, and of their duty not to disclose any information concerning the evaluation to persons not involved in the evaluation including their hierarchy and to keep all evaluation documents secret.

The TEB shall then approve the ITT documents, establish the evaluation criteria, establish a time schedule, the later taking due account of the need dates for consultations with the Agency.

The ITT package shall comprise, as a minimum, the following documents:

- * Cover Letter (s)
- * Statement of Work
- * Specification
- * Draft Sub-contract
- * Conditions of Tender
- * Evaluation Criteria
- * Closing date for the receipt of Offers

7.4.1.1 Approval of ITT package

The TEB shall review the ITT documents (package) and ensure that they constitute a proper basis for a competitive ITT and that they meet the requirements laid down in the applicable instructions and are in accordance with the special instructions and documentation provided by the Agency in advance of the ITT process (if any).

In particular, technical requirements whether constituting a design or a performance specification, shall be unambiguous and exhaustive so that all potential tenderers can understand them in the same way. Terminology and units of measurement used shall be those normal to the subject matter of the ITT, and nothing shall be incorporated that has the effect of preferring or excluding some companies or products unless this is justified by the specific requirements, which shall be recorded in the minutes.

The technical parts of the ITT shall not contain contractual aspects. The TEB shall record any such case in the minutes.

Two copies of the ITT packages prepared by the Contractor, (including evaluation criteria), together with the bidders list in case of restricted tender actions, shall be delivered to the Agency's Responsible Contracts Officer two weeks prior to the intended issue date.

The Agency will review the ITT's package prepared by the Contractor SOLELY to ensure its "impartiality" in term of guaranteeing a fair competition, within ten calendar days, unless justified circumstances prevent such response within that time period.

Once the documents are approved by the Agency, they shall be binding for the evaluation.

No amendment of the binding ITT documents shall be made by the Prime Contractor without the prior approval in writing of the Agency's Responsible Contracts Officer.

Should amendments, exceptionally, be necessary during the tender period, the TEB shall, subject to the agreement of the Agency, approve such amendments, which will be communicated simultaneously to all potential tenderers via EMITS.EE . The members of the TEB shall be notified of any change to the closing date.

7.4.1.2 Establishing of evaluation criteria and weighting factors.

The joint secretaries of the TEB shall submit a proposal for evaluation criteria and weighting factors for the approval of the TEB.

Except in justified cases agreed by the Agency's Responsible Contracts Officer the definition of criteria and weighting factors shall follow the guidelines given in Appendix A

Evaluation Criteria

Evaluation criteria are the norms to be applied by the TEB to determine the strengths and weaknesses of a tender by separate evaluations of its various aspects. The identification of specific significant evaluation criteria is more essential than the identification of a multitude of criteria covering all possible minor aspects. Evaluation criteria shall be well defined and logically distinct. They shall cover all aspects of a tender and shall avoid duplication.

The criteria shall be divided into technical criteria, such as understanding of and compliance with requirements, quality and suitability of proposed design, and suitability of facilities and of support programme, and management criteria, such as overall organisation and management methods, costing and planning, manpower deployment, experience and capacity of the tenderer, and compliance with substantive tender and contract conditions.

The TEB shall be free to establish such criteria as it sees fit, provided that all significant parts of the ITT are covered, and no unfair advantage to one potential tenderer over another is thereby created.

Price and geographical distribution shall not be criteria. (See, however, section 7.4.2.9 on the overall assessment of offers, including the price).

Once approved, the evaluation criteria shall be binding for the evaluation and they shall not be further altered or sub divided. They shall be included as such in the ITT.

Weighting Factors:

Weighting factors are to be applied to the marks obtained for the evaluation criteria, in order to establish the relative importance of each of these elements within the total evaluation. The weighting factors shall apply to all evaluation criteria. The global total of the weighting factors shall add up to 100%.

Should one of the nominated ESA TEB Member disagree with the proposed weighting factors the matter shall be referred to the Agency via the Agency's Responsible Contracts Officer and a further meeting may be called in order to reconsider the matter.

Once approved, the weighting factors shall be binding for the evaluation and they shall not be further altered or sub divided. They shall not be included as such in the ITT.

The CPPO and the Agency's Responsible Contracts Officer shall each keep in confidence a copy of the evaluation criteria and associated weighting factors in a sealed envelope for safe keeping. All other copies of the weighting factors shall be destroyed.

7.4.1.3 Establishing of time schedule

The joint secretaries of the TEB shall propose to the TEB a time schedule for its further actions. The time schedule shall take into account the validity period of the tender, any required periods for consultation with the Agency and shall allow sufficient time for the evaluators to read, understand and discuss the proposals.

This schedule shall be communicated to the Agency at least two weeks before the date of receipt of the Tenders.

7.4.2 Duties of the TEB subsequent to receipt of tenders

The TEB shall assess tenders, mark them, prepare a report on the results and make a recommendation as to any contract action to be taken as a result of the evaluation, in accordance with the following procedures:

7.4.2.1 Preliminary assessment

Prior to a qualitative assessment of the tenders, the TEB shall verify that the tenders are complete, and constitute full evaluable responses to the requirements.

Specifically, each tender must comply with the tender requirements and contain a technical description, a price, a delivery date and a signature validating the offer, the omission of which may have been not noted by the TOB. If any of these elements, or some other element specifically required in the conditions of tender are missing, and the omission is such as to render the tender substantively incomplete, so that its further evaluation would impair fair competition, the TEB shall eliminate such tender from further evaluation.

If, however, the TEB is of the opinion that the omission is unintentional and may easily be corrected and following consultation with the Agency's Responsible Contracts Officer, the Contractor may consult in writing with the tenderer concerned with the aim of rectification. If the result of such consultation is negative, the TEB shall eliminate the tender concerned from further evaluation. Otherwise the tender shall be evaluated. In all cases a written record of such decision shall be placed in the contracts file and copied to the Agency's Responsible Contracts Officer.

7.4.2.2 Acceptance of substantive tender and contract conditions

The TEB shall verify whether the substantive tender and contract conditions have been accepted. If this is not the case, the TEB shall determine into which of the following three categories the omission falls:

- If the omission could impair fair competition, or renders the tender substantively incomplete, the TEB shall refer the matter to the Agency's Responsible Contracts Officer. If the Agency's Responsible Contracts Officer decides that the omission so warrants, he shall so inform the TEB, who shall eliminate such tender from further evaluation, and the tender shall be returned to the tenderer with a statement of rejection. Otherwise the tender shall be retained for further evaluation.
- If the omission is sufficiently serious to render the tender unacceptable, but could be clarified or rectified without impairing fair competition, the Contractor following consultation with the Agency's Responsible Contracts Officer shall consult, in writing, with the tenderer concerned. If the omission is sufficiently clarified or rectified, the rectified tender shall be retained for further evaluation. Otherwise the tender shall be eliminated from further evaluation and returned to the tenderer with a statement of rejection.
- If the omissions are such that they do not affect the overall acceptability of the tender, they shall be taken into account in the marking of the appropriate criteria.

All decisions taken, and all communications shall be copied to the Agency's Responsible Contracts Officer and recorded in the contract file.

7.4.2.3 Clarity of costing and pricing

The TEB shall verify whether the costing and pricing of the tenders is clear. This refers specifically to the correctness and adequacy of the detailed information as required by the Price Breakdown Form and any supporting costing documents required by the conditions of tender.

7.4.2.4 Compliance with specifications (including work statement and management requirements)

The TEB, without awaiting the outcome of any consultation mentioned above, shall continue the initial evaluation by verifying whether the specification (including work statement and management requirements) is complied with. It shall identify the strengths and weaknesses of each tender in respect to the criteria.

This shall be done by comparing the tender with the specification, not by comparing tenders amongst each other.

The TEB shall, also, if possible, identify whether weaknesses are readily capable of being corrected in order, if necessary, to improve the tender concerned. If technical statement contained in a tender need clarification, the CCPO, shall on the request of the chairman of the TEB, consult with the tenderer concerned in writing, in order to obtain any clarification necessary for evaluation. Such correspondence shall be copied to the Agency's Responsible Contracts Officer prior to being send to the tenderer. The TEB shall take the outcome of such consultation into its overall assessment of the tender.

7.4.2.5 Discussion of findings

Prior to the marking of tenders by each individual member, the TEB shall discuss their findings on each aspect of a tender. The chairman shall guide the discussion in such a way that any significant differences of opinion may be reduced, or if this is not possible, that they are clearly identified and recorded.

7.4.2.6 Marking of tenders

The TEB shall award marks to the criteria. The price shall not be marked (see 7.4.2.9) . TEB members shall mark all criteria of which they have a general understanding and can make an assessment.

They shall not restrict themselves to criteria related to their professional field of expertise , or aspects of criteria related thereto.

If a member marks one offer under a particular criteria, he shall mark all offers hereunder.

The marks shall be a number between zero and one hundred for each evaluation criterion and sub-criterion in accordance with the following scale of marking:

Marks

| | |
|-------------------|-----|
| Perfect | 100 |
| Excellent | 90 |
| Very good | 75 |
| Good | 60 |
| Fair | 50 |
| Barely acceptable | 40 |
| Worthless | 0 |

For figures above 40, members shall restrict themselves to the indicated figures. For marks below 40, intermediate marks may be given if in the judgement of the members, the tender could be readily rendered acceptable for that criterion. If this is not the case, a mark of 0 shall be given.

Any member of a TEB, whose mark differ significantly from the marks given by the other members in such a way that no agreement can be reached with respect to acceptability, or who gives a mark below 40 for any criterion, shall state specifically why he disagrees or considers the tender unacceptable on that criterion, and the reason shall be recorded.

When the chairman of the TEB is satisfied that further discussion will not lead to a reduction of any discrepancies, the marks shall be officially recorded on the marking sheets. Marks once thus recorded cannot be changed.

7.4.2.7 Assessment of results of marking

If, as a result of the marking, one or more tenders is marked acceptable in all evaluation criteria (more than 40), then the TEB shall proceed to apply the weighting factors, make its overall assessment, prepare a final report and a recommendation.

If all of the tenders received have one or more criteria judged to be unacceptable, the TEB shall write an interim report and the provisions of section 8.4 below shall be applied.

7.4.2.8 Application of weighting factors

The joint secretaries of the TEB shall, where applicable retrieve from safe keeping the envelope containing the weighting factors; the chairman of the TEB shall open the envelope and the members of the TEB shall apply the weighting factors to the awarded marks. The result of such application will be weighted marks. Those weighted marks shall also be filled into the marking sheets and, finally, reflect one weighted mark for each tender.

7.4.2.9 Overall assessment of tenders

The TEB shall finalize the evaluation of each tender by taking into an overall assessment the marked and weighted criteria and any not marked and not weighted criteria, if such be the case. A numerical relation between the marked and weighted and any unmarked and unweighted evaluation criteria shall not be established.

At this state, the prices offered shall be taken into account. For the purchase of standard equipment, this shall usually be the lowest price meeting the specified requirements for others the assessment shall be based on the best combination of technical quality and price.

The TEB shall also identify areas of non-compliance and any items that would require negotiation prior to the placing of a contract.

The members of the TEB shall discuss their findings for each assessed tender. The chairman of the TEB shall guide the discussion in such a way that any possible significant differences of opinion may be reduced, or if this is not possible, that they are clearly identified.

The overall assessment shall, however, not be based on considerations of industrial policy and in particular geographical distribution.

7.4.2.10 Drawing-up of evaluation report

Each TEB shall produce a report of the evaluation. The report shall contain: reference and subject of the ITT, evaluation criteria, weighting factors, total marks, overall assessment of each tender, tenders in the order of preference, recommendation to place a contract with the tenderer having submitted the most advantageous tender with reasons, and any reservations a member of the TEB may wish to make. Individual marks shall be listed in an annex.

The report shall further contain inter-alia a matrix of the list of the companies contacted in case of restricted competition, the offers received (with the name of the tenderer and sub-tenderers) and the marks awarded and prices.

The recommendations of the TEB shall be strictly based on the conditions of tender: as previously stated under section 7.4.2.9 above considerations of industrial policy or geographical distribution shall not be taken into account unless specifically mentioned in the conditions of tender. The TEB may, however, point out, where appropriate, the implications which result from the choice of a given tenderer and any other remarks it considers relevant to the evaluation.

The evaluation report shall be signed by the Chairman and all TEB members. A copy of the report shall be kept in the contract file.

The chairman of the TEB shall submit the evaluation report to the PCPM, PCCO and Agency's Responsible Contracts Officer. Exceptionally, in case of doubt as to the correctness or completeness of the evaluation, they may refer the matter back to the TEB for further evaluation; they shall, however, not direct changes to evaluation criteria, weighting factors or marks.

Three copies of the Evaluation Report shall be sent in a sealed envelop to the Agency's Responsible Contract Officer, within two working days following the end of the evaluation.

7.4.2.11 Closing of evaluation by TEB

On finalization of the evaluation the chairman of the TEB shall remind its members again not to disclose any information concerning the evaluation to anybody until a final endorsement is made by the Agency. The joint secretaries of the TEB shall ensure that documents no longer needed are collected and disposed of. If a tender is reissued in accordance with the provisions of section 4 above, or negotiations take place in accordance with section 8.4 below, the TEB is maintained till the final recommendation is made.

8. COMMUNICATIONS WITH TENDERERS

Subject to the provisions of section 8.4 below (Negotiation with tenderers) communications with potential tenderers shall be formal, in writing, and restricted to what is necessary to ensure clarity of the requirements and to preserve fair competition. Any communications shall be issued through the PCCO with copy to the Agency's Responsible Contracts Officer.

8.1 Briefing meetings

Upon agreement between ESA and the Contractor, potential tenderers may, if the complexity of the ITT justifies it, be invited to a briefing meeting where the requirements are described and explained. All identified potential tenderers shall be invited. All questions submitted and answers given shall subsequently be distributed in writing to all potential tenderers. A briefing may be held, as appropriate, before or shortly after issue of the ITT.

8.2 Communications during tender preparation period

In accordance with the tender conditions, any questions from potential tenderers shall be submitted in writing to the PCCO. Following approval by the Agency, the Contractor may issue clarifications or amendments to the ITT.

Only questions concerning the understanding of the requirements will be answered.

Amendments and questions and the answers thereto of possible interest to other potential tenderers, shall be distributed via the EMITS.EE.

8.3 Debriefing after evaluation

Tenderers who have not been selected for the placing of a contract will, as a matter of routine, be notified thereof by the Contractor after a final decision has been endorsed by the Agency. Upon request of a tenderer, the Contractor may explain to such tenderer the reasons why this tender has not been accepted. Such debriefing shall be made by the concerned TEB Chairman.

Explanations shall be limited to the findings of the TEB on the tender in question, and shall not cover the quality or contents of other tenders. Debriefings may be oral or in writing. In the former case, a record of the explanation given shall be placed in the contract file.

8.4 Negotiation with tenderers

Negotiations with tenderers may only be undertaken following written approval by the Agency and following a detailed negotiation procedure to be established by the Agency.

8.5 Exceptional negotiation foreseen in the invitation to tender

In exceptional circumstances and subject to the same procedure laid down under section 8.4 above, the Contractor in order to meet the requirements of a particular programme, and to obtain the greatest advantage from a competitive tendering procedure may introduce negotiation as a predetermined element of the evaluation procedure. Under such a procedure, tenderers will submit a binding tender, in response to a full and detailed invitation to tender.

A preliminary evaluation will be made by the TEB, giving both a qualitative assessment of the tenders, and establishing a list of all points which could be improved. Tenders will not be marked at this stage. Negotiations will be conducted, under the authorised specific conditions, with all tenderers, with an aim of achieving the best possible revised tender from each. Upon receipt of revised tenders the TEB will proceed to make a final assessment, mark, apply weighting factors, and draw up a final report and recommendation.

The procedure to be followed, including an undertaking from the Contractor and the Agency not to transmit unlawfully information from one tenderer to another, shall be included in the conditions of tender, and by submission of a preliminary tender, tenderers shall undertake to participate in such negotiations. In order to maintain the fairness of the competition, the procedures described in 7.4.1 and 7.4.2 above shall be strictly adhered to.

In appropriate cases, the procedure may foresee, or the TEB may decide, that cost and price information not be examined prior to final evaluation. In any case, distribution of cost and price information shall be restricted to the TEB and those persons involved in the evaluation and negotiation who need to have access to such information.

9. EVALUATION PROCEDURE FOR NON-COMPETITIVE TENDER

In the case of non-competitive tender actions, a formal TOB shall not be appointed. Tenders shall be opened by the PCCO and the PCPM and a record shall be made in the contract file.

The procedures described in sections 3– 7 above shall be followed with the exception of the application of weighting factors. Deviations from conditions solely related to the maintenance of fair competition may be made, upon the approval of the Agency's Responsible Contracts Officer, provided that confidential information, including cost details from the tenderer, are not wrongfully distributed. A report and recommendation, as described in section 7.4.2.10 above shall be drawn up.

ANNEX I

**NOMINATION AND APPOINTMENT OF TENDER EVALUATION BOARD FOR
INVITATION TO TENDER**

Subject:

Reference: ESA-Contract ../.. / (Contract No ESA and Prime Contractor)

Budget:EURO

Planned issue date:

Chairman:

Deputy Chairman:

Members:

ESA Member:

Ex Officio Joint secretaries:

ANNEX II

TENDER OPENING REPORT

Subject: Contractors ITT Ref Number
 Reference: ESA-Contract / (Contract number ESA and Prime Contractor)
 Budget:EURO
 Published on EMITS.EE on:

The tender opening for the above tender action took place on

The geographical distribution of the firms contacted was as follows (for restricted competition only):

| | | |
|---------------|---------|-------------|
| Belgium | Denmark | France |
| Germany | Italy | Netherlands |
| Spain | Sweden | Switzerland |
| Great Britain | Ireland | Austria |
| Norway | Canada | Finland |
| Portugal | Greece | Others |

the following offers were received and accepted for evaluation:

| Contractor | Subcontractor's | Amount EURO | Price type |
|-------------------|------------------------|--------------------|-------------------|
| | | | |
| | | | |
| | | | |

- The following tender(s) was/were regarded as unacceptable for evaluation for the following reason(s):

.....

and in accordance the Tender Evaluation Manual the chairman of the TEB has been notified and the matter submitted to the Agency's Responsible Contracts Officer.

- [Only one] [No] acceptable tender(s) having been accepted for evaluation, in accordance with the Tender Evaluation Manual the matter has been referred to the Agency's Responsible Contracts Officer

.....

.....

Were present:

Distribution of invitation to tender:
TEB members

ANNEX III

DECLARATION OF SECRECY AND OF NON-INTEREST

Evaluation of tender for:

Reference number:

I, hereby declare that I shall not disclose to any unauthorized person, whether an employee of(Contractors Company) or a staff member of ESA or not, knowledge which I acquire through my participation in the above tender evaluation.

I further declare that neither I nor any immediate member of my family have any personal interest in the outcome of the above tender action, except *)

Signed:

Date:

*) please insert here any exceptions, or delete if there are none.

ANNEX IV

MINUTES OF FIRST TEB MEETING

Subject:

In accordance with the provisions of Article 7.4.1 of the Tender Evaluation Manual, revision 1, the TEB members have:

- reviewed the following documents and agreed that they are a proper basis for a complete ITT package:
 - Bidder list for each ITT (in case of restricted competition)
 - Cover Letter
 - Statement of Work
 - Specification
 - Draft Sub-contract
 - Conditions of Tender
 - Evaluation Criteria
 - Target Price
 - Closing date for the receipt of Offers

DECLARATION OF SECRECY AND OF NON-INTEREST

The following TEB members declare that they shall not disclose to any unauthorized person, whether an employee of(Contractors Company) or a staff member of ESA or not, knowledge which they acquire through their participation in the above tender evaluation.

They further declare that neither they nor any immediate member of their family have any personal interest in the outcome of the above tender action, except

SIGNATURE OF THE TEB MEMBERS

Chairman:
Deputy chairman
Members
Joint secretaries

TARGET CLOSING DATE

TARGET DATE NEXT TEB MEETING (EVALUATION)