



# GENERAL CONDITIONS OF TENDER

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## DEFINITIONS

### For the purposes of these General Conditions of Tender:

- (a) **"EPO"** means the European Patent Organisation, acting through the Office;
- (b) **"Office"** means the European Patent Office, which is the executive body of the EPO;
- (c) **"Bidders"** means the persons or firms submitting tenders;
- (d) **"Conditions"** means all Conditions of Contract and Technical Conditions;
- (e) **"Tender procedure"** means the procedure followed from the time the EPO issues an invitation to tender to the award of the contract;
- (f) **"eTendering"** means a tender procedure conducted by electronic means, using the EPO's procurement platform;
- (g) **"Procurement Documents"** means the document(s) in paper or electronic form which the Bidders receive from the EPO to enable them to submit a bid;
- (h) **"Written" or "in writing"** refers to any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- (i) **"Copy"** means a paper or electronic copy;
- (j) **"Signature"** refers to either an original signature on paper or the electronic signature of an electronic bid as specified for an electronic tender procedure;
- (k) **"EPC"** means the Convention on the Grant of European Patents of 5 October 1973;
- (l) **"PPI"** means the Protocol on Privileges and Immunities of the European Patent Organisation of 5 October 1973;
- (m) **"Contracting states"** means states that have ratified or have acceded to the EPC.

## 1. Scope, variants, request for clarification

1.1 These General Conditions of Tender apply to all invitations to tender issued by the EPO in either a paper-based or an eTendering procedure save in so far as amended or replaced by specific conditions of tender contained in the letter of invitation to tender or elsewhere in the Procurement Documents. Where reference is made to these General Conditions of Tender in other procurement procedures than invitations to tender, they are equally applicable, save to the extent amended as indicated in the previous sentence.

1.2 If the submission of variants has been permitted, a Bidder may exceptionally propose modifications to the Conditions in his reply to the questionnaire concerning general information and confirmation to be supplied by Bidders (Annex 1 to these General Conditions of Tender). In the case of eTendering, the questionnaire is part of the specification sheet and must be completed in the electronic system.

In the case of non-compliance with the Conditions of Contract, the Bidder must clearly specify for each non-compliance which part of the Procurement Documents is affected, the article and paragraph number concerned, the reasons for the non-compliance and the proposed alternative.

In the case of non-compliance with the Technical Conditions, the Bidder must clearly specify for each non-compliance which part of the Technical Conditions is affected, the reasons for the non-compliance and the proposed alternative, and give an explanation.

If the Bidder has not specified any non-compliance in his reply to the questionnaire, he will be deemed to have read, understood and accepted all the Conditions contained in the Procurement Documents. If, in a case of non-compliance, not all the requested information is given, only remarks of a general nature are made or no specific alternatives are proposed, the bid may be excluded.

Any non-compliance will be taken into account in the evaluation of the bid. Where the Bidder's alternative proposal fails to meet any minimum requirement laid down by the EPO for the submission of variants, or significantly reduces the EPO's rights and safeguards, the bid may be excluded.

1.3 Bid prices must be communicated by completion of the appropriate part, if any, of the Procurement Documents.

1.4 Should a Bidder have any questions relating to the tender procedure and/or the Procurement Documents, he may put such questions to the EPO by letter, fax or in electronic form as specified by the EPO in the published notice and/or the letter of invitation to tender for the tender procedure in question. Questions must be received before the deadline specified in the notice/the letter of invitation to tender. Questions and answers which are of general interest will be copied by the EPO to all Bidders.

1.5 If Bidders reproduce forms such as the questionnaire using their own text-processing

facilities they must ensure that all information from the original forms is included in the reproduction. Omissions may lead to exclusion.

1.6 Where a bid is unclear, the EPO may seek clarification from the Bidder.

1.7 Unless otherwise specified in the Procurement Documents, a bid is binding for a period of six months from the final date for receipt of bids.

## 2. Exclusion of Bidders

2.1 Any Bidder who

- (a) is undergoing insolvency, bankruptcy or liquidation proceedings, has entered into a composition agreement with creditors, has ceased trading or is in any similar situation under the laws of the country in which he is domiciled;
- (b) is the subject of a petition in bankruptcy or an application for composition (or has himself filed such a petition or application) or any similar proceedings under the laws of the country in which he is domiciled;
- (c) has been convicted of an offence that puts his professional reliability in question;
- (d) has been found by the EPO to have been guilty of grave professional misconduct;
- (e) has failed to fulfil his obligations with regard to payment of taxes and levies under the laws of the country in which he is domiciled;
- (f) during the last three years has persistently failed to perform his obligations or has failed to perform one or more core obligations under one or more contracts concluded with the EPO, which led to damages or other comparable sanction or to early termination.

may be excluded from the tender procedure.

2.2 Where the EPO requires Bidders to furnish proof that they are not liable to exclusion under Article 2.1, sub-paragraphs (a), (b), (c) or (e), it will accept as sufficient evidence:

- for sub-paragraphs (a), (b) and (c), a copy of an extract from the judicial record or, failing this, of an equivalent document issued by the competent authority of the country concerned showing that the Bidder does not fall under any of these heads,
- for sub-paragraph (e), a copy of a certificate issued by the competent authority of the country concerned.

The EPO may request further information on the above matters and, in particular, production of the originals.

2.3 Where a country does not issue such documents or certificates or where these do not cover all the cases referred to in Article 2.1, sub-paragraphs (a), (b), (c) or (e), the EPO will accept a copy of a formal declaration by a Bidder made before and authenticated by a judicial or administrative authority, notary or any other competent official person or body in the country concerned. The EPO may also request production of the original declaration.

## 3. Information to be supplied by Bidders

- 3.1 Bidders must supply with their bids:
- (a) a duly completed questionnaire or, in the case of an electronic tender, specification sheet,
  - (b) a copy of the relevant entry in the commercial (or similar) register of the country in which the Bidder is domiciled, if the laws of that country prescribe registration, and
  - (c) any other information requested in the published notice, the letter of invitation to tender or the Procurement Documents.
- 3.2 As a rule, information provided by Bidders which the EPO has not requested will not be considered.
- 3.3 The EPO will treat all information provided by Bidders as confidential.
- 4. Changes in Bidders' circumstances**
- Bidders must notify the EPO without delay of any changes occurring in the course of the tender procedure as regards the persons authorised to represent them with legally binding effect in dealings with the EPO, their legal form, name, address or legal domicile.
- They must also notify the EPO without delay if their circumstances change so as to bring them within the ambit of Article 2.1.
- 5. Failure to provide information**
- The EPO is entitled to exclude from the tender procedure any Bidder who fails to provide the information required under Articles 3 and 4.
- 6. Bidders' expenses**
- Expenses incurred by Bidders in preparing and submitting bids will not be reimbursed.
- 7. Form and delivery of bids**
- 7.1 Paper bids must be placed in a double sealed envelope. The outer envelope must have marked on its outside the subject and number of the invitation to tender and contain the documents to be submitted in accordance with Article 3.1 and the letter of invitation to tender. The inside envelope, marked with the name of the Bidder and the words "Not to be opened in the post room", must contain the bid. Forms of inner and outer wrapping other than envelopes may be used where this is more practical. Self-sealing envelopes which can be opened and resealed undetectably must not be used.
- 7.2 In the case of eTendering, bids must be submitted online by transmission in encrypted form to the EPO's procurement platform.
- 7.3 Bids must be dated and duly signed by the person(s) empowered to conclude the contract on the Bidder's behalf. For electronic bids, a qualified electronic signature is required, as specified on the EPO's procurement platform.
- 7.4 Paper bids must arrive at the address specified in the published notice or the letter of invitation to tender before the final date and time for receipt of bids stipulated in the said notice or letter.
- 7.5 In the case of eTendering, bids must arrive at the EPO's procurement platform before the final date and time for receipt of bids stipulated in the said notice or letter.
- 8. Opening of bids - invalid bids**
- 8.1 Bid opening procedures will not be public. Bidders may not attend. Bids will be opened only if they arrive before the final date and time for receipt of bids and in the form specified in Article 7 above.
- 8.2 Bids received late or not in the prescribed form will be opened only where the reasons for this are beyond the Bidder's control, proof of which is required in writing.
- 8.3 As soon as the bids have been opened, all their essential elements, including any annexes, will be recorded and either given an identifying mark or electronically stored in such a way as to ensure the integrity of the data. The record is confidential. It may not be shown either to Bidders or to the public.
- 9. Examination of bids**
- 9.1 Invalid bids (Articles 8.1 and 8.2 above), bids which do not contain a validating signature, contain changes to the conditions of tender which are not allowed or, because of the amendments or additions they contain, are unclear, need not be further examined (see the detailed exclusion grounds in Article 10.1).
- 9.2 Bids containing proposals for variants need not be further examined if either the possibility of submitting variants has been excluded or they fail to meet the minimum mandatory requirements laid down for their submission (see Articles 1.2 and 10.2).
- 9.3 The remaining bids will be examined in detail:
- It will first be examined whether the Bidders meet the selection criteria. The selection criteria concern the reliability, financial and economic standing, as well as technical and professional competence of Bidders. They may require minimum capacity levels and particular qualifications.
  - It will then be examined whether the bids are complete, the calculations are correct, the price is not clearly out of proportion, and the technical content is correct, taking into account the technical and functional requirements in the invitation to tender.
- 9.4 The results of the examination will be placed on record.

## 10. Grounds for exclusion of bids in the examination phase

10.1 The examination may give rise to the exclusion of bids. The following results are grounds for exclusion in the prima facie examination (Article 9.1 above):

- (a) bids are invalid (Articles 8.1 and 8.2 above);
- (b) bids do not contain a validating signature;
- (c) bids do not indicate the price or contain insufficient price details, thereby rendering the bid substantially incomplete or non-comparable with other bids;
- (d) bids do not contain a technical offer;
- (e) bids are not legally binding, or are not binding for the period required, unless the deviation is minor, or, where the EPO considers it appropriate to ask the Bidder to prolong the period for which he is bound by his bid so as to make it comply, the Bidder does not do so);
- (f) bids are not in one of the EPO's official languages;
- (g) bids are not based on the EPO's contractual conditions, unless the EPO has expressly requested or allowed the use of other terms of business;
- (h) bids do not comply with the mandatory procedural conditions of the invitation to tender;
- (i) bids do not contain the information and evidence required for the assessment of the Bidder's know-how, capacity and reliability, and the Bidder does not provide any missing information and evidence within reasonable time after having been requested to do so.

10.2 The following results are grounds for exclusion in the detailed examination (Articles 9.2 and 9.3 above):

- (a) bids from Bidders who do not fulfil the selection criteria establishing the Bidders' know-how, capacity and reliability to fulfil the contract, including Bidders whose circumstances are such as seriously to call into question their financial and professional reliability;
- (b) where the EPO requires Bidders to furnish proof that they are not liable for exclusion under point (a), evidence is not provided within a deadline set by the EPO;
- (c) bids from Bidders who in connection with the tender procedure have entered into agreements which prevent fair competition;
- (d) in the case of an invitation to tender based on price alone, bids do not comply with the technical or financial requirements, or contain proposals for variants to those requirements;
- (e) in the case of an invitation to tender on a discretionary basis, bids do not comply with mandatory technical or financial requirements; such non-compliance will not, however, lead to the exclusion of the bid if the non-compliance relates to an error in the EPO's specifications and that error was indicated in the bid;
- (f) bids do not comply with the basic contractual terms, or in the case of a competitive procedure with negotiation, with the minimum contractual terms;
- (g) bids quote a price which is clearly out of proportion to the goods, work or services

offered, or clearly so low that there is reason to believe that the Bidder cannot comply with the technical or quality requirements of the tender (in such a case, the Bidder will first be given the opportunity to clarify the assumptions underlying his offer, without this leading to any changes in prices);

- (h) bids have submitted solutions which are clearly not feasible or do not comply with the subject of the tender.

10.3 Obvious errors are not grounds for exclusion. The correction of obvious errors takes place during the detailed examination. Corrections of obvious errors may be made by the EPO but must be confirmed in writing by the Bidders.

Obvious errors include:

- errors in the addition or multiplication of figures contained in a bid;
- calculations using for no apparent reason quantities other than those specified by the EPO;
- unit prices apparently differing from the true prices by a factor of ten, one hundred or one thousand.

10.4 A request for information or clarification may not be used either by the EPO or by the Bidders in such a way that it leads to a substantial alteration to the bid, or substantially alters the EPO's specifications. Clarification and information must be requested and provided in writing.

Notwithstanding the above, bids can be excluded at any later stage of the award procedure if a ground for exclusion becomes apparent.

## 11. Assessment of bids

11.1 Only the bids from Bidders whose bids have not been excluded and who fulfil the selection criteria will be shortlisted and admitted to the assessment.

11.2 For tenders for which the contract is not awarded on the basis of price alone, the shortlisted bids will be evaluated on the basis of the award criteria and the contract will be awarded to the most economically advantageous bid. The award criteria concern in particular the price, operating costs, technical merits, delivery/completion dates, technical and financial guarantees offered and compliance with warranty requirements.

11.3 Proposals for variants expressly requested or allowed in the invitation to tender will be assessed in the same way as the principal bids.

11.4 The results of the assessment and the reasons for the award of contract will be placed on record.

## 12. Award of contract

12.1 The EPO is free to choose the bid it considers the most economically advantageous having regard to the criteria laid down in the published notice or another part of the Procurement Documents.

If the tender is explicitly defined in the letter of invitation to tender as one pursuant to which a contract is to be awarded on the basis of price alone, the contract will be awarded to the Bidder

who has bid the lowest price, on condition that the EPO is satisfied as to the Bidder's compliance with the tender requirements (including the Technical Conditions) and that any non-compliance specified by the Bidder does not stand in the way of the award.

- 12.2 The contract may be divided among several Bidders, (parts of) the contract may be placed with more than one Bidder or a partial award may be made.

Prices quoted in a bid may not be revised or re-submitted after the final date for receipt of bids has passed.

- 12.3 A contractual relationship will arise only on signature of the contract.

### 13. Cancellation of the invitation to tender

The EPO may cancel an invitation to tender if

- no bid has been received, no bid has been received which complies with the tender requirements or no bidder fulfils the selection criteria,
- the invitation to tender has not produced an economically acceptable result,
- the basis for the invitation to tender has changed, or
- for any other serious reason.

### 14. Information to Bidders

- 14.1 Unsuccessful Bidders will be notified in writing that their bid has not been selected. As a rule, the reasons why a bid has been unsuccessful will be given to the Bidder concerned if he has made a written request for such information. The reasons will be given in writing.

Drafts, project documents, specimens and samples relating to unsuccessful bids will be returned if so requested either in the bid or in writing within 20 working days from the date of notification to the Bidder that he has been unsuccessful.

Unsuccessful bids and project documents supplied by Bidders may be used for a subsequent award of contract or for other purposes only with the permission of the Bidders concerned.

- 14.2 In the case of cancellation of an invitation to tender, Bidders will be notified thereof without undue delay. As a rule, the reasons for cancellation are notified to Bidders upon their written request.
- 14.3 If the award of contract is delayed, the period within which the contract has to be awarded may be extended only with the consent of the Bidders whose bids have been shortlisted.

### 15. Applicable rules and disputes

- 15.1 The EPO's procurement procedures are governed solely by the EPO's own procurement rules.

- 15.2 By submitting a bid, Bidders accept all the Conditions contained in the Procurement Documents and waive their own terms and conditions. In particular, submitting a bid signifies that Bidders agree to and accept the content of these General Conditions of Tender and that any dispute arising out of or in connection with this invitation to tender will be exclusively and finally settled by an arbitration tribunal, which is set up and conducts its proceedings in accordance with this Article 15 and the attached Rules on Arbitration (Annex 2).

- 15.3 Within one month of receiving the notification of the reasons why his bid was unsuccessful, an unsuccessful Bidder may make a written request for an oral debriefing about the reasons why his bid was unsuccessful. Explanations are limited to the findings of the award committee on the bid in question and will not cover the quality or content of other bids. The debriefing will generally be conducted in person but can also be held via teleconference or videoconference. The debriefing will be conducted in one of the official languages of the EPO.

- 15.4 Bidders claiming a potential loss due to an alleged procedural breach of the EPO's procurement rules may submit their claim to arbitration only after the oral debriefing provided for in Article 15.3 above.

Claims alleging a procedural breach must be filed with the arbitration tribunal no later than one month from the day of the debriefing (see Article 15.3 above). Should an oral debriefing not take place within one month from the EPO's receipt of the unsuccessful Bidder's request for such a debriefing according to Article 15.3, the time limit for filing claims alleging a procedural breach with the arbitration tribunal is two months from the EPO's receipt of that request.

- 15.5 The decision on the award of the contract cannot be challenged or appealed. The relief sought by unsuccessful Bidders is limited to damages.

- 15.6 Where as the result of arbitration conducted under the Rules of Arbitration in Annex 2, the arbitration tribunal awards damages to an unsuccessful Bidder for the loss suffered due to a violation by the EPO of its own procurement rules, such damages are limited to the actual costs of preparing the bid and the costs incurred in the arbitration proceedings.

- 15.7 The EPO is liable for damage only in cases of intent or gross negligence. In cases of simple negligence, the EPO is liable only for damage resulting from death, personal injury or damage to health or for damage resulting from a breach of a material obligation; however, in the latter case the EPO's liability is limited to the compensation of foreseeable, typical damage.

**Questionnaire**

In the case of eTendering, this is part of the specification sheet and must be completed in the electronic system

**General information and confirmation to be supplied by Bidders**

1. Please indicate the name, address, telephone and fax numbers of your/your company's head office and, where different, of your/your company's premises where the work or the services would be carried out.
2. Please indicate the name, function, address, telephone number, fax number and e-mail address of the person responsible for this invitation to tender.
3. Please specify in detail your/your company's line of business.
4. Please indicate the number of staff employed by you/your company (with separate figures for management and other staff).
5. Please indicate the legal form of your company.
6. Please state your company's share capital.
7. Please state when your company was established.
8. Please name the person(s) empowered to conclude the contract on your company's behalf (surname, first name, position, starting date in this position).
9. Please provide names and contact details of those of your/your company's customers who are willing and able to provide references. Please also state the type of work or service and the dates of contracts/orders.
10. Please provide evidence of qualifications (copies) or recent testimonials from technically or otherwise qualified persons involved in projects carried out by you/your company and include a list thereof.
11. Please provide references (copies) from your bank, giving information on your financial standing.
12. Please state your/your company's annual turnover in at least the past three years, and provide a copy of the latest annual report, balance sheet and profit/loss account.
13. Please state your company's number in the commercial or similar register (if applicable) and provide a copy of the entry.
14. Please confirm that, as Bidder or on behalf of the company submitting the bid, you have read the General Conditions of Tender, and that there are no grounds for exclusion under any of the heads listed in Article 2 of the General Conditions of Tender.
15. If the submission of variants has been permitted, you may exceptionally propose modifications to the Conditions of Contract or the Technical Conditions in accordance with Article 1.2 of the General Conditions of Tender. Any non-compliance will be taken into account in the evaluation of the bid.
  - a. In the case of non-compliance with the Conditions of Contract, please specify for each non-compliance which part of the Procurement Documents is affected, the article and paragraph number concerned, the reasons for the non-compliance and the proposed alternative.
  - b. In the case of non-compliance with the Technical Conditions, please specify for each non-compliance which part of the Technical Conditions is affected, the reasons for the non-compliance and the proposed alternative, and give an explanation.



## Rules on Arbitration

### 1. Jurisdiction of the arbitration tribunal

- 1.1 All disputes arising out of or in connection with invitations to tender issued by the EPO are to be exclusively and finally ruled on by an arbitration tribunal in accordance with these Rules on Arbitration.
- 1.2 The arbitration tribunal also rules on the validity and effect of any counterclaims reasonably connected with the dispute.

### 2. Applicable law

- 2.1 The arbitration tribunal rules on the merits of claims based on the EPO's procurement rules and taking account of the European Patent Organisation's special status as an intergovernmental organisation.
- 2.2 In addition to the provisions in these Rules on Arbitration, the arbitration tribunal also applies the provisions of Book Ten "Arbitration Procedure" of the German Code of Civil Procedure (ZPO). In deviation from Section 1035 III, third sentence, of the German Code of Civil Procedure (ZPO), if the party initiating arbitration proceedings indicates in its notification of initiation of arbitration to the other party that the matter is urgent, it must appoint an arbitrator in that notification and the time limits in Section 1035 III, third sentence, of the German Code of Civil Procedure (ZPO) for appointing the two other arbitrators are 14 calendar days instead of one month. For the sake of clarity the reference to the German Code of Civil Procedure (ZPO) in this Article 2.2 does not constitute a waiver of the EPO's immunity from the jurisdiction of the national courts.

### 3. Venue and language

- 3.1 Arbitration proceedings are held in Munich. Hearings before the arbitration tribunal take place in Munich.
- 3.2 Arbitration proceedings are conducted in one of the official languages of the European Patent Organisation, to be selected by the arbitration tribunal.

### 4. Rules governing the procedure

- 4.1 The arbitration tribunal may request that the parties submit documents, and name and cite witnesses. The arbitration tribunal cannot order measures against a party to enforce such a request. When evaluating the evidence, however, it may, in the proper exercise of its discretion, take into account any failure to meet the request.
- 4.2 The arbitration tribunal is competent to rule on interim or precautionary measures. Such interim measures cannot be aimed at suspending the award of the contract to another bidder. The grant of interim relief by national courts is excluded.
- 4.3 The decision on the award of the contract cannot be challenged or appealed. The relief sought by unsuccessful bidders is limited to damages.
- 4.4 The chairman of the arbitration tribunal conducts the arbitration proceedings. He is authorised to issue orders to this end without involving the other arbitrators.
- 4.5 Arbitration proceedings are not public. Their subject-matter is to be treated confidentially by the parties and the arbitrators.
- 4.6 The arbitration tribunal must thoroughly examine, at one hearing at least, the claims made by the parties, unless they state in writing that they wish to dispense with such a hearing. If a party dispenses in writing with a hearing and the other party fails to respond even after being requested to do so within a specified period by the arbitration tribunal, the arbitration tribunal may decide to proceed without a hearing.
- 4.7 If a party fails to comment within a period set by the arbitration tribunal or fails to appear at a hearing (failure to appear), the arbitration tribunal may continue the proceedings and reach a decision on the basis of the information on the facts and law already available to it. This does not apply if the claimant fails to file the request for arbitration within the period set for that purpose, in which case the arbitration tribunal closes the proceedings.
- 4.8 The parties may be represented before the arbitration tribunal by lawyers or other persons of their choice.

## **5. Settlement**

- 5.1 The arbitration tribunal will try to reach a settlement between the parties in due course.
- 5.2 A settlement is concluded in the form of an arbitration award with an agreed wording.

## **6. Costs**

- 6.1 The arbitration tribunal rules on the costs of the arbitration proceedings in accordance with Sections 91 ff of the German Code of Civil Procedure (ZPO). It exercises its discretion when fixing the value of the claim.
- 6.2 When making its award, the arbitration tribunal, where appropriate, determines the amount of the costs and necessary expenses to be paid by a party.  
The costs and necessary expenses to be paid for a representative of a party are calculated in accordance with the German Act on Attorneys' Fees (RVG) as applicable to representation in proceedings before a civil court of first instance.
- 6.3 The arbitrators are paid a fee plus expenses in line with those paid to a legal practitioner in accordance with the RVG as applicable to representation in proceedings before a civil court of first instance. The chairman of the arbitration tribunal is paid 130% of that amount.
- 6.4 Once the last arbitrator has been appointed, the chairman of the arbitration tribunal may require the parties to pay a reasonable advance on the arbitrators' fees and expenses. The parties pay equal proportions of the advance.  
If a party fails to pay the advance required by the arbitration tribunal despite having been issued with a reminder, the other party may pay the advance himself/itself.

## **7. Appointment of arbitrators by a court**

Where a court selects an arbitrator in accordance with Section 1035 III, IV of the German Code of Civil Procedure (ZPO) or another legal provision, it must bear in mind that, pursuant to Section 1035 V of that Code, the arbitrator should preferably be a judge or legal practitioner with experience in the relevant legal and specialist (particularly technical) field.