

A.INSTRUCTIONS TO TENDERERS

PUBLICATION REF.: EuropeAid/127217/D/SUP/DM_

In submitting a tender, the tenderer accepts in full and without restriction the special and general conditions governing this contract as the sole basis of this tendering procedure, whatever his own conditions of sale may be, which he hereby waives. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified will lead to the rejection of the tender. No account can be taken of any reservation in the tender as regards the tender dossier; any reservation may result in the immediate rejection of the tender without further evaluation.

These Instructions set out the rules for the submission, selection and implementation of contracts financed under this call for tenders, in conformity with the provisions of the Practical Guide to contract procedures for EC external actions, which is applicable to the present call (available on the Internet at this address: http://ec.europa.eu/europeaid/work/procedures/index_en.htm).

1 Supplies to be provided

1.1 The subject of the contract is the delivery by the Contractor of the following goods:

The supply of computers, computer peripheral and other hardware equipment, and accessories to the Government of the Commonwealth of Dominica

in ten (10) lots of:

Lot 1: Computers (Desktops & Laptops)

Lot 2: Printers – Network Lasers

Lot 3: Computer Software

Lot 4: Servers

Lot 5: Digital Projectors

Lot 6: Interactive and Non-Interactive Whiteboards

Lot 7: Networking Equipment (Switches, Fibre optic tools, cable, patch panels)

Lot 8: Routers and Wireless Access Points

Lot 9: Mobile Laptop Lab

Lot 10: Universal power supplies and power strips

to be delivered to The Office of the National Authorising Officer of the European Development Fund, Government of the Commonwealth of Dominica, DDU (delivered duty unpaid) no later than 28th February 2009.

- 1.2 The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.
- 1.3 Tenderers are not authorised to tender for a variant in addition to the present tender.

2 *Timetable*

	DATE	TIME*
Clarification meeting	N/A	-
Deadline for request for any clarifications from the Contracting Authority	16 th September 2008	16:00 hours
Last date on which clarifications are issued by the Contracting Authority	26 th September 2008	-
Deadline for submission of tenders	7 th October 2008	14:00 hours
Tender opening session	7 th October 2008	15:00 hours
Notification of award to the successful tenderer	15 th October 2008 ³	-
Signature of the contract	31 st October 2008 ³	-

* All times are in the time zone of the country of the Contracting Authority

³ Provisional date

3. *Participation*

- 3.1. Participation in tendering is open to all legal persons [participating either individually or in a grouping (consortium) or tenderers] which are established in a the Member State of the European Union or in a country or territory of the regions covered and/or authorised by the specific instruments applicable to the Special Framework of Assistance (SFA) 2005 programme under which the contract is financed. All works, supplies and services must originate in one or more of these countries. The participation is also open to international organisations. The participation of natural persons is directly governed by the specific instruments applicable to the programme under which the contract is financed.
- 3.2. These terms refer to all nationals of the said states and to all legal entities, companies or partnerships constituted under, and governed by, the civil, commercial or public law of such states and having their statutory office, central administration or principal place of business there. A legal entity, company or partnership having only its statutory office there must be engaged in an activity which has an effective and continuous link with the economy of the state concerned.
- 3.3. These rules apply to:

- a) tenderers
 - b) members of a consortium
 - c) any subcontractors.
- 3.4 Natural persons, companies or undertakings meeting the conditions set out in section 2.3.3 of the Practical Guide to contract procedures for EC external actions are excluded from participation in and the award of contracts. Tenderers or candidates who have been guilty of making false declarations will also incur financial penalties and exclusion in accordance with section 2.3.5 of the Practical Guide.
- 3.5 To be eligible for participation in this tender procedure, tenderers must prove to the satisfaction of the Contracting Authority that they comply with the necessary legal, technical and financial requirements and have the wherewithal to carry out the contract effectively.

4. *Origin*

- 4.1 Unless otherwise provided in the Special Conditions, supplies must originate in a Member State of the European Community or a country covered by the Special Framework of Assistance (SFA) 2005 programme. The origin of the goods must be determined according to the Community Customs Code or the international agreements to which the country concerned is a signatory.
- 4.2. When submitting his tender, the tenderer must state expressly that all the goods meet the requirements concerning origin and must state the countries of origin. He may be asked to provide additional information in this connection.

5. *Type of contract*

This is a unit-price contract.

6. *Currency*

Tenders must be presented in **Euro currency (€)**.

7. *Lots*

- 7.1 The tenderer may submit a tender for one lot only, several or all of the lots.
- 7.2 Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The tenderer must offer the whole of the quantity or quantities indicated for each lot. Under no circumstances must tenders for part of the quantities required be taken into consideration. If the tenderer is awarded more than one lot, a single contract may be concluded covering all those lots.
- 7.3 A tenderer may include in his tender the overall discount he would grant in the event of some or all of the lots for which he has submitted a tender being awarded. The discount should be clearly indicated for each lot in such a way that it can be announced during the public tender opening session.
- 7.4 Contracts will be awarded lot by lot, but the Contracting Authority may select the most favourable overall solution after taking account of any discounts offered.

8. *Period of validity*

- 8.1. Tenderers shall be bound by their tenders for a period of 90 days from the deadline for the submission of tenders.
- 8.2. In exceptional cases and prior to the expiry of the original tender validity period, the Contracting Authority may ask tenderers in writing to extend this period by 40 days. Tenderers that agree to do so will not be permitted to modify their tenders. If they refuse, their participation in the tender procedure will be terminated.

The successful tenderer will be bound by his tender for a further period of 60 days. The further period is added to the initial period of 90 days irrespective of the date of notification.

9. *Language of offers*

- 9.1. The offers, all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in the language of the procedure which is English.

Supporting documents and printed literature furnished by the tenderer may be in another language, provided they are accompanied by a translation into the language of the procedure. For the purposes of interpretation of the tender, the language of the procedure will prevail.

10. *Submission of tenders*

- 10.1. Tenders must be received before the deadline specified in 10.3. They must include all the documents specified in point 11 of these Instructions and be sent to the following address:

Mr. Edward Lambert

National Authorising Officer/European Development Fund

Office of The Prime Minister

P. O. Box 1102

6th Floor, Financial Centre

Kennedy Avenue

Roseau

The Commonwealth of Dominica

Tenders must comply with the following conditions:

- 10.2. All tenders must be submitted in one original, marked “original”, and three (3) copies signed in the same way as the original and marked “copy”.
- 10.3. All tenders must be received at The Office of the National Authorising Officer before 14:00 hours on 7th October 2008, by registered letter with acknowledgement of receipt or hand-delivered against receipt signed by National Authorising Officer/EDF or his representative.
- 10.4. All tenders, including annexes and all supporting documents, must be submitted in a sealed envelope bearing only:
 - a) the above address;
 - b) the reference code of this tender procedure, (i.e., EuropeAid/127217/D/SUP/DM);
 - c) where applicable, the number of the lot(s) tendered for;

- d) the words “Not to be opened before the tender opening session” in the language of the tender dossier.
- e) the name of the tenderer.

The technical and financial offers must be placed together in a sealed envelope. The envelope should then be placed in another single sealed envelope/package, unless their volume requires a separate submission for each lot.

11. Content of tenders

All tenders submitted must comply with the requirements in the tender dossier and comprise:

Part 1: Technical offer:

- a detailed description of the supplies tendered in conformity with the technical specifications, including any documentation required, including if applicable;
 - a list of the manufacturer's recommended spare parts and consumables;

The technical offer should be presented as per template (annex II+III*, the contractor’s technical offer) completed when and if necessary by separate sheets for details.

Part 2: Financial offer:

- A financial offer calculated on a basis of DDU¹ for the supplies tendered, including if applicable:
 - financial proposal for spare parts and consumables for use over 3 years] (with itemised pricelist);

This financial offer should be presented as per template (annex IV*, budget breakdown), and if necessary completed by separate sheets for the details.

- An electronic version of the financial offer.

Part 3: Documentation:

To be supplied following templates in annex*:

- The tender guarantees, as indicated in point 11 of the Procurement Notice, are detailed in the table below:

LOT NUMBER AND TITLE	TENDER GUARANTEE (€)
1: Computers (Desktops & Laptops)	3000.00

¹ <DDP (delivered duty paid) / DDU (delivered duty unpaid)> - Incoterms 2000 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/id3040/index.html>

2: Printers – Network Lasers	100.00
3: Computer Software	300.00
4: Servers	900.00
5: Digital Projectors	200.00
6: Interactive & Non-Interactive Whiteboards	50.00
7: Networking Equipment	200.00
8: Routers & Wireless Access Points	100.00
9: Mobile Laptop Lab	300.00
10: Universal Power Supplies & Power Strips	200.00

- The “Tender Form for a Supply Contract”, duly completed, which includes the tenderer’s declaration, point 7, (from each member if a consortium):
- The details of the bank account into which payments should be made (financial identification form) (Where the tenderer has already signed another contract with the European Commission, he may provide instead of the financial identification form either his financial identification form number or a copy of the financial identification form provided on that occasion, unless a change occurred in the meantime)
- The legal entity file and the supporting documents (Where the tenderer has already signed another contract with the European Commission, he may provide instead of the legal entity sheet and its supporting documents either his legal entity number or a copy of the legal entity sheet provided on that occasion, unless a change in his legal status occurred in the meantime.)

To be supplied on free formats:

- A description of the organisation of the warranty tendered, which must be in accordance with the conditions laid down in Article 32 of the General Conditions.
- A description of the organisation of the commercial warranty tendered in accordance with the conditions laid down in Article 32 of the Special Conditions]
- A statement by the tenderer attesting the origin of the supplies tendered (or other proofs of origin).
- Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- (Other)

Remarks:

Tenderers are requested to follow this order of presentation.

Annex* refers to templates attached to the tender dossier. These templates are also available on: http://ec.europa.eu/europeaid/work/procedures/index_en.htm

12. Pricing

- 12.1. Tenderers will be deemed to have satisfied themselves, before submitting their tender(s), as to (its)(their) correctness and completeness, to have taken account of all that is required for the full and proper execution of the contract and to have included all costs in their rates and prices.
- 12.2. Depending on whether the supplies proposed are manufactured locally or are to be imported into the country of the Beneficiary, Tenderers must quote, by lot, unit (and overall) prices for their tenders on one of the following bases:
 - a) for supplies manufactured locally, unit and overall prices must be quoted for delivery to the place of destination and in accordance with the above conditions, excluding all domestic taxation applicable to their manufacture and sale;
 - b) for supplies to be imported into the country of the Beneficiary, unit and overall prices must be quoted for delivery to the place of destination and in accordance with the above conditions, excluding all duties and taxes applicable to their importation and VAT, from which they are exempt.
- 12.3. Whatever the origin of the supplies, the contract is exempt from stamp and registration duties.
- 12.4. The prices for the contract are fixed and not subject to revision.

13. Additional information before the deadline for submission of tenders

The tender dossier should be clear enough to preclude the need for tenderers to request additional information during the procedure. If the Contracting Authority, either on its own initiative or in response to a request from a prospective tenderer, provides additional information on the tender dossier, it must send such information in writing to all other prospective tenderers at the same time.

Tenderers may submit questions in writing to the following address up to 21 days before the deadline for submission of tenders, specifying the **publication reference and the contract title**:

Mr. Edward Lambert
National Authorising Officer/European Development Fund
Office of the Prime Minister
P. O. Box 1102
6th Floor, Financial Centre
Kennedy Avenue
Roseau
Commonwealth of Dominica

Fax: (767) 449-9443

Email: edf@cwdom.dm

Any clarification of the tender dossier will be published on the EuropeAid website [and www.naodominica.org] at the latest 11 days before the deadline for submission of tenders. No further clarification will be provided after this date.

Any prospective tenderers seeking to arrange individual meetings with either the Contracting Authority and/or the European Commission during the tender period may be excluded from the tender procedure.

14. Clarification meeting / site visit

14.1 No clarification meeting / site visit is planned.

15. Alteration or withdrawal of tenders

- 15.1. Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders referred to in Article 10.1. No tender may be altered after this deadline. Withdrawals must be unconditional and will end all participation in the tender procedure.
- 15.2. Any such notification of alteration or withdrawal must be prepared and submitted in accordance with Article 10. The outer envelope must be marked 'Alteration' or 'Withdrawal' as appropriate.
- 15.3. No tender may be withdrawn in the interval between the deadline for submission of tenders referred to in Article 10.1 and the expiry of the tender validity period. Withdrawal of a tender during this interval may result in forfeiture of the tender guarantee.

16. Costs of preparing tenders

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs will be borne by the tenderer.

17. Ownership of tenders

The Contracting Authority retains ownership of all tenders received under this tender procedure. Consequently, tenderers have no right to have their tenders returned to them.

18. Joint venture or consortium

- 18.1. If a tenderer is a joint venture or consortium of two or more persons, the tender must be single with the object of securing a single contract, each person must sign the tender and will be jointly and severally liable for the tender and any contract. Those persons must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior consent in writing of the Contracting Authority.
- 18.2. The tender may be signed by the representative of the joint venture or consortium only if he has been expressly so authorised in writing by the members of the joint venture or consortium, and the authorising contract, notarial act or deed must be submitted to the Contracting Authority in accordance with point 11 of these Instructions to Tenderers. All

signatures to the authorising instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the tender are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must provide the proof required under Article 3.5 as if it, itself, were the tenderer.

19. Opening of tenders

- 19.1. The opening and examination of tenders is for the purpose of checking whether the tenders are complete, whether the requisite tender guarantees have been furnished, whether the required documents have been properly included and whether the tenders are generally in order.
- 19.2. The tenders will be opened in public session on 7th October 2008 at 15:00 hours, local time at The Office of the National Authorising Officer by the committee appointed for the purpose. The committee will draw up minutes of the meeting, which will be available on request.
- 19.3. At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of modification and withdrawal, the presence of the requisite tender guarantee and such other information as the Contracting Authority may consider appropriate may be announced.
- 19.4. After the public opening of the tenders, no information relating to the examination, clarification, evaluation and comparison of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.
- 19.5. Any attempt by a tenderer to influence the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, to obtain information on how the procedure is progressing or to influence the Contracting Authority in its decision concerning the award of the contract will result in the immediate rejection of his tender.
- 19.6. All tenders received after the deadline for submission specified in the procurement notice or these instructions will be kept by the Contracting Authority. The associated guarantees will be returned to the tenderers. No liability can be accepted for late delivery of tenders. Late tenders will be rejected and will not be evaluated.

20. Evaluation of tenders

- 20.1. Examination of the administrative conformity of tenders

The aim at this stage is to check that tenders comply with the essential requirements of the tender dossier. A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them.

Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply. Decisions to the effect that a tender is not administratively compliant must be duly justified in the evaluation minutes.

If a tender does not comply with the tender dossier, it will be rejected immediately and may not subsequently be made to comply by correcting it or withdrawing the departure or restriction.

20.2. Technical evaluation

After analysing the tenders deemed to comply in administrative terms, the evaluation committee will rule on the technical admissibility of each tender, classifying it as technically compliant or non-compliant.

The minimum qualifications required (see selection criteria in Procurement Notice point 16) are to be evaluated at the start of this stage.

20.3. In the interests of transparency and equal treatment and to facilitate the examination and evaluation of tenders, the evaluation committee may ask each tenderer individually for clarification of his tender including breakdowns of prices, within a reasonable time limit to be fixed by the evaluation committee. The request for clarification and the response must be in writing, but no change in the price or substance of the tender may be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered during the evaluation of tenders pursuant to Article 20.4. Any such request for clarification must not distort competition. Decisions to the effect that a tender is not technically compliant must be duly justified in the evaluation minutes.

20.4. Financial evaluation

a) Tenders found to be technically compliant shall be checked for any arithmetical errors in computation and summation. Errors will be corrected by the evaluation committee as follows:

- where there is a discrepancy between amounts in figures and in words, the amount in words will be the amount taken into account;

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

b) Amounts corrected in this way will be binding on the tenderer. If the tenderer does not accept them, his tender will be rejected.

20.5. Variant solutions

Variant solutions will not be taken into consideration.

20.6. Award criteria

The sole award criterion will be the price. The contract will be awarded to the lowest compliant tender.

21. Signature of the contract and performance guarantee

21.1 The successful tenderer will be informed in writing that its tender has been accepted (notification of award). [Before the Contracting Authority signs the contract with the successful tenderer, the successful tenderer must provide the **documentary proof** or statement required under the law of the country in which the company (or each of the companies in case of a consortium) is established, to show that it does not fall into the exclusion situations listed in section 2.3.3 of the Practical Guide to contract procedures for EC external actions. This evidence or these documents or statements must carry a date,

which cannot be more than 1 year before the date of submission of the tender. In addition, a statement shall be furnished stating that the situations described in these documents have not changed since then.]

- 21.2 [The successful tenderer shall also provide evidence of the financial and economic standing and the technical and professional capacity according to the selection criteria for this call for tender specified in the procurement notice, point 16. The documentary proofs required are listed in sections 2.4.12.1.3 and 2.4.12.1.4 of the Practical Guide to contract procedures for EC external actions.]
- 21.3 [If the successful tenderer fails to provide the documentary proof or statement or the evidence of the financial and economic standing and the technical and professional capacity within 15 calendar days following the notification of award or if the successful tenderer is found to have provided false information, the award will be considered null and void. In such a case, the Contracting Authority may award the tender to the next lowest tenderer or cancel the tender procedure.]
- 21.4 The Contracting Authority reserves the right to vary the quantities specified for the lots within a range of 100%. The total value of the supplies may not rise or fall as a result of the variation in the quantities by more than 25 % of the contract price at the time of contracting and during the validity of the contract. The unit prices used in the tender shall be applicable to the quantities procured under the variation.
- 21.5 Within 30 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer must sign and date the contract and return it, with the performance guarantee, to the Contracting Authority. On signing the contract, the successful tenderer will become the Contractor and the contract will enter into force.
- 21.6 If he fails to sign and return the contract and any financial guarantee required within 30 days after receipt of notification, the Contracting Authority may consider the acceptance of the tender to be cancelled without prejudice to the Contracting Authority's right to seize the guarantee, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Contracting Authority.
- 21.7 The performance guarantee referred to in the General Conditions is set at 10% of the amount of the contract and must be presented in the form specified in the annex to the tender dossier. It will be released within 45 days of the issue of the final acceptance certificate by the Contracting Authority, except for the proportion assigned to after-sales service.

22. Tender guarantee

The tender guarantee referred to in Article 11 above is set and must be presented in the form specified in the annex to the tender dossier. It must remain valid for 45 days beyond the period of validity of the tender. Tender guarantees provided by tenderers who have not been selected shall be returned together with the information letter that the tenderer has been unsuccessful. The tender guarantee of the successful tenderer shall be released on the signing of the contract, once the performance guarantee has been submitted.

23. Ethics clauses

- 23.1. Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his candidacy or tender and may result in administrative penalties.
- 23.2. Without the Contracting Authority's prior written authorisation, a Contractor and his staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 23.3. When putting forward a candidacy or tender, the candidate or tenderer shall declare that he is affected by no potential conflict of interest and has no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.
- 23.4. The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project or services without the Contracting Authority's prior approval. He may not commit the Contracting Authority in any way without its prior written consent.
- 23.5. For the duration of the contract the Contractor and his staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.
- 23.6. The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 23.7. The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.
- 23.8. The contract shall govern the Contracting Parties' use of all reports and documents drawn up, received or presented by them during the implementation of the contract.
- 23.9. The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 23.10. The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.
- 23.11. All tenders will be rejected or contracts terminated if it emerges that the award or implementation of a contract has given rise to unusual commercial expenses.

- 23.12. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.
- 23.13. The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.
- 23.14. Contractors found to have paid unusual commercial expenses on projects funded by the Community are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving Community funds.

24. Cancellation of the tender procedure

In the event of a tender procedure's cancellation, tenderers will be notified by the Contracting Authority. If the tender procedure is cancelled before the tender opening session the sealed envelopes will be returned, unopened, to the tenderers.

Cancellation may occur where:

- the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;
- the economic or technical parameters of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal implementation of the project impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition.

In no event shall the Contracting Authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure even if the Contracting Authority has been advised of the possibility of damages. The publication of a procurement notice does not commit the Contracting Authority to implement the programme or project announced.

25 Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint. If this procedure fails, the tenderer may have recourse to the following:

Where the European Commission is informed of such a complaint, it must communicate its opinion to the Contracting Authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the Contracting Authority. If this procedure fails, the tenderer may have recourse to procedures established under the recipient's national legislation.

