

Declaration by the Representatives of the Governments of the Member States, meeting in the Council, concerning procedures to be followed in the field of public works concessions

I. GRANTING OF CONCESSION CONTRACTS

The Member States agree that when the authority awarding contracts wishes to have recourse to concession contracts under the conditions laid down in Article 3 (1) of the Council Directive of 26 July 1971¹ concerning the coordination of procedures for the award of public works contracts, it shall, if the estimated total amount for the works exceeds one million units of account, make known its intention by means of a notice. The notice shall describe the subject of the concession contract in sufficient detail to enable interested contractors to make a valid assessment of the contract. It shall list the personal, technical and financial conditions to be fulfilled by the candidates. It shall state the main criteria to be used in awarding the contract and it shall lay down a period of not less than thirty-five days for the submission of request to participate. The notice shall be sent to the Office for Official Publications of the European Communities and published in full in the *Official Journal of the European Communities* in the official languages of the European Communities not later than ten days after the date of dispatch, this date being the beginning of the period for the submission of requests to participate.

No concession contract, concluded in the case provided for in Article 3 (1) of the abovementioned Directive, can be awarded unless advertised as described in the preceding paragraph.

II. SUB-CONTRACTING

The Member States agree that concession contracts shall impose upon concessionaires the obligation to apply, in respect of the contracts which they award to third parties, the rules listed in paragraphs 1 and 2 below.

Undertakings which have formed a group in order to obtain the concession contract, or companies associated with or affiliated to them, are not regarded as third parties.

'Associated or affiliated companies' means companies which hold a controlling interest in an undertak-

ing to which a concession contract has been awarded and companies controlling interest in which is held by an undertaking to which a concession contract has been awarded.

A comprehensive list of these companies shall be enclosed with the tender. This list shall be brought up to date following any subsequent changes in the relationships between the companies.

1. Percentage of work sub-contracted

The authority awarding contracts is required:

- (a) to place the concessionaire under an obligation to award to third parties contracts representing a minimum of 30% (specified in the concession contract) of the total value of the work for which the concession contract is to be awarded, at the same time providing the option for candidates to increase this percentage; or
- (b) to request the candidates for concession contracts to specify in their tenders the minimum percentage of the total value of the work for which the concession contract is to be awarded which they intend to assign to third parties.

Whichever procedure is followed by the authority awarding contracts, the percentage will be taken into consideration as a positive factor in the choice of concessionaire.

2. Advertising rules

- (a) When they involve amounts of less than one million units of account, invitations to tender for sub-contracting purposes shall not be subject to any particular condition with regard to advertising;
- (b) when they involve amounts of one million units of account or more, invitations to tender shall be advertised under the conditions listed below:
 - the notice shall be sent to the Office for Official Publications of the European Communities and published in full in the *Official Journal of the European Communities* in the official languages of the Communities not later than ten days after the date of dispatch;

¹ OJ No L 185, 16.10.1971, p. 5.

- the time limit for the receipt of tenders will be fixed by the concessionaire and may not be less than thirty-five days after the date of dispatch of the notice;
- if, in addition to the advertisement in the *Official Journal of the European Communities*, the concessionaire advertises in the official gazettes or the specialist press of the Member States, such advertisements shall not contain information other than that published in the *Official Journal of the European Communities*.

Since the purpose of the advertising is to allow a valid assessment to be made of the features of the work and the conditions to be fulfilled, the notice will include at least the following information:

- (i) the date of dispatch to the Office for Official Publications of the European Communities;
- (ii) the place, nature and extent of the services to be performed and the general nature of the work;
- (iii) the time limit for completion of the work;
- (iv) information about any financial guarantees which may be required;
- (v) the final date for receipt of tenders, account being taken of the time limit of thirty-five days;
- (vi) the address from which documents on the work to be carried out, such as plans, quantities, contract documents etc, may be obtained;
- (vii) the address to which the tenders must be sent;
- (viii) the documents to be enclosed with the tender as evidence of the technical and economic qualifications of the contractor.

The notice shall show that the contracts will be awarded:

- to the undertakings offering the lowest price; or
- to those which submit the most economically advantageous tender, in the light of the criteria set out in the contract documents.

III. The cost of publication in the *Official Journal of the European Communities* of the notices provided for under I and II shall be defrayed by the Communities in accordance with the procedure and conditions referred to in Article 31 of the Council Directive of 26 July 1971 concerning the coordination of procedures for the award of public works contracts.

IV. Six months before the expiry of a period of three years, and account being taken of the experience gained, the Commission shall submit proposals to the Council so that it may adopt by the end of this period definitive arrangements for concession contracts.

V. TERMS OF REFERENCE OF THE ADVISORY COMMITTEE

The Member States and the Commission agree that the Advisory Committee, irrespective of the tasks assigned to it by the Council Decision setting it up, and by the Council Directive of 26 July 1971 concerning the coordination of procedures for the award of public works contracts, is empowered to examine any problem which may arise from the application of this Declaration.