

ANNEX I - PROCUREMENT REVIEW PROCEDURE

I. Scope

1. The Procurement Review Procedure shall be applicable to open competitive procurements of a value equal to or greater than EUR 100,000.
2. Any unsuccessful tenderer at prime contractor's level to a procurement action within the scope of Paragraph 1 above alleging a procedural breach by EUMETSAT of Procedure 3 of the EUMETSAT Procurement Procedures may submit a complaint provided that the unsuccessful tenderer has received the debriefing on its tender evaluation and has escalated its claim to the EUMETSAT Head of Contracts as foreseen in the EUMETSAT Procurement Procedures. Economic operators proposed as subcontractors are excluded.
3. The Review Procedure covers solely procedural breaches. The substance of the tender evaluation shall not be subject to the Procurement Review Procedure.
4. The initiation of the Procurement Review Procedure shall not suspend the award of any contract resulting from the appealed procurement action.

II. Review by the EUMETSAT Director-General

1. A complaint shall be submitted no later than one month after the date of the reply by the EUMETSAT Head of Contracts to the unsuccessful tenderer regarding its claim of an alleged procedural breach by EUMETSAT of Procedure 3 of the EUMETSAT Procurement Procedures. The complaint must be addressed to the Director-General and be submitted in writing by registered mail to the following address:

Director-General
EUMETSAT
Eumetsat-Allee 164295 Darmstadt
Federal Republic of Germany

The Director-General shall not review any complaint submitted outside of this time limit.

2. Within one month after the date of submission of the complaint the Director-General shall issue a written decision to the unsuccessful Tenderer.

The decision shall:

- a) state the reasons for the decision;
 - b) if the complaint is upheld in whole or in part, a financial compensation will be awarded not exceeding EUR 100,000.
3. The absence of a reply to the complaint within the period foreseen in par. 2 above shall be deemed an implicit decision rejecting the complaint.
 4. The decision of the Director-General shall become final and binding if not appealed in accordance with Section III below.

III. Review by the EUMETSAT Ombudsman

1. Within two months after receipt of the decision by the Director-General foreseen in Section II.2. above, the unsuccessful tenderer may submit the appeal in writing to the EUMETSAT Ombudsman.
2. The EUMETSAT Ombudsman shall inform the Director-General that an appeal has been submitted.
3. The EUMETSAT Ombudsman shall only admit appeals provided that the appellant exhausted in due time the complaint procedure to the Director-General outlined in Section II above.
4. The unsuccessful tenderer's claims and supporting evidence of a procedural breach, the procurement procedure followed for the challenged procurement action and any associated records relevant to the alleged procedural breach shall be submitted together with the appeal.
5. Following receipt of the appeal, the EUMETSAT Ombudsman shall request the Secretariat to submit their views, supporting evidence records and documentation within one month from the request.
6. The EUMETSAT Ombudsman shall assess the claim on the basis of the Parties' written submissions and documentation and without a hearing.
7. The EUMETSAT Ombudsman shall issue a decision within two months after the receipt of the Secretariat's views.

8. The decision of the EUMETSAT Ombudsman shall be in writing and shall:
- state the reasons for the decision; and
 - if the appeal is upheld in whole or in part, determine the financial compensation to be paid to the unsuccessful tenderer. The criteria used to determine the amount of the financial compensation up to the ceiling of EUR 100,000 will be the value of the procurement, gravity of the procedural breach, financial loss of the tenderer due to the procedural breach, contributing fault of the tenderer and any additional criteria the Ombudsman may see fit.

The EUMETSAT Ombudsman may not suspend, cancel or reverse a decision for contract award made by the Secretariat in the frame of the procurement action under appeal.

9. The decision of the EUMETSAT Ombudsman shall be final and binding.
10. Irrespective of whether the appeal is upheld or rejected by the EUMETSAT Ombudsman, each Party shall bear its own costs for participating to the Procurement Review Procedure. The costs of the Review by the EUMETSAT Ombudsman shall be borne by the unsuccessful Party.
11. Should the appellant decide to withdraw his/her appeal and provided the withdrawal is unconditional, the EUMETSAT Ombudsman shall close the proceedings. The cost of the Review by the EUMETSAT Ombudsman until the time of the appeal's withdrawal shall be borne by the appellant.

IV. Compensation

1. Where, as the result of a Review as set out in this Procurement Review Procedure, a final and binding decision grants compensation to the appellant unsuccessful tenderer, such compensation shall in all cases not exceed EUR 100,000.

ANNEX II - TERMS OF REFERENCE OF THE EUMETSAT OMBUDSMAN

1. Ombudsman Function

The EUMETSAT Ombudsman shall decide on issues of alleged procedural breaches of the EUMETSAT Procurement Procedures following the submission of an appeal by an unsuccessful Tenderer in accordance with the Procurement Review Procedure.

The EUMETSAT Ombudsman and his/her alternate are independent in the performance of their functions and shall not seek or accept instructions from anyone whatsoever.

2. Appointment and Term

The EUMETSAT Ombudsman and his/her alternate shall be appointed by Council following proposal by the Director-General for a term of five (5) years, renewable once.

The Director-General shall present to Council for appointment a list of senior persons with particular experience and competence in matters pertaining to European space industry and public procurement independent from EUMETSAT. The EUMETSAT Ombudsman and his/her alternate shall not be staff members of EUMETSAT nor members of Delegations of Member States.

If the EUMETSAT Ombudsman and his/her alternate is at any time unable to continue to serve, a new appointment shall be made by Council for the unexpired term.

In case of resignation by the EUMETSAT Ombudsman or his/her alternate, he/she may be requested to continue in office until his/her successor has taken up duty.

Emoluments

The emoluments of the EUMETSAT Ombudsman and his/her alternate shall be fixed by Council. These emoluments shall consist of the reimbursement, in accordance with Article 26 of the Staff Rules, of travel expenses, a daily subsistence allowance and a daily fee.

Conflict of Interest

The EUMETSAT Ombudsman shall have no conflict of interest in performing his/her function and shall be obliged to notify the Director-General of any potential conflict of interest that could exceptionally arise during his/her term.

The EUMETSAT Ombudsman or his/her alternate may not decide on an appeal which he or she has a conflict of interest, especially if he or she was previously involved in the case in another capacity.

A Party may object on the account of the EUMETSAT Ombudsman's or his/her alternate's presumed partiality. The objection must be made in writing as soon as the Party concerned becomes aware of the facts underlying the presumption of partiality.

If the Party objects on the account of the partiality of the EUMETSAT Ombudsman, his/her alternate shall rule on such objection before considering the appeal. If the objection is upheld, then the alternate will decide on the appeal.