



OCCAR Management Procedure

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Record of changes

Date	Issue	Changes
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01/07/06	2	Converted to the OCCAR graphical house style.
17/06/09	3	Insertion of Competitive Dialogue and limited competition procedures, clarification on related Programme Arrangements, change in advertising provisions and editorial/administrative changes.
28/06/19	4	Revision in the light of the Directives 2009/81/EC of the European Parliament and of the Council of 13/07/09 and Directive 2014/24/EU of the European Parliament and of the Council of 26/02/14.
16/02/2021	4.1	Definition of "Economic Operator" amended i.a.w. an action raised from the EC OCCAR Pillar Assessment report.

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List of acronyms

BoS	Board of Supervisors
CR	Contract Route
EDTIB	European Defence Technological and Industrial Base
IPR	Intellectual Property Rights
ITPD	Invitation to Participate in Dialogue
ITT	Invitation To Tender (also known as Request for Proposal (RFP))
MEAT	Most Economically Advantageous Tender
MoU	Memorandum of Understanding
OMP	OCCAR Management Procedure
PAB	OCCAR Procurement Appeal Board
PB	Programme Board
PC	Programme Committee
PD	Programme Division
PM	Programme Manager
PMA	Programme Management Authorisation
PQQ	Pre-Qualification Questionnaire
PRC	OCCAR Procurement Review Committee
ProcS	Procurement Strategy
ProgD	Programme Decision
PS	Participating State(s)

1. **Introduction**

OMP 5 provides the OCCAR procedures and policy to be followed for placing a Contract; including tender activities and the requirements to be put in place prior to Contract placement.

This OMP covers Contracts (and Contract amendments) and Framework Agreements let by OCCAR in accordance with the specific Programme Arrangements and funded by the Operational Budget.

2. **Related Documentation**

- OCCAR Convention
- OMP 1 Principal Programme Management Procedure
- OMP 2 Programme Integration Procedures
- OMP 4 Legal Aspects
- OMP 6 Contract Terms and Conditions

3. **Definitions and General Principles**

3.1 Definitions

For the purposes of this Directive, the following definitions shall apply:

Candidate	An Economic Operator, which has sought an invitation to take part in a restricted or Negotiated Procedure, innovation partnership or a Competitive Dialogue.
Competitive Dialogue	Procedure in which any Economic Operator may ask to participate and whereby the Contracting Authority conducts a dialogue with the Candidates admitted to that procedure with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the Candidates chosen are invited to tender.
Contract	The mutually binding written agreement between Parties (Participating States and Contractor).
Contract Route	The rationale and recommendation to satisfy a requirement leading to the placement of a Contract.
Contracting Authority	OCCAR; the Organisation for Joint Armament Co-operation (Organisation Conjointe de Coopération en Matière d'Armement).
Contractor	The legal entity named as such in a Contract. The expression Contractor shall include any legal entity to whom the Contract is assigned with the written consent of the Contracting Authority. For the purpose of this definition the Contractor may be joint Contracting parties (co-Contractors).
Economic Operator, Supplier or Service Provider	Any natural or legal person or a person with powers of representation, decision making or control or a member of their administrative, management or supervisory body or public entity or consortium of such persons and/or bodies which offers on the market to execute works, supply products and provide services, respectively.

Framework Agreement	An agreement between one or more Contracting Authority/entities and one or more Economic Operator(s), the purpose of which is to establish the terms governing Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Invitation To Tender or Invitation To Participate in Dialogue	A package of documents, issued to potential Contractors, which invites bids for the supply of goods or services.
Life Cycle	All consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation.
Negotiated Procedure	Procedure in which the Contracting Authority/entity invites the Economic Operator of its choice and negotiates the terms of the Contract with one or more of these.
OCCAR Member State	A State that has ratified the OCCAR Convention and signed the OCCAR Security Agreement.
Participant	An Economic Operator which has been invited to take part in the dialogue phase of a Competitive Dialogue.
Participating State	The States named as such in the Contract in whose name and on behalf of or on whose behalf the Contracting Authority acts under the Contract.
Partner	An Economic Operator which has been invited to take part in the research and development phase of an Innovation Partnership.
Programme Arrangements	The main OCCAR documents related to the integration of programmes into OCCAR as described in OMP 2.
Procurement Document	Any document produced or referred to by the Contracting Authority to describe or determine elements of the procurement or the procedure, including the Contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of Contract, formats for the presentation of documents by Candidates and Tenderers, information on generally applicable obligations and any additional documents.
Procurement Strategy	The OCCAR document detailing and justifying the best way to satisfy the Participating States declared requirements through the achievement of the most economically advantageous solution, while ensuring the application of the OCCAR Rules. It includes an assessment of the possible procurement and support options, in terms of cost (including Life Cycle Cost estimates), timescales, risks and benefits.
Restricted Procedures	Procedures in which any Economic Operator may ask to participate and whereby only those Economic Operators invited by the Contracting Authority/entity may submit a tender.

Sub-Contract	A Contract placed by the Contractor or any of its Sub-Contractors, at any tier of sub-Contracting, in or towards fulfilment of any obligation on the part of the Contractor under the Contract. This includes Contracts for Commercial Items unless otherwise specified in the Contract.
Sub-Contractor	Any legal entity that enters into a Sub-Contract.
Sub-Delegatee	PMs, Heads of Division within CO and/or individual OCCAR Staff Members having received a sub-delegation of Authority as detailed in a dedicated letter of delegation signed by both the Delegator and the Sub-Delegatee as appropriate.
Tenderer	An Economic Operator, which has submitted a tender under a Restricted or Negotiated Procedure or a Competitive Dialogue.

3.2 Procurement Principles

3.2.1 General

3.2.1.1 As prescribed in the OCCAR Convention in its Article 24 (1), the use of competition is the cornerstone of OCCAR Procurement Principles because it provides the greatest leverage on Tenderers to obtain the best value for money. The potential for competition in each Programme must always be given careful and early consideration by OCCAR.

3.2.1.2 The Contracting Authority shall treat all Economic Operators equally, without discrimination and shall act in a transparent and proportionate manner.

3.2.1.3 The design of the procurement shall not be made with the intention of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain Economic Operators.

3.2.1.4 It is OCCAR policy that all staff must:

- a. Exercise impartiality and consistency of treatment in their dealings with Economic Operators;
- b. Respect commercial confidentiality;
- c. Uphold the integrity of a Contract, which requires the due performance of obligations freely entered into by both parties.

3.2.2 Conflict of Interest

3.2.2.1 The Contracting Authority shall take appropriate measures to effectively prevent, identify and remedy any conflict of interest arising in the conduct of procurement process so as to avoid any distortion of competition and to ensure equal treatment of all Economic Operators.

3.2.2.2 A conflict of interest shall cover any situation where members of OCCAR or the PS or another person, acting on behalf of OCCAR or the PS, who are involved in the procurement process or may influence the outcome

of that process have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement process.

3.2.3 Economic Operators

3.2.3.1 Groups of Economic Operators, including temporary associations, may participate in procurement procedures. They shall not be required by the Contracting Authority to have a specific legal form in order to submit a tender or a request to participate.

Where necessary, the Contracting Authority may clarify in the Procurement Documents how groups of Economic Operators are to meet the requirements as to economic and financial standing or technical and professional ability provided that this is justified by objective reasons and is proportionate.

Any conditions for the performance of a Contract by such groups of Economic Operators, which are different from those imposed on individual participants, shall also be justified by objective reasons and shall be proportionate.

3.2.3.2 Notwithstanding para. 3.2.3.1, the Contracting Authority may require groups of Economic Operators to assume a specific legal form once they have been awarded the Contract, to the extent that such a change is necessary for the satisfactory performance of the Contract.

3.3 Approving Authority

The definition of what is a Major and Minor Contracts/amendments will be defined in the Programme Decision (ProgD) as described in OMP 2.

3.3.1 Approving Authority for Major Contracts

The appropriate Programme Committee (PC) will be the Approving Authority for Major Contract action and Major modifications (amendments) to the existing Contracts that affect the High Level Objectives (performance, time and cost) of the Contract. The OCCAR-EA Director will submit the recommendation for Contract award and Major modifications to the appropriate PC.

3.3.2 Approving Authority for Minor Contracts

The OCCAR-EA Director will be the Approving Authority for Minor Contract action and Minor amendments to existing Contracts. The OCCAR-EA Director must keep the appropriate PC informed and shall provide PC members with copies of all such Contracts and Contract amendments. In the event that the OCCAR-EA Director's Approving Authority is delegated to a Sub-Delegatee, the OCCAR-EA Director and the PC must be kept informed of any Contract or Contract amendments issued and be provided with copies of the Contract or Contract amendments.

3.4 Contract Prerequisites

3.4.1 Programme Arrangements

3.4.1.1 Prior to commencing any Tender activity in support of a new requirement, the following Programme Arrangements should be in existence, namely:

- a. An agreed requirement (between Programme Participating States – PS), this may be in the form of a capability shortfall or as a defined equipment;
- b. A signed Memorandum of Understanding (MoU) or an amended MoU between the PS;
- c. A Programme Management Authorisation (PMA), signed by all Board of Supervisors (BoS) members and, in case of Non-Member State(s), a signed Letter of Acceptance (see OMP 1 and OMP 2);
- d. A ProgD signed by all PS (see OMP 1 and OMP 2);
- e. A PC (or its equivalent) consisting of the nationally empowered representatives involved in the Programme (see OMP 1). With the PMA, and where appropriate in conjunction with the agreement of Programme Participating Non-Member State(s), the PC is deemed to be established;
- f. A Programme Division (PD) or Programme Integration Team set up to manage an individual Programme; and
- g. A ProcS or a Contract Route (CR) approved by the Approving Authority.

3.4.1.2 OCCAR recognise that it will sometimes be necessary to commence Tender activities in parallel with the drafting/staffing of some of the arrangements in para. 3.4.1.1 above (see also OMP 2). Internal preparatory work may be carried out subject to, and with the full knowledge and express Authority from the OCCAR-EA Director and the PC (or its equivalent). The extent to which external activity can progress is dependent on which arrangements are in place and is as follows:

- a. A Request For Information (RFI) may be issued only where a signed PMA or BoS decision (related to the preliminary and temporary work by OCCAR) is in place and subject to the full knowledge and express Authority from the PC (or its equivalent);
- b. An Invitation to Tender (ITT)/Invitation To Participate in Dialogue may be issued only where a signed PMA or BoS decision (related to the preliminary and temporary work by OCCAR) is in place and a ProcS (or its equivalent) subject to the full knowledge and express Authority from the PC (or its equivalent);
- c. Award of a Contract is strictly subject to all relevant Programme Arrangements being in place.

3.4.1.3 In all cases where activity commences prior to all relevant Programme Arrangements being in place care must be taken not to:

- a. Commit OCCAR to any work;
- b. Give a company an unfair advantage.

3.4.2 Procurement Strategy / Contract Route

All Contracts awarded must be in accordance with either the approved ProcS or in cases where no ProcS is covering a requirement a dedicated and approved CR.

3.4.2.1 Procurement Strategy

3.4.2.1.1 The process of awarding Contracts is based primarily on the approved ProcS. The Contract process must be consistent with the ProcS. The ProcS will cover the entire Programme or a Programme phase, and may result in one or more Contracts being placed.

3.4.2.1.2 The ProcS will cover the Programme Operational Requirement or other defined requirements from the PS, costed options, timescales, risks, industrial considerations (including justifications for applying restrictions, if any), the procurement method and in-service support strategy. Once approved, the ProcS will lead to the placing of one or more Contracts to satisfy the Programme Operational Requirement.

3.4.2.1.3 The ProcS must be approved by the relevant Approving Authority. The PM, through the OCCAR-EA Director if appropriate, will recommend a ProcS or CR to the Approving Authority in accordance with the ProgD.

3.4.2.1.4 Consideration must also be given to the timescales involved in exercising rights of use in intellectual property and, if necessary, to the risks and costs involved in negotiating a licensing arrangement with a third party owner of intellectual property and/or the information that may be needed to run a competition.

3.4.2.2 The Contract Route

3.4.2.2.1 The contracting strategy for Contracts must be approved on an individual basis, unless fully covered by the ProcS. This will take the form of a document entitled the "Contract Route". The scale and extent of the CR should be proportionate to the scale of the investment, the risks involved and the complexity of the issues raised by the proposed procurement.

3.4.2.2.2 The CR will ensure that the "best" method of procurement is being employed. It must address the applicable procurement procedure.

3.4.2.2.3 All CR must be approved by the relevant Approving Authority. The PM, if appropriate through the OCCAR-EA Director, will recommend the CR to the Approving Authority in accordance with the ProgD.

4. Procurement Procedures

4.1 General

- 4.1.1 It is OCCAR's policy to achieve best value for money, therefore, wherever practicable, procurement will be done through competition. The aim of competition is to promote keen pricing, to encourage the most efficient use of industrial resources and to stimulate innovation and new ideas. For those Contracts where competition is not applicable, the aim is to replicate the incentives and disciplines imposed by competitive procurement by ensuring that prices or pricing mechanisms are agreed prior to Contract placement.
- 4.1.2 Contracts can be let by applying the open procedure, the Restricted Procedure, a competitive Negotiated Procedure with a publication of a Contract notice (a call for competition) or the innovation partnership.
- 4.1.3 Under the circumstances referred to in para. 4.5, Contracts may be awarded by means of a Competitive Dialogue.
- 4.1.4 In the specific cases and circumstances referred to in para. 4.7, a Negotiated Procedure without publication of a Contract notice may be applied.
- 4.1.5 When the value of the requirement is so small that the expected savings achieved through a formal competition are likely to be of a low value or outweighed by the cost, time and effort involved, an informal competition, e.g. by seeking offers by telephone or via websites, may be undertaken if such action is recommended to and endorsed by the Approving Authority in the ProcS or CR. Where offers are sought by telephone or via websites, an audit trail should be kept of any related discussions or correspondence.

4.2 Open Procedure

- 4.2.1 In open procedures, any interested Economic Operator may submit a tender in response to a call for competition.
- 4.2.2 The tender shall be accompanied by the information for qualitative selection that is requested by the Contracting Authority.
- 4.2.3 A flowchart of the framework for such a procedure is held at Annex OMP 5-A.

4.3 Restricted Procedure

- 4.3.1 In Restricted Procedures, any Economic Operator may submit a request to participate in response to a call for competition containing the information that is requested by the Contracting Authority.
- 4.3.2 Only those Economic Operators invited to do so by the Contracting Authority following its assessment of the information provided may submit a tender. The Contracting Authority may limit the number to a minimum of three suitable Candidates, if possible, to be invited to participate in the procedure.
- 4.3.3 A flowchart of the framework for such a procedure is held at Annex OMP 5-A.

4.4 Competitive Negotiated Procedure with Publication of a Contract Notice

- 4.4.1 The Contracting Authority may award Contracts in a competitive Negotiated Procedure with publication of a Contract notice (a call for competition). Any Economic Operator may submit a request to participate in response to a call for competition. The Contracting Authority shall negotiate with the Tenderers the Tenders submitted by them in order to adapt them to the requirements they have set in the Contract notice, the Contract documents and supporting documents, if any, and to seek out the best tender.
- 4.4.2 During the negotiations, the equal treatment of all Tenderers shall be ensured. In particular, no information shall be provided in a discriminatory manner that may give the Tenderer(s) an advantage over others.
- 4.4.3 The Negotiated Procedure may take place in successive stages in order to reduce the number of Tenders to be negotiated by applying the award criteria published in the related Contract notice or ITT, provided the reduction still allows for effective competition.
- 4.4.4 A flowchart of the framework for such a procedure is held at Annex OMP 5-A.
- 4.4.5 If appropriate, the call for competition and ITT will be advertised jointly, with the request to Economic Operator(s) to provide the necessary documentation at the same time.

4.5 Competitive Dialogue

- 4.5.1 It is not always possible to identify and define, at the outset, the technical means to satisfy complex requirements or to assess what the market can offer in the way of technical solutions and/or financial/legal solutions. Consequently, it may not be desirable to undertake the Restricted Procedure or the competitive Negotiated Procedure with publication of a Contract notice, as it would be necessary to first explore possibilities with Industry with the aim of identifying optimal solutions. In these cases, a Competitive Dialogue procedure may be a more appropriate means of effective competition.
- 4.5.2 In this case a Contract notice setting out the needs and requirements shall be published, which shall be defined in that notice and/or in a descriptive document.
- 4.5.3 A dialogue shall open with the Candidates selected in accordance with the relevant provisions set out in the Contract notice. The aim of the dialogue shall be to identify and define the means best suited to satisfying the Contracting Authority needs. All aspects of the Contract may be discussed with the chosen Candidates during this dialogue.

During the dialogue, equality of treatment among all Candidates shall be ensured. In particular, no information shall be provided in a discriminatory manner that may give the Candidate(s) an advantage over others.

No solutions proposed or other confidential information communicated by a Participant of the dialogue, shall without the agreement of that Participant be revealed to the other Participants.

- 4.5.4 It may be foreseen for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria published in the related Contract notice or Invitation to Participate in Dialogue (ITPD). This shall be indicated in the Contract notice or the descriptive document.

Such dialogue should be continued until the solution or solutions can be identified, if necessary after comparing them, which is/are likely to meet the Contracting Authority needs.

- 4.5.5 Tenders at all stages, on request, the Participants/Tenderers can be asked to clarify, specify and fine-tune their tender. However, such clarification, specification, fine-tuning or additional information may not involve changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect.
- 4.5.6 OCCAR will assess the Tenders received on the basis of the award criteria laid down in the Contract notice or the descriptive document and choose the most economically advantageous tender.
- 4.5.7 Prices or payments to the Participants in the dialogue may be specified.
- 4.5.8 A flowchart of the framework for such a procedure is held at Annex OMP 5-A.

4.6 Innovation Partnership

- 4.6.1 In innovation partnerships, any Economic Operator may submit a request to participate in response to a Contract notice by providing the information for qualitative selection that is requested by the Contracting Authority.
- 4.6.2 In the Procurement Documents, the Contracting Authority shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all Tenders. The information provided shall be sufficiently precise to enable Economic Operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

The Contracting Authority may decide to set up the innovation partnership with one Partner or with several Partners conducting separate research and development activities.

Only those Economic Operators invited by the Contracting Authority following the assessment of the information provided may participate in the procedure. The Contracting Authority may limit the number of suitable Candidates to be invited to participate in the procedure. The Contracts shall be awarded on the sole basis of the award criterion to the Most Economically Advantageous Tender (MEAT) as defined in the Contract notice.

- 4.6.3 The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the Contracting Authority and the Partners.

- 4.6.4 The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the Partners and provide for payment of the remuneration in appropriate instalments.

Based on those targets, the Contracting Authority may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several Partners, to reduce the number of Partners by terminating individual Contracts.

- 4.6.5 The Contracting Authority shall negotiate with Tenderers the initial and all subsequent Tenders submitted by them, except for the final tender, to improve the content thereof.

- 4.6.6 During the negotiations the Contracting Authority shall ensure the equal treatment of all Tenderers. To that end, they shall not provide information in a discriminatory manner that may give the Tenderer(s) an advantage over others. OCCAR shall inform all Tenderers whose Tenders have not been eliminated, pursuant to para. 4.6.5, in writing of any changes to the technical specifications or other Procurement Documents other than those setting out the minimum requirements. Following those changes OCCAR shall provide sufficient time for Tenderers to modify and re-submit amended Tenders, as appropriate.

OCCAR shall not reveal to the other Partners confidential information communicated by a Partner participating in the negotiations without its prior written agreement.

- 4.6.7 Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of Tenders to be negotiated by applying the award criteria specified.

- 4.6.8 In selecting Candidates OCCAR shall in particular apply criteria concerning the Candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

Only those Economic Operators invited by OCCAR following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by OCCAR that cannot be met by existing solutions.

- 4.6.9 In the Procurement Documents, the Contracting Authority shall define the arrangements applicable to intellectual property rights. In the case of an innovation partnership with several partners, OCCAR shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

- 4.6.10 OCCAR shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and

innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.

4.6.11 A flowchart of the framework for such a procedure is held at Annex OMP 5-A.

4.7 Negotiated Procedure without Publication of a Contract Notice

Exceptionally, in the following circumstances a Contract may be awarded by a Negotiated Procedure without publication of a Contract notice where the Approving Authority has approved the ProcS and/or CR, which includes justification for publication and whenever applicable competition being inappropriate(s).

4.7.1 Negotiated Procedure without Publication of a Contract Notice with more than one Tenderer

4.7.1.1 A Negotiated Procedure without publication of a Contract notice with more than one Tenderer may be undertaken only in the following circumstances:

- a. Where security aspects dictate the performance of specific classified requirements, by only those companies holding the appropriate security clearance;
- b. Where Contracts placed to increase the capabilities and competitiveness of the European Defence Technological and Industrial Base (EDTIB), tendering may be limited to companies, institutes, agencies or appropriate institutions under the jurisdiction of PS;
- c. Where security of supply aspects dictate the performance of requirements, by only those companies whose organisation and location of their supply chains will allow them to comply with the requirements concerning the security of supply set out in the Contract documents, and a commitment to ensure that possible changes in their supply chains during the execution of the Contract will not affect adversely compliance with these requirements;
- d. Where extraordinary technical experience/capability to perform and reliability are mandatory requirements which can only be achieved by a limited number of companies;
- e. Where open competition would not meet an essential urgent requirement, e.g. operational urgency (this does not include circumstances where time constraints are caused by either OCCAR or a PS);
- f. Where no Tenders or suitable Tenders have been submitted in response to an open or restricted competition, provided that the initial conditions of the contract are not substantially altered;
- g. Where supplies are quoted and purchased on a commodity market;
- h. In circumstances outside a to e where authorised by the BoS (e.g. for the purposes of restoring Global Balance).

4.7.1.2 A flowchart of the framework for such a procedure is held at Annex OMP 5-A.

4.7.2 Negotiated Procedure without Publication of a Contract Notice with only one Tenderer

4.7.2.1 A Negotiated Procedure without publication of a Contract notice with only one Tenderer may be undertaken in the following circumstances:

- a. When the supplies or services are unobtainable from any other source (e.g. where they are proprietary and there are no suitable alternative proprietary or commercial articles which meet the requirement) and there are no economic grounds for developing an alternative or no prospect of securing licensing rights, or when there is only one known Supplier who possesses unique or specialised capability in relation to the requirement;
- b. When the requirement is for spares which must be ordered from the original equipment manufacturer e.g. for technical, interoperability, safety, or testing reasons;
- c. Where in accordance with the agreed ProcS, and following a definition type Contract placed under competition, with the purpose of exploring the technical feasibility and commercial conditions for establishing a Production Contract for the requirement, it is decided to place the follow-on Production Contract with the Supplier of the chosen definition solution. Where it is intended to rely on this provision, the ITT for the Definition Contracts shall have mentioned the possibility of placing the follow-on Production Contract without further competition;
- d. When the requirement is for additional orders and the circumstances support non-competitive action, for example:
 - i. Orders are to be placed within 12 months of the original Contract placement;
 - ii. The quantity in relation to the original is such that no useful purpose is likely to be served by ITTs;
 - iii. The Supplier is willing to reduce or maintain his price;
 - iv. No other relevant circumstances have changed;
- e. When precluded by the specified mandatory criteria approved in the ProcS and/or CR as decided by the PS(s);
- f. When the periods required (this does not include circumstances where time constraints are caused by either OCCAR or a PS) for a competitive procedure are incompatible with the urgency resulting from a crisis (any situation in a Participating State or third country in which a harmful event has occurred which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or has a substantial impact on property values, or requires measures in order to supply the population with necessities; a crisis shall also be deemed to have arisen if the occurrence

of such a harmful event is deemed to be impending; armed conflicts and wars shall be regarded as crises).

4.7.2.2 A flowchart of the framework for such a procedure is held at Annex OMP 5-A.

4.7.3 For non-competitive Tenders, the price quoted will have to be demonstrated to be fair and reasonable

This will normally entail a price investigation using appropriate national experts, however, the total price agreement rests with the Programme Manager (PM) supported by the PD Contracts Officer.

4.7.4 Each case should be examined to see whether there is any action OCCAR could take which would allow a viable competition to be held

It should never be assumed that difficulties like:

- a. timing (with the exception of those circumstances detailed in para. 4.7.1 or 4.7.2);
- b. past practice;
- c. past procurement route;
- d. complexity of the requirement; or
- e. end-user pressure

are sufficient justifications for deciding to proceed non-competitively.

5. Conduct of the Procedures

5.1 Preparation

5.1.1 Preliminary Market Consultations

5.1.1.1 Before launching a procurement procedure, OCCAR may conduct preliminary market consultations informing Economic Operators of their procurement plans and requirements. A preliminary market consultation differs from a RFI (see para. 3.4.1.2a) as it does not require a Programme Arrangement to be in place.

5.1.1.2 For this purpose, the Contracting Authority may for example seek or accept advice from independent experts, or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

5.1.2 Prior Involvement of Candidates or Tenderers

5.1.2.1 Where a Candidate or Tenderer or an undertaking related to a Candidate or Tenderer has advised OCCAR or the Participating States or has otherwise been involved in the preparation of the procurement procedure,

OCCAR shall take appropriate measures to ensure that competition is not distorted by the participation of that Candidate or Tenderer.

5.1.2.2 Such measures shall include the communication to the other Candidates and Tenderers of relevant information exchanged in the context of or resulting from the involvement of the Candidate or Tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of Tenders. The Candidate or Tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

5.1.2.3 Prior to any such exclusion, Candidates or Tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition. The measures taken shall be documented in the Contract Presentation to the OCCAR-EA Director.

5.1.3 Division of Contracts into Lots

5.1.3.1 Generally, a Prime Contractor will be appointed for whole systems wherever it is practicable and cost effective to do so. Prime Contractor arrangements seek to transfer responsibility, under the Contract, to the Prime Contractor for the delivery of equipment and/or services to a timescale and specification agreed with OCCAR. Consequently, the Prime Contractor will be liable for any failure, including that of Sub-Contractors, to provide equipment or services required and for their fitness for purpose as specified in the Contract.

5.1.3.2 In deviation to the principle of para. 5.1.3.1 above, OCCAR may decide to award a Contract in separate lots and will determine the size and value of such lots.

5.1.3.3 The Contracting Authority shall indicate whether Tenders can be submitted for one, for several, or for all of the lots.

5.1.4 Variants

5.1.4.1 The Contracting Authority may authorise or require Tenderers to submit variants. They shall indicate in the Contract notice whether or not they authorise or require variants. Variants shall not be authorised without such indication. Variants shall be linked to the subject-matter of the Contract.

5.1.4.2 The Contracting Authority shall state in the Procurement Documents the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted.

5.1.4.3 Only variants meeting the minimum requirements laid down by the Contracting Authority shall be taken into consideration.

5.1.5 Setting Time Limits

5.1.5.1 When fixing the time limits for the receipt of Tenders and requests to participate, the Contracting Authority shall take account of the complexity of the Contract and the time required for drawing up Tenders.

5.1.5.2 Where Tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the Procurement Documents, the time limits for the receipt of Tenders shall be fixed so that all Economic Operators concerned may be aware of all the information needed to produce Tenders.

5.1.5.3 The Contracting Authority shall extend the time limits for the receipt of Tenders so that all Economic Operators concerned may be aware of all the information needed to produce Tenders in the following cases:

- a. Where, for whatever reason, additional information, although requested by the Economic Operator in good time, is not supplied at the latest six days before the time limit fixed for the receipt of Tenders.
- b. Where significant changes are made to the Procurement Documents.

The length of the extension shall be proportionate to the importance of the information or change.

Where the additional information has either not been requested in good time or its importance with a view to preparing responsive Tenders is insignificant, the Contracting Authority shall not be required to extend the time limits.

5.2 Choice of Candidates/Participants/Partners

5.2.1 Selection Criteria/Pre-Qualification Questionnaire

5.2.1.1 General

5.2.1.1.1 In order to evaluate the suitability of the potential Supplier to meet the requirement a Pre-Qualification Questionnaire (PQQ) may be required to be completed. The advertisement for the requirement and/or the PQQ should set out the minimum standards in some detail and the criteria that will be used in the process to select Suppliers to be invited to Tender. Only Supplier(s) who meet the criteria should be invited to Tender.

5.2.1.1.2 The criteria shall be limited to those that are appropriate to ensure that a Candidate or Tenderer has the legal and financial capacities and the technical and professional abilities to perform the Contract to be awarded. All criteria shall be related and proportionate to the subject-matter of the Contract.

5.2.1.1.3 Selection criteria may relate to:

- a. suitability to pursue the professional activity;
- b. economic and financial standing;
- c. technical and professional ability.

5.2.1.2 Suitability to Pursue the Professional Activity

5.2.1.2.1 OCCAR may request a Candidate to be enrolled on a professional or trade register in its Member State of origin or establishment, and to provide a proof of such registration or a declaration on oath.

5.2.1.2.2 In procedures for the award of service Contracts, OCCAR may request Candidates to possess a particular authorisation or be a member of a particular organisation in order to be able to perform the service, and to provide a proof of such authorisation or membership.

5.2.1.3 Economic and Financial Standing

5.2.1.3.1 Proof of an Economic Operator's financial stability may be required and one or more of the following references provided to OCCAR:

- a. Appropriate statements from a bank or, where appropriate, evidence of professional risk indemnity insurance;
- b. The presentation of balance sheets or extracts from balance sheets, where publication of the balance sheet is required under the law of the country in which the Economic Operator is established;
- c. A statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the Contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the Economic Operator started trading, insofar as information on such turnovers is available.

5.2.1.3.2 With regard to economic and financial standing, Contracting Authority may impose requirements ensuring that Economic Operators possess the necessary economic and financial capacity to perform the Contract. For that purpose, Contracting Authority may require, in particular, that Economic Operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the Contract. In addition, Contracting Authority may require that Economic Operators provide information on their annual accounts showing the ratios, for instance, between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance.

5.2.1.3.3 The minimum yearly turnover that Economic Operators are required to have shall not exceed two times the estimated Contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies.

5.2.1.3.4 The ratio, for instance, between assets and liabilities may be taken into consideration where the Contracting Authority specifies the methods and criteria for such consideration in the Procurement Documents. Such methods and criteria shall be transparent, objective and non-discriminatory.

5.2.1.3.5 Where a Contract is divided into lots this Article shall apply in relation to each individual lot. However, the Contracting Authority may set the minimum yearly turnover that Economic Operators are required to have

by reference to groups of lots in the event that the successful Tenderer is awarded several lots to be executed at the same time.

5.2.1.4 Technical and/or Professional Ability

5.2.1.4.1 Evidence of an Economic Operators' technical abilities may be requested to be furnished to the Contracting Authority, according to the nature, quantity or importance and use of the works, supplies or services. The evidence that may be required to be provided is as follows:

- a. A list of the works carried or principal deliveries effected or the main services provided out over the past five (5) years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and location of the works and shall specify whether they were carried out according to the rules of the trade and properly completed.
- b. An indication of the technicians or technical bodies involved, whether or not they belong directly to the Economic Operator's undertaking, especially those responsible for quality control and, in the case of works Contracts, those upon which the Contractor can call in order to carry out the work;
- c. A description of the technical facilities and measures used by the Economic Operator to ensure quality and the undertaking's study and research facilities, as well as internal rules regarding intellectual property;
- d. A check carried out by the Contracting Authority or on their behalf by a competent official body of the country in which the Economic Operator is established, subject to that body's agreement, on the production capacity of the supplier or the technical capacity of the Economic Operator. If necessary, on the means of study and research which are available to it and the quality control measures it will operate;
- e. In the case of works Contracts, service Contracts or supply Contracts also covering siting and installation operations or services, the educational and professional qualifications of the Economic Operator and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;
- f. For works Contracts and services Contracts, and only in appropriate cases, an indication of the environmental management measures that the Economic Operator will be able to apply when performing the Contract;
- g. A statement of the average annual manpower of the service provider or Contractor and the number of managerial staff for the last three (3) years;
- h. A description of the tools, material, technical equipment, staff numbers and know-how and/or sources of supply which the Economic Operator has at its disposal to perform the Contract, cope with any additional needs required by the Contracting Authority as a result of a crisis or carry out the maintenance, modernisation or adaptation of the supplies covered by the Contract;

- i. With regard to the products to be supplied, provision of:
 - samples, descriptions and/or photographs, the authenticity of which must be certified if the Contracting Authority so requests;
 - certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products, clearly identified by references to specifications or standards;
- j. In the case of Contracts involving, entailing and/or containing classified information, evidence of the ability to process, store and transmit such information at the level of protection required by the Contracting Authority.

5.2.1.4.2 The Contracting Authority shall specify in the ITT/ITPD which of the references must be provided.

5.2.1.5 Reliance on the Capacities of other Economic Operator(s)

5.2.1.5.1 An Economic Operator may, where appropriate and for a particular Contract, rely on the capacities of other Economic Operator(s), regardless of the legal nature of the links that it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect.

5.2.1.5.2 Under the same conditions, a consortium of Economic Operators may rely on the capacities of participants in the consortium or of other entities.

5.2.1.5.3 If, for any valid reason, the Economic Operator is unable to provide the references requested by the Contracting Authority, it may prove its economic and financial standing by any other document which the Contracting Authority considers appropriate.

5.2.1.6 Exclusion from the Procurement Process

5.2.1.6.1 An Economic Operator may be excluded from participation in the procurement procedure where that Economic Operator:

- a. is bankrupt or is being wound up, where its affairs are being administered by a court, where it has entered into an arrangement with creditors, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;
- b. is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by a court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
- c. has been convicted by a judgment which has the force of "*res judicata*" in accordance with the legal provisions of the country of any offence concerning its professional conduct, such as, for example, infringement of existing legislation on the export of defence and/or security equipment;

- d. has been guilty of grave professional misconduct proven by any means which the Contracting Authority can supply, such as a breach of obligations regarding security of information or security of supply during a previous Contract;
- e. has been found, on the basis of any means of evidence, including protected data sources, not to possess the reliability necessary to exclude risks to the security of the Member State;
- f. has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which it is established or with those of the country of the Contracting Authority/entity;
- g. has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the Contracting Authority is guilty of serious misrepresentation in supplying the information required under this Section, or has not supplied such information.

5.2.1.6.2 An Economic Operator shall also be excluded from participation in a procurement procedure where the Contracting Authority is aware that the Economic Operator:

- a. has been the subject of a conviction by final judgment, for one or more of the reasons listed below:
 - Participation in a criminal organisation;
 - Corruption;
 - Fraud;
 - Terrorist offences or offences linked to terrorist activities;
 - Money laundering and terrorist financing;
 - Child labour and other forms of trafficking in human beings.
- b. is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision, having final and binding effect, in accordance with the legal provisions of the country in which it is established or, with those of a Participating States.

5.2.1.6.3 The Contracting Authority may require the Candidates to provide a signed declaration that none of the cases above apply to them.

5.2.1.7 Additional Documentation and Information

5.2.1.7.1 Where information or documentation to be submitted by Economic Operator is or appears to be incomplete, erroneous or where specific documents are missing, OCCAR may request the Economic Operator concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit. Such requests

shall be made in full compliance with the principles of equal treatment and transparency.

5.2.1.7.2 The rules of fairness and equity will be strictly observed throughout the Supplier selection process. Re-consideration of any pre-selection/qualification criteria and pre-selection/qualification decisions will not occur during the tendering or Tender assessment processes.

5.3 Award of the Contract

5.3.1 Contract Award Criteria

5.3.1.1 The Contracting Authority shall base the Contract award on the most economically advantageous tender.

5.3.1.2 The most economically advantageous tender from the point of view of the Contracting Authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public Contract in question. Such criteria may comprise, for instance:

- a. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- b. organisation, qualification and experience of staff assigned to performing the Contract, where the quality of the staff assigned can have a significant impact on the level of performance of the Contract; or
- c. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

5.3.1.3 Award criteria shall be considered to be linked to the subject-matter of the Contract where they relate to the works, supplies or services to be provided under that Contract in any respect and at any stage of their life cycle, including factors involved in:

- a. the specific process of production, provision or trading of those works, supplies or services; or
- b. a specific process for another stage of their life cycle.

5.3.1.4 Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the Contracting Authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the Tenderers to be effectively verified in order to assess how well the Tenders meet the award criteria. In case of doubt, the Contracting Authority shall verify effectively the accuracy of the information and proof provided by the Tenderers.

5.3.1.5 The Contracting Authority shall specify, in the Procurement Documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

Those weightings may be expressed by providing for a range with an appropriate maximum spread.

Where weighting is not possible for objective reasons, the Contracting Authority shall indicate the criteria in decreasing order of importance.

5.3.2 Abnormally Low Tenders

If a given Tender appears to be abnormally low in relation to the goods, works or services, the Contracting Authority shall, before it rejects these Tenders, request in writing details of the constituent elements of the Tender which it considers relevant.

Those details may relate in particular to:

- a. the economics of the construction method, manufacturing process or services provided;
- b. the technical solutions chosen and/or any exceptionally favourable conditions available to the Tenderer for the execution of the work or for the supply of the goods or services;
- c. the originality of the work, supplies or services proposed by the Tenderer;
- d. compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;
- e. the possibility of the Tenderer obtaining State aid.

OCCAR shall verify those constituent elements by consulting with the Tenderer, taking account of the evidence supplied.

5.4 Security of Information

When Contracts involve, require and/or contain classified information, OCCAR shall specify in the Contract documentation (Contract notices, Contract documents, descriptive documents or supporting documents) the measures and requirements necessary to ensure the security of such information at the requisite level.

To this end, the Contracting Authority may require that the tender documents contain, inter alia, the following particulars:

- a. a commitment from the Tenderer and the Sub-Contractors already identified to appropriately safeguard the confidentiality of all classified or commercially sensitive information in their possession or coming to their notice throughout the duration of the Contract and after termination or conclusion of the Contract, in accordance with the relevant laws, regulations and administrative provisions;

- b. a commitment from the Tenderer to obtain the commitment provided in point a. from other Sub-Contractors to which it will Sub-Contract during the execution of the Contract;
- c. sufficient information on Sub-Contractors already identified to enable the Contracting Authority to determine that each of them possesses the capabilities required to appropriately safeguard the confidentiality of the classified information to which they have access or which they are required to produce when carrying out their Sub-Contracting activities;
- d. a commitment from the Tenderer to provide the information required under point c. on any new Sub-Contractor before awarding a Sub-Contract.

For further details see OMP 11 and OMP 12.

6. Sub-Contracting

6.1 General

- 6.1.1 Competition is the cornerstone of OCCAR's procurement policy. Competition must therefore be encouraged throughout the supply chain. Sub-Contract competition should therefore be encouraged in all procurements to obtain best value for money. Care must, however, be exercised not to interfere with a Prime Contractor's commercial decisions where the Prime Contractor has been appointed as a result of competition.
- 6.1.2 In general it is the responsibility of the Prime Contractor to select the Sub-Contractors. In exceptional circumstances, such as for the purposes of the restoration of Global Balance, OCCAR may wish to direct a Contractor towards a specific Sub-Contractor.
- 6.1.3 Where a Prime Contractor has been selected non-competitively, it is essential to maximise and have visibility of the Sub-Contractor competition. The Prime Contractor will be required to provide evidence of how he intends to achieve the greatest competition at Sub-Contractor(s) level. A procurement, which has only Sub-Contract competition, should be regarded as a non-competitive procurement for the purposes of approval of the CR.
- 6.1.4 Exceptionally OCCAR may require to be involved in the selection of Sub-Contractors to preserve the interests of the PS:
 - a. For the purposes of restoring Global Balance, ITT/ITPDs may, on the decision of the BoS, provide guidance on work allocation.
 - b. Where either security of supply or industrial strategy matters require that specific Sub-Contracts be placed with a Supplier(s) of a particular nation(s), this will require approval by the appropriate PC. Notwithstanding this direction, the Contract must specify that the Contractor is fully responsible for meeting the requirements of the Contract.

Further to the reasons set out above, the Contracting Authority reserves the right to reject the Sub-Contractors selected by the Tenderer either at the stage of the award procedure of the main Contract or by the successful Tenderer during the performance of the Contract. Such rejection can only be

based on criteria applied for Supplier selection for the main Contract. If the Contracting Authority rejects a Sub-Contractor, it must produce written justification to the Tenderer or the successful Tenderer, setting why it considers the Sub-Contractor(s) does not meet the criteria.

- 6.1.5 Responsibility for the apportionment and satisfactory completion of sub-Contracted work is the full responsibility of the Prime Contractor. The PM therefore need to take care not to diminish in any way this responsibility by undue involvement in the selection of Sub-Contractors post Contract award.

7. Records/Contract Presentation

For every Contract or Framework Agreement, the PD shall present a written report, the Contract Presentation Report, to the OCCAR-EA Director to confirm that the selection procedure was undertaken in a transparent and non-discriminatory manner. The Contract Presentation Report shall include the following:

- a. the subject and value of the Contract or Framework Agreement;
- b. the Contract award procedure chosen;
- c. in the case of a Competitive Dialogue, the circumstances justifying the use of this procedure;
- d. in the case of a Negotiated Procedure without prior publication of a Contract Notice, the circumstances which justify the use of this procedure;
- e. if appropriate, the reasons for the Framework Agreement lasting more than seven years;
- f. the name of the Candidates chosen and the reason for their selection;
- g. the name of the Candidates excluded and the reasons for their exclusion;
- h. the reasons for the rejection of any Tenders received;
- i. the name of the successful Tenderer and the reasons why its Tender was selected, and, if known, the share of the Contract or Framework Agreement which the successful Tenderer intends, or will be required, to Sub-Contract to third parties;
- j. the Contract Price (including price type);
- k. the related ProgD;
- l. the related CR;
- m. description of the Negotiation Process;
- n. deviations from OMP 6;
- o. PM Certification that the final results are considered fair and reasonable.

8. Advertisement

8.1 General

- 8.1.1 The award of a Contract or a Framework Agreement shall be advertised. The Approving Authority must endorse any recommendation not to advertise (e.g. security of information).

Where provided for in the ProcS and/or in the CR, requirements with an estimated value under 412.000,00 Euro w/o VAT will not be advertised.

- 8.1.2 The PM will ensure that the requirement is advertised on the OCCAR website. These adverts gain exposure in the Member States by a link from their national electronic bulletins, whenever practicable. Additionally, the relevant PC (or its equivalent) may endorse such links to be implemented by Programme Participating Non-Member States on their national electronic bulletins, or implemented on any other electronic bulletins.

- 8.1.3 Advertisements will be issued at the following points in the procurement process:

- a. Possible future purchase;
- b. Award of Contract.

8.2 Possible Future Purchases

- 8.2.1 The intention is to provide as much advance notice as possible of all forthcoming OCCAR ITT/ITPD and requirements within the stated thresholds, to enable companies to register an interest. The announcement of a future requirement is not to be construed as confirmation that a Tender/Contract will subsequently be issued. Announcements are for information only.

- 8.2.2 Such advertisements should:

- a. Summarise the requirements, (including general qualification requirements);
- b. Give an estimated date for ITT/ITPD issue;
- c. Invite expressions of interest within a reasonable period of time (for Major Contracts, normally no later than six (6) months before estimated date of ITT/ITPD issue);
- d. Give details of any intended Tenderers Conference to take place prior to ITT/ITPD release;
- e. Detail points of contact for further information;
- f. Where appropriate, specify the mandatory eligibility and qualification criteria as defined in the ProcS and/or CR;
- g. Specify the Supplier selection criteria when applicable;
- h. Provide any other relevant information as available;

- i. Where a Competitive Dialogue procedure is to be applied, the following information should be included:
 - the requirement (can be further defined in the ITPD);
 - the minimum number of Candidates you intend to ITPD;
 - The objective and non-discriminatory criteria which you intend to use to limit the number of suppliers to be ITPD;
 - the intention for the Competitive Dialogue procedure to take place over successive stages (reserve right to do so even if development of the requirement may result in this being unnecessary);
 - if variant bids are to be permitted;
 - the procedural time limit for receipt of requests to participate (not less than 30 days although this can be reduced due to circumstances); and
 - the award criteria you intend to use when selecting the winning Tenderer (can be further refined in ITPD).

8.2.3 The principal objective of the above is to facilitate consideration by Supplier(s) as to whether a requirement falls within the scope of their present or potential capabilities. It will assist where necessary in establishing initial contacts between Supplier(s) to explore the potential for industrial teaming arrangements.

9. Complaints Procedure

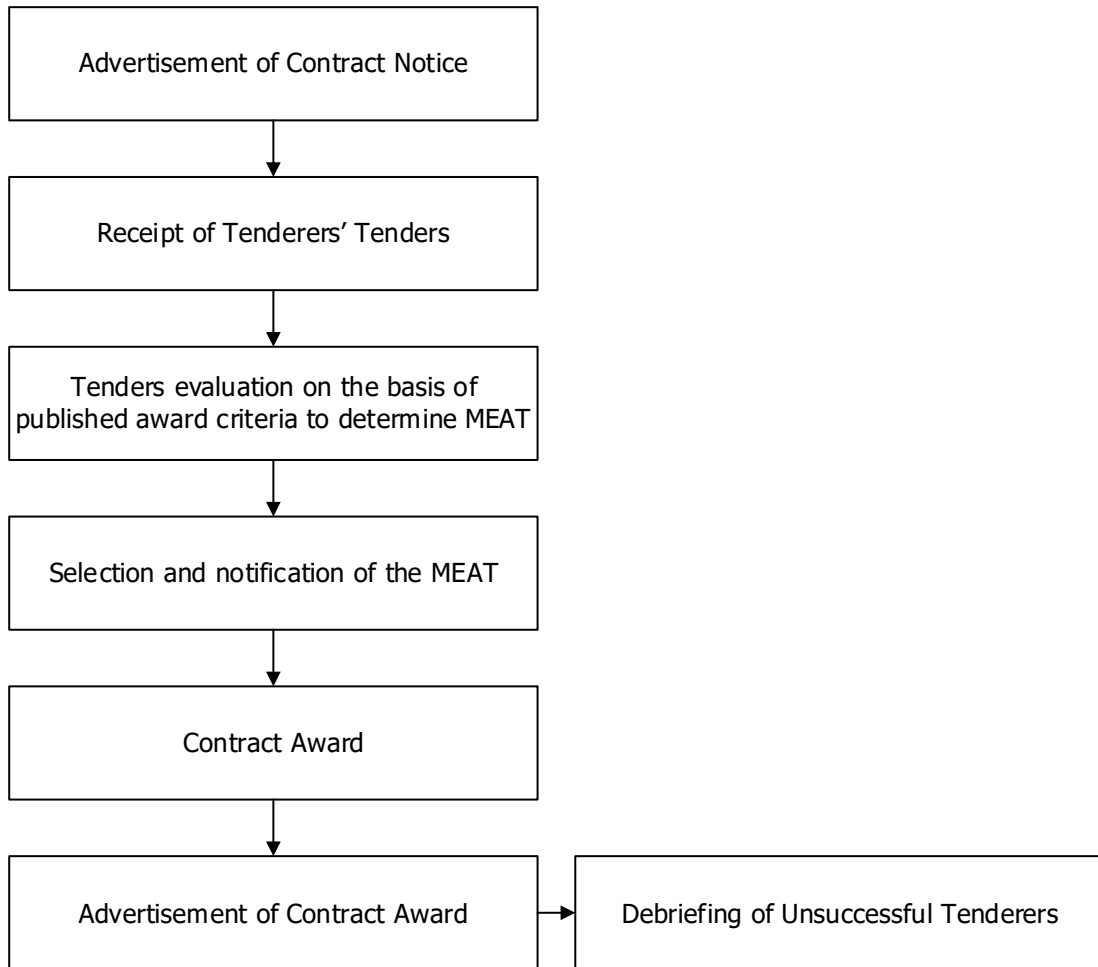
The rules applicable to the proceedings initiated by an unsuccessful Economic Operator in case he considers himself to have been disadvantaged in a procurement process are detailed at Annex OMP 5-B.

10. Annexes

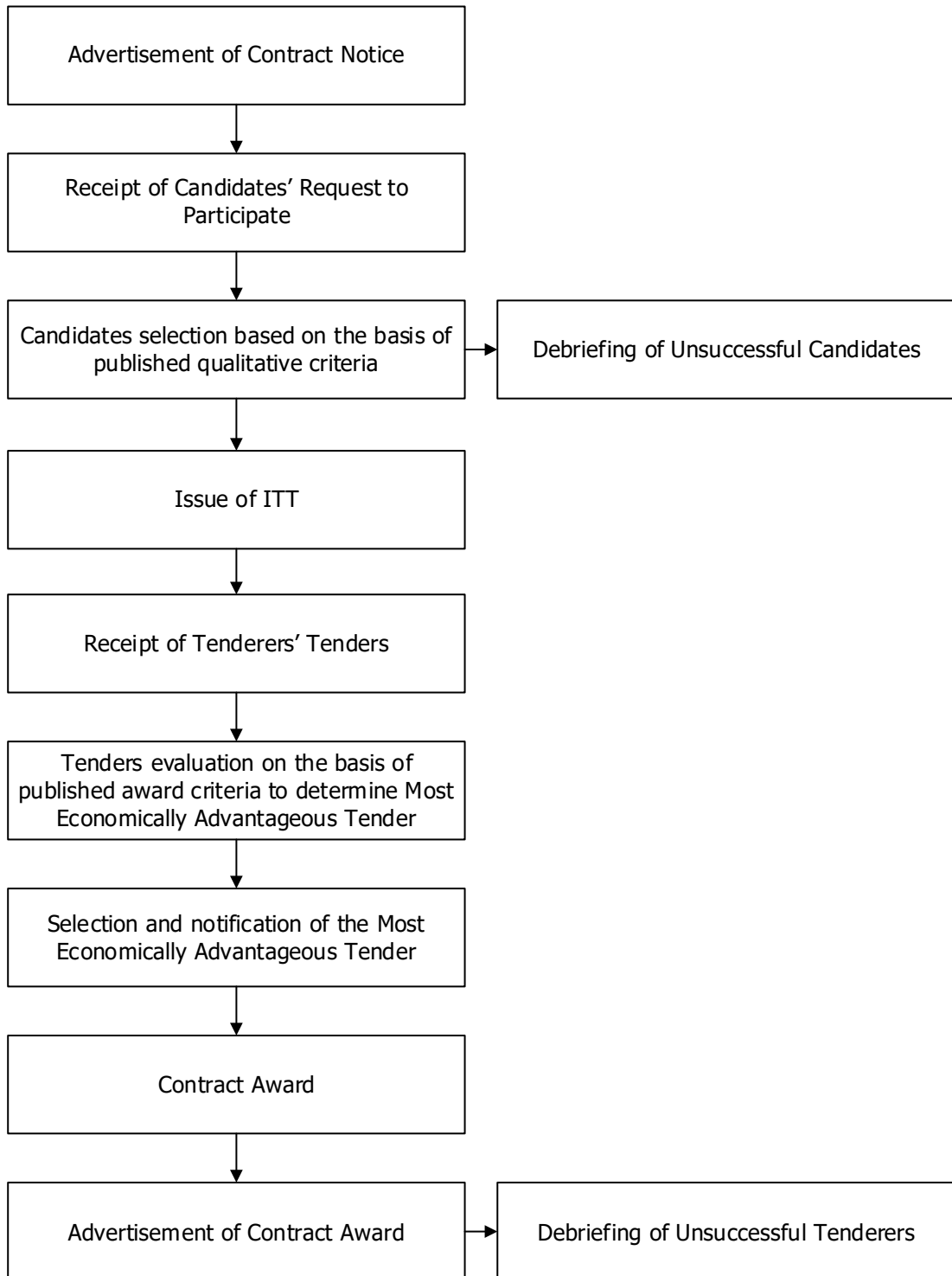
Annex OMP 5-A	Flowcharts of Procurement Procedures
Annex OMP 5-B	Complaints Procedure

Annex OMP 5-A – Flowcharts of Procurement Procedures

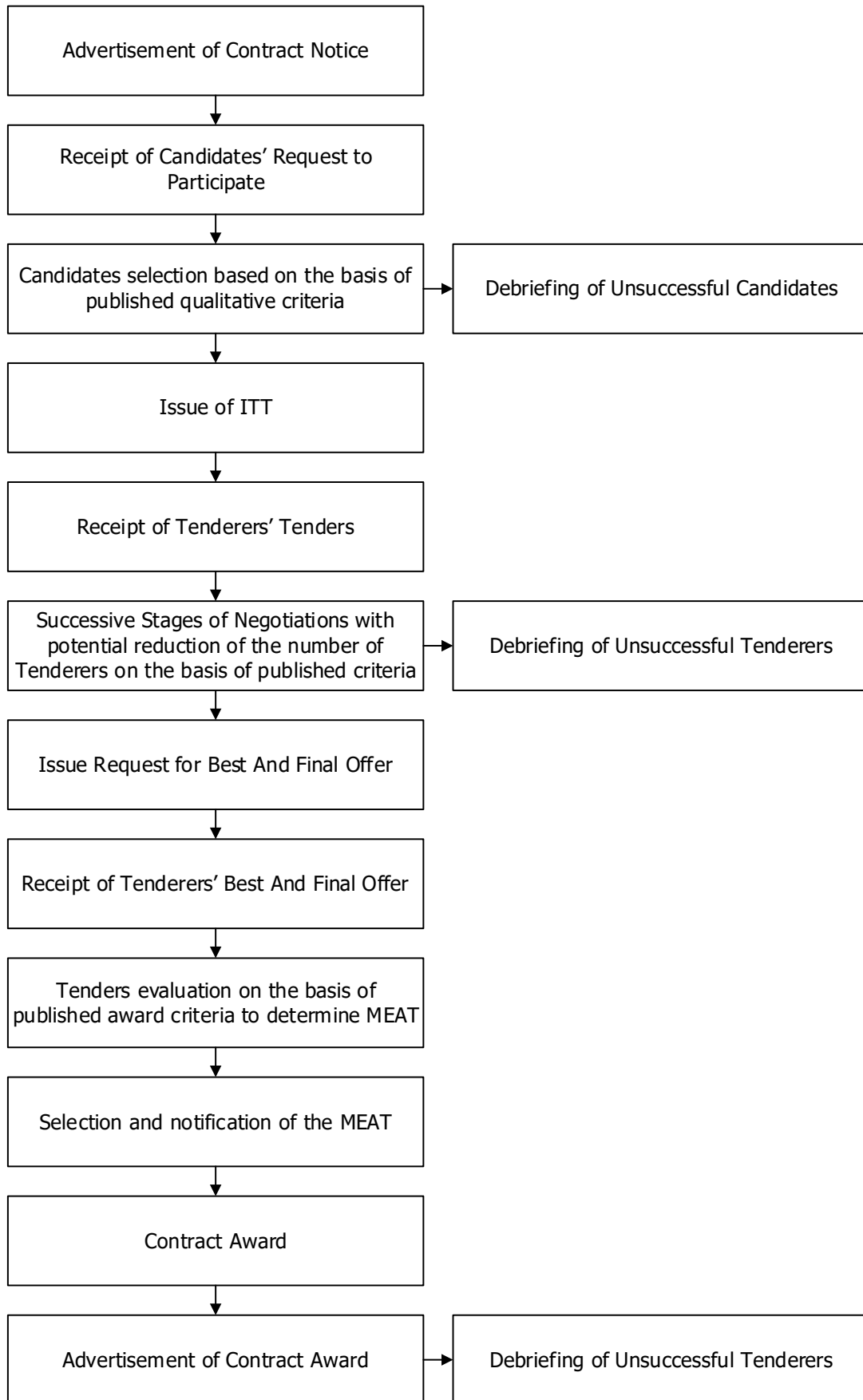
1. Open Procedure



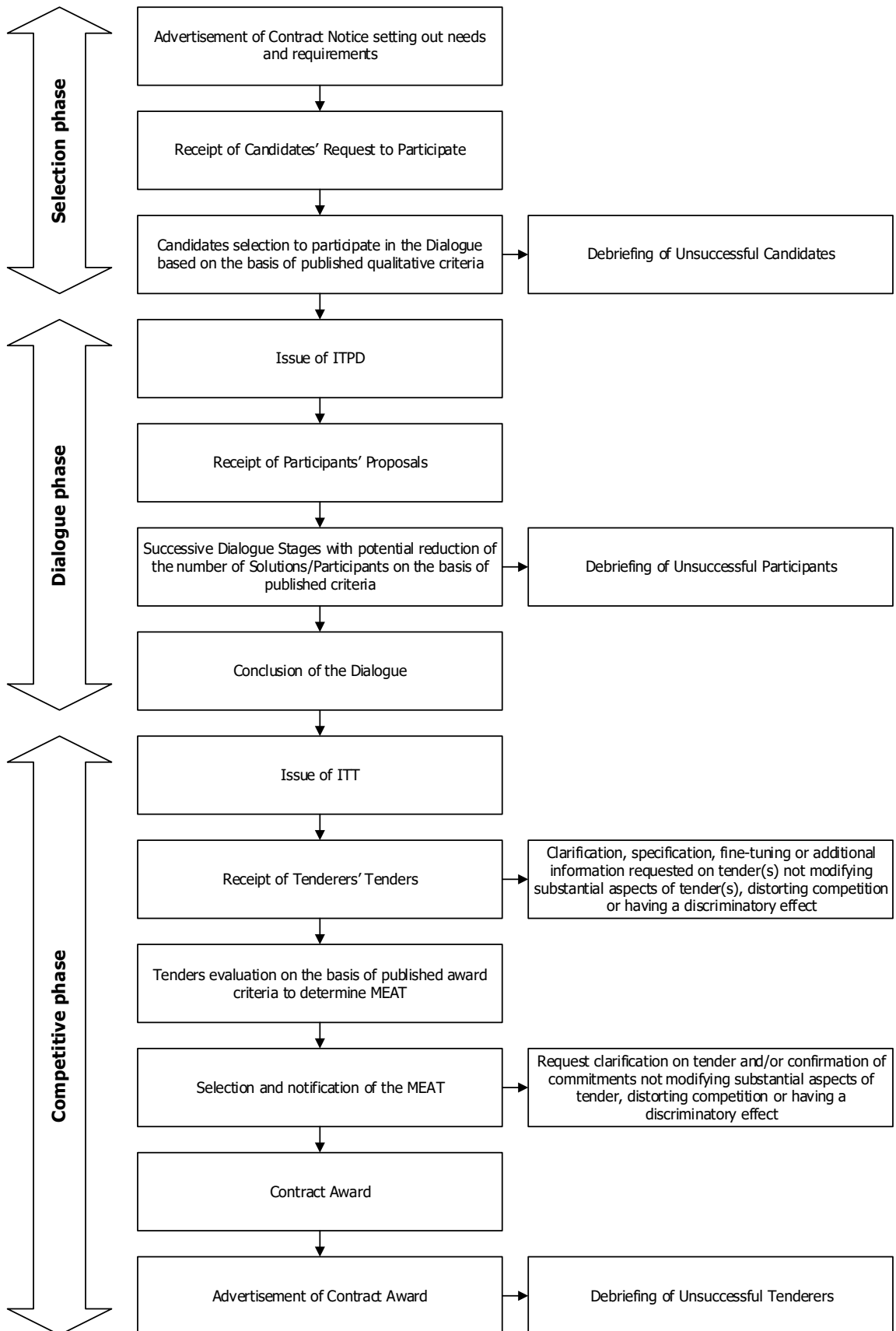
2. Restricted Procedure



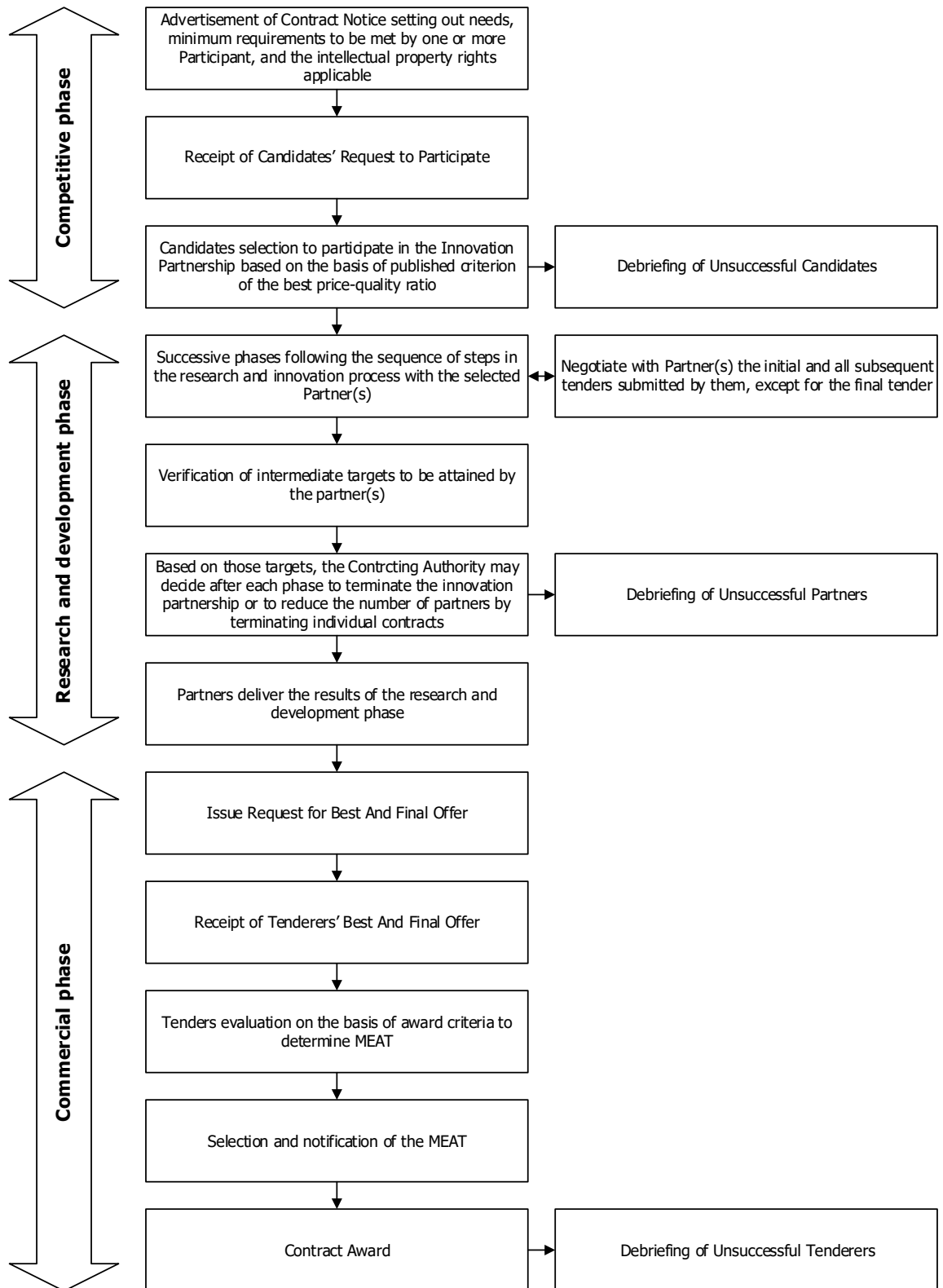
3. Competitive Negotiated Procedure with Publication of a Contract Notice



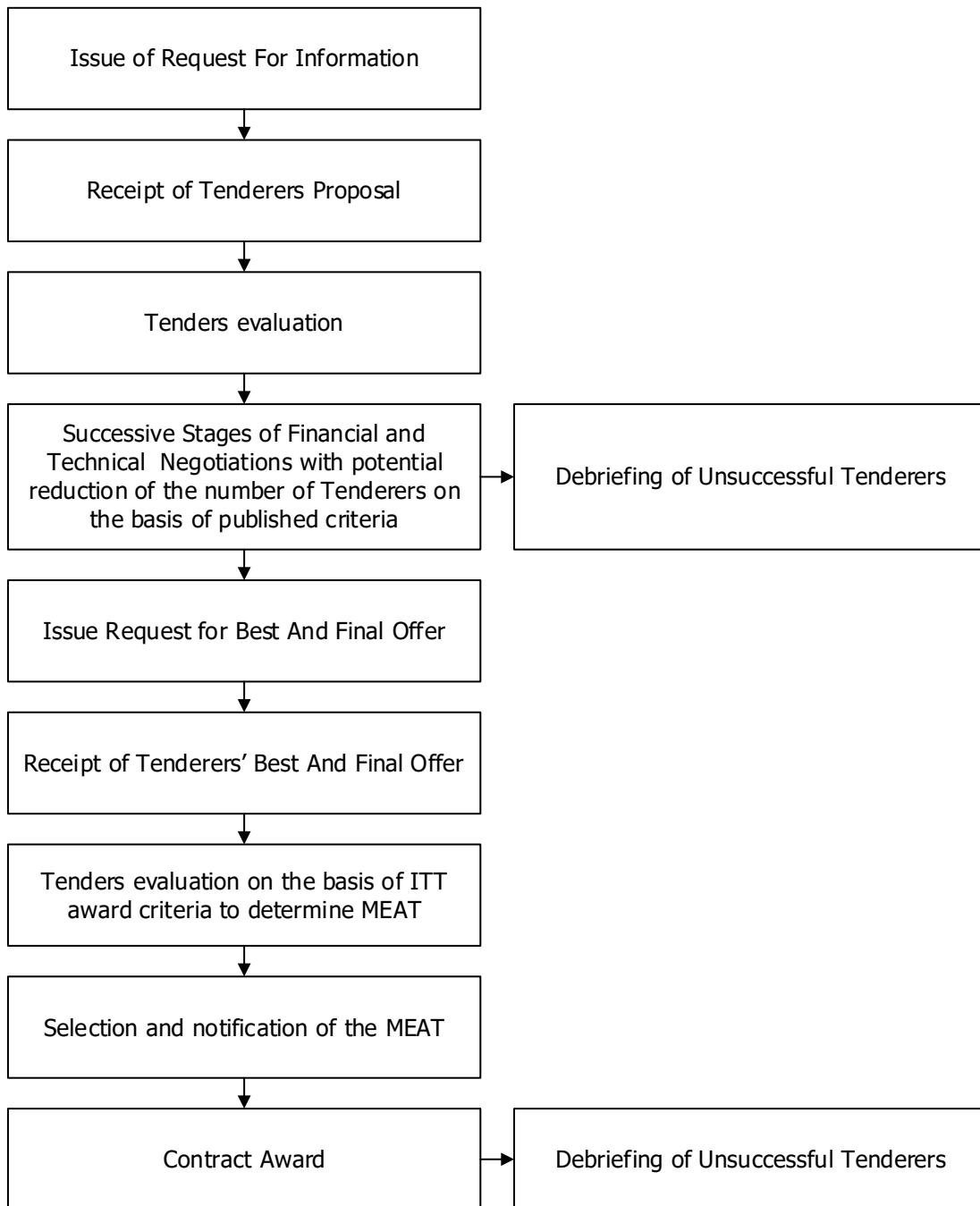
4. Competitive Dialogue



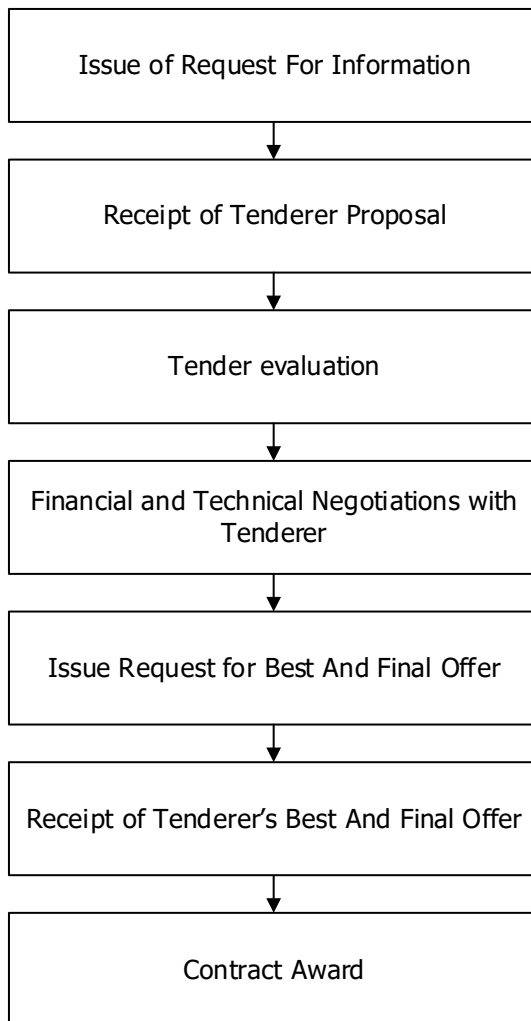
5. Innovation Partnership



6. Negotiated Procedure without Publication of a Contract Notice with more than one Contractor



7. Negotiated Procedure without Publication of a Contract Notice with only one Contractor



Annex OMP 5-B – Complaints Procedure

1. Scope

This Annex establishes the rules applicable to the proceedings initiated by an unsuccessful Economic Operator in case he considers himself to have been disadvantaged in a procurement process.

The proceedings pursuant to this procedure are free of charge. The Economic Operator shall bear its own costs, including for legal counsel, incurred throughout the proceedings.

The proceedings pursuant to this procedure shall have no impact on the Economic Operators participation in other ongoing or future procurement procedures of OCCAR.

2. Procurement complaints bodies

2.1 The OCCAR procurement complaint bodies are the OCCAR Procurement Review Committee (PRC) and the OCCAR Procurement Appeals Board (PAB).

2.2 The OCCAR procurement complaint bodies are responsible for the implementation of the following procedures within their respective powers.

2.3 All OCCAR staff members are obliged to cooperate with the OCCAR procurement complaints bodies and to provide any documents required under this OMP and requested by them without undue delay.

2.4 The OCCAR procurement complaint bodies act objectively and impartially in accordance with the OCCAR rules and regulations.

2.5 All members of the complaint bodies shall be independent and free from improper influence and fear of retaliation in the performance of their duties pursuant to this procedure.

2.6 Any member of the complaint bodies who has a conflict of interest in deciding on a particular case shall promptly recuse himself or herself and be replaced by an alternate. The mere fact of being an OCCAR staff member is not considered to constitute a conflict of interest.

3. Procurement Review Procedure

3.1 Procurement Review Committee

3.1.1 Composition

The PRC shall be composed of three members:

- the Commercial and Policy Section Leader as chairman;
- a contract officer appointed by the Commercial and Policy Section Leader and selected from a PD different to the one conducting the concerned procurement procedure;
- a technical officer appointed by the Commercial and Policy Section Leader and selected from a PD different to the one conducting the concerned procurement procedure.

The OCCAR-EA Director shall appoint an alternative chairman, to replace the Commercial and Policy Section Leader in cases where the latter is unable to act.

3.1.2 Competences

The PRC is directly empowered by the OCCAR-EA Director.

The PRC is required to review the procurement process, to give its opinion to the according PC and to make a recommendation to the OCCAR-EA Director in order to enable him to take an administrative decision regarding the concerned procurement procedure.

The PRC review is therefore limited to verifying that the applicable OCCAR rules and regulations are complied with and that there is no manifest error of assessment of fact or misuse of powers.

The PRC does not have any power beyond those conferred upon them by this OMP. In particular, they do not have the right to annul a Contract awarded in an OCCAR Programme.

3.2 Request for Review

In case an Economic Operator considers himself to have been disadvantaged in a procurement process, he has the right to request a review of the proceeding.

The Economic Operator is responsible for providing evidence supporting its Request for Review and for ensuring that the evidence is accurate and sufficient to form a basis for the review.

Only those Economic Operators shall have the right to request a review that are directly and individually concerned by the specific procurement process.

The right to request a review is limited to a period not exceeding 30 days. The period begins when the Economic Operator identified or should have identified the infringement of its rights.

The Request for Review must be signed by a person authorised to represent the Economic Operator and submitted in a PDF format. The PDF file shall be attached to an e-mail sent to the following e-mail address: OCCAR.Questions@occar.int.

The Request for Review and all supporting documents must be in English.

The Request for Review must contain:

- the full legal name of the Economic Operator and its contact details, including address and telephone number;
- the full name of the person authorised to represent the Economic Operator and/or, if applicable, the name and contact details of any counsel assisting or representing the Economic Operator;
- the e-mail address at which the Economic Operator accepts to receive any written communications in relation to the Request for Review;
- a statement of the relevant facts;

- the grounds on which the Economic Operator claims that the challenged procurement procedure was not conducted in accordance with the OCCAR rules and regulations;
- an indication on which information contained in the Request for Review shall be treated by the OCCAR as commercial sensitive or classified, if any.

3.3 Proceeding before the OCCAR Procurement Review Committee

The PRC shall, as a general rule, review a procurement process within sixty (60) working days after the date of submission of the Request for Review (see flowchart at para. 5.1).

Any Request for Review received by OCCAR shall immediately be referred to the chairman of the PRC. The chairman shall establish the PRC in accordance with para. 3.1.1 within five (5) working days after the receipt of the complaint.

The PRC will acknowledge the receipt of the Request for Review to the Economic Operator and inform the concerned PM within five (5) working days after it has been established.

The PM responsible for the challenged procurement procedure will submit all documentation related to the concerned procurement procedure and a written statement with regard to the Request for Review to the PRC not later than ten (10) working days after being informed about the Request for Review.

The PRC shall evaluate the provided documents and the statement. In case of any formal errors or a lack of information requested under para. 3.2 affecting the performance of the Request for Review the PRC shall request the Economic Operator to provide the missing information as it seems necessary. The missing information shall be provided in a period of one week; otherwise, the Request for Review shall be excluded. This exclusion is subject to appeal.

The PRC subsequently shares the statement including the related documentation with the Economic Operator as soon as the statement has been evaluated. The PRC may redact or withhold information the release of which would affect other Economic Operators legitimate commercial interests, would infringe the law of the Member States or the PS, might prejudice fair competition between Economic Operators or are subject to any classification in accordance with OMP 11.

All activities above between reception of the statement from the PM by the PRC and the sharing of the statement with the Economic Operator shall not exceed a time span of fifteen (15) working days.

The Economic Operator may submit to the PRC additional observations strictly limited to the statement and the documents provided by the PRC not later than five (5) working days after the receipt.

The PRC may ask the PM and/or the Economic Operator for clarification, at any time. The PM and/or the Economic Operator shall provide their clarifications within the timelines specified by the PRC.

A Request for Review is founded in case of a material breach of the OCCAR rules and regulations affecting the Economic Operator and which could have impacted

the outcome of the procurement procedure. Otherwise, it is deemed unfounded and will be rejected.

To that extent the PRC will send a report within five (5) working days of receipt of the Economic Operator's additional observations to the concerned PC concluding if the Request for Review is deemed founded or unfounded.

On that basis, PRC and PC should submit within five (5) working days of receipt of the PRC's report a common recommendation to the OCCAR-EA Director. In case PRC and PC cannot agree on a common recommendation, each of them shall send a self-standing recommendation to the OCCAR-EA Director.

The OCCAR-EA Director shall take an administrative decision within ten (10) working days of receipt of the recommendation(s).

The OCCAR-EA Director shall inform the Economic Operator as well as the concerned PB and the BoS about his Decision.

Although Request for Reviews shall not stay the execution of the decisions appealed against, OCCAR personnel shall exercise all due circumspection to avoid taking any further action during the period within which a Request for Reviews may be brought or is being heard which would change the position to the detriment of the Economic Operator bringing the Request for Reviews, by rendering impossible the relief sought by the appellant, in the event of his Request for Reviews being upheld.

The filing of a Request for Review does not suspend the challenged procurement procedure.

If deemed appropriate, the PRC may, upon a request or on its own motion, propose the OCCAR-EA Director to suspend the signing of the Contract or adopt other measures of a temporary nature, which may be valid until the final decision is taken. The recommendation shall carefully weigh the advantages and disadvantages of such a suspension and is justified just in case of a severe disadvantage for the Economic Operator due to the alleged breach of OCCAR rules and regulations which prevails over the interests of the PS.

4. Appeals

4.1 Procurement Appeal Board

4.1.1 Composition

Each member of the BoS shall appoint one (1) national expert with commercial and/or legal background. The appointed national experts shall not be members of OCCAR staff.

The national expert shall be from an OCCAR Member State.

Any person appointed to the functions of member or alternate must hold the required security clearance certificate authorising him/her to have access to the appeal information.

In the case of an appeal, the BoS will appoint three (3) of the national experts above as members of the PAB.

One of the members of the PAB is designated as president. The president of the PAB shall be designated by unanimous consent by the members of the PAB.

The three (3) remaining national experts shall be alternative members in case of absence of a nominated appointed member of the PAB.

The BoS will appoint any required replacement for a national expert that is unavailable.

4.1.2 Competences

The PAB is directly empowered by the BoS.

The PAB is required to evaluate the Appeal, to give its opinion to the concerned PB and to make a recommendation to the BoS via the OCCAR-EA Director in order to enable the BoS to take an administrative decision regarding the concerned procurement process.

The PAB review is therefore limited to verifying that the applicable OCCAR rules and regulations are complied with and that there is no manifest error of assessment of fact or misuse of powers.

The PAB does not have any power beyond those conferred upon them by this OMP. In particular, they do not have the right to annul a contract awarded in an OCCAR Programme.

The members of the PAB shall enjoy, so far as is necessary for the effective exercise of their functions, the privileges and immunities specified in the Convention.

4.2 Appeal Procedure

4.2.1 General

Appeals shall be made in writing within twenty (20) working days following the OCCAR-EA Director information to the Economic Operator of the administrative decision to reject the complaint (see flowchart at para. 5.2). They shall state all grounds of appeal put forward by the appellant and shall be accompanied by all documentary evidence in support thereof.

The PAB shall, as a general rule, evaluate appeals submitted to it not later than ninety (90) working days after the date of submission of the appeal.

Although appeals shall not stay the execution of the decisions appealed against, OCCAR personnel shall exercise all due circumspection to avoid taking any further action during the period within which an appeal may be brought or is being heard which would change the position to the detriment of the Economic Operator bringing the appeal, by rendering impossible the relief sought by the appellant, in the event of his appeal being upheld.

Appeals, together with the documentary evidence in support, shall be communicated immediately to the president of the PAB.

The appeal does not suspend the challenged procurement procedure. If deemed appropriate, the PAB may, upon a request or on its own motion,

propose the BoS to suspend the signing of the Contract or adopt other measures of a temporary nature, which may be valid until the final decision is taken. The recommendation shall carefully weigh the advantages and disadvantages of such a suspension and is justified just in case of a severe disadvantage for the Economic Operator due to the alleged breach of OCCAR rules and regulations which prevails over the interests of the PS.

4.2.2 Convening of the Board

The PAB shall be convened by its president within ten (10) working days after the receipt of the appeal.

The president shall have discretion, in exceptional circumstances, to depart from the time-limits laid down in this Article. The BoS, the Programme Board (PB), the OCCAR-EA Director as well as the appellant shall be informed about such decision and its reasons.

4.2.3 Appeals Procedure

The president will decide about the scheduling and the amount of hearings and/or meetings required. The meetings of the PAB shall be held in private.

The OCCAR-EA Director and the appellant may, on their own initiative, or following a request by the PAB, attend the hearings and make oral statements in support of their arguments.

The PAB may require the production of any document which it deems useful for the consideration of the appeals before it. Documents so communicated to the PAB shall also be communicated to the OCCAR-EA Director and to the appellant.

The PAB shall hear any witnesses whose evidence it deems may be useful in the proceedings. Any OCCAR official called as a witness shall appear before the PAB and may not refuse to give the required information, except under the conditions laid down in this Annex.

Nevertheless, if the interests or rules and regulations of OCCAR necessitate the utmost secrecy concerning information of a particularly confidential nature, the OCCAR-EA Director may, either on his own initiative or at the request of the Head of the Division or PM concerned, personally decide that certain documents shall not be communicated to the PAB or may instruct a staff member not to reply to certain questions. Classified material originating from a Member State or PS shall not in any event be disclosed without the consent of the Member State or PS concerned. Recourse to the provisions of this article shall in no case be interpreted to the disadvantage of the appellant.

Anyone attending a meeting of the PAB shall preserve the utmost secrecy concerning the information which comes to his knowledge and the views expressed during discussions.

After the evaluation of the appeal, the PAB will send a report to the concerned PB including a statement if the appeal is deemed founded or unfounded.

On that basis, PAB and PB should submit a common recommendation to the BoS. In case PAB and PB cannot agree on a common recommendation, each of them will send a self-standing recommendation to the BoS.

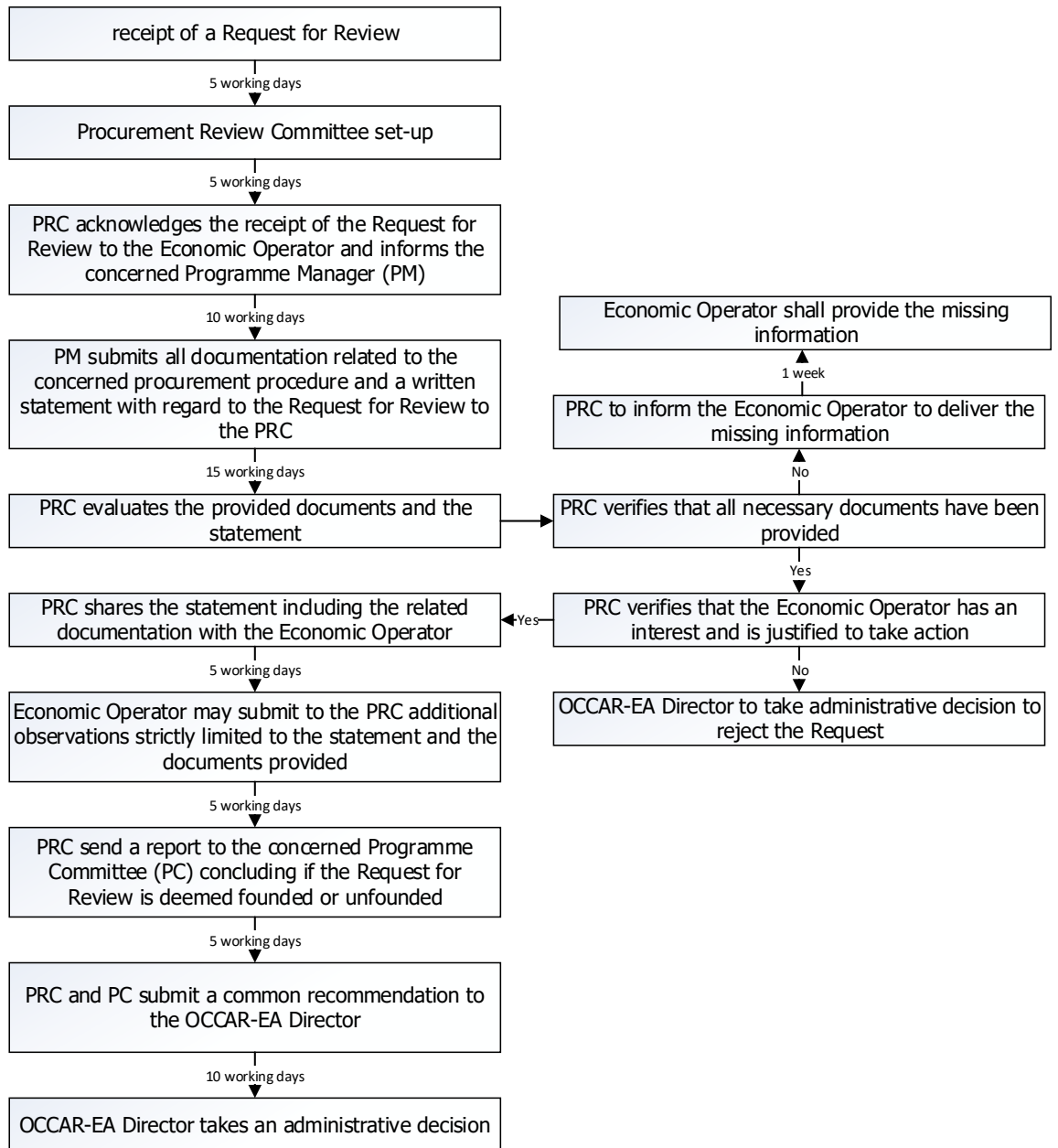
The BoS will take an administrative decision about the recommendation(s) in accordance with Chapter IV of the OCCAR Convention.

The BoS shall inform the Economic Operator as well as the concerned PB and the OCCAR-EA Director about its decision.

The decisions of the BoS shall not be subject to appeal, except that the BoS may be requested to rectify a clerical or accidental mistake in a decision delivered. The Economic Operator may petition the BoS for a re-hearing should a determining fact not have been known by the BoS and by the Economic Operator requesting a re-hearing at the time of the BoS decision. Petitions for a re-hearing must be made within one (1) month from the date on which the above-mentioned fact becomes known and within six (6) month from the date of the decision.

5. Flowchart of Complaints Procedures

5.1 Procurement Review Procedure



5.2 Appeal Procedure

