

*Great Socialist People's Libyan Arab Jamahiriya*  
**National Oil Corporation**

Resolution of the Management Committee  
No. 103/2009

Regarding the Approval of the Unified Policy for Contracting at  
the Oil Companies Affiliated to the National Oil Corporation

Management Committee,

- Reference to the following : The law No.1 of year 2007 regarding the framework of the people's Congresses and people's Committees.
- Decision of the General Secretariat for the General People's Congress no.10 of year 1979 regarding the reorganization of the National Oil Corporation.
- Decision of the General People's Committee no. 82 for year 2006 regarding the distribution of the authorities which were entrusted to the energy secretariat in the oil sector and also the decision of several resolutions.
- Decision of the General People's Committee no. 1 of year 2009 regarding the reformation of the National Oil Corporation Management Committee.
- The Memo dated July 12, 2009 of the Chairman, Revision Committee, regarding the Regulations and Contracting procedures in the oil companies and the suggestion of the Unified Policy for contracting.
- The discussion of the Management Committee during their meeting held on August 10, 2009.

Do hereby decide

Article 1

The attached Unified Policy for Contracting at the Oil Companies affiliated to the National Oil Corporation is hereby approved.

Article 2

This decision comes into force effective from date of issue.

Signed

Dr. Shokri M. Ghanem

Chairman of Management Committee.

Issued in Tripoli, August 17, 2009.

# **National Oil Corporation**

**The Unified Policy for Contracting at the Oil  
Companies affiliated to the  
National Oil Corporation**

<b>Article No.</b>	<b>Index</b>	<b>Page</b>
1.	Definitions	5
2.	General Principles	5
3	Policy Effectiveness Scope	6
4	Methods of Contracting	6
5	Pre-requisites for commencing the Contracting Procedures	7
6	Required conditions of the Applicant for Contracting	8
7	The Provisions regulating the process of the 'Tenders' Committee	9
8	Announcement of Bidding	11
9	Extension of the Bids closing date	11
10	General Conditions for 'Tenders' Submission	12
11	Bonds	14
12	'Tenders' Box	15
13	Opening of Bids	15
14	Studying and Evaluation of the Technical and Unpriced Commercial Offers	16
15	Study and Evaluation of Priced Commercial Offers	16
16	Splitting / partial award of Tender	17
17	Cases often cancelled by Tender	18
18	Ground rules of Tender Award	18
19	Award Resolution	19
20	Notification of the successful bidder	19
21	Cancellation of the Award	19
22	Procedures of Contracting by Direct Negotiation	20
23	Preparation of the Contract draft	21
24	Amendment of the Contract	22
25	Prohibition of Contract sub-assignment (partially or in whole)	22
26	Subcontracting	22
27	Provisions of the Contract	22
28	Cases of Contract cancellation	23
29	Warning the Contractor or Supplier prior penalization	23
30	Rules for delay Compensations	24
31	Contract's Language	24
32	Compliance to the Prevailing Regulations	25
33	Force Majeure and Emergency situations	25
34	Competence of the Libyan judiciary	25

## **Article 1**

### **Definitions**

The following words and expressions in the application of the provisions of this policy shall have the stated meanings opposite to each below unless expressed otherwise:

**The company:** means one of the fully owned companies by the **National Oil Corporation** or engaged with the **National Oil Corporation** in proportion or sharing agreements with other entities.

**Management Committee:** Management Committee of the company.

**The Committee:** Tenders' Committee.

**Execution tools:** Includes the Contractor, Supplier or the Consultant.

**The department concerned:** the department responsible for the project.

**The Consultant:** Any experienced office either individual, partnership, entity or company registered and classified according to the applicable legislations for providing experience in the administrative, financial, engineering, economic, health, environmental or legal fields excluding the employee at the authority owning the project.

## **Article 2**

### **General Principles**

This policy is aiming to:

- a. Achieve the maximum economic sufficiency for getting the commodities and services as well as performing the company's project with competitive prices.
- b. Promote and enhance honesty and competition and provide fair dealing with the execution means to realize equal opportunities principle.
- c. Achieve transparency in all stages of tenders, either in relation to the execution of the company's project or its procurement.
- d. Provide the bidders in the bid with the complete, clear, united information about the required work in the specified time as well as providing sufficient copies from the Tenders' documents for fulfilling the applicant's requests.
- e. Ensure the priority in dealing with the national industries, products and services and the like. This shall be stated in the conditions and specifications of the required works to be performed.

- f. Protect the confidentiality of information provided in the tenders and restrict its disclosure to other bidders except in cases stated in this Policy.
- g. Secure that contracting shall be on the basis of accurate, detailed technical conditions and specifications in compliance to the approved standard specifications, as well as to ensure that the purchase and execution of the works and projects are with fair prices not exceeding the prevailing prices.
- h. Ensure that contracting shall be within the necessary, actual requirements for the specified activities (contracting shall not be done on any work or project not listed in the plan) and shall be within listed approvals in the plan and the approved budget.

### **Article 3**

#### **Policy Effectiveness Scope**

The provisions of this policy shall be applicable on all contracts concluded by the company and such contracts exceeding LD 500,000 five hundred thousand Libyan Dinars, either related to contracts for constructions, services or supplies. As for contracts which are less than five hundred thousand Libyan Dinars shall be decided according to the internal regulations and procedures issued by the company after being approved by the authority concerned.

### **Article 4**

#### **Method of Contracting**

The contracting shall be by one of the following methods:

**a. General bidding:**

It is a set of detailed procedures according to the rules and conditions stated in this policy to select the bidder who presents the best tender. The general bidding may be either internal to be announced internally or external to be announced internally and externally.

To abide by General Bidding is the origin of presenting tenders and can not be avoided except for certain cases and by a decision of Management Committee.

**b. Limited bidding:**

The contract with the limited bidding shall be done under the approval of the **National Oil Corporation** in cases where participation is limited to specified contractors, suppliers, consultants, technicians or experts either in Libya or abroad provided that they

should have technical and financial sufficiency and good reputation. The Tenders' Committee undertakes the invitation to participate in the limited bidding for a number of the execution means with the activity type in relation to the bidding subject among the enrolled on the acceptable contractor's list at the company. Addressing the invitation shall be by the proper means that the Committee suggests provided that the data incorporated shall be as in the announcement for the public bidding.

Except as has been stated, all the provisions that regulate the public bidding shall be applicable to the limited bidding either internal or external.

**c. On-Spot Bidding:**

By the permission from the **National Oil Corporation**, contact shall be done with specialized companies in the field of works or the required commodities to be contracted, whose names are enrolled on the list of acceptable companies at the legally competent authority in the Company and on-spot them for reaching the best conditions and prices for contracting. This type of contracting shall be used in cases where amounts of work and prices are previously specified within the Tenders' package.

**d. Direct Negotiation:**

The direct negotiation shall be by issuance of the purchase order or the assignment of works directly to the execution means by the appointed Management Committee of the company within the mentioned limits and cases stated in article 22 of this policy.

**Article 5**

**Pre-requisites for commencing the Contracting Procedures**

The company, before commencing the bid for any project for contracting, shall commit the following:

1. Ensuring that the project is listed on the work plan and on the approved budget of the company, or carried over budget, as well as the approved amount of funds are sufficient for the execution of the project.
2. Preparing the economic feasibility study of the project, if applicable, and stating its integration extent with the current and future projects if necessary.

3. To achieve the required technical studies including the determination of the specifications, designs, activities list or items, bill of materials, statement of execution methods and time schedule.
4. To achieve comprehensive financial study including prices and the preliminary cost estimations of the project and the basis on which the estimations are prepared.
5. To ensure that the required supplies are within the actual and necessary needs for the running of the operations and on the basis of actual and objective studies for the consumption.
6. To define the project accurately and indicate the importance of its implementation.
7. The company, before the announcement of the tender, may make pre-qualification to ensure the availability of the required capability and conditions at the execution means in accordance to the requirements stated in the pre-qualification documents including their financial and administrative capabilities as well as their obligation on performance capabilities in order to invite them to participate in the bidding of the project.
8. The prior qualification shall be announced by the proper means to ensure the reviewing by a large number of companies interested to participate. The pre-qualification documents should include the instructions, conditions of participation, the required information and documents to be presented by the execution means, the method and place of submission and deadline for submission.

#### **Article 6**

##### **Required conditions of the applicant for Contracting**

The bidders shall meet the following conditions:

1. Complete the licensing procedures and registration at the proper authorities in Libya according to the applicable legislations for the execution means established in Jamahiriya.
2. Possess the technical and financial capabilities and the experience in the contracting field.
3. To abide by the applicable legislations determined by the laws and resolutions.

## Article 7

### The provisions regulating the process of the Tenders' Committee

1. In each company, a Tenders' Committee should be formed for undertaking the tasks and authorities stated in this policy. Such committee consists of a chairman and six members who have qualifications and experience not less than ten years. They shall be appointed for three years under decision of Management Committee unless the period is extended or renewed. The committee is as follows:

- A manager of one of Technical Departments. Chairman
- A representative of Legal Department. Member
- A representative of Finance Department. Member
- A representative of Material Department. Member
- A representative of Auditing Department. Member
- A representative of Projects Department. Member
- A representative of concerned Department. Member

It is a condition that the chairman of the Committee shall have experience, qualification, sufficiency and competence in the field of the engineering works and the management of execution of projects, technical services, oil operations and contracts. In case of the absence of the chairman, one of the committee's members should be assigned to the chairman's tasks until his return.

2. A representative of the Control Committee is entitled to attend the meetings of the Tenders' Committee as an observer without having the voting right.
3. The Tenders' Committee is authorized to make the on-spot bidding and to receive the tenders of the applicants and take the required steps to make a decision.
4. The Committee has to receive tenders, open bid envelopes, evaluate and award according to the provisions of this policy and document their actions proceedings in the Committee's minutes of meeting.

5. The Tenders' Committee has to determine a time for regular periodic meetings and when necessary provide the members with the agenda of the meeting 48 hours before the specified date of the meeting. The committee's meeting shall not be deemed valid unless it is attended by the majority of its members, including the chairman. The names of the absentees and the reasons of absence should be recorded in the minutes of meetings, including the award minutes, then the minutes of Committee meetings shall be signed by the chairman and the attending members.
6. The Committee can call for meetings with any person who is thought to be of help, without having the voting right, in the deliberations provided that the deliberations and the Committee minutes are in strict confidence. The related documents shall be kept in a special archive with the secretary of the Committee.
7. The Committee should issue its recommendation by the majority of votes. In case of equality, the side of the chairman shall prevail, unless otherwise expressed by the proportion or sharing agreements, and it is necessary to document the viewpoint of the minority of the members and basis of their opinions. The committee has to also document the opinion of the assistant(s) and the aspects on which the committee depended on in case they concluded different points of view than the assistant(s). The secretary of the committee is not entitled to vote.
8. The Tenders' Committee executes its authorities with full independency according to the provisions of this policy until providing its recommendations to the Management Committee for approval without prejudicing the right of Management in the supervision on the Committee's work and without interfering in the details which have the confidentiality nature according to this policy.
9. Chairman and Members of the Committee shall not have relationship up to fourth degree or direct or indirect interest at any of the stages of submission offers, award or contracting.
10. The Tenders Committee's recommendations to award shall be approved upon a decision by Management Committee.

11. The Committee shall have a secretary entrusted with the liability of following up the activities of the Committee, preparing its minutes, follow up signing, keeping the documents and correspondences of the Committee. It's a condition that the Secretary of the Committee is to be efficient, objective, has good conduct and it is preferable that he is experienced in the legal and administrative affairs.

### **Article 8**

#### **Announcement of Bidding**

1. Each company should prepare, before calling for the bid, a package related to 'Tenders' documents including general and special conditions, technical conditions and specifications, lists of commodities or works and its attachments. Such package should be delivered to whoever wishes to apply for the bid with the fee determined by the Committee.
2. The call for the bid shall be announced in local and foreign newspapers, on internet (if required) and on websites of both the announcing company and the **National Oil Corporation**.
3. The call for the bid should include clear and comprehensive information about the announced works with the following information as a minimum:-
  - a. Number and subject of tender.
  - b. Validity term of offers.
  - c. The office that the offers shall be submitted to and the deadline date for submission, providing that the deadline is calculated as from the date of last announcement.
  - d. The specified date for opening bid envelopes.
  - e. The value of the initial insurance with validity term.
  - f. The financial and technical capabilities and the required experience for work.
  - g. Any other information that the 'Tenders' Committee deems to be added for announcement.

### **Article 9**

#### **Extension of the bid's closing date**

1. The offer should be received within the stipulated bid closing date. Offers received after the bid closing date are to be ignored regardless of the reason(s) for the delay.

2. However, the Tenders' Committee may, by reasoned decision, extend the bid closing date before or after its expiry for one of the following reasons:
  - a. Request of extension by sufficient number of invited bidders who wish to participate in the tender.
  - b. If it is thought that the number of the received offers does not match with the importance of the project.
  - c. If new developments occurred in relation to the tender project that necessitate an extension of the bid closing date.
3. In all cases, the declaration of the term extension should be issued before opening the bid envelopes. The announcement of the date extension shall be made by the same means as the tender announcement.

### **Article 10**

#### **General conditions for Tenders' submission**

In submission of their offers, the bidders should follow the stated provisions in the following items:

1. The offers shall be received within the specified due date in the announcement, signed by authorized officials of the bidders on the form of the tender sealed with the stamp of the bidder, including the attachments schedules to the offer. Offers shall be presented in three separate sealed and labeled envelopes (Technical, Unpriced Commercial, {Priced Commercial}) and affixing the contents of the envelope (Technical, Unpriced Commercial, Priced Commercial) with the Tender number and name of the applicant company bidder. The three envelopes shall be placed in one closed and sealed envelope in order to ensure confidentiality and shall be delivered to the Secretary of the Tenders' Committee at the company with a receipt documenting the time and date of delivery. Bidders abroad may send their tenders by registered mail, provided that their offers are received by the Secretary of Tenders' Committee Office no later than the deadline for submission of offers.
2. The bidder has to take into account the following in preparation of the bill of prices/rates that is placed inside the envelope of the priced

Commercial offer:-

a. Prices should be provided in Libyan dinar, whether a lump sum or on the basis of unit price, and written in numbers and letters, and in case of tender being submitted by a foreign bidder, prices may be provided in foreign currency to be presented by Libyan dinar using the exchange rate on the bid envelopes opening date. Bidder's to be committed by such exchange rate throughout the period of implementation. Bill of prices (rates) must be dated and submitted by the applicant bidder.

b. For the purpose of comparison, prices must be inclusive of the cost of procurement, customs duties, transportation fees, shipping, packaging, handling, insurance, and all what will be borne by the bidder of amounts committed to be paid by him provided that the prices are based on a unified ground to allow for a fair comparison.

c. If the bidder did not quote the cost of one of the items to be supplied with submitted list of prices, it shall be treated as declining from entering the tender for such item. In case of the construction works, if bidder did not quote the cost of any of the items contained in the submitted work to be contracted, the Committee can assume the highest cost for the item in the technically acceptable bidder for comparison between him and the technically accepted offers.

d. It is not permissible for the bidder to amend or erase the submitted list of prices, and any correction by the bidder must be rewritten by number and letters by signing and stamping it.

3. Bidders must comply with the conditions set forth in the tender documents and must not violate them.

4. The tender may be submitted jointly by several contractors, taking into account the following regulations: -

a. The partnership should be completed before submitting the tender and in accordance to the proper agreement between the joint parties such agreement to be endorsed by the competent authorities.

b. The agreement should specify the joint commitment collectively and liabilities to the implementation of all required works and services.

c. The agreement should clarify the legal representative of the joint parties partnership who will execute the contracting procedures.

d. None of the joint parties may submit individually or collectively with another bidder for the subject project tender.

5. The bidders have to include in the unpriced commercial envelope the required primary insurance bond, in addition to include data and documents that the company sees the need to be available in the technical offer for the verification of its conformity with the tender package terms and conditions and specifications, (as a proof of technical efficiency and financial capability of bidders commensurate with the nature of the subject contract).

## **Article 11**

### **Bonds**

1. Primary bond (participation bonds in the tender).

a. Each tender must be accompanied with primary bond, any tender not accompanied by the full primary bond shall not be considered. The company has to determine the monetary value under the terms of the announcement no more than (0.5%) a half per cent of the estimated cost of the project.

b. The primary bond must be in the form of a certified cheque or a bank letter of guarantee unconditional and irrevocable issued by a commercial bank operating in Libya and be confirmed and endorsed by it. The validity term of the subject letter of guarantee must not be less than sixty days after the expiration of the validity of the offer.

c. If the bidder withdraws his bid before the date of bid envelopes opening, the primary bond becomes the property of the company without the need to take any action. If the validity of the offer expires, the bidders may retrieve it and in this case his offer is considered null. If the duration of the offer elapses without being withdrawn, that will construe bidder as accepting to sustain its engagement with his offer and to renew validity of the letter of guarantee. Primary bond should be returned to unsuccessful bidders.

2. The final bond (Performance bond).

a. The successful bidder, within thirty days beginning on the day being notified by registered letter that his offer is accepted, present a final bond in an amount not less than (10%) ten percent of the total value of the contract, he may top up to the submitted primary bond to be equal to the required final bond.

b. The final bond must remain valid for the duration of the contract and until rectification the Contractor completely fulfils all his obligations, including any defects which appear during the warranty period.

c. The final bond provisions are identical to the performance method of primary bond provided for in the preceding paragraph (1 B) of this article.

d. The release of the final bond shall be done after the lapse of warranty period which is not less than one year from the date of the initial completion and handover takes place of the works after the Contractor's completely fulfilled his contractual obligations set forth in the contract.

e. The final bond will be seized in case of cancellation of the contract as provided for in Article (28) of this policy, or in case of appearance of any defects during the warranty period of bond which are not repaired by the contractor after notifying him.

### **Article 12**

#### **Tender Box**

1. At the office of the Tenders' Committee will be a box (or safe) for tenders with two locks and two keys; one with the Chairman of the Committee and the other key with the Secretary of the Committee. The envelopes of the submitted bids to the Tenders' Committee shall be kept safely in such box.

2. The Secretary of the Tenders' Committee should record the date and hour of receipt of the bid, which was delivered to him by hand or by mail, in a special register log book which is to be kept in the tender box at all times.

### **Article 13**

#### **Opening of Bids**

The Tenders' Committee should open the tender box on the selected date for opening the envelopes and shall take the following actions: -

1. Inventory the received bids and document it in the record (minutes of meeting) of opening the envelopes.

2. Verify the existence of three separate envelopes provided for each bid, one is technical bid, second is unpriced commercial and the third is priced commercial offer and record the same in the minutes of the opening of envelopes.

3. Numbering the bids in the form of a fraction, on the numerator is the number of the tender and on the denominator is the total number of the received offers to document the number of each offer on the technical envelope and the unpriced one and priced commercial offers which should be kept closed.

4. Re-keeping the envelopes in the box without opening the tenders.
5. The Tenders' Committee shall open the technical and unpriced envelopes subsequently and verify the number of pages and then sign and stamp it.
6. The head of the Committee and its members shall sign the Committee minutes after the completion of all the said steps
7. The Secretary of the Committee retains the primary bonds until the completion of the tendering and award process.

#### **Article (14)**

##### **Studying and evaluation of the technical and unpriced commercial offers**

1. The Committee shall review each of the opened offers (technical and non-priced commercial) with technical and commercial review for verification of compliance with the specifications and conditions listed at the tender package. Find out whether offers contain any reservations, exceptions, conditions, alternative proposals or different technical and commercial tender conditions.
2. The Committee may form among its members, or other professionals, Committees to study and evaluate the technical and unpriced commercial offers or use the company's competent technicians and experts to assess the technical and unpriced commercial offers and give the opinion and ranking of offers according to the extent of compliance with the terms of the tender package. The Committee, or those who have been entrusted with the task of evaluating offers of the bidders, should require the bidders to complete the missing data and documentation and clarify the uncertainties of technical and commercial matters. The bidder's clarifications should be communicated through the Tenders' Committee.
3. The Committee must show in detail the deficiencies or violation of the terms and specifications of the bidders that the evaluation indicate them as non-acceptable technically and commercially. The Committee must record every action taken in the evaluation process indicating its means in the search, investigation and those engaged in that, as well as demonstrate the results of technical evaluation of the offers and decisions taken with regard to the acceptance or rejection of the technical offers.

## **Article (15)**

### **Study and Evaluation of priced commercial offers**

1. After the completion of the technical and non-priced commercial evaluation of the received opened offers and completing all the information and final reports by the bodies entrusted with the task of evaluating the offers, the Committee undertakes the opening of the commercial priced offers of the acceptable commercially and technically offers on the selected day for that, after making sure of envelope's integrity and the presence of tender number and the signature of the Committee evident on each envelope at the opening session.
2. The potential bidders are to be invited whose technical and unpriced commercial offers have been accepted to attend the opening of priced Commercial offers and read out the prices and the main terms and conditions in their presence.
3. The Committee has to review the bills of quantities and prices contained in the priced commercial offers, both individually and collectively and make necessary corrections in preparation for the evaluation.
4. If there is a difference between the written price in letters and the price set out in numbers, the price written in letters shall prevail and if there is a difference between the unit price and total price, the unit price shall prevail.
5. The Committee shall review all prices, which are contained in the offers for items of supply and compare it with the previously prepared detailed financial estimates for the project.
6. The Committee should ensure reasonability of offers prices corresponding to the previous conditions, specifications and prices considered formerly as guidance to deal with prevailing market prices and the cost estimate of the tender.
7. The Committee should hold differentiation and comparison of accepted tenders after the unification of the basis of comparison of all technical, commercial and contractual aspects taking into account the conditions for providing warranty, maintenance, spare parts, operational requirements, terms of payment, delivery and other factors that influence in determining the relative value of the bids taking into consideration the circumstances and the nature of the subject of contract.

8. The Committee may negotiate with the lowest bidder whose bid price is associated with the same reservations for the purpose of making his offer in full compliance with the terms of the bid, and if he refuses to give up these reservations, the Committee may negotiate with the next lower bid in price until it reaches the offer in which is conforming to all requirements and required technical specifications. The Committee has to state the reasons of the rejection of the lowest price offers clearly.

#### **Article (16)**

#### **Splitting / Partial Award of Tender**

If prices are equal in two bids or more, the Committee may divide the required quantities between these tenders, without prejudice, to the specifications and deadlines for delivery and in all cases. Items may be divided and awarded to more than one bidder as per lowest item prices.

#### **Article (17)**

#### **Cases of Tender cancellation**

1. It is possible to cancel the tender before or after the opening of bid envelopes in the following cases:
  - a. If it is entirely dismissed in accordance with the requirements of public interest.
  - b. If only one offer was received or only one is left after the disqualifying other received bids.
  - c. Violation of submitted bidders to the conditions and specifications.
  - d. If the value of the lowest price offer is significantly more and above the estimated offers budget.
  - e. If all or most offers are accompanied with reservations and can not be accepted and bidders refuse to waive it.
  - f. If it is proved that there is corruption or bribery and illegal means.
2. The cancellation in these cases shall be by the decision of the Management Committee upon a recommendation from the Tenders' Committee and the decision shall specify the reasons that it is based on.

#### **Article (18)**

#### **Ground rules for Tender and Award rules of the bid**

1. The Committee recommends the award of tender to the bidder submitting best terms and lowest prices between the accepted bids and to grant the priority in the award to the submitted offer by the national bidders followed by joint entities involved with the Libyan side subject to the availability of technical competence, quality and equal price.

2. The Committee formulates its decisions/recommendation by the majority of votes of those members and those members not in favour should be documented in the minutes. The resolution must be signed by at least two thirds of the present members of the Committee, including the Chairman, unless otherwise, provided for in the participation agreement or the joint adventure in output of the described majority.

3. The Committee's letter of its recommendation of award must contain the following data: -

- a. Tender subject.
- b. Bids envelopes opening date.
- c. Names and addresses of the bidders.
- d. A summary of actions taken by the Committee regarding the tender.
- e. The results of the technical evaluation of the offers.
- f. Tables to compare and analyze prices.
- g. A list of excluded offers and the reasons for exclusion.
- h. The bases and criteria on which the recommendations by the Committee is based.
- i. Committee's Recommendation.

#### **Article (19)**

#### **Awarding Resolution**

The Management Committee undertakes the following: -

1. Approval of the recommendations Tenders' Committee award and issue the awarding resolution.
2. Returns the recommendations to the Tenders' Committee to act on for one of the following: -
  - a. Re-bidding the tender while stating the reasons.
  - b. Conducting an additional on spot bidding between the lowest offers in order to obtain better contractual, financial and technical terms.
  - c. Requesting a further review of one or more elements on which the recommendation was based.
  - d. Cancel the tender specifying the reasons.

#### **Article (20)**

#### **Award notice of the Tenderer**

The Committee is responsible for notification of the winning bids in the tender and those who did not win the tender within one week from date of award and request the successful bidder to deposit the final bond during the period specified in Article (11) paragraph 2 (a) of this regulation and to refund the primary bond to the un-successful bidders.

**Article (21)**  
**Cancellation of the Award**

If the awarded bidder refuses to deposit the final bond within the period stipulated in the preceding article, or if he declines to sign the contract within the period specified for that, the company takes the following actions: -

1. Confiscate the primary bond and notify the bidder abstained in writing the same way as the award decision notification.
2. Notify the Management Committee of removing the Contractor or supplier from the list of acceptable contractors and suppliers, stating justifications (i.e. black list such bidder).
3. Cancellation of the award decision and initiation by a Management decision.
4. Authorize the Tender Committee to negotiate with the rest of the applicants submitting prices and conditions in line with the tender or on-spot bid among bidders, the Committee could recommend the award to the second bidder or re-bid.
5. If it is proved that there is a corruption or bribery or illegal means.

**Article (22)**  
**Procedures of Contracting by Direct Negotiation**

1. The contracting by direct negotiation shall be done with the approval of the Management Committee in urgent cases that can not be delayed in tendering procedures or on-spot bidding and the cases described below as follows: -

- a. Cases of emergency requirements of company operations.
- b. Cases where no-one applies for the tender or on-spot bidding or only one bidder applies.
- c. The purchase of necessary materials to meet the needs resulting from a case of urgent necessity.
- d. The purchase of materials which are only being found at a sole source.

2. The contracting procedures shall be undertaken by a formed Committee by the Management Committee experienced and competent in the field of technical, financial and legal process. Such Committee will have the responsibility to verify the conformity of the articles and works in terms of quality and specifications required. The prices shall be suitable compared to the market price in the obtained offers.

3. The Committee's meetings shall be valid in case of presence of full members and make recommendations by a majority of votes. In case of equality, the chairman side shall prevail and the Committees meetings should be recorded in the minutes.
4. A report to be prepared by the Committee illustrating the suitability of the prices which are being proposed for contracting and the extent of compliance of the required works with the conditions and specifications.
5. This report is to be submitted to the Management Committee for the approval of the contracting procedures
6. It is not allowed to divide scope of work or quantities of materials required to be provided for the sake of getting it within the authorized limit of direct negotiation approval.
7. Opportunity in purchasing or executing the works by direct negotiation should be executed with a large number of execution means so that the company dealing will not be restricted to specified number or continuously dealing with specified companies or institutions.
8. Any contract negotiated by the Committee should abide by the requirements and provisions of the contracting provisions mentioned in this policy.

### **Article (23)**

#### **Preparation of the contract draft**

1. The chairman of the Management Committee undertakes signing all the contracts and has the authority to authorize by specific authorization any of the officials (employees) of the company to sign a contract provided that the authorization should be for each contract separately.
2. The legal department shall prepare the draft of the contract in co-ordination with the concerned department and the financial department and initial it after its preparation for its signing by the Chairman of the Management Committee.
3. The contract shall be referred to the contractor or the supplier for signing unless he submits remarks. In this case, the contract will be referred for the final decision by the department who undertook the preparation of the contract draft and its revision to be referred afterwards for signing by the Chairman of the Management Committee or by the authorized person for signing.
4. The contract shall be effective from the signing date or specified date for its effectiveness and the supply contract shall be valid from date of the purchase order issuance.

#### **Article (24)**

##### **Amendment of the contract**

After getting the permission of the company's Management Committee and upon the request of the concerned department, the Committee can recommend the amendment of the contract within the agreed rates provided the amendment percentage does not exceed 10% of the original value of the contract and not exceeding approved budget of the project.

#### **Article (25)**

##### **Prohibition of Contract sub-assignment (partially or in whole)**

The contractor is not allowed to assign the contract completely or part of it to third party without prior written consent of the company. If the contractor assigns completely or partially in violation, the contract shall be cancelled, the final bond seized and the contractor shall be burdened with the liability for any damages or obligations which may arise from his uni-lateral action and charging him with any increase in the prices.

#### **Article (26)**

##### **Subcontracting**

- a. The contractor is not allowed to subcontract the execution of all the works of the contract. However, the contractor can subcontract a part of the works to specialized experienced entity in the execution of the works subject of the contract provided that he has the prior written consent of the company. The contractor remains liable jointly with the subcontractor for the execution of the obligations subject of the contract.
- b. It should be observed that the priority in subcontracting must be to the national companies if they have the experience and qualification in the proposed works for contracting.

#### **Article (27)**

##### **Provisions of the contract**

This regulation in relation to the contract provisions is deemed an integral part of the contract. The contract should determine the obligations of both parties and those relating to the initial and final take over as well as the best performance of the works and the other agreed provisions for the obligations of the contracted parties.

## **Article (28)**

### **Cases of contract cancellation**

The company can cancel the contract or withdraw the work from the successful bidder upon a recommendation from the concerned department after coordination with the legal department in the following cases:

- a. If the contractor does not submit the final bond by one of the specified means in article 11 from this regulation or does not sign the contract after notifying him to sign.
- b. If the contractor or supplier delays the beginning of execution so that in view of the company he can not fulfill his contractual obligations, despite notifying him in writing.
- c. If the contractor suspends the work for more than 30 days without reasonable reason
- d. If the contractor withdraws from the work site or abandon's it or is disabling to execute.
- e. If the contractor mis-conducts in the execution of the contract or defaults in one of its obligations as per the contract and does not repair its effects within 15 days from notification date by the company

The company in the mentioned cases can withdraw the work from the contractor and execute the same on his account with the continuity of his liability and obligation for compensation as per the contract.

## **Article (29)**

### **Warning of the contractor or supplier prior penalisation**

1. Except for the delay compensation, it is not allowed to inflict the penalty on the contractor before notifying him, and elapse of sufficient period for fulfilling his obligations, unless otherwise expressed in the contract.
2. The notice shall be by registered letter or fax sent to the address mentioned in the contract with no need to take any other action.
3. The company is not obliged to observe the mentioned term in paragraph 1, if there is a necessity of executing the contract in its date and the elapse of the notice period could affect the project or if there is any damage from the continuity of the violation.

## **Article (30)**

### **Rules for delay Compensation**

1. If the contractor delays the execution of the contract beyond the agreed date either original or extension relating to the whole work, or one of its stages, or supplying the materials partially or in whole upon which such contractor is liable to compensate for the delay in completing the work or supplying the materials beyond the specified date on the time schedule.
2. The compensation is due from the specified date for it at the contract without warning or notice or taking another action by the company.
3. The compensation is due with the amount and percentage as specified by the contract and to be accounted on the total value of the contract if the company sees that the delayed part of the works or supplies is preventing from utilising it. If the company decides that the delayed part does not cause such adverse effect, then the compensation shall be calculated from the value of the delayed works portion only.
4. The compensation for delay shall not exceed 5% of the total value of the contract unless otherwise expressed in the Contract documents.
5. The delay compensation does not prejudice the company's right for compensation that may be caused by other damages.
6. The company can upon a written request of the contractor justifying the delay reasons in the execution, relieve such contractor from all or some of the compensation value of delay. In this case, the contractor is not allowed to claim any compensation due to this relief and in case of rejecting the reasons because the company is not convinced, the compensation shall be paid by the Contractor.

## **Article (31)**

### **Contract's language**

The contract shall be made, including annexes, general conditions, specifications, bill of rates (prices) and bill of material quantities, in Arabic with permissibility of being made in English. Both texts shall have the same power unless the original was made in Arabic, the Arabic text then shall have the precedence in case of conflict with the English translation. As an exception, the technical annexes may be prepared in English.

### **Article (32)**

#### **Compliance to the Prevailing Regulations**

The Contractor undertakes with the company to abide by the laws and regulations in force in Libya and bears the consequences of violating it and keeping the discipline at the project site of the contract and fulfilling the requirements of the safety and security at the company as well as the environment protection. He bears solely the compensation liability for damages as a result of his intentional acts or the mistakes either by him, his representatives, employees or subcontractors.

### **Article (33)**

#### **Force Majeure and Emergency Situations**

The contractor, supplier and the company individually or jointly shall be relieved from their obligations resulted from the contract due to the force majeure that makes the execution of the contract impossible. However, during the occurrence of exceptional conditions not expected that make the execution by the contractor or company's of their obligations very difficult and threatening them with great loss without becoming impossible for execution, the contractor deserves compensation that achieves the financial balance of the contract. In case of continuity of such conditions without expecting of its removal then the contract could be terminated upon the request of the contractor.

### **Article (34)**

#### **Competence of the Libyan Judiciary**

The Libyan judiciary is to be referred to settle the disputes that may arise from the contract for the works executed in Libya. In case of contracting with foreign entities, the contract should state the resortation to the arbitration provided that it should be a special arbitration. In this case, the arbitration stipulation should determine the dispute aspects and its procedures as well as the selection rules of the arbitrators to ensure equal opportunity to the Libyan side to select them and determine the authority of the arbitrators as well as the other aspects for such purposes. It should be observed that the arbitration should not be conducted by a sole arbitrator.