

## **COMMERCIAL SPECIFICATION ON THE PURCHASES TO BE MADE FROM ABROAD**

### **Definitions:**

**Article 1:** In this specification, the following connotations are used:

"OFFICE" to mean the Directorate General of State Supply Office.

"TENDERER" to mean the entrepreneur making its offer in accordance with this specification.

"ENTREPRENEUR" to mean the real person who participates in the procurement of goods or services and public or private legal entities or their joint ventures.

"CONTRACTOR" to mean the tenderer awarded the contract and the tenderer given the order letter in the cases where no contract is signed.

"MATERIAL" to mean the item to be purchased in accordance with this specification.

"REGISTERED E-MAIL" to mean the electronic mail providing legal evidence regarding the use of electronic messages, including their transmission and delivery.

### **I. General Terms:**

#### **The Scope of Tender and the Obtaining of Tender Documents:**

**Article 2:** Tenderers may obtain the related specifications and their annexes for the tender of ..... from the Directorate General of State Supply Office, Regional Directorates, Contact Offices and [www.dmo.gov.tr](http://www.dmo.gov.tr). Those who are going to bid shall pay the amount of ..... TL or its foreign currency equivalent of the specifications and their annexes to our account number at the ....., or pay in cash to the Cashier's Office of our General Directorate.

The offers of tenderers who do not include the original and a copy of the bank or cashier receipt shall be disregarded. The original of the bank or cashier receipt shall be returned after the offers are opened.

#### **How to Prepare Bids and What They will Contain:**

**Article 3:** The attached bid forms shall be prepared in either Turkish or English for every type of material offered and signed by the officials of tenderer and placed in inner envelope and sealed. After the type of material is written on the envelope, it shall be submitted to "DEVLET MALZEME OFİSİ GENEL MÜDÜRLÜĞÜ, ....., ANKARA, TÜRKİYE" by hand or through mail/cargo, together with the documents specified in the article(s) below, in an outer envelope, sealed in such a manner as to maintain the confidentiality.

Furthermore, on the left bottom corner of the envelope shall be written the types of material offered and the bid deadline and if found necessary by the Office, a sample of the material offered shall be submitted.

**Article 4:** The offers shall clearly indicate:

- a) The unit prices of each material offered, according to the type of delivery.
- b) That each material offered is in conformity with the quality specified in the technical specification attached to this specification.
- c) The name and address of the international survey company recommended.  
(Office shall be free to accept or decline the suggested survey company).
- d) Total net (kg), gross (kg) weights and shipping measurement to be taken into consideration in shipping.
- e) Should it suffice for the tenderer to sign and send this specification and the attached technical specification and other enclosures, it shall be construed to mean that all the conditions of the Office have been accepted in full. If tenderers propose their own sales conditions, their offers may be rejected based on the commercial specification and special terms.
- f) Harmonized System Code of each material offered should be indicated on the bid form.

**Article 5:** Together with the offer:

- a) Single copies of this commercial specification and the attached technical specification signed by the officials of the tenderer,
- b) Bid bond prepared in accordance with the provisions of article 10 and in the amount specified in the same article,
- c) Certificate of authority of the representative in Türkiye,
- d) Detailed instruction books, illustrations and catalogues or brochures in sufficient quantities on the material offered,  
shall be submitted.

**Article 6:** The packing and surveying expenses shall be borne by the contractor and these expenses shall be included into the unit prices of FOB, CF, CIF, CIP and DAP (any delivery place to be indicated by the Office in tender documents).

**Validity and Rigidity of Prices:**

**Article 7:** Tenderers shall submit the offer indicating the prices and the total amounts including the expenses in Turkish Lira or foreign currency.

The prices offered shall be fixed and for a period of at least 2 months as of the bid deadline.

Requests for increases in the prices offered shall not be made later by the tenderer, for any reason whatsoever.

**Bid Deadline; Submitting and Opening of Bids:**

**Article 8:**

- a) Bid deadline is ..... and the bids shall reach or be submitted to DEVLET MALZEME OFİSİ GENEL MÜDÜRLÜĞÜ..... ANKARA – TÜRKİYE address until 12:00 on the same date. Bids submitted after this time and delays in postal services shall not be taken

into consideration. The bids sent or submitted shall not be revoked or withdrawn for any reason whatsoever.

However, on condition that signed bids and specifications are airmailed within one week as of bid deadline, bids submitted by telex, fax or cable prior to bid deadline may also be taken into consideration.

- b) The tenderer reserves the right to bid for the whole of the material subject to purchasing or to bid partially on condition that it is stated in tender documents.

**Article 9:** As long as not indicated otherwise, the bids shall be opened at .....  
..... at 14:00 on the bid deadline in the presence of the officials of the tenderer or their authorized representatives who want to attend.

**Guarantee and Order:**

**Article 10:** Values to be accepted as guarantee are listed below;

- a) Turkish currency currently in circulation,
- b) Letters of guarantee issued by banks and special finance institutions,
- c) Government Debt Securities issued by the Undersecretariat of Treasury and documents issued in place of these securities.

The securities mentioned in paragraph (c) and among the documents drafted instead of these securities, the ones issued by adding interest to the nominal value shall be accepted as guarantee on the sales value corresponding to the principal amount.

Letters of guarantee issued by foreign banks permitted to operate in Turkey under the related legislation and letters of guarantee issued by banks operating in Turkey based on counter-guarantees of banks or similar credit institutions operating outside Turkey shall also be accepted as guarantee.

Guarantees may be exchanged with other forms accepted as guarantee.

Guarantees submitted to the contracting entity (Office) shall under no circumstances be subject to attachment and temporary injunction.

The tenderer submitting the bid shall submit either a bid bond issued in foreign currency for the material offered, with a counter-guarantee and prepared by a bank recognized by the Government of the Republic of Türkiye or an unlimited bid bond in TL prepared by a national bank that can be recognized to the .....  
Directorate General of the State Supply Office prior to the date and hour of bid deadline.

If, in accordance with the formalities of the bank, a limit shall absolutely be imposed, the following statement shall be placed in the bid bond.

"This guarantee is valid until (.....) and our letter shall be renewed automatically on a quarterly basis, without the need to apply for renewal till it is returned to us".

The tenderer awarded the contract, within 15 days as of the receipt of the order letter, shall submit a performance bond at the rate of 6% of the order value and bearing the conditions outlined above, to the Directorate General of State Supply Office. In this case the bid bond of the contractor shall be returned. On condition that the performance bond is not received within the 15 day-period, the Office shall cancel the order and forfeit the bid bond. The performance bond shall be returned upon the expiration of the guarantee period, which is included in the tender, or in other cases, upon checking the material whether it meets the requirements without any deficiency after its clearance from Turkish Customs.

If, for any reason, there is a delay in the receipt of the order letter, the 10<sup>th</sup> day after the order letter leaves the State Supply Office shall be accepted as the notification date.

The letter of credit shall be opened after the performance bond prepared in accordance with the prescribed procedures is submitted to the Office.

In case of an advance payment, the counterguarantee for the letter of credit shall be issued by ..... bank.

#### **Quality Control:**

**Article 11:** Should the Office consider the surveying, which is essential for the approval of the ordered goods, necessary to be made on-the-spot, an inspection team designated by the Office abroad, or a survey company designated within the framework of the agreement with the contractor is charged with the duty of carrying out the surveying.

The contractor shall document the full coherence of the material with its technical specification through the report it takes from the appointed inspection team or the survey company, and submit them to the corresponding bank together with the other documents for the payment to be effected.

The survey company shall be the one proposed in accordance with the Article 4/c, acknowledged, or announced by the Office.

The contractor shall pay for the surveying carried out by the survey company.

Should the surveying be carried out by a team designated by the Office, Inspection Team expenses shall be covered by the Office.

#### **Shipment of Material:**

**Article 12:** In tenders placed on FOB/FCA/EXW delivery basis, transportation tender will also be made if required.

In orders to be placed on FOB/FCA/EXW delivery basis, all the losses the Office incurs because of the fact that the contractor fails to make the material ordered available for loading on the date previously agreed shall be met by the exporting company. All the losses the Office incurs because of the fact that the transporter fails to make the means of transportation available on the date previously agreed shall be met by the transportation company.

**Article 13:** In tenders placed on FOB/FCA/EXW delivery basis, information of the transporting company ascertained by the Office through tender or request for quotation method shall be advised to the contractor before the shipping.

**Article 14:** In the event that the material is transported by trucks, train or airplane, freight payment shall be in TL.

**Shipping Documents:**

**Article 15:** Five copies of invoice, one of them original, five copies of packing list of contents, two copies of certificate of origin, and in the event that the material is imported from an EU member country, one original and one copy of ATR movement certificate, and in the event that the material is imported from EFTA (European Free Trade Association) member country, a EUR 1 movement certificate, together with the survey report specified in Article 11 shall all be submitted as shipping documents to the corresponding bank to effect payment.

Furthermore, in the event that shipment is made by sea or by air, three original + three copies of the bill of lading; by rail, two copies of railway bill; by land, two copies of shipper's receipt; by mail, two copies of postal receipt shall be submitted together with the documents mentioned above to the corresponding bank.

The invoice, packing lists, bills of lading, railway bills, shipper's receipt, postal receipt and other receipts and documents if any, shall be addressed to DEVLET MALZEME OFİSİ GENEL MÜDÜRLÜĞÜ, ANKARA – TÜRKİYE.

**Insurance:**

**Article 16:** Unless indicated otherwise in the order, the insurance shall be made by the Office in Türkiye. Therefore, minimum two business days prior to shipment of the material the contractor shall notify the Office by telex, cable, fax or similar means of the type of material, its CF, FOB and Ex-Works value, number of package, weight, departure date of the means of transportation, its type, its flight number and name or plate number, if any. All loses and damages the Office incurs for the material's not being insured as the above information is not provided on time or not at all shall be borne by the contractor.

**Payment:**

**Article 17:** Unless otherwise indicated, payment shall be made by an irrevocable and confirmed/unconfirmed letter of credit opened in favor of the contractor and on condition that they are found to be in conformity with the order conditions as a result of the inspection of the material by the survey company or the inspection team, and based on the definitive acceptance report to be prepared to certify their conditions.

No payment whatsoever shall be made to the contractor prior to the definitive acceptance (except for advance payments).

Correspondent bank charges shall be borne by the contractor.

**Delivery Period and Shipment:**

**Article 18:** The delivery of the material under this contract shall be completed within ..... day(s)/month(s) at the latest and the firm delivery period proposed by the contractor shall also be stated in the bid form. This

period starts on the date when the letter of credit has been notified to the corresponding bank. In equal conditions of the offers, shorter delivery period might be a reason for preference by the Office.

### **Force Majeures and Granting of Time Extension:**

**Article 19:** Time extension may be granted for the occurrence of events such as declaration of war, embargo, fire, strike, lock-out, earthquake, flood, landslide and other force majeure acceptable by the Office, which affect the performance of work and cause delays. The contractor shall notify the Office within one week as of the occurrence of such an incident and shall prove this with a document of force majeure obtained from the local authorities and legalized by the Turkish Consulate.

However, in order to grant a time extension with reference to any force majeure, when the mentioned situation disappears, documents certifying force majeure, issued by the competent authorities and legalized by the Turkish Consulate must be submitted to the Office within 20 days at the latest.

### **Delays and Termination:**

**Article 20:** In the event that the material ordered is not delivered within the specified period without the occurrence of a force majeure, and if it is deemed necessary to extend the validity of the letter of credit, a delay penalty shall be charged in accordance with the terms of Article 18 on condition that all the extension costs shall be borne by the contractor.

a) A delay penalty at the rate of 0,2% (two per mill) of price of goods which have been delayed in delivery will be charged and this penalty will be not less than US \$100 and not more than US \$1,000 for each day in delayed periods up to and including the 15<sup>th</sup> day.

b) A delay penalty at the rate of 0,3% (three per mill) of price of goods which have been delayed in delivery will be charged and this penalty will be not less than US \$150 and not more than US \$1,500 for each day including the first 15 days in delayed periods up to and including the 30<sup>th</sup> day.

c) A delay penalty at the rate of 0,4% (four per mill) of price of goods which have been delayed in delivery will be charged and this penalty will be not less than US \$200 and not more than US \$2,000 for each day including the first 30 days in delayed periods for more than 30 days.

However, the delay penalty will never exceed the cost of goods which have been delayed in delivery.

In the event that the order has been placed under a unit of currency other than US \$, the cross rate of exchange valid at the Central Bank of Türkiye on the last day of delay shall apply for the determination of the delay penalty. In this case, the delay penalty accrued may be deducted either from the contractor's progress payment in accordance with our instructions in the Letter of Credit, or be collected from the performance bond.

In the event that the contractor fails to comply with the contract provisions in part or in whole, or to fulfill its contractual obligations after the conclusion of the contract, the Office shall be authorized to cancel the contract by notifying the contractor accordingly, without further need to obtain any judgement. In case of such cancellation, the performance bond of the contractor shall be forfeited and the contractor shall be advised in writing accordingly. In the

event of cancellation, the amount corresponding to 10% of the portion of the contract remaining non-performed shall be collected as penalty.

However, another invitation for bids on behalf and account of the contractor shall not be opened.

The forfeited bond shall not be deducted from the penalty charge.

In such cases, the debts and receivables of the contractor shall be liquidated and the contractor may not be allowed to take part in the Office's invitation for bids for a period of up to one year.

### **Responsibility of Contractors:**

**Article 21:** With regard to the goods and services to be delivered in accordance with the contracts which contractors have concluded with the Office, contractors shall be responsible for fulfilling the provisions of the Law on Consumer Protection, supplements and amendments to this law, and regulations and circulars either published or to be published on this subject.

As the seller, the Office may ask for the following from the contractor according to buyer requests:

- a) Changing the goods,
- b) Repairing the goods free of charge,
- c) Returning the price of the goods, and
- d) Deducting the loss in value from the price.

The contractor is to fulfill this request within (15) days at the latest following the date of request.

Otherwise, the Office itself shall fulfill/meet buyer requests without requiring any court order and notice whatsoever. Consequently, all kinds of damages and expenses the Office incurs, and fines paid by the Office if it becomes liable according to penal provisions of the Law on Consumer Protection, shall be covered from the receivables of the contractor by the Office. The receivables of the contractor shall be blocked until the debt is paid in full. If there is an outstanding debt remaining, it shall be collected from the contractor by court order after the respective request.

### **Inscription:**

**Article 22:** If required, the letters "D.M.O." shall be inscribed on the appropriate places of the materials as specified in technical specification.

### **Other Terms:**

**Article 23:** The address which is advised by the tenderer/contractor shall be accepted as their legal residence and any kind of communication sent by the Office to this address shall be considered as sent to the tenderer's/contractor's themselves on the same date.

Any kind of notification (for order etc.) which will be sent by the Office to the registered e-mail address/fax number written on the letterhead, bid form or any kind of document of the

tenderer or contractor submitted to the Office, shall also be considered as sent to the tenderer's/contractor's themselves.

In the event that there is any controversy put in trials, the records received by the communication devices of the Office shall be based on. These records shall have the force of evidential contract in the Article 193 of the Code of Civil Procedure.

**Article 24:** In the event that there are conflicts between the provisions of this commercial specification, the attached technical specification based on the purchase and the letter of order to be prepared based on the said specifications, the provisions in favor of the Office shall apply.

**Article 25:** All disputes in respect to the purchase of material under this specification shall be resolved in accordance with the laws of the Republic of Türkiye in Ankara Courts.

**Article 26:** All correspondences with the contractor, other than offers shall be addressed to "DEVLET MALZEME OFİSİ GENEL MÜDÜRLÜĞÜ,..... Satınalma Daire Başkanlığı ANKARA - TÜRKİYE".

**Article 27:** The Office shall have no liability to the tenderer due to its invitation for bids. The Office reserves the right to partially tender or to tender as a whole the materials offered, or to award the tender to whomever it may please or to withdraw the order.

**Ineligibility:**

**Article 28:** Persons specified below can under no circumstances take part in tenders, either directly or indirectly or as sub-contractors, whether in their own name or in the name of others;

- a) Persons for whom participation in tenders is temporarily or permanently prohibited by administrations or through a decree of court according to the provisions of Public Procurement Law no. 4734 and other regulations,
- b) Persons convicted of crimes in the scope of the Antiterrorism Law dtd. 12.04.1991, no. 3713 or of organized crimes or crimes of bribery to public officials either in their own countries or in a foreign country,
- c) Those who have been found guilty of fraudulent bankruptcy by the relevant authorities,
- d) The contracting officers of the Office and persons assigned to boards having the same authority,
- e) Those who are assigned to prepare, execute, finalize and approve all procurement proceedings of the Office relating to the subject of the tender,
- f) Spouses, blood relatives up to the third degree, relatives of kinship by marriage up to the second degree, as well as adopted children and adoptive parents of the persons mentioned in paragraphs (d) and (e),



- g) The partners and companies of the persons mentioned in paragraphs (d), (e) and (f) (except for joint stock corporations of which these persons are not in the board of directors or which these persons do not own more than 10% of the capital),
- h) Real or legal persons involved in terrorist organizations or declared to be having an affair with these organizations by the Directorate General of Security and those with foreign connections declared to be in this scope by the Undersecretariat of the National Intelligence Organization.

Contractors (companies) providing consultancy services for the subject matter of the procurement cannot participate in the procurement of such work. Similarly, contractors of the subject matter of the procurement cannot participate in procurements held for the consultancy services of such work. These prohibitions are also applicable for their companies with which they have a partnership and management relation and for the companies where more than half of the capital is owned by above-mentioned companies.

Organizations like foundations, associations, unions, funds included within the body of the Office or related with the Office, whatever their purpose of establishment are and the companies which are the partners of such entities cannot participate in the tenders.

Moreover, it is compulsory to comply with the provisions of the "Law Concerning Prohibited Activities of Former Public Servants" dtd. 02.10.1981, no. 2531.

Tenderers (companies) who take part in the tender in spite of these restrictions shall be excluded from the tender and their preliminary guarantee shall be seized as income. Furthermore, in the case that the tender is awarded to one of these tenderers due to the fact that it is not detected at the stage of evaluation of the bids, their guarantee shall be seized and the tender shall be cancelled.

#### **Prohibited Acts and Conduct:**

**Article 29:** The following acts and conduct are prohibited in tender proceedings:

- a) To conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, undue influence, undue interest, agreement, corruption, bribery or other actions.
- b) To cause confusion among tenderers (companies), to prevent participation, to offer agreement to tenderers (companies) or to encourage them to accept such offers, to undertake activities which may influence competition or the tender decision.
- c) To issue or use fake documents or securities or to attempt to do so.
- d) Except for being able to submit alternative offers, submission of more than one offer by a tenderer (company) on his own account or on behalf of others, directly or indirectly, in person or by proxy.
- e) Participating in the tender although it is stated in Article 28 of this specification that they cannot.

The provisions stipulated in the articles 30, 31 and 32 of this specification shall apply to those who have carried out these prohibited acts and conduct.

#### **Prohibition from Participation to Tenders:**

**Article 30:** Those who are established to be involved in acts and conduct set forth in Article 29 depending on the type of the prohibited act or conduct, for at least one year and up to two years and those who, except for force majeure, do not conclude a contract in accordance with the procedures although they are awarded the tender, for at least six months and up to one year, shall be prohibited from participation to any tender carried out by public institutions and entities including those which are exempted by the Article 2 and the Article 3 of Public Procurement Law.

The prohibition decisions shall be made by the ministry carrying out the tender proceedings or the related or relevant ministry and by the contracting officers for the institutions which are not regarded as the related or relevant institution of any ministry and also by the Ministry of Interior for special provincial administrations and municipalities and their unions, enterprises and businesses.

The prohibition decision shall apply in accordance with the provisions of paragraph 1., to all of the partners on condition that the legal entity subject to a prohibition decision is a sole proprietorship, and to partners that are real or legal persons who own more than half of the capital on condition that it is a stock corporation. According to whether those who are subject to prohibition decisions are real persons or legal entities; the prohibition decision shall apply likewise on condition that they are also partner to a separate sole proprietorship, to this sole proprietorship, and on condition that they are partner to the stock corporation provided that they own more than half of the capital, to this stock corporation.

Those who are established to be involved in these acts and conduct during or after the tender proceedings shall not be allowed by the Office to participate in the current tender as well the subsequent tenders to be carried out by the Office until the effective date of the prohibition decision.

The prohibition decisions shall be made within at most forty five days following the establishment of acts or conduct requiring prohibition. The prohibition decision made shall be sent for publication in the Official Gazette within at most fifteen days, and shall become effective on the date of its publication. These decisions shall be monitored by the Public Procurement Authority and those who are prohibited from participation to public tenders shall be recorded.

In the event that the Office encounters a situation that requires prohibition from participating in tenders, it shall be responsible for notifying this to the relevant or related ministry so that what is required is done.

#### **Penal Liability of Tenderers:**

**Article 31:** Even if it is established after the completion and acceptance of the contract, against the real or legal persons involved in acts or conduct that are specified in Article 29, constituting a crime under the Turkish Criminal Code, and their partners or proxies relating to the work in question, a criminal complaint is filed so that a criminal investigation is made by a public prosecution office in accordance with the provisions of the Turkish Criminal Code.

In addition to the punishment to be rendered by the court, these persons shall be prohibited from participation in the tender proceedings of all public institutions and entities that are included within the scope of Public Procurement Law no. 4734, by decision of court, provided that it applies from the day following the expiry date of the prohibition decision made by the Office pursuant to Article 30 and for a period of not less than one year and up to 3 years, together with the prohibitions stipulated under third clause of Article 30.

**Confidentiality of Information:**

**Article 32:** Those who are assigned with the implementation of this Specification and those who provide consultancy services cannot disclose or use for the benefit of their own or of third persons, any of the confidential information or documents relating to all proceedings about the tender process; works and transactions of tenderers as well as technical and financial aspects of the offers and estimated cost of the work. Depending on their relevance, the sanctions stipulated under Article 29 and 30 shall apply about the ones who act on the contrary.

**II. Special Terms:**

In the event that the material to be purchased is

- a) A printing machine and a copier,
- b) A communication device,
- c) A transportation vehicle and a construction equipment,
- d) A workshop machine,
- e) A medical device

or the like, the other special terms required by the characteristics of the material and the laws in effect shall also apply.