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**ORGANISATION EUROPÉENNE POUR LA RECHERCHE NUCLÉAIRE**  
**CERN** EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH

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ACTION TO BE TAKEN

VOTING PROCEDURES

|                    |   |  |
|--------------------|---|--|
| For recommendation | <b>FINANCE COMMITTEE</b><br>360 <sup>th</sup> Meeting<br><b>13-14 June 2017</b> | 2/3 of all Member States +<br>51% of the Contributions of all<br>Member States |
| For approval       | <b>COUNCIL</b><br>185 <sup>th</sup> Session<br><b>15-16 June 2017</b>           | 2/3 Majority of all Member<br>States   |

AMENDMENTS TO THE CERN FINANCIAL RULES

This document proposes a number of amendments to the CERN Financial Rules (CERN/FC/5305), primarily to the CERN Procurement Rules set out in Annex 1 of the Regulations for the implementation of the CERN Financial Rules.

The Finance Committee is invited to recommend that the Council approve, and the Council is invited to approve, the amendments to the CERN Financial Rules set out in this document.

The amended CERN Financial Rules shall replace the current version as from their approval.

## AMENDMENTS TO THE CERN FINANCIAL RULES

### 1 INTRODUCTION

- 1.1 Following discussions at the Finance Committee meetings of December 2015 and March 2016, the Director-General decided on 12 May 2016 to set up an internal working group with the aim of elaborating proposals for improving the distribution of industrial return to the CERN Member States. It was also agreed to define a procedure enabling CERN to reject “abnormally low” bids. A White Paper setting out the working group’s proposals was submitted to the Finance Committee at its meeting in March 2017.
- 1.2 The amendments presented in this document are based on the outcome of the Finance Committee’s discussions on the White Paper at its meeting in March 2017. Specifically, this document proposes various minor adjustments to the wording of the CERN Financial Rules, as well as a number of substantive amendments to the CERN Procurement Rules that reflect the objectives mentioned above.

### 2 RECOMMENDATION

The Finance Committee is invited to recommend that the Council approve, and the Council is invited to approve, the amendments to the CERN Financial Rules, including the CERN Procurement Rules, set out in this document.



European Organization for Nuclear Research  
*Organisation européenne pour la recherche nucléaire*

# **CERN FINANCIAL RULES**

**2017**

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## TERMS AND DEFINITIONS

For the purpose of the Financial Rules, their Implementing Regulations and the Procurement Rules, the following definitions shall apply:

- The term “**Associate Member State(s)**” means Associate Member State(s) and Associate Member State(s) in the pre-stage to Membership of CERN, except where expressly stipulated otherwise.
- The term “**carry-forward**” means the operation by which a budget that is allocated for, and remains unused within, a given financial year is added to the budget of the following financial year.
- The term “**contract**” means a purchase order, a contract or other agreement for the purchase of supplies or services by CERN.
- The term “**Convention**” means the Convention for the Establishment of CERN dated 1st July 1953 and any amendment thereof.
- The term “**country(ies) of origin**” means:
  - For supplies: the country(ies) where the supplies (including their components and sub-assemblies) are manufactured or undergo the last major transformation by the contractor or his sub-contractor(s);
  - For services and civil-engineering work: the country(ies) in which the bidder is established.
- The term “**donation**” means the gifting of any form of asset or service.
- The term “**expenses**”, within the context of the budget, means expenditures and liabilities variations for a given financial period.
- The term “**Financial Rules**” means the CERN Financial Rules governing the Organization’s financial administration.
- The term “**firm(s)**” includes the commercial companies, institutes and other entities participating in CERN invitations to tender or price enquiries or having entered into a contract with CERN.



- The term “**General Conditions for Tendering**” means the general conditions for invitations to tender by CERN.
- The term “**General Conditions of Contracts**” means the general conditions of CERN contracts.
- The term “**Industrial Liaison Officer**” means a representative of a CERN Member State responsible, inter alia, for ensuring the proper contacts and flow of information between CERN and the firms in the Member State concerned.
- The term “**Implementing Regulations**” means the Regulations for the Implementation of the Financial Rules, complementing the latter.
- The term “**invitation to tender**” means the set of documents drawn up by CERN for the purpose of inviting firms to submit a bid for the provision of supplies or the performance of services with an estimated value of 200 000 CHF or more.
- The term “**invitation-to-tender documents**” means all the sets of documents constituting the market survey, the invitation to tender or the price enquiry.
- The term “**market survey**” means the set of documents drawn up by CERN for the purpose of inviting firms to express their interest in a forthcoming invitation to tender and providing them with the opportunity to qualify for that invitation to tender.
- The term “**medium-term plan**” means the document setting out CERN's budget planning for the next period of five years.
- The term “**Member State(s)**” means both Member State(s) and Associate Member State(s) of CERN, except where expressly stipulated otherwise.
- The term “**price enquiry**” means the set of documents drawn up by CERN for the purpose of inviting firms to submit a bid for the provision of supplies or the performance of services with an estimated value of less than 200 000 CHF.
- The term “**Protocol**” means the Financial Protocol annexed to the Convention.
- The term “**Procurement Rules**” means the rules governing CERN’s purchases.
- The term “**punch-out catalogue**” means the system which gives users direct access via CERN’s on-line procurement system to the catalogues of suppliers offering negotiated prices **for agreed items**.
- The term “**requirement**” means a precise description and an estimation of CERN's needs.

- The term “**revenues**” means both the financial contributions of the Member States and additional revenues.
- The term “**subcontract(s)**” means any arrangement whereby the contractor contracts with another legal entity, except for legal entities under its direct control, for the provision of a major part of the supply (including sub-assemblies and components) or any part of the services. The term “subcontract(s)” includes sub-sub-contract(s).
- The term “**tendering procedure**” means the set of rules governing any procedures under which CERN invites firms to express their interest in a forthcoming invitation to tender or to submit a bid, including price enquiries, market surveys and invitations to tender.
- The term “**user**” means the CERN department requesting a purchase corresponding to its requirement.
- The term “**utilities**” means supplies and services necessarily originating in France or Switzerland for compelling technical, geographical or legal reasons.

# **CERN FINANCIAL RULES**

## **Section 1 – General principles**

### ***Article 1: Legal framework***

The Financial Rules and their Implementing Regulations define the rules governing financial administration at CERN and are adopted by the Council pursuant to Article 7 of the Protocol annexed to the Convention.

The Financial Rules and their Implementing Regulations do not apply to the CERN Pension Fund, which enjoys operational autonomy. The Pension Fund's assets shall be managed and its accounts kept separately from the assets and accounts of CERN.

### ***Article 2: Parties to financial administration***

The following shall be parties to the financial administration of CERN:

- The Council (Article V of the Convention) as the supreme decision making body;
- The Finance Committee established by the Council (Article V. 12 of the Convention and Article 3 of the Protocol) as its subordinate and consultative body<sup>1</sup>;
- The Director-General (Article VI of the Convention) as the executive body, or any person mandated by him in such fields and for such purposes as he shall expressly define. The Director-General shall publish a list of the mandates and of the corresponding signature rights.

### ***Article 3: Financial year***

CERN's financial year shall run from 1<sup>st</sup> January to 31<sup>st</sup> December (Article 1 (1) of the Protocol).

### ***Article 4: Currency***

The currency used to draw up the budget and to keep the accounts shall be the Swiss franc.

The contributions shall be denominated and paid in Swiss francs.

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<sup>1</sup> The consultative role of the Finance Committee implies that decisions of financial nature are taken by the Council normally following recommendation by the Finance Committee.

## **Section 2 – Planning and budget**

### ***Article 5: Budget planning***

Budget planning shall be formulated in a medium-term plan, drawn up each year by the Director-General, defining CERN's objectives and activities for the following five budget years.

After consulting the Scientific Policy Committee and the Finance Committee, the Council shall approve in principle the strategy proposed in the medium-term plan.

The budget shall be an annual one and shall be embedded in the medium-term plan.

Where their scale so warrants, projects may be subject to separate approval by the Council.

### ***Article 6: Structure of the budget***

The budget shall comprise:

- the objectives and activities for the financial year to which they relate, the estimated expenses in terms of personnel and materials, required for their implementation, as well as the overall complement **for employed members of personnel**;
- the revenues;
- information on the balance of the budget;
- observations of the Director-General.

### ***Article 7: Adoption of the budget***

After consulting the Finance Committee, the Council shall adopt the budget, at the prices of the current year, in June or the latest in September of the year preceding the financial year to which it relates. The budget shall subsequently be indexed on the basis of the cost-variation indices approved by the Council before the beginning of the financial year to which it relates.

### ***Article 8: Execution of the budget***

The Council's adoption of the budget shall constitute an authorisation for the Director-General to commit expenditures for the purposes of achieving the objectives and executing the activities provided for in the budget. The commitments shall be subject to regular controls.

The Director-General may, within the approved overall budget and to achieve the defined objectives, reallocate resources from one activity to another. Any major reallocation of resources must be substantiated by scientific or technical arguments and reported to the Finance Committee and the Council by the Director-General.

The Director-General shall submit an annual report on budget execution for the previous year to the Council for approval.

Where the budget is not adopted before the beginning of the financial year and pending its adoption:

- the Director-General may spend on CERN operations the equivalent, per quarter, of one quarter of the operating expenses of the budget of the previous financial year;
- the Director-General may commit expenditures relating to approved multi-annual projects within the cost to completion; expenditures relating to other projects shall be subject to specific approval by the Council;
- the Director-General may proceed with the expenditures required for the preservation of CERN's assets and for CERN to comply with its legal obligations.

#### ***Article 9: Budget balance***

At the end of the financial year, the budget amounts shall be compared with the amounts of the final budget outturn.

**Any** positive balance of that part of the budget which is allocated to multi-annual projects shall be carried forward to the following financial year within the cost to completion.

The unused part of the budget allocated to operation shall be carried forward to the following financial year, provided that it relates to commitments open when the accounts for the financial year concerned are closed.

Any excess budget expenditure shall be carried forward to the next financial year.

### **Section 3 – Financing**

#### ***Article 10: Financial contributions of the Member States***

CERN's activities shall be financed by the annual contributions of the Member States.

The Council shall adopt the scale of the annual contributions of the Member States, which shall be drawn up in accordance with the method specified in Article VII of the Convention.

After consulting the Director-General, the Finance Committee shall determine the arrangements for the payment of contributions in such a way as to ensure the regular financing of CERN (Article 4 (5) (a) of the Protocol).

The Director-General shall notify the Member States of the amounts of their contributions and of the dates on which payments are due (Article 4 (5) (b) of the Protocol).

In the event that the budget is not adopted before the beginning of the financial year, CERN shall call up contributions from the Member States in accordance with the schedule defined in the Implementing Regulations.

CERN shall be authorised to charge interest on contribution arrears.

#### ***Article 11: Additional revenues***

CERN may receive additional revenues, consisting in particular of other contributions from the Member States, contributions from non-Member States and the European Union on the basis of agreements concluded with CERN, as well as revenues generated by CERN itself and donations.

The Director-General may accept donations in accordance with the provisions of Article VII.6 of the Convention.

#### ***Article 12: Loans***

After consulting the Finance Committee, the Council may authorise CERN to have recourse to long-term loans if they are required for the funding of approved investments.

#### ***Article 13: Fund for the CERN Health Insurance Scheme***

A fund exclusively dedicated to the CERN Health Insurance Scheme has been set up and shall be held separately from the rest of CERN's assets.

The fund's capital shall vary according to the return on the capital and the balance of contributions with respect to the benefits paid and external administrative costs.

#### ***Article 14: Sale **or donation** of CERN property***

CERN may sell its property that is of no further use for the accomplishment of its mission or may, if such property is of negligible market value, dispose of it as a gift.

The award of any contract for the sale of property for an amount exceeding 750 000 Swiss francs, or exceeding 200 000 Swiss francs in the case of a contract without competitive tendering, shall be subject to prior approval by the Finance Committee.

Property may be disposed of as a gift exclusively to scientific research and educational establishments, museums and public institutions in the Member States, or in non-Member States provided that there has been no indication of interest in the Member States.

#### **Section 4 – Management and control system**

A management and control system meeting the requirements specified in the provisions of this section shall ensure the effectiveness and efficiency of CERN operations, the safeguard of CERN's assets, the reliability of the financial reporting and the compliance with the relevant applicable regulations.

This system shall be based, in particular, on the principles of transparency, integrity and accountability.

##### ***Article 15: General accounting principles***

CERN's accounts shall be drawn up in accordance with the International Public Sector Accounting Standards (IPSAS).

These standards and the way in which they are implemented shall be explained in the notes attached to the annual **financial statements**.

##### ***Article 16: Financial commitments***

All financial commitments shall be in the interest of CERN, be subject to prior funding authorisation and be drawn up in writing by a person duly mandated by the Director-General for that purpose.

##### ***Article 17: Management of financial risks***

###### 17.1 Liquidity risk

The payment arrangements for contributions as defined in Article 10 of the Financial Rules shall ensure, in principle, the regular funding of CERN's activities.

Nevertheless, CERN shall, if necessary, cover its exposure to liquidity risks by having recourse to short-term bank loans or credit lines.

In the event of a cash surplus, CERN shall invest the amounts concerned.



## 17.2 Counterparty risk

CERN shall take the following steps to protect itself from the risk of counterparty default:

- having recourse to top-rated financial institutions and setting a ceiling on the level of operations authorised with each counterparty;
- applying rules and procedures defining the conditions for opening and managing third-party accounts and limiting the amounts managed and the transactions authorised;
- applying procurement rules that allow CERN to ensure that its contractors have the capacity to comply with the contractual conditions.

## 17.3 Financial market risk

The goal of financial risk management shall be to minimise the impact of the unpredictable nature of financial market trends on CERN's financial position.

The Director-General may have recourse to financial instruments to cover financial market risks such as variations in interest and exchange rates.

### ***Article 18: Approval of the **Financial statements*****

After consulting the Finance Committee, the Council shall approve the annual **financial statements** within six months from the end of the financial year to which they relate and shall grant the Director-General discharge for his management.

### ***Article 19: Inventories***

The Director-General shall ensure that an inventory of CERN's property is kept.

### ***Article 20: Internal audit***

The Director-General shall establish an internal audit service to assess the efficiency of the management and control system. He shall define the internal audit service's program of work.

The internal audit service shall report directly to the Director-General in an independent and objective way.

### ***Article 21: External auditors***

The external auditors, appointed by the Council pursuant to Article 8 of the Protocol, shall certify the **financial statements** and carry out any audit they consider necessary in that framework or any audit expressly requested by the Council or the Finance Committee.

### **Section 5 – Procurement Rules**

The Procurement Rules are set out in Annex 1 of the Regulations for the Implementation of the Financial Rules.

### **Section 6 – Final provisions**

#### ***Article 22: Entry into force***

The Financial Rules and their Implementing Regulations shall enter into force on the date of their adoption by the Council. They shall cancel and replace the previous editions of the Financial Rules and the Internal Financial Regulations.

#### ***Article 23: Interpretation***

The **Industry, Procurement and Knowledge Transfer Department** shall advise the other departments on the interpretation of the **CERN Procurement Rules and the Finance and Administrative Processes Department** shall advise the other departments on the interpretation of the **other parts of the** Financial Rules and their Implementing Regulations. Any divergence in interpretation shall be submitted to the Director-General for a written decision, which shall be kept on file.

If the administrative structure of CERN changes, references to the terms « department » and « service » in the Financial Rules shall be interpreted to mean any corresponding organic unit in the new administrative structure.

**REGULATIONS FOR THE  
IMPLEMENTATION  
OF THE CERN FINANCIAL RULES**

## **Section 1 – General principles**

### ***Article 1: Legal framework***

### ***Article 2: Parties to financial administration***

The costs incurred by participants in CERN's official meetings shall be borne as follows:

- a) costs incurred by participants attending Finance Committee meetings and Council Sessions in their capacity as representatives of the Member States shall be borne by the latter;
- b) costs incurred by participants at working groups set up by the Council or its Committees shall be borne by CERN, except where such a meeting is convened immediately before or after a meeting covered by a). In this case, all the costs incurred by members attending both meetings shall be borne by their respective Member State;
- c) costs incurred by participants at meetings of the Scientific Policy Committee shall be borne by CERN;
- d) as a general rule, costs shall be reimbursed to only one person appointed by his Member State as a member of a working group;
- e) costs shall be reimbursed in accordance with the rates and conditions laid down in the CERN Staff Rules and Regulations.

### ***Article 3: Financial year***

### ***Article 4: Currency***

## **Section 2 – Planning and budget**

### ***Article 5: Budget planning***

### ***Article 6: Structure of the budget***

### ***Article 7: Adoption of the budget***

The Council shall define the rules for calculating the cost-variation indices and the

mechanisms for applying them.

#### ***Article 8: Execution of the budget***

The execution of the budget shall be controlled by the services designated by the Director-General.

The annual **progress** report shall compare the results achieved and the resources used with the activities, objectives and expenses provided for in the budget.

#### ***Article 9: Budget balance***

### **Section 3 – Financing**

#### ***Article 10: Financial contributions of the Member States***

The financial contributions of the Member States shall be paid in accordance with the following schedule:

- 50% no later than 10<sup>th</sup> February of the current financial year;
- 50% no later than 10<sup>th</sup> June of the current financial year.

In the event that the budget is not adopted before the beginning of the financial year, contributions shall be paid in accordance with the following schedule:

- the equivalent of 50% of the budget of the previous financial year no later than 10<sup>th</sup> February of the current financial year;
- the balance of contributions no later than 10<sup>th</sup> June of the current financial year, except if the budget has not been adopted by this date. In this case the equivalent of 30% of the budget of the previous financial year shall be paid to CERN no later than 10<sup>th</sup> June and the balance of contributions shall be paid when the budget is adopted.

The interest on contribution arrears shall be:

- charged on the fraction of a Member State's contribution that has not been paid by 31<sup>st</sup> December of the financial year to which it relates;
- applied for the period running from 31<sup>st</sup> December of the financial year to which the contribution relates to the day on which the arrears are paid;
- calculated on the basis of the short-term loan Swiss franc rate applying on each day of this period.

### ***Article 11: Additional revenues***

The **Finance and Administrative Processes Department** shall be informed of any outstanding **obligation** in favour of CERN.

The **Finance and Administrative Processes Department** shall have sole entitlement to receive revenues and to draw up invoices and receipts.

### ***Article 12: Loans***

### ***Article 13: Fund for the CERN Health Insurance Scheme***

Actuarial studies shall be carried out **regularly** with a view to checking the long-term funding of the CERN Health Insurance Scheme.

### ***Article 14: Sale **or donation** of CERN property***

In principle, CERN shall solicit at least three competitive offers for any sale estimated to exceed 5000 Swiss francs.

The contract of sale shall be concluded with the purchaser making the highest offer and providing satisfactory payment guarantees.

The **Industry, Procurement and Knowledge Transfer Department** shall prepare the necessary documentation for any sale of CERN property and **the Finance and Administrative Processes Department shall** ensure that the agreed selling price is received.

In principle, costs associated with the disposal of property as a gift shall be borne by the beneficiary.

## **Section 4 – Management and control system**

### ***Article 15: General accounting principles***

The **financial statements** shall be transmitted to the External Auditors by 31<sup>st</sup> March following the end of the financial year.

### ***Article 16: Financial commitments***

The **Finance and Administrative Processes Department** shall make sure that CERN follows

sound financial management principles.

Any proposal liable to have financial implications shall be submitted to the **Finance and Administrative Processes and/or the Industry, Procurement and Knowledge Transfer Department, as appropriate**, so that **their** observations **can** be submitted to the competent authority in good time.

#### 16.1 Ex ante verifications

Before proposing a financial commitment by CERN, any person in charge of a budget shall ascertain that:

- the commitment forms part of an activity provided for in the budget;
- the commitment complies with the applicable rules;
- the commitment allows the activity to be realised efficiently and economically;
- the provisions available in the budget are sufficient to cover the proposed commitment;
- all the relevant supporting documentation has been supplied.

#### 16.2 Procurement commitments

The **Industry, Procurement and Knowledge Transfer Department** shall centralise and supervise the financial commitments relating to contracts and define the arrangements for payment.

#### 16.3 Commitments in personnel matters

The Human Resources Department shall make sure that the **commitments** in personnel matters comply with the provisions of the Staff Rules and Regulations. **The financial implications of the Staff Rules and Regulations are assessed by the Finance and Administrative Processes Department.**

#### 16.4 Settlement of commitments

The **Finance and Administrative Processes Department** shall have sole authorisation to make payments.

##### 16.4.1 Invoices and reimbursements

The **Finance and Administrative Processes Department** shall check the invoices and credit notes received from third parties. The Department shall make sure that:

- the invoice is drawn up in compliance with the contract;
- the invoiced supplies and services have been duly received and that they comply with the contract;
- the invoice or reimbursement claim has been completed in the correct currency and that the amount has been checked and found to be correct;
- the invoice or reimbursement claim has not already been partly or fully settled;
- all discounts and rebates comply with the contract or standard commercial practice;
- bank guarantees comply with the contract or standard commercial practice;
- the transaction is correctly recorded in the accounts;
- all the relevant supporting documentation has been supplied.

#### 16.4.2 Payments

All payments and transfers of funds must be signed by two persons designated by the Director-General.

Barring an exceptional circumstance, payments shall be made by bank transfer or by cheque or postal order.

No payment shall be made:

- without supporting documentation;
- without clearance by the control services ;
- prior to the date on which it is due, except where this has no impact on CERN's interests;
- to persons other than the creditors or their legal representatives.

#### 16.4.3 Fiscal provisions

The **Finance and Administrative Processes Department** shall verify fiscal exemptions and undertake all the formalities relating to reimbursements.

### ***Article 17: Management of financial risks***

The **Finance and Administrative Processes Department** shall have sole authority to:

- open and close accounts with financial institutions;
- manage bank guarantees;
- open and manage accounts on behalf of third parties, in particular suppliers, research institutes and collaborations, and define the rules governing their operation.



***Article 18: Approval of the **Financial statements*****

***Article 19: Inventories***

Inventories shall be kept and items identified according to a system approved by the **Finance and Administrative Processes Department, including a Property Plant and Equipment (PPE) Register.**

An inventory shall be kept by each Department. A separate inventory shall be kept for the Stores.

***Article 20: Internal audit***

***Article 21: External auditors***

21.1 Appointment and independence

One of the supreme audit institutions (SAI) of the Member States shall be appointed as external auditors for an initial period of three years, renewable once for a further period of two years.

The external auditors shall perform their remit independently and shall neither solicit nor accept instructions from individual Member States or other authorities.

21.2 Execution of the remit

The external auditors shall execute their remit in compliance with the recognized international standards.

The external auditors shall determine the scope of the audit of the **financial statements** as well as the methods to be used and the resources needed to accomplish it.

The external auditors shall have access to all information and may consult any member of the CERN personnel whenever they deem it necessary to carry out their remit.

CERN shall reimburse the travel costs of the external auditors and **shall** provide adequate facilities for the execution of their remit on its domain.

### 21.3 Reporting

After consulting the Director-General, the external auditors shall submit their report to the Council no later than the 31<sup>st</sup> May following the financial year to which the report relates. They shall attend the Finance Committee meeting and the Council session at which their report is examined.

The report shall contain the audit certificate on the financial statements. The audit certificate shall comply with the format prescribed by the auditing standards applied by the external auditors and shall include the opinion of the external auditors.

In their report the external auditors may make any comment they deem necessary on any matter.

#### **Section 5 – Procurement Rules**

The rules governing procurement are **set out** in Annex I.

**Annex 1**  
**to the Regulations for the Implementation of the CERN Financial Rules**

# **CERN PROCUREMENT RULES**

## **CHAPTER 1: INTRODUCTION**

### **1. Definitions**

Definitions of the terms used in the following chapters are set out in the “Terms and Definitions”.

### **2. Objectives and principles**

The objectives of the Procurement Rules are:

- to guarantee that contracts fulfil all of CERN’s technical, financial and delivery requirements;
- to keep overall costs for CERN as low as possible;
- to achieve balanced industrial return for the Member States by setting out appropriate procedures including, but not limited to, alignment, splitting and limited tendering procedures.

CERN shall purchase supplies and services and award contracts in compliance with the principles of transparency and impartiality.

**Invitation-to-tender** documents shall be drafted in an objective way so as to guarantee fair competition.

As a rule, CERN’s tendering procedures shall be selective and shall not take the form of open invitations to tender or open price enquiries.

The processes relating to the opening, negotiation and evaluation of the bids shall be strictly confidential.

## **CHAPTER 2: GENERAL TENDERING PROCEDURES**

### **3. General provisions**

#### **3.1 *Procurement basis and authority***

Prior to initiating a tendering procedure, the users shall verify whether their requirements can be covered by standard equipment available from the CERN Stores or punch-out catalogues.

As a rule, all purchases shall be made by the Procurement Service or under its control.

Purchases shall be based on a requirement submitted in the form of an appropriately authorised purchase request by the user concerned, which shall be subject to verification of the corresponding budget availability.

Similar requirements arising at the same time or expected to arise in a limited time-span shall be covered by a single contract.

Requirements shall not be fragmented into several smaller contracts or be broken down into quantities of items that are so small as to make the distance of suppliers from CERN a significant issue.

In exceptional cases, the Head of the Procurement Service may authorise in writing the placing of such fragmented contracts.

### **3.2 Country of origin**

The countries of origin of supplies and services shall be CERN Member States.

The entitlement for firms to participate in price enquiries and invitations to tender shall be suspended **if**:

- where the production is done in an Associate Member State in the case of supplies, or
- **the firm is** established in an Associate Member State in the case of services,

when the combined total value of commitments for the country concerned for the year in question, covering all orders, contracts and personnel appointments, including the value of the contract under consideration, would exceed the size of that country's financial contribution to CERN for the financial year concerned (the "ceiling").

If, in exceptional circumstances, CERN needs to contact a firm in an Associate Member State that has reached the ceiling, the firm concerned shall be considered and treated as a firm proposing supplies or services originating in a well-balanced Member State, irrespective of that Associate Member State's procurement return status at that stage.

Any proposal to contact a firm for a tendering procedure exceeding 10 000 CHF:

- in an Associate Member State once the ceiling has been reached, or
- where the production would be done in a non-Member State in the case of supplies, or
- in a non-Member State in the case of services

must be authorised in writing by the Head of the Procurement Service, who shall inform the Director concerned if deemed necessary.

### 3.3 *Thresholds and definition of contract types*

The applicable tendering procedure shall be determined on the basis of the following thresholds:

| <b>Estimated contract amount</b> | <b>Procedure</b>   | <b>Section</b> |
|----------------------------------|--|----------------|
| between 1000 and 5000 CHF        | written bid  | section 4.2    |
| between 5000 and 200 000 CHF     | price enquiry  | section 5      |
| exceeding 200 000 CHF            | invitation to tender (preceded by a market survey, in principle) | section 6      |

With a view to applying the above-defined thresholds, the estimated contract amount shall correspond to the value of the contract for its whole duration, excluding options, taxes and custom duties.

The Head of the Procurement Service shall define the internal contract naming convention and whether a contract is to be considered as a supply, a service or a **utilities** contract.

### 3.4 *Number of bids*

At least three bids shall be sought by CERN for any requirement exceeding 5000 CHF.

Provided that CERN has sent a market survey, a price enquiry or an invitation to tender without a prior market survey to a sufficient number of potential bidders proposing supplies or services originating in CERN Member States with a view to obtaining at least three bids, CERN shall be deemed to have followed the competitive tendering procedure in the event that fewer bids are received.

### 3.5 *Basis for adjudication*

Contracts shall be awarded on the basis of one of the following adjudication principles:

- on a “lowest compliant” basis, as defined in section 8.1, to the firm whose bid complies with the technical, financial and delivery requirements and is the lowest, subject to the rules aimed at achieving well-balanced industrial return coefficients for the Member States;
- on a “best value for money” basis, as defined in section 8.2, to the firm whose bid is the most economically advantageous.

In principle, adjudication on a best value for money basis applies to service contracts. However, in certain cases and subject to prior Finance Committee approval, supply contracts may also be adjudicated on a best value for money basis.

### **3.6 Duration of service contracts**

**In principle**, service contracts shall be awarded for a period of three years, renewable by CERN for up to four further optional years in the case of recurrent activities.

In the case of project-linked contracts, the duration of the contract may match the project duration.

### **3.7 Language**

**Invitation-to-tender** documents shall be drafted in English. Where a market survey has shown that only firms in French-speaking areas are interested in being invited to tender, the **invitation-to-tender** documents may be drafted in French.

### **3.8 Currency**

CERN shall request the bidder to quote his prices in Swiss francs (CHF) or, if the bidder wishes to be paid in another currency, in that currency (his national currency or the currency in which he will have the major expenses).

For the purpose of adjudication, CERN shall convert any amount quoted in another currency into CHF using the European Central Bank (ECB) **reference** rate of the closing date of the price enquiry or invitation to tender.

## **4. Requirements up to 5 000 CHF**

### **4.1 Requirements up to 1 000 CHF**

Users shall be authorised to make their own urgent purchases directly with the suppliers for amounts of up to 1000 CHF for any individual purchase, provided that they use the appropriate tools for procurement.

### **4.2 Requirements between 1 000 CHF and 5 000 CHF**

For purchases of up to 5 000 CHF, users may solicit bids themselves.

A written bid **shall be** mandatory. The bid shall be validated by the Procurement Service.

## 5. Price enquiry

A price enquiry shall be mandatory for any purchase of an estimated amount of between 5 000 CHF and 200 000 CHF. As a rule, price enquiries shall be issued by the Procurement Service and drawn up on the appropriate forms.

### 5.1 *Requirements between 5 000 CHF and 10 000 CHF*

Users shall be authorised, for purchases of amounts below 10 000 CHF, to issue price enquiries directly, it being understood that they **must** comply with the applicable provisions of the Procurement Rules.

### 5.2 *Requirements between 10 000 CHF and 200 000 CHF*

#### 5.2.1 Price enquiry and selection of firms

CERN shall prepare:

- the price enquiry in accordance with the principles laid down in section 2;
- the list of firms to be invited to reply, which should normally not exceed five.

A simplified technical auditing procedure, without a specification committee as defined in section 6.4, may be carried out for price enquiries so as to ensure that the Procurement Rules are complied with.

#### 5.2.2 Closing dates for price enquiries

The closing date **for the submission of bids** is four weeks from the date of dispatch of the price enquiry.

However, in urgent cases, the Head of the Procurement Service may authorise an earlier closing date.

Any request for an extension of the deadline for submission of the bids shall reach CERN at least one week before the scheduled closing date. The Procurement Service, in agreement with the user, shall decide on the appropriateness of granting such an extension. If the deadline is extended, all the firms contacted, except those that have already declined, shall be informed of the new closing date.

The deadline by which bidders may be added after the dispatch of the price enquiry shall be jointly decided on a case-by-case basis by the Procurement Service and the user.



### 5.2.3 Dispatch and opening of the bids

The bidder shall submit his bid electronically, in accordance with CERN's secure electronic tendering procedure. In cases where CERN requests the bidder to submit his bid in paper form, he shall send his bid to CERN by registered letter or courier service or exceptionally, deliver it by hand in a sealed envelope, by the closing date.

Once the Procurement Service has received all the bids in response to a price enquiry, but not earlier than five working days after the closing date if it has requested the bidder to submit his bid in paper form, it shall forward the bids to the user.

In cases where **the Procurement Service** has requested the bidder to submit his bid in paper form, where a bid posted before the closing date is received late or a bid posted after the closing date arrives before the bids are forwarded to the user by the Procurement Service, the provisions of section 6.7 shall apply.

### 5.2.4 Assessment and adjudication

Unless otherwise specified, bids shall be assessed and adjudicated and contracts awarded according to the procedures laid down in sections 3.5, 7 and 8.

## 6. Invitation to tender

An invitation to tender shall be mandatory for any purchase **expected to exceed** 200 000 CHF and shall normally be preceded by a market survey as defined in section 6.2. The invitation to tender shall be issued by the Procurement Service and drawn up on the appropriate forms.

The **invitation-to-tender** procedure shall consist of the following phases:

- Announcement (section 6.1);
- Market Survey (section 6.2);
- Invitation to tender and selection of firms (section 6.3);
- Technical auditing (section 6.4);
- Bidders' conference after dispatch of invitation to tender (section 6.5);
- Closing date for invitations to tender (section 6.6);
- Dispatch **and reception of** the bids (section 6.7);
- Opening of the bids (section 6.8).

### 6.1 *Announcement*

CERN shall announce forthcoming market surveys and invitations to tender. **Details of** forthcoming market surveys and invitations to tender can be consulted at <http://cern.ch/fplinks/cft.html>.

## 6.2 *Market survey*

Market surveys, as defined below, shall be carried out prior to invitations to tender, except if decided otherwise by the Head of the Procurement Service at the request of the user.

### 6.2.1 Aim

Following an announcement within the meaning of section 6.1, the market survey shall be conducted, for each group of contracts pertaining to similar activities listed in the announcement, with the following aims in mind:

- qualify firms for an invitation to tender by CERN;
- continuously update and improve the CERN database on suppliers;
- allow users and the Procurement Service to obtain, at an early stage, information from firms interested in tendering;
- allow Member State Delegations, Industrial Liaison Officers and other parties involved to contribute at an early stage to the tendering process by proposing suitable potential bidders;
- encourage firms to seek an early exchange of technical information with CERN.

As a rule, a market survey may be used as the basis for an invitation to tender within a period of up to 12 months or, for contracts involving prototype work, 18 months, unless decided otherwise by the Head of the Procurement Service on a case-by-case basis.

### 6.2.2 List of potential bidders

Without prejudice to the provisions of section 3.2, for each announced invitation to tender CERN shall prepare a list of potential bidders which shall be sent to the Member State Delegations and Industrial Liaison Officers at the time of the market survey.

The list shall include:

- firms indicated by the recipients of the announcement;
- Member State firms which have expressed, in writing to CERN, an interest in **the requirement concerned** or in similar contracts;
- other firms proposed by the Procurement Service or users;
- firms selected from the CERN suppliers database.

All the firms on the list shall be contacted for the market survey. Any other firms proposed by recipients of the announcement before the dispatch of the invitation to tender shall also receive the market survey.

### 6.2.3 Market survey documents

CERN shall decide, on a case-by-case basis and prior to the issue of the market survey, which adjudication principle is to be applied.

CERN shall prepare the following documents for a market survey:

- **technical description;**
- **qualification questionnaire;**
- cover letter indicating on which basis the announced invitation to tender will be adjudicated (section 3.5).

The market survey shall be drafted according to the principles laid down in section 2.

A simplified technical auditing procedure, without a specification committee within the meaning of section 6.4, shall be carried out for market surveys so as to ensure that the Procurement Rules are complied with.

### 6.2.4 Closing dates for market surveys

The closing date for replies shall be not less than four weeks from **the date on which the market survey was first dispatched.**

## 6.3 *Invitation to tender and selection of firms*

Following the market survey CERN shall prepare:

- the invitation to tender in accordance with the principles laid down in section 2 and, in the case of an adjudication on a “best value for money” basis, in accordance with the provisions of section 8.2;
- a final list, which should normally not exceed:
  - 10 firms for contracts exceeding 200 000 CHF and up to 750 000 CHF;
  - 15 firms for contracts exceeding 750 000 CHF.

Only firms **that** have replied to the market survey and are qualified **on the basis of:**

- **the technical, financial and other qualification criteria defined in the market survey,**
- **CERN’s previous experience with the firm, if any,**
- **the number of firms selected from each Member State, taking into account the Member State’s contribution, the relevant industrial return coefficient and the estimated amount of the contract.**

**shall be invited to tender.**

In exceptional cases, the Procurement Service and the user may decide jointly, on a case-by-case basis, to add **firms** after the dispatch of the invitation to tender, provided that the **firms** reply to the market survey and comply with the qualification criteria.

#### **6.4 Technical auditing**

The purpose of technical auditing is to carefully review the invitation to tender, so as to ensure that the Procurement Rules are complied with.

Technical auditing shall be carried out by a specification committee in the framework of technical specification meetings, which shall be held in the following cases:

- invitations to tender of an estimated value of more than 750 000 CHF in the case of competitive tendering;
- invitations to tender of an estimated value of more than 200 000 CHF in the case of non-competitive tendering as defined in section 9;
- market surveys, price enquiries and invitations to tender including research and development and prototype work for amounts above 50 000 CHF;
- if considered necessary by the Head of the Procurement Service or the Head of the user Department, in the case of competitive tendering where the estimated value exceeds 200 000 CHF.

The specification committee shall be composed of:

- the Head of the user Department concerned or his or her designated representative, who shall, except in the case of service contracts, chair and convene the meeting;
- in the case of service contracts, the Industrial Services Manager or his or her designated representative, who shall chair and convene the meeting;
- **the representatives of the user in charge of the invitation to tender;**
- the Head of the Procurement Service or his or her designated representative, as well as the representatives of the Procurement Service in charge of the invitation to tender;
- a representative of the Occupational Health & Safety and Environmental Protection (HSE) Unit;
- a technical referee with proven competence in the field concerned, appointed by the chair and who shall attend the meeting in the capacity of an expert from another CERN Department;
- if considered necessary by the chair, another CERN representative appointed by the chair, such as a representative of the Legal Service.

In cases of invitations to tender exceeding 750 000 CHF, the user shall prepare a risk matrix to be submitted for discussion to the specification committee and which shall be sent by the chair to the director concerned, **if deemed necessary**.

### **6.5 *Bidders' conference after dispatch of invitation to tender***

In addition to the provisions of clause 4 of the General Conditions for Tendering, CERN may organise, on its premises, a compulsory information conference for bidders about two weeks after the invitation to tender has been sent out. **This** conference shall include a visit of the CERN site.

Bidders shall be informed that **they** will be disqualified if they fail to attend the conference.

Bidders shall be given the opportunity to ask questions or request clarifications. The response by CERN shall be recorded in the minutes of the conference, which shall be sent to all participants.

### **6.6 *Closing date for invitations to tender***

The closing dates by which the bidders must submit their bids shall be as follows:

As a rule, the closing date **for the submission of bids** shall not be less than four weeks from the date of dispatch of the invitation to tender. A longer deadline may be specified for more complex items or where a lengthier tendering process is feasible.

For invitations to tender, the two-week CERN end-of-year holiday and the period from 15 July to 15 August shall be excluded when calculating the closing date for submitting bids.

In urgent cases, the Head of the Procurement Service may authorise the deadline for submission of the bids to be reduced.

Any request by a bidder for an extension of the deadline for submission of the bids shall reach CERN at least one week before the scheduled closing date. The Procurement Service, in agreement with the user, shall decide on the appropriateness of granting such an extension. If the deadline is extended, all the bidders contacted, except those that have already declined, shall be informed of the new closing date.

### **6.7 *Dispatch and reception of the bids***

The bidder shall submit his bid electronically, **in accordance with CERN's** secure electronic tendering procedure. In cases where CERN requests the bidder to submit his bid in paper form, he shall be informed that bids **must** not be sent by electronic mail and **shall, by the closing date at the latest,** send his bid to CERN, by registered letter **or** courier service, or, **if authorised by the Head of the Procurement Service,** deliver it by hand in a sealed envelope.

Bids posted by registered mail before the closing date but received after the opening of the bids shall be accepted, provided that they reach CERN within a reasonable time.

Bid posted by registered mail after the closing date but received before the opening of the bids may exceptionally be taken into consideration, subject to the agreement of the Head of the Procurement Service.

Bids which are received after the other bids have been opened and are postmarked after the closing date may under no circumstances be accepted.

## **6.8 Opening the bids**

### **6.8.1 Standard procedure**

The bids received following an invitation to tender shall be opened after the closing date by the Procurement Service in the presence of the user and/or his representative, who shall be invited to attend the opening by the Procurement Service. In cases where CERN has requested paper submissions, bids shall be opened not earlier than five working days after the closing date.

As a rule, only members of the personnel bound by confidentiality shall be allowed to attend openings of bids. Any exception shall be subject to prior written authorisation by the Head of the Procurement Service.

A report of the results of the opening of the bids shall be drawn up in **the form of** a confidential document to be kept by the Procurement Service.

After the opening of the bids, the Procurement Service shall meet the user concerned in order to assess the bids from a technical and, except in the case of a double-envelope procedure, from a financial point of view, in accordance with the provisions laid down in section 7.1.

### **6.8.2 Double-envelope procedure**

In **the** case of best value for money adjudications for service contracts, the Procurement Service shall apply a double-envelope procedure.

Under this procedure, whose use shall be specified in the invitation to tender, technical and commercial bids shall be evaluated separately at two different meetings. The commercial bids shall be opened if the technical bid has been evaluated and found to comply with the technical specification.

## **7. Assessment of bids and negotiations**

The following rules governing the assessment of bids and negotiations shall apply to both price enquiries and invitations to tender.

## 7.1 *Assessment rules*

The following basic assessment rules shall apply:

### 7.1.1 Compliance of the bid

Bids shall be examined in detail in order to establish that:

- the specifications have been fully understood and the bid complies with the technical and delivery requirements in all respects;
- the bid complies in all respects with the commercial and legal conditions laid down by CERN in the invitation-to-tender documents.

Obvious errors in a bid shall be corrected by CERN, as specified in section 7.2.2.

### 7.1.2 Price basis

As a rule, supply contracts adjudicated on a lowest compliant basis, as defined in section 8.1, shall be adjudicated on the basis of FCA<sup>1</sup> prices.

However, supply contracts shall be adjudicated on a DAP<sup>2</sup> basis if the ratio of the DAP price of the lowest FCA bid to the lowest DAP bid exceeds 1.10.

Civil-engineering contracts based on unfinished products shall be adjudicated on a DAP basis.

Civil-engineering work relating to the installation of finished products such as windows, glazing, blinds, doors, flooring, cladding and roofing shall be adjudicated on a DAP basis, provided that the price of the finished products represents less than 50% of the contract price.

Service contracts shall be adjudicated on the basis of the price quoted for the whole contract duration.

### 7.1.3 Bids with prices subject to revision

Bids with firm prices shall be compared with bids with prices subject to revision by applying CERN's revision formula to the latter. If the bidder proposes a variant of the revision formula proposed by CERN, the bidder's formula shall be used in comparing the bids.

The evaluation of bids containing price revision formula shall be based on averages for inflation rates and shall disregard exchange rate fluctuations<sup>3</sup>.

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<sup>1</sup> FCA= Free Carrier. See INCOTERMS 2010 or any later version thereof.

<sup>2</sup> DAP= Delivered At Place. See INCOTERMS 2010 or any later version thereof.

In evaluating price revision formulae for adjudication purposes, it shall be assumed that the rates of increase of materials and labour costs during the entire period of performance of the contract will be equal in all the Member States.

## **7.2 Permissible clarifications or corrections**

### **7.2.1 Clarifications**

Where the conditions proposed require technical clarification, bidders shall be asked to provide such clarification in writing.

Clarifications may be obtained on the understanding that they shall not modify the financial or commercial conditions of the bid, except where such clarifications result in a reduction of the price. The new price shall not be taken into account for adjudication purposes.

### **7.2.2 Correction of obvious errors**

Obvious errors in a bid shall be corrected by CERN. Any correction shall be confirmed in writing by the bidder. The following shall be regarded as obvious errors:

- an error of addition or multiplication of figures quoted in the bid;
- an unsubstantiated calculation made on the basis of a quantity other than that specified by CERN;
- a unit price that clearly differs from the real price by a factor of ten, a hundred or a thousand.

If a price reduction resulting from the correction of obvious errors has the effect of making a bid that was not the lowest at the opening the lowest bid, the new situation thereby created must be approved by the Head of the Procurement Service.

## **7.3 Rejection of bids**

Any bid submitted in response to a **price enquiry** or an invitation to tender by a firm that was not qualified by CERN according to the requirements of the market survey or that no longer fulfils those requirements shall be rejected.

Without prejudice to clause 14 of the General Conditions for Tendering, any bid that does not comply with the requirements of **the price enquiry** or the invitation to tender shall be rejected.

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<sup>3</sup> The average inflation rates to be used for the evaluation of price revision formulae shall be communicated annually by the **Industry, Procurement and Knowledge Transfer Department**.



If CERN receives a bid that appears to be abnormally low taking into account the requirements of the price enquiry or the invitation to tender, CERN shall request the bidder to explain the basis on which the bid was calculated.

The bidder shall provide all relevant information, such as details of the processes and technical solutions chosen, any exceptionally favourable conditions enjoyed by the bidder, the original nature of the supplies or services and evidence of compliance with labour and other applicable laws.

If no explanations are provided by the applicable deadline or if CERN considers that the explanations provided indicate non-compliance with the requirements of the price enquiry or the invitation to tender, that the price is not economically viable or any other substantial risk to the proper performance of the contract, it shall reject the bid.

In the case of contracts exceeding 750 000 CHF, the reasons for rejecting a bid shall be explained in a document to be submitted to the Finance Committee.

Bidders whose bids have been rejected shall be entitled to know the reasons for the rejection once the contract has been adjudicated.

If all the bids are rejected CERN shall analyse the reasons for their rejection with a view to revising the specifications or, if necessary, the entire project.

#### **7.4 *Negotiations***

The Procurement Service may negotiate with the successful bidder in order to improve any of the commercial and/or technical conditions of the bid.

The results of such negotiations, in particular a price reduction or the replacement of a price subject to revision by a firm price, shall not have any impact on the choice of contractor or be mentioned in a subsequent award-of-contract proposal, except in the case of alignment or splitting.

Nevertheless, once the choice of contractor(s) has been made, the advantages obtained from the negotiations shall form part of the contract to be placed.

#### **7.5 *Communications to the bidders***

Only the Procurement Service (in the case of contracts under 750 000 CHF) or the members of the Directorate or the Head of the Procurement Service (in the case of contracts above that amount) shall be authorised to communicate relevant information to the bidders.

## 8. Award of contracts

In accordance with section 3.5 and as defined in sections 8.1 and 8.2 respectively, contracts may be awarded either on a lowest compliant basis or on a best value for money basis.

### 8.1 Award on lowest compliant basis

Supply and service contracts shall be awarded to the bidder whose bid complies with the technical, financial and delivery requirements and is the lowest.

Contracts exceeding 100 000 CHF shall be subject to the alignment and the splitting rules defined in sections 8.1.2 and 8.1.3 respectively, with a view to achieving well-balanced industrial return coefficients (as defined in [sections 8.1.1.1 and 8.1.1.2](#)) for the Member States.

#### 8.1.1 Definition of return coefficients

##### 8.1.1.1 Return coefficient for supply contracts

Supply contracts shall cover any contract that is not defined as a service contract within the meaning of section 8.1.1.2. Research and development contracts as well as maintenance and leasing contracts covering data processing, printing and telecommunication equipment shall be considered as supply contracts.

The return coefficient of a Member State for supply contracts for a given twelve-month period starting on 1<sup>st</sup> March is the ratio between that Member State's percentage share of all purchases of supplies (excluding purchases funded by or [originating in non-Member States, purchases of utilities](#) and individual purchases for an amount below 1000 CHF) during the preceding four calendar years and that Member State's percentage contribution to the budget over the same period.

The target for the return coefficient for supplies is defined as the mean return, based on the current overall budget expenditure on supply purchases in the Member States open to firms in all Member States over the previous four calendar years.

A Member State shall be considered poorly balanced if its supply contract return coefficient falls below [1.0](#), and well balanced if it is equal to or exceeds that value.

##### 8.1.1.2 Return coefficient for service contracts

Service contracts are [multi-year](#) contracts [concluded](#) between CERN and a contractor for the provision of services to be [performed](#) on the CERN site.

The return coefficient of a Member State for service contracts for a given twelve-month period starting on 1<sup>st</sup> March is defined as the ratio between that Member State's percentage share of all purchases pertaining to services, **excluding purchases of utilities**, during the preceding four calendar years and that Member State's percentage contribution to the budget over the same period.

A Member State shall be considered poorly balanced if its service contract return coefficient falls below the target of 0.4, and well balanced if it is equal to or exceeds that value.

#### 8.1.1.3 Overall return coefficient

The overall return coefficient of a Member State for supply and service contracts for a given twelve-month period starting on 1<sup>st</sup> March is defined as the ratio between that Member State's percentage share of all purchases pertaining to supplies and services, including purchases of utilities (but excluding purchases funded by non-Member States and individual purchases for an amount below 1000 CHF), during the preceding four calendar years and that Member State's percentage contribution to the budget over the same period.

#### 8.1.2 Alignment

**Except in the case of splitting in accordance with section 8.1.3:**

Where the lowest bid is from a **bidder** proposing supplies or services originating in a poorly balanced Member State, the contract shall be awarded to that **bidder**, provided that the bid complies with all the stipulated requirements.

Where the lowest bid is from a bidder proposing supplies or services originating in a well-balanced Member State, CERN shall enter into negotiations with the two lowest bidders proposing supplies or services originating in a poorly balanced Member State, provided that their bids fall within 20% of that of the lowest bidder.

- If, as a result of these negotiations, the lowest of the bidders proposing supplies or services originating in a poorly balanced Member State agrees to align his price to that of the lowest bidder, the contract shall be awarded to the bidder proposing supplies or services originating in the poorly balanced Member State, provided that the bid with the realigned price complies with all the stipulated requirements.
- If the lowest of the bidders proposing supplies or services originating in a poorly balanced Member State does not agree to align his price to that of the lowest bidder, but the second lowest of the bidders proposing supplies or services originating in a poorly balanced Member State agrees to do so, the contract shall be awarded to the second lowest of the bidders proposing supplies or services originating in a poorly balanced Member State, provided that the bid with the realigned price complies with all the stipulated requirements.

- If the second lowest of the bidders proposing supplies or services originating in a poorly balanced Member State also fails to agree to align his price to that of the lowest bidder, the contract shall be awarded to the bidder whose bid complies with the technical, financial and delivery requirements and is the lowest.
- Alignment shall always be based on FCA prices, except in cases where adjudication is based on DAP prices as defined in section 7.1.2.

For the purposes of application of the above rules, when several firms jointly submit a bid in accordance with clause 9 of the General Conditions for Tendering, the bid shall be treated as coming from a bidder in a poorly balanced Member State, provided that the total share of the contract that would be awarded to the firm or firms in a poorly balanced Member State(s) is not less than 60% for a supply contract and not less than 40 % for a service contract. If this is not the case, the bid shall be treated as coming from a bidder in a well-balanced Member State.

Where the estimated amount of the tendering procedure is above 50 000 CHF, all potential bidders shall be informed of the applicable alignment procedures.

The list of well-balanced Member States shall be provided to the potential bidders at the time of the tendering procedure and will form the basis for the alignment.

### 8.1.3 Splitting

In the interests of achieving well-balanced industrial returns for all Member States, or where it is otherwise deemed to be in CERN's interests, CERN may split the contract, provided that it is technically feasible.

The following procedures shall apply:

- Where the lowest bid is from a bidder proposing supplies or services originating in a poorly balanced Member State, CERN shall, starting with the second lowest bid, invite the bidders proposing supplies or services originating in a poorly balanced Member State whose bids fall within 20% of the lowest bid, to align their prices as closely as possible to the lowest bid. The contract shall be split between the lowest bidder and the bidder(s) having aligned their prices to an extent acceptable to CERN, provided that the bids still comply with all the stipulated requirements;
- Where the lowest bid is from a bidder proposing supplies or services originating in a well-balanced Member State, CERN shall, starting with the second lowest bid, invite the bidders proposing supplies or services originating in a poorly balanced Member State whose bids fall within 20% of the lowest bid, to align their prices as closely as possible to the lowest bid. The contract shall be split between them, and the lowest bidder shall be excluded, provided that the bids still comply with all the stipulated requirements;
- If the above procedures do not result in the selection of a sufficient number of bidders, then, starting with the lowest bid, the bidders that were not invited to align their prices shall, irrespective of the country of origin of the supplies or services and whether or not the bids fall within 20% of the lowest bid, be

invited to align their prices as closely as possible to the lowest bid. The contract shall be split between the bidders selected according to the above procedures (if any), the lowest bidder (if not yet selected) and the bidders not invited to align their prices under the above procedures but now having aligned their prices to an extent acceptable to CERN, provided that the bids still comply with all the stipulated requirements.

The financial share awarded to the selected bidder that originally submitted the lowest bid shall be at least as large as the share awarded to the bidder that originally submitted the second lowest bid, and so on.

The Head of the Procurement Service may, in exceptional circumstances, authorise minor exceptions.

## **8.2 Award on a best value for money basis**

Where contracts are to be awarded on a best value for money basis, CERN shall award the contract to the bidder having submitted the most economically advantageous bid, **based on the price and the quality**.

The adjudication criteria shall be defined by CERN prior to the dispatch of the corresponding tendering procedure **documents** (section 8.2.1), and the bids shall be evaluated according to the procedure defined in section 8.2.2.

### **8.2.1 Definition of criteria and weights**

The adjudication criteria shall be determined on a case-by-case basis and shall comply with the principles defined in section 2.

The user and the procurement officer concerned shall determine and submit to the Head of the Procurement Service the criteria and their weights, as well as the detailed scoring mechanism to be applied for the assessment of the bids.

The choice of adjudication criteria shall be based on the field covered by the future contract and shall be expressly mentioned in the invitation-to-tender documents, together with the weighting factors.

Quality criteria may include the technical **quality** of the bid, the experience and references of the firm in the required services, the firm's capacity, the ability, experience, training, qualifications and know-how of the personnel and/or management, the firm's organisational and operating methods (organisational **structure**, the management / personnel ratio, use of subcontracting, etc.), the successful **completion of technical on-site field tests**, the schedule for completion or **delivery**, the quality of service (performance management), the achievability (proposed implementation of services supported by appropriate risk management and quality assurance measures), the quality control system and quality assurance documentation, health and safety aspects, the overall quality of the bid, the approach to risk allocation and management, innovation and insurance.

## 8.2.2 Evaluation of the bids

After the opening of the bid, the Procurement Service and the user concerned shall verify, respectively, the technical and commercial compliance of the bids. Non-compliant bids shall be disqualified and rejected as defined in section 7.3.

Compliant bids shall be evaluated and scored by an evaluation panel on a confidential basis.

The bid with the highest total weighted score shall be considered to provide the best value for money and shall, therefore, be recommended for the award of the contract.

## 8.2.3 Splitting

CERN may split the contract if this is technically feasible and deemed to be in its interests.

The financial share awarded to the bidder that obtained the highest total weighted score shall be at least as large as the share awarded to the bidder that obtained the second-highest total weighted score, and so on.

The Head of the Procurement Service may, in exceptional circumstances, authorise minor exceptions.

## CHAPTER 3: SPECIFIC TENDERING CASES

### 9. Requirements without competitive tendering

Where competitive tendering is not appropriate or possible for a specific procurement need, CERN may award a contract without competitive tendering. This comprises the following two cases in particular:

- single source procurement (where, for reasons of standardisation or similar technical or strategic constraints, the product or service must be procured from a particular contractor from among a number of firms proposing similar products or services);
- sole source procurement: (where the product or service is proposed by one firm only and competitive tendering is therefore not possible).

The decision as to whether or not CERN can dispense with competitive tendering for a particular contract shall be taken in accordance with the principles defined below.

The document (memorandum or purchase request) requesting the placing of a contract resulting from no or limited competitive tendering shall be accompanied by substantiating documentation, to be signed by the user, at the same level as that required for a purchase request of the corresponding amount.

The prior approval of the person authorised by the Director-General shall be obtained for all contracts to be placed without or with limited competitive tendering in the case of amounts between 5 000 and 200 000 CHF.

Contracts exceeding 200 000 CHF awarded without competitive tendering shall be subject to prior approval by the Finance Committee in accordance with section 11.1.

## **10. Limited tendering**

In order to improve the return coefficient for supplies to Member States with a very low return coefficient, CERN may, in cases where it is believed there is sufficient competition, contact only firms from Member States with a return coefficient below 0.4. Firms from other Member States shall not be permitted to participate in these tendering procedures.

Contracts for standardised items shall be regularly reviewed with a view to reaching the above-defined objectives.

## **CHAPTER 4: CONTRACT APPROVAL AND FOLLOW-UP**

### **11. Finance Committee approval and reporting**

#### ***11.1 Finance Committee approval***

##### **11.1.1 Award of contracts**

Finance Committee approval shall be sought in the following cases:

- contracts exceeding 750 000 CHF;
- contracts without competitive tendering exceeding 200 000 CHF;
- any exception made to the alignment rules defined in section 8.1.2;
- any substantial exception made to the splitting rules defined in sections 8.1.3 and 8.2.3.

All requests for approval of the award of a contract by the Finance Committee shall be submitted in the form of a document substantiating CERN's proposal. This document shall provide at least:

- details of the tendering procedure;
- a succinct analysis of the bids received;
- an award-of-contract proposal, including the necessary substantiation.

#### 11.1.2 Increased price and supplementary costs

Except in cases where the price increase is due to the application of the price revision formula, the Finance Committee approval is required where the price, which it has approved, is likely to be exceeded by more than 10%.

The of the Finance Committee's approval shall be sought in instances where supplementary costs, when added to the existing purchasing commitments, result in a total planned commitment exceeding 750 000 CHF.

#### 11.1.3 Renewal of service contracts

In the case of contracts exceeding 750 000 CHF, if CERN wishes to exercise its option to renew the contract at the end of the initial period, the Finance Committee's approval shall be obtained for each extension.

### ***11.2 Reporting to the Finance Committee***

The following reports shall be submitted to the Finance Committee:

- The annual report on procurement including:
  - statistics on contracts for utilities;
  - the status of blanket orders and computer rental and maintenance contracts exceeding 100 000 CHF;
  - a list of the contracts exceeding 50 000 CHF;
  - cases of departure from the original order of the bids, for contracts exceeding 200 000 CHF, as a result of special circumstances other than the provisions of sections 8.1.2, 8.1.3 and 8.2.3;
- The annual report on service contracts of an annual amount exceeding 100 000 CHF.

The Head of the Procurement Service shall be responsible for advising the users on the interpretation of the above-defined reporting rules. Where there is a difference of opinion, the matter shall be referred to the Director-General for decision.

The final decision in any such case shall be set out in writing and kept on record.



### ***11.3 Accelerated procedure in the case of urgent contracts***

In exceptional circumstances, if it would be detrimental to CERN's interests to defer the award of a contract for which the Finance Committee's approval is required until the Committee's next meeting, the accelerated procedure defined below shall apply.

The Chair of the Finance Committee shall be informed in order to decide on the urgency of the case. If he or she agrees that the contract award is urgent, the proposal for the award of the contract shall be forwarded by e-mail to the Member State Delegations to the Finance Committee, who shall respond by e-mail within three working days of the date of CERN's e-mail, indicating their approval, disapproval or abstention. Only the Member State Delegations to the Finance Committee who respond within the deadline shall be considered as present and voting.

The proposal shall be deemed to have been accepted by the Finance Committee if it has been approved with the quorum and by the majority that apply to regular contract adjudications at Finance Committee meetings. The Finance Committee shall be informed of the outcome of the voting procedure at its next meeting.

## **12. Contract follow-up**

### ***12.1 Before the start of the contract***

Before the contract starts, the technical, financial, commercial and safety risks shall be addressed by the user, who shall, in collaboration with the Procurement Service, update the risk matrix as defined in section 6.4 according to the characteristics of the selected firm.

For contracts exceeding 750 000 CHF, a monitoring group shall be set up, composed of the user and the group leader, the procurement officer and the Head of the Procurement Service or his or her deputy as well as the contractor and any other representatives deemed necessary by CERN. The monitoring group shall hold a kick-off meeting at the start of the contract, at which issues such as those listed below shall be addressed:

- organisation proposed by the contractor;
- quality system and its implementation;
- material and human resources available for the contract;
- confirmation of defined performance indicators and key milestones as well as remedial measures if needed.

### ***12.2 During the execution of the contract***

Contracts shall be based on the General Conditions of Contracts. It follows *inter alia* from CERN's status as an Intergovernmental Organization having its seat in Geneva,

Switzerland, that any disputes of a commercial nature shall not be subject to national jurisdiction but decided by arbitration.

The user, the Procurement Service, the Finance and Administrative Processes Department and the Legal Service shall perform the technical, commercial, financial and legal follow-up, respectively, of any matter arising in the framework of contract, including where a supply or a service has been subcontracted.

The user shall contact the Procurement Service immediately in the event that a contractor fails to perform his obligations in accordance with the contract. The user concerned shall document his or her interactions with the contractor and report them to the Procurement Service.

The monitoring group shall meet at regular intervals to evaluate the progress of the contract execution and discuss any issues that threaten to affect the performance of the contract.

Contracts shall further be followed up through the filling-out of a standard questionnaire drawn up by the Procurement Service.

## **CHAPTER 5: PROCUREMENT RULES FOR APPROVED OR RECOGNISED EXPERIMENTS AT CERN**

All financial operations connected with the Common Funds shall be subject to the Financial Rules including the Procurement Rules, except as defined in the cases below:

### **13. Cases which do not involve CERN's budget and where the Collaborations intend to act independently at CERN (Case A)**

CERN shall not be the contracting party and the contract negotiation shall be conducted by the institutes participating in the Collaboration.

The Financial Rules including the Procurement Rules shall not apply. The approval of the CERN Finance Committee is not required.

### **14. Cases which do not involve CERN's budget but where CERN is requested to be the contracting party (Case B)**

CERN shall be the contracting party.

The contract signature rights shall be in accordance with the applicable CERN procedures.

Concerning the procedure and the selection of firms to be consulted:

- either the Collaboration selects the firm(s), certifying that the applicable laws have been complied with;
- or the Collaboration requests CERN to perform a tendering procedure in accordance with the Procurement Rules. **In this case the provisions of the Procurement Rules governing industrial return and the limitation of invitations to tender to Member States shall be waived.** The invitation-to-tender documents shall be sent to firms in the Member States and the other countries in which the **institutes** funding the Collaboration are established. The selection process may take into account the origin of funds, the amount committed for contracts already allocated within the Collaboration and the contributions of the different **institutes** participating in the Collaboration but shall not be limited to firms in the country(-ies) providing the funds for that contract.

The Collaboration shall, however, be entitled to request that the contract is awarded on the condition that at least 50% of the value of the bid originates from the country(ies) providing the funding for that contract. In such a case, this condition shall be specified in the invitation-to-tender documents.

Contract negotiations shall be conducted by CERN in co-operation with the Collaboration Management. The General Conditions of Contracts shall apply.

The provisions of section 11 shall apply, except in cases where the contractual risks and liability associated with the contract have been transferred to the funding **institutes** designated by the Collaboration pursuant to a separate preliminary agreement having been signed between them and CERN.

#### **15. Cases where CERN contributes 100% of the financing (Case C)**

The contract shall be awarded in accordance with the Financial and Procurement Rules.

#### **16. Cases funded by the “Common Fund” established by the Collaboration (and to which CERN makes a contribution) (Case D)**

CERN shall be the contracting party.

The contract signature rights shall be in accordance with the applicable CERN procedures.

The firms of all countries of the Collaboration and contributors to the Common Fund shall be taken into consideration for the tendering procedures.

Except as otherwise provided for below, the contract shall be awarded in accordance with the Procurement Rules.

For tendering purposes, where CERN and Member State institutes contribute to the Common Fund, the Procurement Rules shall apply, except sections 8.1.2 and 8.1.3, which shall be waived.

Where institutes of non-Member States also contribute to the Common Fund, the Procurement Rules shall apply, except sections 3.2, 8.1.2 and 8.1.3, which shall be waived.

As a rule, invitation-to-tender documents shall be issued to firms of the participating countries with a view to achieving a balanced distribution of purchases among all the Member and non-Member States concerned.

Contract negotiation shall be conducted by CERN in co-operation with the Collaboration Management. The General Conditions of Contracts shall apply.

In accordance with the provisions of section 11, Finance Committee approval shall be sought in cases where CERN's contribution to the contractual amount exceeds the defined thresholds.

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## Annex II

### Amendments to the CERN Financial Rules adopted by the Council on 12 December 2008 CERN/FC/5305-CERN/2822

| DATE OF COUNCIL APPROVAL – ENTRY INTO FORCE | DOCUMENT REFERENCE                     | AMENDMENTS  |
|---|--|---|
| <b>20 June 2013</b>                         | CERN/FC/5750/Corr.-<br>CERN/3071/Corr. | <i>CERN Procurement Rules:</i><br>Terms and Definitions / Foreword<br>Article 3.2: “Country of origin”<br>Article 5.2.3: “Dispatch and opening of the bids”<br>Article 6.1: “Announcement”<br>Article 6.7: “Dispatch and reception of the bids”<br>Article 6.8.1: “Standard procedure”<br>Article 7.1.2: “Price basis”<br>Article 8.1: “Award on lowest compliant basis”<br>Article 8.1.1.1: “Return coefficient for supply contracts”<br>Article 8.1.2: “Alignment”<br>Article 10: “Limited tendering”   |
| <b>17 September 2015</b>                    | CERN/FC/5949/RA-<br>CERN/3207/RA       | <i>CERN Procurement Rules:</i><br>Article 9: “Requirements without competitive tendering”   |
| <b>13-14 June 2017</b>                      | CERN/FC/6129/RA<br>CERN/3313/RA        | <i>Terms and Definitions</i><br><i>CERN Financial Rules:</i><br>Section 5 : reference to Procurement Rules<br><i>CERN Procurement Rules:</i><br>Section 2: “Principles”<br>Section 3.6: “Duration of service contracts”<br>Section 6.2.3: “Market survey documents”<br>Section 6.3: “Invitation to tender and selection of firms”<br>Section 6.4: “Technical auditing”<br>Section 7.3: “Rejection of bids”<br>Section 8.1.1.1: “Return coefficient for supply contracts”<br>Section 8.1.3: “Splitting”<br>Section 8.2.2: “Evaluation of the bids”<br>Section 10: “Limited tendering”<br>Section 12.2: “During the contract execution” |