



# **Extreme Light Infrastructure ERIC**

## **Procurement Rules**

*As adopted by the Extreme Light Infrastructure ERIC General Assembly on 17 March 2022 and amended on 14 June 2023.*



## Preamble

Having regard to Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), and in particular Article 7(3) thereof;

Having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and in particular Article 9(1)(b) thereof;

Having regard to the Commission Implementing Decision (EU) 2021/960 of 30 April 2021 on setting up the Extreme Light Infrastructure as a European Research Infrastructure Consortium (Extreme Light Infrastructure ERIC).

Having regard to the ELI ERIC Procurement Policy of the Extreme Light Infrastructure ERIC, which requires that Procurement Rules be drawn up to establish the detailed processes governing procurement planning, the choice of selection procedures, publicity, evaluation, contract awards, and appeals,

Whereas the Procurement Policy requires that procurement be conducted so as to pursue and promote the following principles and objectives:

- (1) Best Value for Money – Secure the best mix of quality, effectiveness and price over the whole life cycle of the purchased goods, works or services.
- (2) Publicity – Contracts above certain thresholds shall be published in appropriate media, except where the circumstances or the nature of the contract justify reliance on specific exemptions.
- (3) Integrity – All procurement shall be conducted in a transparent manner and without impartiality and/or preferential treatment. Guidelines for Suppliers shall be made available on the Organisation’s website, including reference to ethical principles.
- (4) Innovation – Where possible, procurement needs should be stated as outcomes as early as possible in a non-prescriptive way to maximise the opportunities for innovators and suppliers to present their solutions. Whenever practicable, early supplier involvement shall be sought with a view to realise the full potential of suppliers’ ideas.
- (5) Sustainability – Where practical and without prejudice to technical performance, ELI shall seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured. This may include, for example, the reduction of greenhouse gas emissions and air pollutants, improved energy and water efficiency, use of renewable resources, reduced hazardous waste and support for refuse and recycling.
- (6) Social responsibility – Seek to promote decent work, social inclusion, accessibility, employment opportunities, ethical trade, gender equality, health and safety and achieve wider compliance with social objectives, provided these are linked to the subject matter of the contract.

The General Assembly of the Extreme Light Infrastructure ERIC has adopted these procurement rules:



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## **CHAPTER 1 - GENERAL PROVISIONS**

### **ARTICLE 1 DEFINITIONS**

For the purpose of these rules:

“AFC” means the Administration and Finance Committee of the Organisation.

“Call for Tenders” means a call for competition made in a manner required or permitted by Article 11.

“Currency” means the monetary unit of account.

“Contract” means the legally binding agreement whereby ELI ERIC purchases works, goods or services in accordance to those Procurement Rules.

“Contractor” means a party who has entered into a contractual relationship with the Organisation for the performance of works, provision of goods, or services.

“Days” mean calendar days, unless otherwise indicated.

“Delivering body” means an in-kind partner or a representing entity within the meaning of Article 15(2) of the ELI ERIC Statutes.

“Directive 2014/24/EU” means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

“Electronic means” means electronic equipment for the processing and storage of data transmitted, conveyed, or received electronically.

“Framework agreement” means an agreement between the Organisation and one or more Contractors, the purpose of which is to establish the terms governing individual orders to be concluded during a given period, in particular with regard to price, technical aspects and, where appropriate, quantity envisaged.

“Host State” means an ELI ERIC Member country where an ELI ERIC Facility is located.

“Hosting institution” means the legal entity responsible for the implementation of an ELI ERIC Facility and having entered an operating agreement with ELI ERIC.

“ILO” means an Industry Liaison Office operating in a country that has been accepted by ELI ERIC to participate in its ILO Network. A core function of an ILO is to foster the establishment of business relations between ELI ERIC and the private sector of that country.

“Member” means a country or intergovernmental organisation which, following approving of their application for accession by the ELI ERIC General Assembly, has the rights and obligations set forth in Article 20 of the ELI ERIC Statutes.

“Organisation” means ELI ERIC.

“PAN” stands for Procurement Advanced Notice and means a public announcement of a future procurement being planned, including sufficiently precise information to enable suppliers to identify the nature and scope of the future demand.



“Procurement documents” or “Tender documents” mean any document or documents produced or referred to by the Organisation to describe or determine elements of the procurement or the procedure, including the call for tenders, the invitation to tender, the technical specifications, and where appropriate, the proposed conditions of contract and any additional documents.

“RFQ” stands for Request for Quotation and means a document that details ELI ERIC’s needs and asks suppliers to respond with a detailed proposal.

“Statutes” mean the Statutes of the Organisation, published in the Commission Implementing Decision (EU) 2021/960 of 30 April 2021 on setting up the Extreme Light Infrastructure as a European Research Infrastructure Consortium (Extreme Light Infrastructure ERIC).

“Supplier” means any natural or legal person, a public entity or group of such persons and/or bodies, which offer the execution of works, supply of products or services on the market.

“Tenderer” means a supplier that has submitted a tender or a request to participate in a tender procedure.

“Working day” means a day other than Saturday, Sunday or a bank holiday in the Czech Republic, unless otherwise specified.

## **ARTICLE 2 SCOPE OF APPLICATION**

- 2(1) These procurement rules apply to all contracts for pecuniary interest for the provision of goods, works or services between the Organisation and a third party or parties, other than those exempted as per Article 6 of those Rules.
- 2(2) These procurement rules shall apply to procurement carried out by ELI ERIC, or in the name and on behalf of ELI ERIC.

## **ARTICLE 3 PRINCIPLES AND OBJECTIVES**

- 3(1) The procedures for award of contracts by the Organisation shall respect the EU principles of transparency, proportionality, equal treatment and nondiscrimination.
- 3(2) While conducting procurement, the Organisation shall seek to promote the objectives of best value for money, publicity, integrity, innovation, sustainability and social responsibility, as set out in the preamble to these rules.

## **ARTICLE 4 ESTIMATION OF THE VALUE OF CONTRACTS**

- 4(1) The estimated value of a procurement shall be based on the total amount payable over the duration of the contract or the framework agreement, net of VAT, as estimated by the Organisation, including any forms of options and renewals, taking into account all forms of remuneration.
- 4(2) Unless objectively justified by the specific circumstances of the contract, the Organisation shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement

so as to limit competition among suppliers or tenderers or to otherwise avoid its obligations under these rules.

- 4(3) Notwithstanding paragraph (2) above and provided that transparency and competition are preserved, the Organisation may subdivide contracts into separate lots to facilitate market access opportunities for small and medium enterprises and to reduce the risk of over dependency on one supplier.

#### **ARTICLE 5 INFORMATION ON POSSIBLE FORTHCOMING PROCUREMENT**

- 5(1) The Organisation will, where possible, publish information regarding future procurement activities.
- 5(2) The Organisation may also publish a Procurement advance notice (PAN) of a future procurement being planned. A PAN shall include information relevant to the procurement and must be sufficiently precise, insofar as that information is available to the Organisation, to enable suppliers to identify the nature and scope of the future procurement.
- 5(3) Where, in relation to contracts with a value exceeding EUR 200,000, a PAN is published between 30 days and 12 months in advance of the publication of a call for tenders, and the conditions in paragraph 4 below are met, the time limit for submitting a request to participate or for the submission of a tender may be shortened in accordance with Articles 13 to 17.
- 5(4) For the purpose of paragraph (3) above, a PAN shall include the following information, insofar as that information is available at the time the PAN is published:
- a) description of the procurement including the nature and extent of works, nature and quantity or value of supplies, nature and extent of services, as applicable;
  - b) estimated date for the performance of the contract;
  - c) estimated time frame for the publication of a call for tenders in respect of the contract referred to in the PAN;
  - d) any other information that may be relevant in the circumstances.
- 5(5) Any publication in accordance with this Article does not constitute a call for tenders and does not confer any rights on suppliers or tenderers.

#### **ARTICLE 6 SPECIFIC EXCLUSIONS**

- 6(1) These procurement rules do not apply to contracts:
- a) for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property;
  - b) for employment, secondment and personnel placement contracts;
  - c) for arbitration, conciliation or other legal services;

- d) for the delivery of in-kind contributions entered between the Organisation and a delivering body, provided that the financing of such in-kind contribution is through the budget of the Member. For the purpose of this paragraph, it does not matter if the financing provided by the Member is done by way of a direct payment from the Member to the delivering body, or through a designated cash contribution made by the Member to the Organisation, which is transferred further to the delivering body;
- e) for joint or collaborative procurement conducted in accordance with Articles 22(2) and 22(4);
- f) for banking services and loans;
- g) for educational and vocational services;
- h) for recreational, cultural and sporting services;
- i) for hotel, accommodation and catering services;
- j) for meeting and conference services;
- k) for health and work environment related services; or
- l) entered into between ELI ERIC and the hosting institutions.

6(2) In the circumstances referred to under paragraph 6(1), ELI ERIC may award the contract by way of direct negotiations with one or more suppliers with a view to satisfy the best interests of the Organisation without prior publication of a contract notice or Request for Quotation ('RFQ').

#### **ARTICLE 7 LANGUAGE**

- 7(1) All procurement documents and ancillary correspondence shall be in English, unless decided otherwise by the Organisation where the following conditions are fulfilled:
- a) the decision is justified by the subject matter of the contract; or
  - b) due to technical or geographical reasons, only domestic suppliers are likely to be interested in submitting tenders.
- 7(2) Responses to calls for tenders or RFQs may be in English or in the language of the procurement documents if the latter are in another language than English.
- 7(3) For procurement documents in languages other than English, RFQs and calls for tenders published on the Organisation's website shall always include a summary in English.

#### **ARTICLE 8 CURRENCY**

- 8(1) As a general rule, the Organisation shall ask suppliers to submit tender quotes in EUR.
- 8(2) Depending on the subject matter of the contract and the circumstances, the Organisation may also allow suppliers to submit tenders in CZK or HUF, or in special circumstances, other currencies.



## **ARTICLE 9 CONFLICTS OF INTEREST**

- 9(1) For the purpose of these Rules, a conflict of interest shall, at the least, be deemed to arise in any situation where a relevant staff member of the Organisation has a private or other interest which influences, or appear to influence, the impartial and objective performance of the procurement process, the outcome of the procurement process, or his or her official duties.
- 9(2) The Organisation shall take appropriate measures to effectively identify, prevent and remedy conflicts of interest arising from the conduct of the procurement so as to ensure integrity, equal treatment of all suppliers and tenderers and to avoid any distortion of competition.
- 9(3) Staff members of the Organisation shall abide by the Organisation's Code of Conduct in Contracting, which shall be made accessible to the public once approved and systematically maintained.

## **CHAPTER 2 - PROCUREMENT PROCEDURES**

### **ARTICLE 10 GENERAL PROVISIONS**

- 10(1) The provisions under this chapter shall apply to contracts with an estimated value of EUR 200,000 and above.
- 10(2) The procurement documents shall be free of charge and fully accessible to suppliers from the date of publication of a call for tenders via the Internet, in a designated area on the Organisation's website.
- 10(3) In some cases due to the subject matter of the contract, the tender documents may not be made available by means of the Internet, potential suppliers may request the delivery of the tender documents, in which case the Organisation shall provide the tender documents within 5 working days of receipt of such request, provided such request was made at least 5 working days before the time limit for receipt of tenders or request to participate.
- 10(4) In the case referred to in paragraph (3) above, the time limits for the receipt of tenders referred to in Articles 13 to 17 shall be prolonged by 5 days.
- 10(5) The receipt of tenders may be organized in electronic or in paper form. The Organisation shall set out detailed instructions for tender submission in the calls for tenders.
- 10(6) , the Organisation may require that proposals be submitted following a double envelope system, whereby the commercial offer is separated from the technical offer.

### **ARTICLE 11 CALL FOR TENDERS**

- 11(1) The Organisation shall make known its intention to conduct a new procurement by means of a call for tenders, unless the circumstances justify use of the procedure without publication of a call for tenders in accordance with Article 18.

- 11(2) The information provided with the call for tenders shall be sufficiently precise so as to enable suppliers to identify the nature and scope of the procurement. The Organisation shall set out their needs and requirements as well the chosen award criteria and indicative timeframe in the tender documents.
- 11(3) A call for tenders shall be published, as a minimum requirement, on the Organisation's website in a designated area accessible to suppliers via the Internet. Depending on the subject matter and the value of the contract, the Organisation may publish the call for tenders in additional media to ensure transparency and competition, including, where appropriate, the Industry Liaison Officers' network

#### **ARTICLE 12 CHOICE OF PROCEDURES**

- 12(1) The Organisation shall organise the procurement procedure leading to the award of a contract in accordance with any one of the procedures described in Articles 13 to 17, provided that a call for tenders has been made in accordance with Article 11.
- 12(2) The choice of the procurement procedure shall be made taking into account the specific circumstances of the procurement, the nature of the goods, services, or works being procured, their degree of innovativeness and complexity, as well as the organisation of the market. The procedure shall be selected in such way as to best ensure the fulfilment of the objectives and principles set forth in Article 3.

#### **ARTICLE 13 OPEN PROCEDURE**

- 13(1) Upon publication of a call for tenders, any interested supplier may submit a tender in response.
- 13(2) The minimum time limit for receipt of tenders shall be reasonable and proportionate to the subject matter of the contract, at least 20 days from the date on which the call for tenders was published. For contracts where no PAN has been published in accordance with Article 5, the minimum time limit for receipt of tenders shall be at least 30 days.
- 13(3) The Organisation shall assess the tenders submitted on the basis of the award criteria set out in the tender documents and in line with Article 28.

#### **ARTICLE 14 RESTRICTED PROCEDURE**

- 14(1) Upon publication of a call for tenders, any interested supplier may submit a request to participate.
- 14(2) The call for tenders may require the provision of information for qualitative selection within the time limits indicated and may include a questionnaire. The selection criteria used to carry out the qualitative selection shall comply with Article 27 and shall be published with the call for tenders.
- 14(3) The minimum time limit for receipt of a request to participate in response to a call for tenders shall be at least 20 days. For contracts where no PAN has been published in accordance with Article 5, the minimum time limit for receipt of a request to participate shall be at least 30 days.

- 14(4) Only those suppliers invited to do so by the Organisation following their qualitative assessments of the information provided in response to the call for tenders may submit a tender. The minimum number of suppliers invited to submit a tender shall be two.
- 14(5) The minimum time limit for the receipt of tenders shall be reasonable and proportionate to the subject matter of the contract, but at least 20 days. For contracts where no PAN has been published in accordance with Article 5, the minimum time limit for the receipt of tenders shall be at least 30 days.
- 14(6) The Organisation shall assess the tenders submitted on the basis of the award criteria set out in the tender documents and in line with Article 28.

#### **ARTICLE 15 COMPETITIVE PROCEDURE WITH NEGOTIATION**

- 15(1) Upon publication of a call for tenders, any interested supplier may submit a request to participate.
- 15(2) The call for tenders may require the provision of information for qualitative selection within the time limits indicated and may include a questionnaire. The selection criteria used to carry out the qualitative selection shall comply with Article 27 and shall be published with the call for tenders.
- 15(3) In addition to (2) above, the call for tenders may also require the submission of an initial tender, which shall be the basis for the subsequent negotiations.
- 15(4) The minimum time limit for receipt of a request to participate in accordance with paragraphs (1) and (2) shall be at least 20 days, or for contracts where no PAN has been published in accordance with Article 5, at least 30 days.
- 15(5) Following the qualitative assessment of the information provided in response to the call for tenders, only those suppliers invited to do so by the Organisation may take part in the negotiations. Where the call for tender is made in accordance with paragraphs (1) and (2), the invitation to negotiate may be accompanied by a requirement to submit an initial tender, which shall form the basis for such negotiations. The number of tenderers invited to take part in the negotiations shall be at least two.
- 15(6) During the negotiations, the Organisation shall ensure equal treatment of all tenderers and shall not provide information in a discriminatory manner by giving some tenderers an advantage over others.
- 15(7) The negotiations may take place in successive stages in order to reduce the number of tenders to be negotiated.
- 15(8) In accordance with Article 32, the Organisation shall not reveal to the other tenderers any confidential information communicated by a tenderer participating in the negotiations without first obtaining that tenderer's consent.
- 15(9) The Organisation shall inform tenderers in due course of its intention to conclude negotiations and set a common deadline for submission of final tenders. The final tenders shall comply with the minimum requirements of the tender documents and be based on the outcome of the negotiations.



15(10) The Organisation shall assess the final tenders submitted on the basis of the award criteria set out in the tender documents and in line with Article 28.

#### **ARTICLE 16 COMPETITIVE DIALOGUE**

- 16(1) Upon publication of a call for tenders, any interested supplier may submit a request to participate provided minimum supplier qualifications are met where required.
- 16(2) The call for tenders may require the provision of information for qualitative selection within the time limits indicated and may include a questionnaire. The selection criteria used to carry out the qualitative selection shall comply with Article 27 and shall be published with the call for tenders.
- 16(3) The minimum time limit for receipt of a request to participate in response to a call for tenders shall be at least 20 days. For contracts where no PAN has been published in accordance with Article 5, the minimum time limit for receipt of a request to participate shall be at least 30 days.
- 16(4) Following the qualitative assessment of the information provided in response to the call for tenders, only those suppliers invited to do so by the Organisation may take part in the dialogue. The invitation to dialogue may be accompanied by a requirement to submit an initial tender, which shall form the basis for such negotiations. The minimum number of candidates invited to take part in the dialogue shall be two.
- 16(5) The dialogue shall take place individually with each candidate, ensuring confidentiality of each solution.
- 16(6) During the dialogue, the Organisation shall ensure equal treatment of all tenderers and shall not provide information in a discriminatory manner by giving some tenderers an advantage over others.
- 16(7) Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the call for tenders or in the descriptive document. In the call for tenders or the descriptive document, the organization shall indicate whether it will use that option.
- 16(8) The Organisation shall inform tenderers in advance of its intention to conclude the dialogue and set a common deadline for submission of final tenders. Having declared that the dialogue is concluded and having so informed the remaining tenderers, the Organisation shall ask each of them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. Those tenders shall contain all the elements required and necessary for the performance of the contract.
- 16(9) At the request of the Organisation, negotiations with the tenderer identified as having submitted the winning tender may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract provided this does not have the effect of materially modifying essential aspects of the tender or of the procurement, including the needs and



requirements set out in the call for tenders or in the descriptive document and does not risk distorting competition or causing discrimination.

#### **ARTICLE 17 INNOVATION PARTNERSHIP**

- 17(1) Upon publication of a call for tenders, any interested supplier may submit a request to participate provided minimum supplier qualifications are met where required.
- 17(2) The call for tenders may require the provision of information for qualitative selection within the time limits indicated and may include a questionnaire. The selection criteria used to carry out the qualitative selection shall comply with Article 27 and shall be published with the call for tenders.
- 17(3) The minimum time limit for receipt of a request to participate in response to a call for tenders shall be at least 20 days. For contracts where no PAN has been published in accordance with Article 5, the minimum time limit for receipt of a request to participate shall be at least 30 days.
- 17(4) The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs specified by the Organisation and the tenderers.
- 17(5) The procurement documents shall provide information on the innovative product, service or works the Organisation intends to procure, indicating in particular the requirements that cannot be met at the time of the call by the products, services or works already available on the market. The documents shall indicate minimum requirements to be met. The information provided shall be sufficiently precise to enable suppliers to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.
- 17(6) The Organisation may decide to set up the innovation partnership with one tenderer or with several tenderers conducting separate research and development activities.
- 17(7) The innovation partnership shall in principle be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the selected Contractor(s) and provide for payment of the remuneration in appropriate instalments.
- 17(8) Based on those targets, the Organisation may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several Contractors, to reduce the number of Contractors by terminating individual contracts, provided that the Organisation has indicated in the procurement documents those possibilities and the conditions for their use.
- 17(9) The Organisation shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof.

## **ARTICLE 18 PROCEDURE WITH DIRECT NEGOTIATIONS**

- 18(1) In the specific cases and circumstances laid down in this Article, the Organisation may award contracts by way of direct negotiations with one or more suppliers, without prior publication of a call for tenders. In such cases, Article 30 shall not be applicable.
- 18(2) The Organisation may award contracts following the procedure under this Article in the following circumstances:
- a) in the absence of competition for technical reasons or due to exclusive rights including intellectual property rights, where no reasonable alternatives are available;
  - b) where only one or no applications, requests to participate or suitable tenders have been submitted in response to a previous call for tenders, provided that the initial conditions of the contract or the tender documents are not substantially altered, that the tenderer who should be awarded the contract complies with the original exclusion and selection criteria if such were required, and that no more than one year has elapsed since the publication of the original call for tenders;
  - c) for research and development contracts which are performed by noncommercial entities for purpose of research, or testing, experimentation, study or development in connection with research or construction, provided that the contract does not include serial production for commercial reasons;
  - d) in circumstances of an urgent nature, unforeseeable and not attributed to the Organisation, where the time limits under in Article 13, Article 14 and Article 15 cannot be complied with;
  - e) for additional deliveries by the original supplier where a change of supplier would oblige the Organisation to acquire supplies or services having different characteristics which would result in incompatibility, disproportionate technical difficulties or damaging time delays in operation, maintenance or application; or
  - f) for strict security reasons;
  - g) for the procurement of second-hand equipment at particularly advantageous terms;
  - h) for contracts at particularly advantageous terms, from a supplier which is winding up business activities, or from receivers or liquidators of a bankruptcy, an agreement with creditors, or similar procedures.

## **CHAPTER 3 - LOW VALUE PROCUREMENT**

### **ARTICLE 19 GENERAL PROVISIONS**

The provisions under this Chapter shall only apply to individual contracts and framework agreements with an estimated value of up to EUR 200,000, which do not fall under one of the exemptions listed in Article 6.



#### **ARTICLE 20 CONTRACTS ESTIMATED TO BE LESS THAN EUR 25,000**

- 20(1) Where practicable, the Organisation shall ensure limited competition through requests for quotation and price comparison.
- 20(2) The Organisation shall ensure that best-value-for-money is obtained.

#### **ARTICLE 21 CONTRACTS ESTIMATED TO BE BETWEEN EUR 25,000 AND EUR 200,000**

- 21(1) Where appropriate, the Organisation may publish the contract opportunity on the Organisation's website in a designated area accessible to suppliers. Publication under this Article does not constitute a call for tender in accordance with Article 11.
- 21(2) The Organisation may also maintain a suppliers database, within the e-tendering tool, from which it shall seek requests for quotation. The suppliers database shall be subject matter specific, easily defined on the basis of purchases made under the category concerned.
- 21(3) The suppliers database shall be open for registration of new suppliers by way of a call or expression of interest to be posted in a designated area on the Organisation's website accessible to suppliers. The call for expression of interest may specify duration and conditions of admission to the database, including the requirement to meet certain selection criteria for qualification of suppliers.
- 21(4) At minimum, the Organisation shall ensure appropriate competition by inviting at least 3 suppliers to submit quotations.
- 21(5) Where, for objective reasons, the number of suppliers available to respond to the publication or to the request for quotation is less than 3, the Organisation shall seek to ensure an optimal level of competition in the circumstances.
- 21(6) For planned procurements with an estimated value of EUR 50,000 to EUR 200,000, the organisation shall usually notify the ELI ILOs at least three (3) weeks in advance of opening the Request For Quotation for selected suppliers to give the ILOs the chance to provide ELI ERIC with suitable suppliers that can be added to the invitee list. In cases of extreme urgency, safety-related or unforeseen circumstances, ELI ERIC and the ILOs can agree on a shorter notification period.

### **CHAPTER 4 - PROCUREMENT ARRANGEMENTS**

#### **ARTICLE 22 FRAMEWORK AGREEMENT**

- 22(1) The Organisation may award a framework agreement in accordance with these rules and in such a case all references to a contract in Chapter 2 should be read as including a framework agreement.
- 22(2) The duration of the framework agreement shall be reasonable and justified by the subject matter of the framework agreement and shall not exceed 5 years.

- 22(3) Where a framework agreement is concluded with a single supplier, contracts awarded pursuant to the framework agreement shall be within the limits laid down in the framework agreement.
- 22(4) Where a framework agreement is concluded with more than one supplier and all the terms and conditions governing the provision of the works, services or supplies concerned are laid down in the framework agreement, orders shall be placed without reopening the competition. Conditions for placing the order shall be stipulated in the original tender documents or in the framework agreement.
- 22(5) Notwithstanding paragraph (4) above, the Organisation reserves the right to reopen competition amongst suppliers party to the framework agreement provided that the choice of whether to reopen competition is reasonable given the circumstances at hand and that the award criteria used are objective, communicated to tenderers in advance, and relate to the subject matter of the specific contract.
- 22(6) Where a framework agreement is concluded with more than one supplier, the Organisation may award a contract for which not all the terms and conditions are laid down in the framework agreement provided that:
- a) The initial tender documents stipulated that competition amongst suppliers party to the framework may be reopened for the award of specific contracts;
  - b) The specific contract is awarded following competition; and
  - c) The competition is based on the same criteria for the award of the framework agreement, but such criteria may be more precisely formulated and where appropriate, accompanied by other criteria, which have been referred to in the original tender documents for the framework agreement.
- 22(7) The Organisation shall not misuse a framework agreement in order to prevent, restrict or distort competition.

#### **ARTICLE 23 ELECTRONIC CATALOGUES**

- 23(1) The Organisation may require tenders to be presented in the format of an electronic catalogue, in accordance with the technical specifications and format established by the Organisation.
- 23(2) Where tenders have been submitted in the form of electronic catalogues to a framework agreement concluded with more than one supplier, the Organisation may use one of the following options:
- a) award a contract on the basis of the electronic catalogues originally submitted to the framework agreement; or
  - b) invite suppliers party to the framework agreement to resubmit electronic catalogues, adapted to the requirements of the contract in question if necessary.



#### **ARTICLE 24 COLLABORATIVE AND JOINT PROCUREMENT**

- 24(1) The Organisation may award a contract or conclude a framework agreement jointly or in collaboration with other contracting authorities in the Host Countries or in other countries.
- 24(2) When acting in collaborative procurement with other contracting authorities that are subject to other procurement procedures pursuant to Directive 2014/24/EU, or international rules, the Organisation may choose to organise the joint or collaborative procurement in accordance with such other procurement procedures.
- 24(3) The Organisation may enter into a contract or establish a framework agreement for use by other contracting authorities, provided that it has clearly identified, by name or by category, those contracting authorities entitled to rely on the contract or framework agreement in the call for tenders and tender documents.
- 24(4) Where one or more of the contracting authorities mentioned in paragraph (3) above are subject to other procurement procedures pursuant to Directive 2014/24/EU or international rules, the Organisation may organise the award of the contract or the framework agreement in accordance with such other procurement procedures.

#### **CHAPTER 5 - CONDUCT OF THE PROCUREMENT**

##### **ARTICLE 25 GROUNDS FOR EXCLUSION**

- 25(1) The Organisation may treat as ineligible and may choose not to invite a supplier to tender or award a contract to a supplier if the Organisation has actual knowledge that the supplier or any other person who has powers of representation, decision or control of the supplier:
- a) has been convicted of any of the following offences in the last three years: participation in criminal organisation; corruption; fraud; money laundering; terrorist offences or offences linked to terrorist activities; child labour or other forms of illegal trafficking in human beings;
  - b) has failed to comply with applicable environmental, social or labour laws in the last three years;
  - c) is guilty of grave professional misconduct, which renders the supplier or tenderer's integrity questionable;
  - d) is involved, or has been involved in the last three years, in collusion;
- or where the Organisation has actual knowledge of the existence of any of the following circumstances:
- e) a conflict of interests affecting the supplier or tenderer that cannot be remedied by other means than exclusion;
  - f) an unfair advantage that may distort competition as a result of the prior involvement of the supplier or tenderer in the preparation of the procurement process, in accordance with Article 29(4);

- g) significant, documented and notified previous deficiencies in the performance of prior contracts awarded by the Organisation;
- h) serious misrepresentation while supplying information required as part of a tender procedure; or
- i) where the supplier or tenderer is bankrupt, or is the subject of insolvency or winding-up procedures or is in any equivalent situation arising from a similar procedure under the laws and regulations of any state.

- 25(2) At any time during the procurement procedure, the Organisation may exclude a supplier or a tenderer where, due to new information brought to light, the Organisation becomes aware that the supplier or tenderer is in one of the situations referred to in paragraphs (1)(a)-(i) above or other exclusion grounds specified in the procurement documents.
- 25(3) The Organisation may request that official registers, certificates, statements and other means of proof are submitted as evidence against grounds for exclusion in accordance with paragraph (1) above.
- 25(4) A supplier that is in one of the situations referred to in paragraph (1) above shall have the possibility to request that compliance measures taken by that supplier are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion, with a view that possible admission to the procurement procedure be examined.
- 25(5) Such compliance measures may particularly include personnel and organisational measures such as the severance of all links with persons or organisations involved in the misbehaviour, appropriate staff reorganisation measures, the implementation of reporting and control systems, the creation of an internal audit structure to monitor compliance and the adoption of internal liability and compensation rules.
- 25(6) The compliance measures taken by the supplier shall be evaluated by the Organisation, taking into account the particular circumstances of the offence or misconduct. The Organisation shall give the supplier a statement of the reasons for its decision in case it considers the compliance measures taken to be insufficient. Such decision shall be made at the sole discretion of the Organisation.

## **ARTICLE 26 TECHNICAL SPECIFICATIONS**

- 26(1) The technical specifications shall define the components required of the works, supplies or services to be performed under the contract and shall be set out in the tender documents.
- 26(2) Technical specifications shall afford equal access to suppliers in the procurement procedure and shall not have the effect of creating unjustified obstacles to competition or result in unfair discrimination.
- 26(3) Where relevant to the subject matter of the contract, the technical specifications shall be drawn up so as to promote the objectives of innovation, sustainability and social responsibility as set out in the preamble to these rules.
- 26(4) Technical specifications may refer to a specific make or source, or a particular process that characterises the products or services provided by a specific supplier. In such a case the technical



specifications shall always allow an equivalent solution and each such reference shall always be accompanied by the words “or equivalent”.

#### **ARTICLE 27 SELECTION CRITERIA**

- 27(1) Where applicable, the Organisation shall establish selection criteria for the qualitative selection of suppliers to be invited to tender or, where applicable, to negotiate the contract.
- 27(2) The selection criteria used shall be based on clear and objective criteria that the Organisation may determine, provided it makes the criteria available to suppliers in advance.
- 27(3) The criteria must be related and proportionate to the subject-matter of the contract, and may include (but are not limited to): suitability to pursue a professional activity, economic and financial standing, and technical and professional ability.
- 27(4) Where appropriate and relevant for a particular contract, a tenderer may rely on the capacities of other entities to demonstrate economics and financial standing or technical and professional ability, subject to the following conditions set out in paragraphs (5), (6) and (7) below.
- 27(5) With regard to criteria relating to economic and financial standing, the Organisation may require that the tenderer and those other entities be jointly liable for the execution of the contract.
- 27(6) With regard to criteria relating to technical capacity, the Organisation may require the tenderer to prove that it will have at its disposal the relevant resource by, for example, providing a commitment in writing to that effect.
- 27(7) With regard to educational and professional qualifications or experience of individuals, a tenderer may only rely on the capacities of other entities if those individuals perform the services or works that require their qualification or experience.
- 27(8) In order to facilitate an efficient evaluation process and reduce the likelihood of errors, the Organisation may decide to request the documentary evidence of fulfilment of the selection criteria upon finalisation of the evaluation of tenders and to request such documentary evidence from the tenderer(s) recommended for award only. The decision to request the documentary evidence together with the tender from all tenderers or at the end of the evaluation process from the awarded tenderer(s) only, shall rest with the Organisation and the chosen option shall be clearly stated in the call for tenders and the tender documents.

#### **ARTICLE 28 AWARD CRITERIA**

- 28(1) The Organisation shall award contracts on the basis of best-value-for-money, which shall be assessed on the basis of objective criteria in accordance with the principles set out in Article 3(1) above.
- 28(2) The objective criteria used to assess the best-value-for-money shall be linked to the subject matter of the contract and shall not confer an unrestricted freedom of choice on the Organisation. Such criteria

may include environmental, social or innovation-related criteria and shall reflect the objectives set out in the preamble of these rules and Article 3(2) above.

- 28(3) The criteria used to assess the best-value-for-money shall be set out in the call for tenders or the tender documents and be sufficiently clear to allow tenderers to understand on what basis their tenders will be assessed and to allow the information provided by the tenderers to be effectively verified.
- 28(4) In appropriate cases, justified by the subject matter of the contract, the best-value- for-money may be based solely on price or life-cycle costing.
- 28(5) In exceptional cases justified by the technological requirements of the Organisation, the Organisation may award contracts on best-performance basis, provided this award criterion is specified in the tender documents.

#### **ARTICLE 29 MARKET CONSULTATIONS AND INVOLVEMENT OF SUPPLIERS IN THE PROCUREMENT**

- 29(1) Prior to commencing a procurement procedure or a low-value procurement, the Organisation may conduct a market survey or consultation with potential suppliers to plan the conduct of the procurement, prepare the tender documents and inform the market on forthcoming procurement plans.
- 29(2) For this purpose, the Organisation may engage external independent experts and/or potential suppliers, provided this does not have the effect of distorting competition.
- 29(3) The Organisation shall take appropriate measures to ensure that competition is not distorted as a result of the participation in the procurement procedure by a tenderer or an entity related to a tenderer previously involved in the preparation of the procurement.
- 29(4) The Organisation may exclude a supplier or a tenderer if it has grounds to conclude that the prior involvement of that tenderer, supplier or related entity in the procurement process is capable of distorting competition or compromising the integrity of the procedure.
- 29(5) Prior to any such exclusion, the supplier or tenderer shall be given the opportunity to prove that its involvement in the preparation of the tender process is not capable of distorting competition.

#### **ARTICLE 30 NOTICE OF DECISION TO REJECT A TENDERER OR TO AWARD A CONTRACT**

- 30(1) The Organisation shall send a notice to tenderers who were excluded pursuant to Article 25 or failed to meet the selection criteria pursuant to Article 27. The notice shall be sent as soon as possible after a decision has been made and include the reasons why the tenderer was unsuccessful in meeting those criteria. The identity of awarded tenderer(s) or the tenderer(s) selected for the next stage in a tender procedure conducted in several stages (i.e., restricted or competitive with negotiation, innovation partnership and competitive dialogue) will remain confidential until the award decision.

- 30(2) Prior to entering into a contract or concluding a framework agreement, the Organisation shall send all unsuccessful tenderers, who have not been informed of their rejection pursuant to paragraph (1) above, a notice communicating its decision.
- 30(3) The notice referred to in paragraph (2) shall include:
- a) the criteria used for the award of the contract;
  - b) the name of the tenderer or tenderers to be awarded the contract or to become a party to the framework agreement;
  - c) the score for each award criterion obtained by the tenderer which is to receive the notice and the tenderer or tenderers to be awarded the contract or to become a party to the framework agreement; and
  - d) where paragraph (4) below is applicable, the earliest date the Organisation intends to enter into the contract or to conclude the framework agreement.
- 30(4) For contracts falling under Chapter 2 (with the exception of contracts awarded based on the procedure without publication of Article 18) the Organisation must not enter into the contract or conclude the framework agreement before the end of a standstill period.
- 30(5) The standstill period shall end at midnight at the end of the 10th day following the relevant sending date of the notice in accordance with paragraph (2). The “relevant sending date” means the day on which the notice is sent, which for the purpose of calculating the standstill period, shall be counted as the first day.
- 30(6) For contracts falling under Chapter 3, the decision of whether to follow the provisions of this Article shall be at the Organisation’s discretion.

#### **ARTICLE 31 CANCELLATION OF A PROCUREMENT PROCEDURE**

- 31(1) The Organisation may decide to cancel a procurement procedure at any time before entering into a contract, provided such decision is in conformity with the principles set out in Article 3(1).
- 31(2) For procurement procedures conducted in accordance with Articles 14 to 17, the Organisation shall cancel the procedure in the event no or only one supplier has qualified to submit a tender.
- 31(3) The Organisation shall inform all tenderers of its decision within a reasonable time.
- 31(4) Participation in a tender procedure that has been cancelled shall not give rise to any right for compensation for foregone profits or costs incurred by suppliers or tenderers.

#### **ARTICLE 32 CONFIDENTIALITY**

- 32(1) In its communications with suppliers or tenderers or any other third party, the Organisation shall not disclose any information if the non-disclosure of such information is necessary for the protection of essential interests of the Organisation or a Member Country.



32(2) The Organisation shall not disclose information communicated to it by a supplier or a tenderer that has been reasonably designated by that supplier or tenderer as confidential and that, according to the Organisation's assessment, would likely prejudice the legitimate commercial interests of that supplier or tenderer, or would impede fair competition, unless disclosure of that information is ordered by a court or administrative body as required under EU laws or laws of the Host State.

## **CHAPTER 6 - AUDIT**

### **ARTICLE 33 GENERAL AUDIT**

The Director General shall appoint an internal auditor to conduct an annual review of procurements against the procurement rules of the Organisation. The auditor shall provide a written report of its findings. The auditor shall be independent of the Organisation's procurement function.

## **CHAPTER 7 - CONTRACT PERFORMANCE**

### **ARTICLE 34 CONTRACT CONDITIONS**

34(1) In case of works executed or services provided outside the Host Countries, the Organisation may require compliance with obligations in the fields of environmental, social, tax and employment law that apply at the place of execution of the works or provision of the services, in addition to obligations resulting from laws, regulations, decrees, collective agreements and decisions applicable in the relevant Host Country.

34(2) The Organisation may also require additional stipulations relating to the performance of the contract, concerning in particular innovation-related, environmental, social or employment-related considerations, or financial penalties in the event of non-performance or non-compliance with the contractual terms.

### **ARTICLE 35 SUBCONTRACTING**

35(1) The Organisation may ask tenderers to indicate in their tenders any share of the contract that may be subcontracted to third parties and the identity of such proposed subcontractors.

35(2) The Organisation may exclude subcontractors under Article 23, in which case it may require a tenderer to replace those subcontractors so identified.

### **ARTICLE 36 MODIFICATION ON CONTRACTS**

36(1) Contracts may be modified during their term only if one or more of the following conditions are fulfilled:

- a) the modification is not substantial within the meaning of Article 36(2);

- b) the modification has been provided for in the initial tender documents and is included in the final contract by way of a clear, precise and unequivocal review or option clause;
- c) the modification is in relation to the identity of the contracting partner due to corporate restructuring, including takeover, merger, acquisition or insolvency of the original contracting partner, provided the new contracting partner fulfils the criteria for qualitative selection applied in the original tender procedure;
- d) additional works, services or supplies by the same contractor have become necessary or the modification has become necessary due to unforeseen and urgent circumstances related to technical and economic reasons and the replacement of the contractor is not possible or would result in a significant increase of costs or substantial delays for the Organisation. In any event, the increase in the value of the contract due to such modification - or successive modifications - must not exceed 50% of the value of the original contract; or
- e) the value of the modification (either in terms of price or risk allocation) is below 25% of the original contract, provided the modification does not change the main objectives of the initial procurement.

36(2) A “substantial modification” is any modification which:

- a) would have attracted additional or other suppliers to the initial tender process;
- b) introduces or excludes conditions that would have allowed the admission of suppliers other than those initially selected to the tender process;
- c) would have resulted in the appointment of a tenderer other than the one originally appointed; or
- d) considerably changes the economic balance of the contract in favour of the contractor.

## **CHAPTER 8 - APPEAL PROCEDURE**

### **ARTICLE 37 RIGHT OF APPEAL**

- 37(1) Subject to paragraph (2) below, any supplier or tenderer who suffered or risks suffering loss or damage due to breach of these rules, may appeal a procurement decision taken by the Organisation.
- 37(2) Appeals must be submitted in writing to the Organisation’s Tenders Appeal Board within 10 days from the day on which the person submitting the appeal knew or ought to have known of the grounds for the appeal and in any event no later than 3 months from the date when the grounds for submitting the appeal first arose.
- 37(3) The Tenders Appeal Board may appoint an ad-hoc internal auditor in relation to a specific procurement. The auditor shall provide its report in writing to the Tenders Appeal Board within 14 days of its appointment. The ad-hoc internal auditor shall be independent of the Organisation’s procurement function.



37(4) In exceptional circumstances, the Tenders Appeal Board may extend the time limit of 10 days set out in paragraph (2) above, where the Tenders Appeal Board considers that there are compelling reasons for doing so. However no such extension of the time limit shall be granted so as to permit an appeal to be reviewed more than 3 months from the date when the grounds for submitting that appeal first arose.

#### **ARTICLE 38 HANDLING OF APPEALS**

- 38(1) If the Tenders Appeal Board considers that a decision taken by the Organisation infringes these rules, it shall order that the tender procedure or parts of it be rectified or grant any other remedy that would be adequate and reasonable in the circumstances. Where no infringement is considered to have taken place, it shall reject the appeal.
- 38(2) The Tenders Appeal Board may make an order suspending the procurement procedure or the award of contract until it has issued its final decision.
- 38(3) For the purpose of investigating an appeal, the Tenders Appeal Board may order that an audit be conducted in accordance with Article 31(2) prior to issuing its decision.
- 38(4) The Tenders Appeal Board shall notify the appellant in writing of its final decision within 30 working days following the date of receipt of the appeal; such notification shall state the grounds on which its decision is based. If the Tenders Appeal Board has rejected an appeal in accordance with Article 38(1), the Organisation may immediately proceed with signing the awarded contract(s) in case the contract(s) have not yet been awarded.
- 38(5) The Tenders Appeal Board shall be appointed by the Director General and composed of at least 3 but no more than 5 competent members of the Organisation's staff and/or external parties, chaired by a person who is legally qualified and competent in the field of public procurement.
- 38(6) The members of the Tenders Appeal Board shall be independent of the Organisation's Procurement Division or any relevant staff member of the Organisation within the meaning of Article 9(4).

#### **CHAPTER 9 - FINAL PROVISIONS**

##### **ARTICLE 39 INTERPRETATION**

These rules shall be interpreted in light of relevant principles of the European Union legislation.

##### **ARTICLE 40 AMENDMENTS**

Material amendments to these procurement rules shall require the approval of the General Assembly by simple majority vote following recommendation of the AFC.





**ARTICLE 41 ENTRY INTO FORCE**

These procurement rules shall enter into force on March 17, 2022.