



E-RIHS

EUROPEAN RESEARCH INFRASTRUCTURE
FOR HERITAGE SCIENCE

E-RIHS IP

European Research Infrastructure for Heritage Science

IMPLEMENTATION Phase

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D3.2 Detailed Rules on Procurement Procedures and Criteria

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ABSTRACT

The document represents the comprehensive E-RIHS procurement policy, in line with Art. 11 of the E-RIHS Statutes on Procurement Policy. It is a standalone document containing procedures and criteria for procurement. These rules apply to supply, service and works provisions funded by the E-RIHS ERIC's budget and set financial thresholds for various tendering procedures, including the requirement to publish tenders. The document has been shared with members of the (interim) General Assembly and (interim) Committee of National Nodes for their input and will be submitted for General Assembly approval once the E-RIHS ERIC is approved.

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ABBREVIATIONS

ACTRIS	Aerosol, Clouds, and Trace Gases Research Infrastructure
CTAO	Cherenkov Telescope Array Observatory
E-RIHS	European Research Infrastructure for Heritage Science
ERIC	European Research Infrastructure Consortium
ESS	European Spallation Source
EU	European Union
HS	Heritage Science
iCNN	Interim Committee of National Nodes
iGA	Interim General Assembly
PAN	Procurement Advance Notice
VAT	Value-Added Tax

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INTRODUCTION

E-RIHS ERIC is a distributed research infrastructure that includes E-RIHS National Nodes and a Central Hub, with its legal seat and headquarters based in Florence, Italy. As per Article 7(3) of the ERIC Regulation, E-RIHS ERIC holds the status of an international organisation, granting it the autonomy to establish its own procurement procedures instead of being strictly bound by the EU Directive on Public Procurement as implemented in national law.

The purpose of this document is to outline the E-RIHS ERIC Procurement Policy, in accordance with Article 11 of the E-RIHS ERIC Statutes, which upholds the principles of transparency, non-discrimination, and competition. These principles ensure a just, impartial, and efficient procurement process, providing equal access to all eligible suppliers and promoting fair competition among them.

The E-RIHS ERIC Procurement Policy is a standalone document and provides detailed rules for procurement procedures and criteria, aiming to ensure equitable and efficient procurement practices in line with E-RIHS ERIC's mission.

The E-RIHS ERIC Procurement Policy is informed by best practices from procurement processes that have been successfully approved for implementation or implemented in other relevant European research infrastructures, including ACTRIS ERIC (Aerosol, Clouds, and Trace Gases Research Infrastructure European Research Infrastructure Consortium)¹, CTAO ERIC-to be (Cherenkov Telescope Array Observatory)², and ESS ERIC (European Spallation Source)³.

A special focus has been placed on CTAO, which shares similarities with E-RIHS ERIC as a distributed research infrastructure with its legal seat in Italy, and ACTRIS ERIC, which has its legal seat in Finland and part of its Head Office hosted in Italy. To respect confidentiality, the CTAO and ACTRIS documents were consulted as private documents, following the standard practice for their respective ERICs. Additionally, dedicated meetings were organised between the T3.2 leader (CNR) and/or E-RIHS IP participants contributing to task T3.2, with the purpose of delving into and comparing their applied procedures.

The E-RIHS ERIC Procurement Policy to be submitted to the General Assembly for its approval follows herein.

¹ Aerosol, Clouds, and Trace Gases Research Infrastructure (ACTRIS) European Research Infrastructure Consortium (ERIC), <https://www.actris.eu> accessed on 2023/07/30.

² Cherenkov Telescope Array Observatory (CTAO), <https://www.cta-observatory.org> accessed on 2023/07/30.

³ European Spallation Source (ESS) European Research Infrastructure Consortium (ERIC), <https://europeanspallationsource.se> accessed on 2023/07/30.

E-RIHS ERIC PROCUREMENT POLICY

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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)⁴, and in particular Article 7(3) thereof, which establishes that *“An ERIC is an international organisation within the meaning of Article 15(c) of Directive 2004/18/EC”*⁵.

Having regard to Directive 2014/24/EU of the European Parliament⁶, and in particular Article 9(1)(b) of the thereof, which establishes that *“this Directive shall not apply to public contracts and design contests which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those laid down in this Directive established by [...] an international organisation”*;

Having regard to the Commission implementing decision of DD/MM/YYYY⁷ on setting up the European Research Infrastructure for Heritage Science (E-RIHS) ERIC and in particular Article 11 of the E-RIHS ERIC Statutes⁸.

The General Assembly of E-RIHS ERIC adopts the Procurement Policy.

⁴ REGULATIONS COUNCIL REGULATION (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (L 206/1, 8.8.2009), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0723>.

⁵ DIRECTIVE 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134/114, 30.4.2004), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0018>.

⁶ 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 (Text with EEA relevance) (OJ L 94/65, 28.3.2014), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024>.

⁷ The date field is left blank because it relates to the date when the ERIC will be approved. This information will be adjusted and filled in the document once E-RIHS ERIC is officially established.

⁸ Article 11 Procurement Policy of the E-RIHS ERIC Statutes *“(1) E-RIHS ERIC procurement policy shall respect the principles of transparency, non-discrimination, and competition. (2) Detailed rules on procurement procedures and criteria shall be set out in the rules of procedure and adopted by the General Assembly”*.

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS

“Best-value for Money” means to secure the best mix of quality, effectiveness and price over the whole life cycle of the purchased goods, works or services.

“Call for tenders” means a call for competition made in a manner required or permitted by Article 13.

“Contractor” means a party who has been awarded and entered into a contract with the Organisation.

“Currency” means the monetary unit of account.

“Days” mean calendar days, unless otherwise indicated.

“Delivering body” means an in-kind partner or a representing entity.

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

“E-RIHS ERIC Third Parties” mean Countries and/or Organisations that are not Partner Countries, which have a cooperation relationship with E-RIHS ERIC.

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

“Host Country” means Italy.

“Innovation” means that, 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.

“Integrity” means that all procurement shall be conducted in a manner above reproach and with complete impartiality and preferential treatment for none.

“Organisation” means the European Research Infrastructure for Heritage Science ERIC.

“Partner Country” means a Country, which is a Member or an Observer in the European Research Infrastructure for Heritage Science ERIC.

“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 tenders, the technical specifications, and where appropriate, the proposed conditions of contract and any additional documents.

“Publicity” means that 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.

“Statutes” mean the Statutes of the Organisation on setting up the European Research Infrastructure for Heritage Science as a European Research Infrastructure Consortium (E-RIHS 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.

“Sustainability” means that, in accordance with relevant EU policy, seeking 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. Seeking 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.

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

“Working days” mean days other than Saturday, Sunday or bank holidays in Italy.

ARTICLE 2. SCOPE

1. These procurement rules apply to all contracts for pecuniary interest for the provision of goods, works or services, concluded in writing between the Organisation and a third party or parties, other than those exempted as per Article 6 of this policy.
2. These procurement rules only apply to procurement contracts that are financed, for the most part, by the Organisation’s budget and carried out by the Organisation or on behalf of the Organisation.
3. The rights conferred by these procurement rules are applicable to suppliers and tenderers from the EU Member States, Partner Countries, and other States that benefit from relevant international or bilateral agreements on procurement with the EU, but only where such agreements apply to the procurement concerned.

ARTICLE 3. GENERAL PRINCIPLES

1. All procurements shall aim at performing the tasks and activities set in Article 2 of the E-RIHS ERIC Statutes and shall be covered by a corresponding budget.
2. According to Article 11 of the E-RIHS ERIC Statutes, the procurement policy of the Organisation shall respect the principles of transparency, non-discrimination, and competition.
3. While conducting procurement, the Organisation shall seek to promote the objectives of best-value for money, publicity, integrity, innovation and sustainability.

ARTICLE 4. ESTIMATION OF THE VALUE OF CONTRACTS

1. The estimated value of a procurement shall be based on the total amount payable, net of VAT, including any forms of options and renewals of the contract as explicitly set out in the procurement documents.
2. With regard to framework agreements, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement.
3. Unless objectively justified by the specific circumstances of the contract, the Organisation shall neither divide its procurement nor use a valuation method for estimating the value of procurement so as to limit competition among suppliers or to otherwise avoid its obligations under these rules.

4. Notwithstanding paragraph 3 above and provided that transparency and competition are preserved, the Organisation might seek to 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

1. The Organisation will, where possible, publish information regarding future procurement activities.
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 E-RIHS ERIC, to enable suppliers to identify the nature and scope of the future procurement.
3. Where, in relation to contracts with a value exceeding EUR 200.000, a PAN is published between thirty (30) days and twelve (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 15 to 17.
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. 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. EXCLUSIONS

1. This procurement policy does 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 Partner Country. For the purpose of this paragraph, it does not matter if the financing provided is done by way of a direct payment to the delivering body, or through a designated cash contribution to the Organisation, which is transferred further to the delivering body;
 - e. joint or collaborative procurement conducted in accordance with Article 22, paragraphs 2 and 4;

- f. for banking services and loans;
- g. for educational services;
- h. for hotel, accommodation and catering services;
- i. for meeting, conference and event services; or
- j. for health and work environment related services.

ARTICLE 7. NATIONALITY RULE

1. In general, participation in procurement activities managed by the Organisation is open on equal terms to all natural or legal persons effectively established in the territory of:
 - a. E-RIHS ERIC Members,
 - b. E-RIHS ERIC Observers,
 - c. E-RIHS ERIC Third Parties, and
 - d. Member States of the European Union.
2. Natural or legal persons established in States different from the ones included in the list under paragraph 1 above may also be invited to participate in a procurement activity, subject to the existence of one or/and more of the following conditions:
 - a. the goods and services are not available in any of the eligible States,
 - b. companies in other States offer a more advanced technology or quality than firms from the listed eligible States, and/or
 - c. possibility to achieve significant financial or time savings.

ARTICLE 8. NATIONALITY VERIFICATION

1. For the purposes of verifying compliance with the nationality rule, the tender dossier will require tenderers and applicants being natural persons to state the country of which they are nationals. For legal persons, the tender dossier will require that the country in which they are effectively established is stated.
2. If Organisation suspects that a candidate/tenderer does not comply with the rule of nationality, it must ask the candidate/tenderer to provide evidence demonstrating actual compliance. In view to demonstrate their actual compliance with the "effective establishment" criteria, legal persons have to demonstrate that they are formed in accordance with the law of an eligible State and have their registered office, central administration or principal place of business within the territory of an eligible State.

ARTICLE 9. LANGUAGE

1. Generally, tender documents and correspondence as well as contract documents 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; and
 - b. where, due to technical or geographical reasons, only domestic suppliers or contractors are likely to be interested in submitting tenders.
2. Responses to calls for tenders shall be in the language of the tender documents or in any other language permitted by the tender documents.

3. For procurement documents in languages other than English, requests for quotations and calls for tenders published on the Organisation website shall always include a summary in English.

ARTICLE 10. CURRENCY

1. As a rule, the Organisation shall ask suppliers to submit tender quotes in EUR.

ARTICLE 11. CONFLICTS OF INTEREST

1. 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.
2. For the purpose of this policy, 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.
3. For the purpose of this Article, “a relevant staff member of the Organisation” shall include any individual who is involved in the exercise of the Organisation’s procurement procedures or who may be in a position to influence the outcome of the exercise of those procedures.

CHAPTER 2. PROCUREMENT PROCEDURES

ARTICLE 12. GENERAL PROVISIONS

1. The provisions under this chapter shall apply to contracts with an estimated value of EUR 200.000 and above.
2. The procurement documents shall be free of charge and accessible to suppliers from the date of publication of a call for tenders via the Internet.
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 five (5) working days of receipt of such request, provided such request was made at least five (5) working days before the time limit for receipt of tenders or request to participate.
4. In the case referred to in paragraph 3 above, the time limits for the receipt of tenders referred to in Articles 15 to 17 shall be prolonged by five (5) days.
5. Where practicable, the Organisation may also allow for tenders to be submitted by electronic means, in which case it may reduce the time limit for receipt of tenders referred to in Articles 15 to 17 by 3 days. Such electronic means must be non-discriminatory, generally available and compatible with the information and communication technology products in general use.

ARTICLE 13. CALL FOR TENDERS

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 19.
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.

3. A Call for tenders shall be published, as a minimum, on the Organisation's website in 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 and the Supplement to the Official Journal of the European Union.

ARTICLE 14. CHOICE OF PROCUREMENT PROCEDURE

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 15 to 18, provided that a call for tenders has been made in accordance with Article 13.
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 relevant market. The procedure shall be selected in such way as to best ensure the fulfilment of the objectives and principles set forth in Article 2.

ARTICLE 15. OPEN PROCEDURE

1. Upon publication of a call for tenders, any interested supplier may submit a tender in response.
2. The minimum time limit for receipt of tenders shall be reasonable and proportionate to the subject matter of the contract and consist of at least twenty (20) days from the date on which the call for tenders was published. For contracts where no PAN was published in accordance with Article 5, the minimum time limit for receipt of tenders shall be at least thirty (30) days.
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 30.

ARTICLE 16. RESTRICTED PROCEDURE

1. Upon publication of a call for tenders, any interested supplier may submit a request to participate.
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.
3. The minimum time limit for receipt of a request to participate in response to a restricted call for tenders shall be at least twenty (20) days. For contracts where no PAN was published, the minimum time limit for receipt of a request to participate shall be at least thirty (30) days.
4. Only those suppliers invited to do so by the Organisation following the 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 (3) three. However, where the number of suppliers meeting the selection criteria is below the minimum number, the Organisation may continue the procedure with those suppliers only.
5. The minimum time limit for the receipt of tenders shall be reasonable and proportionate to the subject matter of the contract and consist of at least twenty (20) days. For contracts where no

PAN was published, the minimum time limit for the receipt of tenders shall be at least thirty (30) days.

6. The Organisation shall assess the tenders submitted based on the award criteria set out in the tender documents and in line with Article 30.

ARTICLE 17. COMPETITIVE PROCEDURE WITH NEGOTIATION

1. Upon publication of a call for tenders, any interested supplier may submit a request to participate.
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.
3. In addition to paragraph 2 above, the call for tenders may also require the submission of an initial tender, which shall be the basis for the subsequent negotiations.
4. The minimum time limit for receipt of a request to participate shall be at least twenty (20) days, or, for contracts where no PAN was published, at least thirty (30) days.
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 above, 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 three (3). However, where the number of suppliers meeting the selection criteria is below the minimum number, the Organisation may continue the procedure with those suppliers only.
6. The Organisation shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tenders, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.
7. During the negotiations, the Organisation shall ensure the equal treatment of all tenderers. To that end, the Organisation shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.
8. Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified.
9. The Organisation shall not reveal to the other participants confidential information communicated by a candidate or a tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.
10. The Organisation shall inform tenderers in good time of its intention to conclude negotiations and set a common deadline for submission of final tenders.
11. The Organisation shall assess the final tenders submitted on the basis of the award criteria set out in the tender documents.

ARTICLE 18. INNOVATION PARTNERSHIP

1. The Organisation might identify the need for an innovative product, service or work that cannot be met by purchasing products or services already available on the market. In this case, it may set up an innovation partnership, following the steps indicated in the next paragraphs.
2. Any supplier may submit a request to participate in response to a contract notice, which shall indicate the minimum requirements to be met. In selecting candidates, the Organisation shall apply criteria concerning the suppliers' capacity in the field of R&D and in developing and implementing innovative solutions. Following the assessment of the information provided, only those suppliers invited to do so by the Organisation may participate in the subsequent steps of the procedure.
3. The suppliers invited may submit research and innovation projects, aimed at meeting the needs identified by the Organisation that cannot be met by existing solutions.
4. The Organisation shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender. The minimum requirements and the award criteria shall not be subject to negotiations. Negotiations may take place in successive stages to reduce the number of tenders, provided that the use of such option has been foreseen in the procurement documents. The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products or the provision of the services.
5. In case of an innovation partnership with several partners, the Organisation shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner, without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.
6. The Organisation shall ensure that the structure of the partnership and the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.
7. The contract shall be awarded on the sole basis of the best price-quality ratio criterion. The Organisation may decide to set up an innovation partnership with one or several partners conducting separate R&D activities. The Organisation shall set intermediate targets to be attained and provide for payment of the remuneration in appropriate instalments.
8. The Organisation may decide to terminate the innovation partnership or, in the case of several partners, to reduce their number by terminating individual contracts, provided that it has indicated in the procurement documents those possibilities and the conditions for their use.
9. In the procurement documents, the Organisation shall also define the arrangements applicable to intellectual property rights.

ARTICLE 19. PROCEDURE WITHOUT PUBLICATION OF A CALL FOR TENDERS

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 31 shall not be applicable.
2. The Organisation may award contracts following the procedure under this Article in the following circumstances:

- a. where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
 - i. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance.
 - ii. competition is absent for technical reasons.
 - iii. the protection of exclusive rights, including intellectual property rights.
- 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 tender documents are not substantially altered, and that the original exclusion and selection criteria are maintained and that no more than one (1) year has elapsed since the publication of the original call for tenders;
- c. for research and development contracts which are performed by non-commercial entities solely for purpose of research, testing, experimentation, study or development in connection with the mandate of the Organisation, provided that the contract does not include quantity production to establish commercial viability or for recovering general research and development costs;
- d. in circumstances of extreme urgency, due to events unforeseeable by the Organisation and not attributable to it and where the time limits in Article 15, Article 16 and Article 17 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 or disproportionate technical difficulties in operation, maintenance or application;
- f. for strict security-related reasons;
- g. for the procurement of second-hand equipment at particularly advantageous terms; or
- 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 20. GENERAL PROVISIONS

1. The provisions under this Chapter shall only apply to 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 21. CONTRACTS ESTIMATED TO BE LESS THAN EUR 10.000

1. For contracts with an estimated value of less than EUR 10.000, the Organisation may award the contract by way of direct negotiations with one or more suppliers, without prior publication of a contract notice.

ARTICLE 22. CONTRACTS ESTIMATED TO BE BETWEEN EUR 10.001 AND EUR 200.000

1. For contracts with an estimated value of between EUR 10.001 and EUR 200.000, 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 13.
2. The Organisation may also maintain a suppliers database, 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.
3. The supplier database shall be open for registration of new suppliers by way of a call for expression of interest to be published 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.
4. The Organisation shall ensure appropriate competition by inviting at least three (3) suppliers to submit quotations.
5. Where, for objective reasons, the number of suppliers available to respond to the publication or to the request for quotation is less than three (3), the Organisation shall seek to ensure an optimal level of competition in the circumstances.
6. For planned procurements with an estimated value of EUR 50.000 to EUR 200.000, the Organisation shall usually notify the Industrial Liaison Office (ILOs) located in E-RIHS ERIC's Partner Countries at least three (3) weeks in advance of opening the Request for Quotation for selected suppliers to give the ILOs the chance to provide the Organisation with suitable suppliers that can be added to the invitee list. In cases of extreme urgency, safety-related or unforeseen circumstances, Organisation and the ILOs can agree on a shorter notification period.

CHAPTER 4. PROCUREMENT ARRANGEMENTS

ARTICLE 23. FRAMEWORKS AGREEMENTS

1. The Organisation may conclude framework agreements, if they apply the procedures set forth in this policy.
2. A framework agreement means an agreement between the Organisation and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, regarding price and, where appropriate, the quantity envisaged.
3. The term of a framework agreement shall not exceed five (5) years, save in exceptional cases duly justified, by the subject of the framework agreement.
4. 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.
5. 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, contracts shall be awarded without reopening the competition on the basis of conditions for determining which of the suppliers shall perform the contract. Such conditions shall be stipulated in the original tender documents or in the framework agreement.

6. Notwithstanding paragraph 5 above, the Organisation reserves the right to reopen competition amongst suppliers who are 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.
7. Where a framework agreement is concluded with more than one supplier and not all the terms and conditions governing the contract to be awarded are laid down in the framework agreement, the Organisation may award a contract to one supplier for which provided that:
 - a. the initial tender documents stipulated that competition amongst suppliers who are 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.
8. The Organisation shall not misuse a framework agreement to prevent, restrict or distort competition.

ARTICLE 24. COLLABORATIVE AND JOINT PROCUREMENT

1. The Organisation may award a contract or conclude a framework agreement jointly or in collaboration with other contracting authorities in the Host Country or in other countries.
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.
3. The Organisation may enter 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.
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 PROCEDURE

ARTICLE 25. PRELIMINARY MARKET CONSULTATIONS AND PRIOR INVOLVEMENT OF SUPPLIERS

1. The Organisation may conduct a market survey or a prior consultation to plan the conduct of the procurement, prepare the tender documents and inform the market on forthcoming procurement plans.
2. The Organisation may engage external independent experts or market participants, provided this does not have the effect of distorting competition.

3. Where a supplier or an undertaking related to it has advised the Organisation or has otherwise been involved in the preparation of the procurement procedure, the Organisation shall take appropriate measures to ensure that competition is not distorted by the participation of that supplier. The Organisation may exclude a supplier if it has grounds to conclude that the prior involvement of that supplier in the procurement process is capable of distorting competition or compromising the integrity of the procedure.
4. Measures referred to in paragraph 3 above shall include the communication to the other suppliers of relevant information exchanged in the context of the involvement of the supplier in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The supplier concerned shall only be excluded where there are no other means to ensure compliance with the principle of equal treatment.

ARTICLE 26. EXCLUSION GROUNDS

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 offenses in the last (3) three years: participation in criminal organisations and illegal cartels; corruption; fraud; money laundering; terrorist offenses 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 (3) three years;
 - c. is guilty of grave professional misconduct, which renders the supplier's integrity questionable;
 - d. is involved, or has been involved in the last (3) 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;
 - 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 where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations.
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.

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.
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.
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.
6. The compliance measures taken by the supplier shall be evaluated by the Organisation, considering the 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 27. QUALIFICATION CRITERIA

1. The Organisation may impose criteria on economic operators as requirements for participation in a procurement procedure. Such criteria shall be limited to those that are appropriate to ensure that a tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be non-discriminatory and proportionate to the subject-matter of the contract and shall be set out in the contract notice or documents made available to suppliers.
2. Regarding suitability to pursue the professional activity, the Organisation may require economic operators to be enrolled in one of the professional or trade registers kept in their Member State of establishment. In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the Organisation may require them to prove that they hold such authorisation or membership.
3. Regarding economic and financial standing, the Organisation may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract. For that purpose, the Organisation may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, it may require that economic operators provide information on their annual accounts showing the ratios, for instance, between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance. The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services, or supplies. Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the Organisation may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots if the successful tenderer is awarded several lots to be executed at the same time.

4. Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement shall be calculated based on the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement.
5. Regarding technical and professional ability, the Organisation may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. The Organisation may require that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past. The Organisation may assume that an economic operator does not possess the required professional abilities where it has established that the economic operator has conflicting interests which may negatively affect the performance of the contract.
6. In procurement procedures for supplies requiring site preparation or installation work, services or works, the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated regarding their skills, efficiency, experience and reliability.
7. The Organisation shall indicate the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

ARTICLE 28. REDUCTION OF NUMBER OF CANDIDATES

1. Where relevant and appropriate, the Organisation may make recourse to a two-step procedure, with a pre-qualification stage, in order to reduce the number of candidates to be invited to submit tenders or to negotiate.

ARTICLE 29. TECHNICAL SPECIFICATIONS

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.
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.
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.
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 only if they allow an equivalent solution to be proposed and is accompanied by the words “or equivalent”.

ARTICLE 30. AWARD CRITERIA

1. The Organisation shall base the award of contracts on the best-value for money, which shall be identified based on objective criteria in accordance with the principles set out in Article 3.
2. The award criteria shall be the price or cost, using a life-cycle costing approach, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the contract and shall not confer an unrestricted freedom of choice on the Organisation.

3. Such criteria may comprise, for instance:
 - a. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
 - b. organisation, qualification, and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
 - c. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.
4. The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.
5. In appropriate cases, justified by the subject matter of the contract, the best-value-for money may be based solely on price.
6. The criteria used to assess the best-value for money shall be set out in the notice or the tender documents and be sufficiently clear to allow suppliers to understand on what basis their tenders will be assessed and to allow the information provided by the suppliers to be effectively verified.

ARTICLE 31. NOTICE TO REJECT A TENDER OR TO AWARD A CONTRACT

1. The Organisation shall send a notice to tenderers who were excluded pursuant to Article 26 or failed to meet the qualification 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) will remain confidential until the award decision.
2. Prior to entering 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.
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.
4. For contracts awarded under Article 15, Article 16, Article 17 and Article 18 with a value of over EUR 200.000, the Organisation must not enter into the contract or conclude the framework agreement before the end of a standstill period.

5. The standstill period shall end at midnight at the end of the 10th day following the date of the notice, which means the date on which the notice was sent and which for the purpose of calculating the standstill period shall be counted as the first day.
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 32. CANCELLATION OF A PROCUREMENT PROCEDURE

1. The Organisation may decide to cancel a procurement procedure at any time before entering a contract, provided that such decision is in conformity with the principles set out in Article 3.
2. The Organisation shall inform all tenderers of its decision within a reasonable time.
3. 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 33. CONFIDENTIALITY

1. In its communications with suppliers 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.
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.

CHAPTER 6. AUDIT

ARTICLE 34. GENERAL AUDIT

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

CHAPTER 7. CONTRACT PERFORMANCE

ARTICLE 35. CONTRACT CONDITIONS

1. 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 State.
2. The Organisation may also require additional stipulations relating to the performance of the contract, concerning 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 36. SUBCONTRACTING

1. Tenderers must indicate in their tenders any share of the contract that may be subcontracted to third parties and the identity of such proposed subcontractors.
2. The Organisation may exclude subcontractors, subject to conditions indicated in Articles 26 and 27, in which case it may require a tenderer to replace those subcontractors so identified.

ARTICLE 37. MODIFICATION OF CONTRACT

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 paragraph 2 below;
 - 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.
2. A substantial modification is any modification that:
 - a. could 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.
3. Contracts may be extended only if one or more of the following conditions are fulfilled:
 - a) the extension 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;
 - b) the extension is required for additional works, services or supplies by the same contractor, which have 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 extension - or successive extensions - must not exceed 50% of the value of the original contract.

CHAPTER 8. APPEAL

ARTICLE 38. RIGHT OF APPEAL

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.
2. Appeals must be submitted in writing to the Organisation's Tender Appeal Board within ten (10) days from the day on which the tenderer knew or ought to have known the grounds for the appeal and in any event no later than three (3) months from the date when the grounds for submitting the appeal first arose.
3. The Tender Appeal Board shall be appointed by the Director General and composed of at least three (3) and no more than five (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. The members of the Tender Appeal Board shall be independent of the Organisation's procurement Division or any relevant staff member in accordance with Article 11.
4. In exceptional circumstances, the Tender Appeal Board may extend the time limit set out in paragraph 2 above, where it considers that there are compelling reasons for doing so. However, no such extension of the time limit shall be granted to permit an appeal to be reviewed more than three (3) months from the date when the grounds for submitting that appeal first arose.

ARTICLE 39. HANDLING OF THE APPEAL

1. If the Tender Appeal Board considers that a decision taken by the Organisation infringes this Procurement policy, it shall order that the tender procedure or parts of it be rectified, or it shall grant any other remedy that would be adequate and reasonable in the circumstances. Where no infringement is considered to have taken place, the Tender Appeal Board shall reject the appeal.
2. The Tenders Appeal Board may issue an order suspending the procurement procedure or the contract award until its final decision.
3. For investigating an appeal, the Tenders Appeal Board may order that an audit be conducted prior to taking its decision.
4. The Tender Appeal Board shall notify the appellant in writing of its final decision within thirty (30) working days from the date of receipt of the appeal. Such notification shall state the grounds on which the decision is based. In case of rejection of the appeal, the Organisations may proceed with signing the awarded contract(s).

ARTICLE 40. JURISDICTION

1. The Milan Chamber of Arbitration shall have exclusive jurisdiction over any dispute between the Organisation and a supplier arising out of or in connection with the final decision of the Tenders Appeal Board.

2. The Rules for Expedited Arbitrations shall apply, unless the Milan Chamber of Arbitration, in its discretion, determines, taking into account the complexity of the matter, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the Milan Chamber of Arbitration shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators.
3. The seat of the arbitration shall be in Milan, Italy, and the language to be used in the arbitral proceedings shall be English.
4. Filing a request for arbitration under this Article shall only be possible following the final decision of the Tenders Appeal Board and no later than thirty (30) days following the date on which that decision was communicated to the appellant in writing.

CHAPTER 9. FINAL PROVISIONS

ARTICLE 41. REPORTING

1. The Organisation will monitor its procurement activities with the aim of preparing and submit regular annual reports to the General Assembly.
2. Monitoring the procurement activities will involve the collection and analysis of data for quantitative and qualitative purposes. For example, the first purpose will cover statistical data's comparison with data collected during previous reporting periods and the geographical distribution of procurement activities; the second will be related to the implementation of the principles of transparency, competitiveness and equal treatment.

ARTICLE 42. INTERPRETATION

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

ARTICLE 43. AMENDMENTS

1. Any amendment to this Procurement policy shall require the approval of the General Assembly of the Organisation by simple majority.

ARTICLE 44. ENTRY INTO FORCE

1. This procurement policy shall enter into force on the date of adoption by the General Assembly of the Organisation.

REFERENCES

ACTRIS ERIC (2023). ACTRIS ERIC Procurement Rules, as approved on the 1st ACTRIS ERIC General Assembly on 6th of June 2023.

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