

Annex 6 to Financial Rules

PROCEDURE AND PRINCIPLES FOR THE ACQUISITION OF GOODS AND SERVICES

The procurement procedures described below relate to all purchases of goods and services by the Organization from any legal person governed by private law (hereinafter « the supplier(s) »).

(1) Basic principles

The Organization's procurement of goods and services procedure must be governed by the following principles :

(a) The international nature of contracts

All tenders must be international in nature except when justified by the nature of the contract or by specific circumstances.

(b) Integrity

The Organization's funds and resources must be used solely for the interests of the Organization.

(c) Transparency

Selection criteria must be specified in the contract notice and their initial interpretation must not change during the procedure.

(d) Non-discrimination of candidates

All candidates must benefit from the same treatment and not be granted any advantage whatsoever.

(e) Cost-effectiveness

Obtaining the best value for money must prevail and be based on objective criteria.

(f) Conflict of interest

All participants in the Organization's procurement of goods and services procedure must declare any potential conflict of interest.

(2) Procurement procedures

(a) Size of contracts

The procurement procedure to be followed by the Organization shall depend on the estimated cost for the acquisition of goods or services from a supplier.

This amount, which determines the procurement procedure to be followed, shall correspond to the payment made to a supplier for the purchase of goods or services, based on a WCO financial year (hereinafter « annual amount »).

When a contract is concluded for several years, the amount to be taken into account to determine the procedure to be followed shall be the amount calculated on a yearly average and not the total amount for the acquisition of goods and services.

When several orders for goods and services are placed with a single supplier for an annual accrued amount exceeding 120,000 euro, a special dispensation must be obtained from the Secretary General each time an order is placed.

The practice of artificially splitting contacts to avoid exceeding the 120,000 euro threshold is prohibited.

(b) Different procurement procedures

- Purchases not exceeding 120,000 euro : Market availability

Goods and services estimated to cost 120,000 euro or less shall be procured, on the basis of the best value for money, according to market availability.

For any purchase of goods and/or services for an estimated total amount of 1,000 euro or more, at least three (3) offers shall be obtained from potential suppliers and compared based on the needs and interests of the Organization.

In all cases, the final decision to select the best quote and award the contract lies only with the Organization and its authorized representative(s).

- Purchases exceeding 120,000 euro : Call for tenders

Goods and services estimated to cost more than 120,000 euro shall be procured following a call for tenders, on the basis of the best value for money.

Once recourse to the procedure leading to the selection of the best value for money offer has been decided, precise selection criteria and objectives must be specified in the call for tenders. These criteria shall be the basis for selection of a tender.

The call for tenders must be published on the Organization's Web site under a designated heading and may be sent to all suppliers identified as working in the required domain, unless the contents of the call for tenders contain security-related elements or if the information is strictly confidential therefore rendering publication impossible.

(c) Waivers

- *Procedural waiver*

The Secretary General or his/her authorized representative may authorize waivers to the above obligations.

In particular, the obligation to conduct a call for tenders may be waived in the following cases :

- for reasons of urgency, security or standardization of equipment;
- when there is no market competition for the goods or service concerned;
- when an order relates to goods and services for which the specifications are precisely defined;
- for any other practical purposes.

All waivers must be justified.

In the event of waivers being authorized in respect of the obligation to conduct a call for tenders, a list of those waivers shall be provided to the next sessions of the Audit Committee and the Finance Committee.

- *Waiver to the international nature of contracts*

When the call for tenders procedure is applied, the invitation may exceptionally be restricted geographically when the particular nature of the contract, its size or its urgent execution so require.

When the goods or services can only be supplied at a reasonable cost and/or within the prescribed time by suppliers established close to the Organization, such as in the case of cleaning or maintenance, the call for tenders may be limited to the place where the Organization is located.

(3) Call for tenders validation procedure

When it is decided to conduct a call for tenders, the Advisory Committee on Contracts (ACC) must meet beforehand to validate the call for tenders procedure used and ensure that the contents of the invitation to tender are in conformity with the requirements of the Organization.

The ACC shall comprise the following members :

- with the right to vote :
 - the Head of Administration and Personnel or his/her representative;
 - the Head of the Unit or the Director(s) concerned with the acquisition of the goods and/or services, or his/her/their representative(s);
 - the Head of Central Services or his/her representative;

- the Head of the Legal Service or his/her representative;
- the Head of the Accounting Service or his/her representative;
- with consultative status :
 - the Internal Auditor or his/her representative.

The presence of members with a right to vote shall be obligatory, whereas the presence of members with consultative status shall be optional.

At the end of the meeting, the ACC may decide to publish the call for tenders or request any clarification and/or amendment required.

(4) Procedure for the receipt and opening of tenders

(a) Receipt of tenders

When receiving a bid following an invitation to tender, the Head of Central Services or his/her representative should stamp the tender with the date on which it was received. This date shall serve as proof in cases of dispute as to the date of receipt.

(b) Opening of tenders

The Head of Central Services or his/her representative, in the presence of a member of the service which issued the call for tender, shall open the bids once the time limit for deposit of tenders has expired.

Tenders shall be opened *in camera*; no suppliers shall be present.

The Head of Central Services or his/her representative shall also be responsible for opening financial tenders.

(c) Analysis of tenders

The Head of Central Services or his/her representative shall carry out an administrative analysis of all tenders received from suppliers within the time allowed.

The service which issued the call for tender (which may be assisted by an external expert) shall undertake the technical analysis.

These two analyses and financial tenders shall then be provided to the ACC for consultation and discussion during a meeting organized for this purpose (see Item (5) below).

The ACC may, at its own discretion and if it considers it necessary, examine all offers in full and not take account of the analyses provided.

(5) Procedure for the selection of tenders

The procedure for the selection of tenders shall be applied as provided below:

The ACC shall :

1. carefully consider the specifications and terms of all bids, and obtain expert advice as required;
2. record its findings and conclusions, including detailed justification in all cases where the lowest bid is not accepted.

At the end of the meeting, the ACC may :

- award the contract; or
- proceed with a new call for tenders or select a candidate via the market availability procedure, particularly when only one valid bid was submitted or if the results obtained do not meet with the Organization's expectations; or
- decide not to award the contract.

If only one valid bid is submitted, awarding the contract shall be authorized by the Secretary General upon recommendation from the ACC. A list of such cases shall be provided to the next sessions of the Finance Committee and the Audit Committee.

A report will then be drawn up indicating any debate or discussions which took place and the decision of the ACC.

The Head of Central Services or his/her representative shall take the required steps.

(6) Notification to tenderers

Unsuccessful tenderers who took part in the call for tenders shall be informed in writing of the justification behind the rejection of their tender.

(7) Procedure for requesting information and lodging a complaint following a call for tenders procedure

(a) Request for information following a call for tenders procedure

Only a tenderer who has participated in a WCO call for tenders may submit a request for information. Any request received from a sub-contractor of the tenderer will not be entertained.

Requests must be submitted to the Head of Central Services, in writing (letter or e-mail), within eight (8) working days from the day after notification of the decision to reject the tenderer's offer. Beyond that time all requests will be rejected.

The Head of Central Services has ten (10) working days from the day after receipt of the request for information to provide the tenderer with a written response (by letter or e-mail).

For reasons of confidentiality, the Head of Central Services may not, under any circumstances, provide the tenderer with information about : (i) the technical or financial tenders of the other participating tenderers, (ii) the selection criteria and their weighting, or (iii) the content of the report drawn up by the Advisory Committee on Contracts (ACC).

If the tenderer is not satisfied with the response provided by the Head of Central Services, he/she may lodge a complaint with the Review Committee under the procedure described in Item 7 (b) below.

(b) Complaint following a call for tenders procedure

(i) Procedure

Any tenderer who has participated in a call for tenders and feels he/she has been wronged may bring a complaint before the Review Committee, if he/she has first submitted a request for information to the Head of Central Services in accordance with the procedure described in Item 7 (a) above.

In order for this request to be admissible, the tenderer must :

- submit his/her complaint to the Head of Administration and Personnel by registered letter with acknowledgement of receipt, within five (5) working days following the day when the Head of Central Services responded to the request for information;
- indicate the reasons for his/her complaint and identify any alleged failure on the part of the WCO; and
- specify the amount of the alleged damage or loss suffered (the Review Committee reserves the right to request proof).

The Review Committee shall first verify the admissibility of the complaint, i.e., (i) whether a request for information has first been properly submitted to the Head of Central Services, (ii) whether the complaint was lodged within the given time frame, (iii) whether it contains valid and legitimate grounds, and (iv) whether it specifies the amount of the alleged damage or loss suffered. If this is not the case, the complaint will be immediately and irrevocably rejected.

When examining the substance of the complaint, the Review Committee shall check that the selection criteria used are objective and have led to acceptance of the best tender.

The Review Committee shall communicate its reasoned opinion to the Secretary General for final decision within thirty (30) working days from receipt of the complaint.

The Secretary General shall then inform the applicant, by letter, of his/her decision, which is not subject to appeal.

If the tenderer is not satisfied with the Secretary General's decision, he/she has five (5) working days following that decision to initiate arbitral proceedings in accordance with Part I of Customs Co-operation Council Decision No. 331. By way of derogation from paragraph 2 (i) of Part I of Decision No. 331, the time limits specified are not applicable, and have been replaced by the aforementioned time limit of five (5) working days.

(ii) Composition of the Review Committee

The Review Committee shall comprise the following members :

- the Secretary General or his/her representative;
- the Head of the Legal Service or his/her representative;
- an expert designated by the Head of Administration and Personnel; and
- in an advisory capacity, the Head of Central Services or his/her representative.

In order to conduct a technical examination of the result of a tender, the Review Committee may turn to an outside consultant for an external opinion on the technical characteristics of the tender.

Persons having participated in the Advisory Committee on Contracts (ACC) meeting with the right to vote may not sit on the Review Committee. They may, however, be consulted if required for the proper analysis and understanding of the complaint, and/or to provide information justifying their selection.

(c) Compensation

If, at the end of the review procedure or of the arbitral proceedings as described in Part I of Customs Co-operation Council Decision No. 331, a final decision awards compensation to the claimant for the damage or loss suffered as a result of a failure on the part of the WCO during the contested call for tenders procedure, such compensation shall be limited, in all cases, to the cost of preparing the tender and the costs incurred in lodging the complaint, up to a maximum of twenty thousand (20,000) euro.

In no case shall the WCO be required to pay an amount greater than twenty thousand (20,000) euro as compensation under these Financial Rules.

(8) Contracts

The letting and performance of all contracts shall be subject to budgetary and financial control in accordance with the Financial Rules of the Organization.

Contracts shall :

- (a) be negotiated and drawn up in compliance with the "Guidelines on WCO Contracts and Procurements procedures" (as established by the Secretariat) and validated by the Legal Service, as appropriate;

- (b) be subject to approval by the official responsible for budget control in accordance with paragraph 3 of Annex 1 to the Financial Rules;
- (c) be signed by the Secretary General or the Head of Administration and Personnel on behalf of the Secretary General;
- (d) be subject to Council Decision No. 331 for settlement of disputes, which provides that all contracts entered into by the Organization shall contain an arbitration clause under which the Council and the other party (or parties) to the contract undertake to refer any dispute to a tribunal of arbitrators, which shall reach its decision by application of the standards laid down by the Organization and, failing that, by Belgian law.

(9) Execution of contracts

The service which issued the call for tenders shall ensure that the supplies received and the services rendered comply with the order. It shall provide the Administration with a written statement to that effect before payment.

Monitoring of the correct execution of the contract shall lie with the service concerned. It must inform the Legal Service of any deviation from the provisions of the contract.

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