

Guidelines for Procurement of the EU-OPENSREEN ERIC

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EU-OPENSREEN ERIC

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A. Basic Principles

According to Article 7 (3) of Regulation (EC) No 723/2009, the EU-OPENSREEN ERIC is an international organisation and may issue its own procurement rules which comply with the principles of transparency, non-discrimination and competition. Art. 27 of the EU-OPENSREEN ERIC statutes lays down the following procurement rules:

Equal treatment and non-discrimination, transparency and competition. Innovation can be a criterion.

Article 8 of the Internal Rules of Procedure of the EU-OPENSREEN ERIC contains the following requirements for procurement:

Award criteria are

- a) Quality of services, labour and goods,
- (b) interoperability; and
- (c) best value for money.

According to Art. 8 para. 3 a of the Internal Rules of Procedure, services, labour and goods with a contract value of more than € 100,000.00 must be awarded by means of a competitive tender procedure after public announcement. According to Art. 8 para. 3 b of the Internal Rules of Procedure, smaller contracts with a contract value of less than € 100,000.00 are to be awarded by negotiated procedure without publication. EU-OPENSREEN ERIC should invite at least three bidders to submit a written bid and negotiate the terms of contract with one or more of them. Contracts with a value of up to € 5,000.00 may be awarded by private treaty. According to Art. 8 para. 5 of the Internal Rules of Procedure, the Director General is responsible for the procurement and the procurement process.

These procurement principles apply to the implementation of these requirements and to the conduct of procurement in accordance with the principles of competition, transparency and non-discrimination. If the contract is financed through third-party funding or grants, priority must be given to the requirements for awarding contracts in the award notice or grant agreement - otherwise there is a risk of loss of funding.

B. Procurement Procedure

I. Procurement objects and procurement needs

The need for certain procurements is notified by an employee appointed by the Director General. Thereby the procurement object is determined and described.

II. Contract value

The contract value is decisive for determining the requirements for procurement. The contract value must be determined before each procurement. The contract value is calculated according to § 3 VgV (German Vergabeverordnung):

- Estimate of the net order value at the time of the beginning of the award procedure, e.g. based on experience, market research.
- The value of different lots must be added together.
- For framework contracts: Total remuneration over the entire term. All possible individual orders must be taken into account.
- Options and contingent items must be taken into account.
- For regularly recurring deliveries or services: Estimate on basis of contracts from the previous financial year
- For time-limited supply and service contracts with a term of one year of up to 48 months: the total value for the duration of those contracts.
- In the case of supply and service contracts with an indefinite term or with an indefinite term of duration of more than 48 months: 48 times the monthly value.

Avoidance by artificial division of a uniform contract is not permitted.

III. Overview: Procedures

Type of contract	Contract Value	Procedure	Number of tenders	e-tender yes/no
Service and delivery	< 5.000 €	Free-hand award	A written offer	No
Service and delivery	≥ 5.000 – 100.000 €	Negotiation procedure without competitive bidding	Written offer from at least 3 suppliers	No
Service and delivery	≥ 100.000	Public tender with announcement at simap.europa.eu and on EU-OPENSREEN ERIC website		yes
Freelancer	< 5.000 €	Freehand award	A written offer	No
Freelancer	≥ 5.000 – 100.000 €	As much competition as possible according to the nature of the business/special circumstances may apply		No
Freelancer	≥ 100.000 €	If order includes conceptual and innovative solutions: Negotiation procedure with competitive bidding		Yes

Exceptions to the types of procedure provided for may be applied according to §§ 107-109 GWB (German Gesetz gegen Wettbewerbsbeschränkungen), § 14 para. 4 VgV (German Vergabeverordnung), § 3 a para. 4 VOB/A (German VOB Vergabe- und Vertragsordnung für Bauleistungen - Part A), § 3a para. 3 VOB/A EU and § 8 para. 4 UVgO (German Unterschwellenvergabeordnung).

Exceptions must always be justified in writing and coordinated with the Director General or an employee appointed by the Director General.

IV. Criteria in the award procedure

1. Company-related requirements and criteria

Contracts shall only be awarded to parties which do not have to be excluded from the award of the contract by application of §§ 123 and 124 GWB (German Gesetz gegen Wettbewerbsbeschränkungen) and which can be expected to execute the contract properly, i.e. which are suitable for the service. Suitability criteria relate to the ability or permission to exercise a profession, economic and financial, technical or professional capacity.

In the case of contracts with a net value of € 30,000 or more, the bidder to whom the contract is to be awarded must request information from the central register of trades before the contract is awarded.

2. Award criteria

Before the start of the procurement process, suitable criteria for the selection of the economic tender must be defined and, if necessary, notified to the bidders together with their weighting.

Award criteria are

- Quality of service, work and goods (to be defined more closely in relation to the procurement object),
- Interoperability (to be further defined in relation to the procurement object)
- best value for money (to be defined in more detail in relation to the procurement object).

Innovative aspects shall be taken into account in the description of the service and in the award criteria if this is appropriate in relation to the object of the contract.

V. Procedure

Reasonable time limits shall be granted for the submission of participation requests and tenders. The deadlines may be determined on the basis of the deadlines laid down in the VgV (German Vergabeverordnung) for the individual types of procedure.

The date of receipt of the requests to participate and of the tenders, including the time, must be clearly determined. If no electronic tender is made, it must be received by an employee appointed by the Director General. This must be indicated in the tender documents. Tenders must be marked. Bidders must be provided with a label for this purpose. The date and time of receipt of tenders and applications for participation by the EU-OPENSREEN ERIC must be officially signed by the responsible EU-OPENSREEN employee on the envelope.

The tender documents must stipulate that questions and comments on the tender documents can only be made in writing/by e-mail. Answers to questions from tenderers and information on the tender documents must be made available to all candidates/tenderers in accordance with the principle of equal treatment.

In the case of a public tender and an open procedure, negotiations with the tenderers and negotiations on the tenders are generally excluded.

VI Confidentiality, exclusion of manipulation, handling of tenders

Offers will be treated confidentially. They shall remain sealed until the expiry of the offer period and the opening date. Tenders must be opened by two representatives who sign the minutes of the opening date.

All employees of the EU-OPENSREEN ERIC who are entrusted with the procurement are obliged to exclude conflicts of interest. § 6 VgV (German Vergabeverordnung) applies accordingly.

VII Documentation

Documentation is required for orders worth €5,000 or more:

- Estimate of the order value
- Where a derogation is invoked reason for the derogation
- Type of procedure
- Documentation of the request for quotation
- Correspondence with the bidders
- Number of offers/applications for participation
- Justification of the award decision including price comparison list
- Award of contract (conclusion of contract)
- If necessary, cancellation of the award procedure with statement of reasons

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