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## 14. PROCUREMENT

### Preamble

According to the ERIC Regulation, CERIC-ERIC is recognized as an international organization for the purpose of the application of the European Directive on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>1</sup>

The rules indicated in this IR will apply also to the pre-procurement activities which can be developed in collaboration with external suppliers. This Regulation will be uploaded in the public part of the CERIC website to ensure transparency.

### Chapter 1. General provisions

#### Definitions

(1) For the purposes of these rules:

“Call for Tenders” means a call for competition made in a manner required or permitted by Article 10.

“Currency” means the monetary unit of account.

“Contractor” means a party, who has been awarded and entered into a contract with CERIC-ERIC.

“Days” mean calendar days, unless otherwise indicated.

“Direct award” means direct negotiations with one or more suppliers, without prior publication of a call for tenders.

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

“Framework agreement” means an agreement between CERIC-ERIC 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.

“Procurement documents” or “Tender documents” mean any document or documents produced or referred to by CERIC-ERIC 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 document.

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<sup>1</sup> 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

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

“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 a Saturday, Sunday or an official public holiday in Italy.

### **Scope of application**

- (1) These procurement rules apply to all contracts of pecuniary interest for the provision of goods, works or services, concluded in writing between CERIC-ERIC and a third party or parties.
- (2) These procurement rules only apply to procurement contracts that are financed, for the most part, by CERIC-ERIC’s budget and carried out by CERIC-ERIC or on behalf of CERIC-ERIC.
- (3) The rights conferred by these procurement rules are applicable to suppliers and tenderers from the EU Member States and to suppliers and tenderers from 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.

### **Principles**

- (1) The procurement and pre-procurement procedures by a research public body as CERIC-ERIC shall, wherever possible, take into account the innovative content of the technical requirements and the potential for technology transfer and support of innovation in industry.
- (2) The procedures for the award of contracts by CERIC-ERIC shall respect the EU principles of transparency, proportionality, non-discrimination and competition.
- (3) CERIC-ERIC procurement procedures are selective and take normally the form of invitations to tenders or price inquiries.
- (4) Bids evaluation criteria shall be either the best value for money or the lowest price.
- (5) Pre-procurement and Procurement procedures shall be based on well defined technical specifications and market analysis.

### **Estimation of the value of contracts**

- (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 CERIC-ERIC, including any form of option and renewals, and taking into account all forms of remuneration.
- (2) Unless objectively justified by the specific circumstances of the contract, CERIC-ERIC 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 otherwise avoid its obligations under these rules.

(3) Notwithstanding paragraph (2) above, CERIC-ERIC shall seek to subdivide contracts into separate lots as to facilitate market access opportunities for small and medium enterprises and to reduce the risk of over-dependency in one supplier.

### **Information on possible forthcoming procurement**

(1) CERIC-ERIC will, wherever appropriate, publish on its website information regarding procurement activities planned for forthcoming months or years. Such information may seek specific information from suppliers prior to instigating a call for tenders.

(2) CERIC-ERIC may also publish on its website a specific advance notice (SAN) of a possible future procurement. A SAN shall include information relevant to the procurement and must be sufficiently precise, insofar as that information is available to CERIC-ERIC, as to enable suppliers to identify the nature and scope of the future procurement.

(3) Where, in relation to contracts with a value exceeding Euro 200,000 [two-hundred-thousand], a SAN is published between 30 [thirty] days and 12 [twelve] months in advance of the publication of a call for tender, the time limits for submitting a request to participate or for the submission of a tender may be shortened in accordance with Articles 12, 13 and 14.

(4) Publication under this Article does not constitute a call for tenders and does not confer any rights on suppliers or tenderers.

### **Specific exclusions**

These procurement rules do not apply to contracts for:

- (a) the acquisition or rental, by whatever financial means, of lands, existing buildings or other immovable property;
- (b) employment, secondment and personnel placement;
- (c) arbitration, conciliation or other legal services;
- (d) the delivery of in-kind contributions by CERIC-ERIC Members to CERIC-ERIC;
- (e) bank services and loans;
- (f) education and vocational education services;
- (g) research and development services where both of the following conditions are not fulfilled:
  - (a) the benefits accrue exclusively to CERIC-ERIC for its use in the conduct of its own affairs; and
  - (b) the service provided is wholly remunerated by CERIC-ERIC;
- (h) recreational, cultural and sporting services;
- (i) travel agency and similar services;
- (j) hotel and restaurant services, including canteen, catering, food and beverage-serving services;
- (k) health and work environment related services.
- (l) situation in which there is only one possible supplier.

### **Language**

- (1) As a general rule tender documents and ancillary correspondence shall be formulated in English, unless decided otherwise by CERIC-ERIC where the following conditions are fulfilled: (a) the value of the contract is less than Euro 50,000 [fifty-thousand] and (b) the decision is justified by the subject matter of the contract.
- (2) Responses to calls for tenders shall be formulated and presented in the language of the tender documents or in any other language permitted by the tender documents.

### **Currency**

- (1) As a general rule, CERIC-ERIC shall ask suppliers to submit tender quotes in Euros.
- (2) Depending on the subject matter of the contract and the circumstances, CERIC-ERIC may also allow suppliers to submit tenders in other currencies.

### **Conflicts of interest**

- (1) For the purposes of this Article, a conflict of interest shall, at the least, be deemed to arise in any situation in which a relevant staff member or collaborators of CERIC-ERIC, as defined below in paragraph (3), has a private or other interest which is such as to influence, 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.
- (2) All relevant staff members or collaborators of CERIC-ERIC shall take appropriate measures to effectively identify, prevent and remedy conflicts of interest arising in the conduct of the procurement so as to ensure integrity, avoid any distortion of competition and to ensure equal treatment of all suppliers and tenderers.
- (3) For the purpose of this Article, a "relevant staff member or collaborators of CERIC-ERIC" shall include any individual who is involved in the exercise of CERIC-ERIC's procurement procedures or who may be in a position to influence the outcome of the exercise of those procedures.

## **Chapter 2. Procurement procedures for contracts with estimated value of Euro 50,000 and above**

### **General provisions**

- (1) The provisions under this chapter shall only apply to contracts with an estimated value of Euro 50,000 [fifty-thousand] and above, unless decided by CERIC-ERIC to apply them also on a particular contract with an estimated value below this threshold.
- (2) CERIC-ERIC 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 15.

- (3) The information provided with the call for tenders shall be sufficiently precise as to enable suppliers to identify the nature and scope of the procurement. CERIC-ERIC may request confidentiality on specific parts of the tender documents, wherever Intellectual Property or other specific aspects may require this.
- (4) A call for tenders shall be published, as a minimum requirement, on CERIC-ERIC's website in a designated area accessible to suppliers via the Internet. Depending on the subject matter and the value of the procurement, CERIC-ERIC shall publish the call for tender in additional media to ensure transparency and competition.
- (5) As a general rule, the procurement documents shall be fully accessible to suppliers by means of the internet, free of charge, in a designated area on CERIC-ERIC's website from the date of publication of a call for tenders.
- (6) If, due to exceptional reasons justified by the subject matter of the contract, the tender documents are not fully available by means of the internet, suppliers may request the delivery of the tender documents, in which case CERIC-ERIC shall provide the tender documents within 3 [three] working days of the receipt of such request, provided such request was made at least 5 [five] working days before the time limit for receipt of tenders or request to participate.
- (7) Wherever practicable, CERIC-ERIC may also allow for tenders to be submitted by electronic means, in which case it may reduce by maximum 3 [three] days the time limit for receipt of tenders referred to in Articles 12, 13 and 14. Such electronic means must be compatible with the information and communication technology products in general use, they shall be non-discriminatory and generally available.

### **Choice of procedures**

- (1) CERIC-ERIC shall have the freedom to organise the procurement procedure leading to the award of a contract in accordance with any of the procedures described in Articles 12, 13 and 14, provided, that a call for tenders has been made in accordance with Article 10.

### **Open procedure**

- (1) Upon publication of a call for tenders, any interested supplier may submit a tender in response to the call for tenders.
- (2) The minimum time limit for receipt of tenders shall be reasonable and proportionate to the subject matter of the contract and in any event no less than 20 [twenty] days from the date on which the call for tenders was published. For contracts with a value exceeding Euro 200,000 [two-hundred-thousand] where no SAN has been published in accordance with Article 5, the minimum time limit for receipt of tenders shall be no less than 30 [thirty] days.
- (3) CERIC-ERIC shall assess the tenders submitted on the basis of the award criteria set out in the tender documents and in line with Article 24.

### **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 of the potential suppliers within time limits indicated and may include a questionnaire. The selection criteria used to carry out the qualitative selection shall comply with Article 23 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 call for tenders shall be no less than 15 [fifteen] days. For contracts with a value exceeding EUR 200,000 [two-hundred-thousand] where no SAN has been published in accordance with Article 5, the minimum time limit for receipt of a request to participate shall be no less than 20 [twenty] days.
- (4) Only those suppliers invited to do so by CERIC-ERIC following its positive qualitative assessment 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] and in any event sufficient to ensure genuine competition. However, where the number of suppliers meeting the selection criteria is below the minimum number, CERIC-ERIC 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 in any event no less than 15 [fifteen] days. For contracts with a value exceeding EUR 200,000 [two-hundred-thousand] where no SAN has been published in accordance with Article 5, the minimum time limit for the receipt of tenders shall be 20 [twenty] days.
- (6) CERIC-ERIC shall assess the tenders submitted on the basis of the award criteria set out in the tender documents and in line with Article 24.

### **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 of the supplier shall comply with Article 23 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 in accordance with paragraphs (1) and (2) shall be no less than 15 [fifteen] days, or for contracts with a value exceeding EUR 200,000 [two-hundred-thousand] where no SAN has been published in accordance with Article 5, 20 [twenty] days.
- (5) If the call for tenders also requires the submission of an initial tender in accordance with paragraph (3), the time limit shall be no less than 20 [twenty] days, or for contracts with a value

exceeding EUR 200,000 [two-hundred-thousand], where no SAN has been published in accordance with Article 5, 30 [thirty] days.

(6) Following the positive qualitative assessment of the information provided in response to the call for tenders, only those suppliers invited to do so by CERIC-ERIC 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 minimum number of tenderers invited to take part in the negotiations shall be 3 [three] and in any event sufficient to ensure genuine competition. However, where the number of suppliers meeting the selection criteria is below the minimum number, CERIC-ERIC may continue the procedure with those suppliers.

(7) During the negotiations, CERIC-ERIC shall ensure equal treatment of all tenderers and shall not provide information in a discriminatory manner, such that some tenderers may be given an advantage over others.

(8) The negotiations may take place in successive stages in order to reduce the number of tenderers participating in the negotiation.

(9) In the case of research and development activities, CERIC-ERIC may decide to use the negotiation phase to conduct separate research and development activities with one or several tenderers. Such activities may aim at the development of an innovative supply, service or works and the subsequent purchase of the resulting supply, service or works. In such cases, the negotiations may be structured in successive stages reflecting the steps of the research and innovation process.

(10) In accordance with Article 25 CERIC-ERIC shall not reveal to the other tenderers any confidential information communicated by a tenderer participating in the negotiations without first obtaining that tenderer's agreement. CERIC-ERIC may also require to more tenders to collaborate in developing specific new solutions needed in response to specific technical requirements.

(11) CERIC-ERIC shall inform tenderers in good time 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.

(12) CERIC-ERIC shall assess the final tenders submitted, on the basis of the award criteria set out in the tender documents and in line with Article 24.

### **Procedure without publication of a call for tenders**

(1) In the specific cases and circumstance laid down in this Article, CERIC-ERIC 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 27 shall not be applicable.

(2) CERIC-ERIC 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 no, or only one, 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 and that no more than 1 year has elapsed since the publication of the original call for tenders;

c) for research and development services or supplies, where the contract is purely for the purpose of research, experimentation, study or development, and provided that the contract does not include quantity production to establish commercial viability or to recover research and development costs borne by the supplier;

d) in specific circumstances of an urgent nature, unforeseeable and not attributed to CERIC-ERIC, where the time limits under Articles 12, 13 and 14 cannot be complied with;

e) for additional deliveries by the original supplier where a change of supplier would oblige CERIC-ERIC 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 reasons.

### **Chapter 3. Low value procurement (less than Euro 50,000)**

#### **General provisions**

(1) The provisions under this Chapter shall only apply to contracts with estimated value of up to Euro 50,000 [fifty-thousand], which do not fall under one of the exemptions listed in Article 15(2).

(2) CERIC-ERIC may award contracts referred to in the previous paragraph (1) of the present Article 16 by way of direct negotiations with one or more suppliers, without prior publication of the contract opportunity. Article 27 shall not be applicable.

#### **Contracts estimated to be less than Euro 5,000 [five-thousand]**

(1) Unless impractical or inappropriate in the circumstances, CERIC-ERIC shall ensure limited competition through requests for quotation to different suppliers and price comparison.

#### **Contracts estimated to be between Euro 5,000 [five-thousand] and Euro 50,000 [fifty-thousand]**

(1) Unless impractical or inappropriate in the circumstances, CERIC-ERIC shall ensure appropriate competition through requests for quotations to be sent to at least 3 suppliers.

(2) Where, for objective reasons, the number of suppliers available to the request for quotation is less than 3 [three], CERIC-ERIC shall seek to ensure an optimal level of competition in the circumstances.



## **Chapter 4. Procurement arrangements**

### **Framework agreement**

- (1) CERIC-ERIC may award a framework agreement in accordance with the present rules and in such a case all references in Chapters 2 and 3 to a contract should be read as including a framework agreement, except where the context otherwise requires.
- (2) The duration of the framework shall be reasonable and justified by the subject matter of the contract, and shall not exceed 5 years, save in exceptional circumstances duly justified by the subject matter of the framework agreement.
- (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.
- (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, specific contracts shall be awarded without reopening of competition on the basis of objective criteria for determining, which of the suppliers shall perform the contract. Such objective criteria shall be stipulated in the original tender documents for the framework agreement.
- (5) Notwithstanding paragraph (4) above, CERIC-ERIC may decide to reopen competition amongst suppliers who are party to the framework agreement provided, that the choice of whether to reopen competition is based on objective criteria laid down in the tender documents for the framework agreement and that the criteria which will be subject to the competition are clearly specified.
- (6) 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, that contract may be awarded to a supplier which is a party to the framework agreement provided that: a) the tender documents stipulate that competition amongst suppliers party to the framework may be reopened for the award of specific contracts; b) the contract is awarded following competition; 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.
- (3) CERIC-ERIC shall not misuse a framework agreement in order to prevent, restrict or distort competition.

### **Electronic catalogues**

- (1) CERIC-ERIC may require tenders to be presented in the format of an electronic catalogue, in accordance with the technical specifications and format established by CERIC-ERIC.
- (2) Where tenders have been submitted in the form of electronic catalogues to a framework agreement concluded with more than one supplier, CERIC-ERIC 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 their electronic catalogues, if necessary, adapted to the requirements of the contract in question.

## **Chapter 5. Conduct of the procurement**

### **Grounds for exclusion**

(1) CERIC-ERIC may treat as ineligible and shall not invite a supplier to tender or award a contract to a supplier if CERIC-ERIC has actual knowledge that the supplier or its directors or any other person who has powers of representation, decision or control of the supplier:

a) have been convicted of any of the following offences in the last three years: participation in criminal organization; corruption; fraud; money laundering; terrorist offences or offences linked to terrorist activities; child labour and other forms of illegal trafficking in human beings; or

b) has failed to comply with applicable environmental, social or labour laws in the last three years; or

c) is guilty of grave professional misconduct, which renders the supplier or tenderer's integrity questionable; or

d) is involved or in the last three years has been involved in collusion;

or where CERIC-ERIC has actual knowledge of the existence of any of the following circumstances:

e) an unfair advantage that may distort competition as a result from prior involvement of the supplier or tenderer in the preparation of the procurement process, in accordance with Article 26(4).

f) significant previous deficiencies in the performance of prior contracts awarded by CERIC-ERIC;

g) serious misrepresentation in supplying information required as part of a tender procedure; or

h) where the supplier or tenderer is bankrupt or is the subject of insolvency or winding-up procedures or it is in any equivalent situation arising from a similar procedure under the laws and regulations of any state.

(2) At any time during the procurement procedure CERIC-ERIC may exclude a supplier or a tenderer where, due to new information brought into light, it turns out that the supplier or tenderer is in one of the situations referred to in paragraphs (1)(a)-(h) above.

(3) CERIC-ERIC may request that official register, certificates, statements, and other means of proof are submitted as evidence for the absence of 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 to possible admission to the procurement procedure be examined.

(5) Such compliance measures may include in particular 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 CERIC-ERIC, taking into account the particular circumstances of the offence or misconduct. CERIC-ERIC shall give the supplier a statement of the reasons for its decision in case it considers the compliance measures taken to be insufficient.

### **Technical specifications**

(1) The technical specifications shall define the characteristics 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 of suppliers to 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 and sustainability.

(4) Technical specifications shall not refer to a specific make or source, or a particular process, which characterises the products or services provided by a specific supplier with the effect of favouring or eliminating certain suppliers or certain products.

(5) Notwithstanding paragraph (4) above, when a reference to a specific make or source cannot be objectively avoided in order to describe the subject matter of the contract, it shall be accompanied by the words "or equivalent".

### **Selection criteria**

(1) CERIC-ERIC may establish selection criteria for the qualitative selection of suppliers to be invited to tender for or, where applicable, to negotiate the contract.

(2) The selection criteria used shall be based on objective criteria, which CERIC-ERIC may determine, provided it makes the criteria available to suppliers in advance.

(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.

(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.

(5) With regard to criteria relating to economic and financial standing, CERIC-ERIC may require that the tenderer and those other entities be jointly liable for the execution of the contract.

(6) With regard to criteria relating to technical capacity, CERIC-ERIC may require the tenderer to prove that it will have at its disposal the relevant resources, for example, by providing a commitment in writing by those entities to that effect.

(7) With regard to educational and professional qualifications or experience of individuals, a tenderer may only rely on the capacities of other entities where those individuals will perform the services or works for which the qualification or experience is required.

### **Award criteria**

- (1) CERIC-ERIC shall award contracts on the basis of the lowest price only or of the best-value-for-money, which shall be assessed on the basis of objective criteria in compliance with the principles set out in Article 3.
- (2) The objective criteria used to assess the best-value-for-money shall be linked to the subject matter of the contract, for example, but not limited to, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion and may include environmental, social or innovation-related criteria. Such criteria shall not confer an unrestricted freedom of choice on CERIC-ERIC.
- (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 as 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.
- (4) Where appropriate, CERIC-ERIC shall require that proposals are submitted following a double envelope system, whereby the commercial offer is separated from the technical offer.

### **Confidentiality**

- (1) In its communications with suppliers or tenderers or with any other person, CERIC-ERIC shall not disclose any information if non-disclosure of such information is necessary for the protection of essential interests of CERIC-ERIC.
- (2) CERIC-ERIC shall not disclose information communicated to it by a supplier or a tenderer, which has been designated by that supplier or tenderer as confidential and which would 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 required under EU laws or the laws of Italy.

### **Market consultations and involvement of tenderers in the procurement**

- (1) Prior to commencing a procurement procedure, CERIC-ERIC may conduct a market survey with a view to planning the conduct of the procurement and preparing the tender documents.
- (2) For this purpose, CERIC-ERIC may engage external independent experts, or market participants, provided this does not have the effect of distorting competition.
- (3) CERIC-ERIC 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, which has previously been involved in the preparation of the procurement.
- (4) CERIC-ERIC may exclude a supplier or a tenderer if it has grounds to conclude that the prior involvement of that tenderer or a related entity in the procurement process is capable of distorting competition or compromising the integrity of the procedure.

(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.

### **Notice of decision to award a contract**

(1) Prior to entering into a contract or concluding a framework agreement, CERIC-ERIC shall send all unsuccessful tenderers a notice communicating its decision to award the contract or conclude a framework agreement.

(2) The notice referred to in paragraph (1) shall include:

a) the criteria used for the award of the contract;

b) the name of the tenderer to be awarded the contract or to become a party to the framework agreement;

c) the motivation regarding the choice of the successful tenderer/s and/or the score obtained by the tenderer which is to receive the notice and the tenderer/s to be awarded the contract or to become a party to the framework agreement.

### **Cancellation of a procurement procedure**

(1) CERIC-ERIC may decide to cancel a procurement procedure at any time before entering into contract, provided such decision is adequately motivated and is in conformity with the principles set out in Article 3.

(2) CERIC-ERIC 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 compensation claims for foregone profits or costs incurred by suppliers or tenderers.

## **Chapter 6. Contract performance**

### **Contract conditions**

(1) CERIC-ERIC may require compliance with obligations in the fields of environmental, social, tax and employment law that apply at the place where the works are executed or the services provided, and resulting from laws, regulations, decrees, collective agreements and decisions applicable at the relevant state.

(2) CERIC-ERIC may also require additional conditions relating to the performance of the contract, concerning in particular innovation-related, environmental, social or employment-related considerations.

### **Subcontracting**

(1) CERIC-ERIC 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.

(2) CERIC-ERIC may verify whether there are ground for exclusion of subcontractors under Article 21, in which case it may require a tenderer to replace subcontractors in respect of which the verification has shown that there are grounds for exclusion.

### **Amendments to contracts during their term**

(1) Contracts may not be modified during their term, unless one or more of the following conditions are fulfilled:

- a) where the modification is not substantial;
- b) where 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) where 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) where the modification has become necessary due to unforeseen and urgent reasons related to technical or economic reasons, and the replacement of the contractor would result in significant increase of costs or substantial delays to CERIC-ERIC. In any event, the increase in the value of the contract due to such modification must not exceed 50% of the value of the original contract;
- e) where the value of the modification (determining an increase or a reduction) is below 20% of the original contract, provided the modification does not change the overall nature of the contract.

(2) For the purpose of this Article, 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 other suppliers than those initially selected to the tender process;
- c) would have resulted in the appointment of a tenderer other than the one originally appointed;
- d) considerably changes the economic balance of the contract in favour of the contractor.

### **Extension of contract term**

(1) The extension of the contract term is subject to the fulfillment of the conditions set in article 31 paragraphs (1)(b) or (1)(d).

## **Chapter 7. Arbitration and audit**

### **Arbitration**

Any dispute between CERIC-ERIC and a supplier arising from the call for tender or from the request for quotation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The Arbitral Tribunal shall decide in accordance with the rules of law of Italy.

The seat of the arbitration shall be Trieste.

The language of the arbitration shall be English.

### **General audit**

(1) CERIC-ERIC's internal auditing function may conduct an annual review of procurements against the procurement rules of CERIC-ERIC.

### **General Assembly oversight**

(1) The CERIC-ERIC General Assembly shall have oversight over the annual procurement plan for contracts with a value above Euro 200,000 [two-hundred-thousand] and on the modification of the present procurement rules.