

# EPOS ERIC

## PROCUREMENT RULES



This work is released under the Creative Commons Attribution 4.0 International (CC BY 4.0)

# EPOS ERIC

## PROCUREMENT RULES

Version 15<sup>th</sup> January 2024

as adopted by the General Assembly of EPOS ERIC on 21<sup>st</sup> February 2024

## Table of content

Preamble .....	5
General Provisions .....	6
Article 1 - Definitions.....	6
Article 2 - Scope of Application .....	6
Article 3 - Principles and Objectives .....	6
Article 4 - Estimated Value of Contracts .....	6
Article 5 - Availability of the Procurement Documents .....	7
Article 6 - Information on Possible Forthcoming Procurements.....	7
Article 7 - Specific Exclusions .....	7
Article 8 - Language.....	7
Article 9 - Currency.....	8
Article 10 - Conflicts of Interest .....	8
Article 11 - Confidentiality.....	8
Article 12 - Procurement Procedures .....	8
Conduct of the Procurement .....	8
Article 13 - Call for Tenders .....	8
Article 14 - Technical Specifications .....	9
Article 15 - Selection Criteria .....	9
Article 16 - Award Criteria .....	9
Article 17 - Notice of Decision to Reject a Tenderer or to Award a Contract .....	9
Other Procurement Arrangements .....	10
Article 18 - Collaborative and Joint Procurement .....	10
Article 19 - Framework Agreements.....	10
Article 20 - Cancellation of a Procurement Procedure.....	10
Article 21 - Appeals .....	11
Article 22 - Amendments to contracts during their term.....	11
Article 23 - Extension of contract term.....	11
Article 24 - Interpretation.....	11
Article 25 - Revisions .....	11
Final Provisions.....	12
Article 26 - General Audit .....	12
Article 27 - General Assembly Oversight .....	12
Article 28 - Entry into Force .....	12

## Preamble

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

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

Having regard to the Commission Implementing Decision (EU) 2018/1732, of 31 October 2018, on setting up the European Plate Observing System - European Research Infrastructure Consortium (EPOS ERIC).

Having regard to Article 24 of the EPOS ERIC Statutes requiring that the EPOS ERIC procurement policy shall respect the principles of transparency, non-discrimination, and competition.

Whereas:

EPOS ERIC wishes to regulate its procurement activity in line with its Statutes and to promote the objectives of value for money, integrity, sustainability, innovation, and social responsibility.

## General Provisions

### Article 1 - Definitions

“Call for Tenders” means a call for competition made in accordance with Article 13.

“Contract” means an agreement concerning the procurement of goods, works or services, concluded in writing between EPOS ERIC and a third party or parties.

“Contractor” means a party awarded and entered a Contract with EPOS ERIC.

“Days” means calendar days unless otherwise indicated.

“Framework agreement” means an agreement between EPOS ERIC and one or more Suppliers, the purpose of which is to establish the terms governing Contracts to be awarded during a given period, particularly regarding price, technical aspects and, where appropriate, quantity envisaged.

“Notice” means communication in writing and refers to any expression consisting of words or figures which can be read, reproduced, and subsequently communicated, including information transmitted and stored electronically.

“Partner country” means a country which is a member or an observer in the EPOS ERIC.

“Procurement documents” or “Tender documents” means any document or documents produced or referred to by EPOS ERIC to describe or determine elements of the procurement or the procurement procedure, including the Call for Tenders, the invitation to tender, the technical specifications, and where appropriate, the proposed conditions of Contract and any additional documents.

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

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

“Working day” means a day other than Saturday, Sunday, or a bank holiday in Italy.

### Article 2 - Scope of Application

These Procurement Rules apply to all contracts concerning the procurement of goods, works, or services concluded in writing between the EPOS ERIC and a party or parties.

These Procurement Rules only apply to procurement contracts financed by the EPOS ERIC’s budget and carried out by the EPOS ERIC or on behalf of the EPOS ERIC.

### Article 3 - Principles and Objectives

The procedures for awarding contracts by EPOS ERIC shall respect the EU principles of transparency, non-discrimination, and competition, as well as proportionality, mutual recognition, and equal treatment.

### Article 4 - Estimated Value of Contracts

The estimated value of a procurement shall be based on the total amount payable over the duration of the Contract, net of VAT, as estimated by EPOS ERIC, including any options and renewals, considering all forms of remuneration.

Unless objectively justified by the specific circumstances of the Contract, EPOS ERIC shall neither divide its procurement nor use a particular valuation method for estimating the procurement value to limit competition among Suppliers or Tenderers or to avoid its obligations under these rules.

### Article 5 - Availability of the Procurement Documents

As a rule, the Procurement documents shall be free of charge and fully accessible to Suppliers from the date of publication of a Call for Tenders via the Internet in a designated area on the EPOS ERIC's website.

### Article 6 - Information on Possible Forthcoming Procurements

EPOS ERIC will, where possible, publish on its website information regarding procurement activities planned for coming months or years.

Any publication under this Article does not constitute a Call for Tenders and does not confer any rights on Suppliers or Tenderers.

### Article 7 - Specific Exclusions

These procurement rules do not apply to contracts:

- a) with a value of less than EUR 10,000;
- b) for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property;
- c) for employment, secondment and personnel placement contracts;
- d) for arbitration, conciliation or other legal services;
- e) for joint or collaborative procurements conducted in accordance with Article 18;
- f) for banking services and loans;
- g) for educational and vocational services;
- h) for recreational, cultural and sporting services;
- i) for hotel and accommodation services;
- j) for health and work environment-related services.

For contracts referred to in (a)-(k) above, EPOS ERIC may award the contract by way of direct negotiations with one or more suppliers, without prior publication of a Call for Tenders.

In addition, EPOS ERIC may award contracts by way of direct negotiations, without prior publication of a Call for Tenders:

- 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) when due to external circumstances of an urgent nature, unforeseeable and not attributed to EPOS ERIC, there is an urgency to award a contract immediately or within just a few days;
- c) for additional deliveries by the original Supplier where a change of Supplier would oblige EPOS ERIC to acquire supplies or services having different characteristics, which would result in incompatibility or disproportionate technical difficulties in operation, maintenance or application;
- d) for strict security reasons;
- e) where only one or no applications, requests to participate, or suitable Tenders have been submitted in response to a previous Call for Tenders, provided that the initial conditions of the Contract or the Tender documents are not substantially altered.

### Article 8 - Language

Generally, Tender documents and ancillary correspondence shall be written in English unless decided otherwise by EPOS ERIC, where the following conditions are fulfilled:

- a) the subject matter of the Contract justifies the decision; or
- b) due to technical or geographical reasons, only domestic Suppliers or Contractors are likely to be interested in submitting tenders.

Responses to Calls for tenders shall be in the language of the Tender documents, or any other language permitted by the Tender documents.

## **Article 9 - Currency**

Suppliers shall be requested to submit tender quotes in EUR.

## **Article 10 - Conflicts of Interest**

A conflict of interest shall be deemed to arise in any situation where an EPOS ERIC staff member involved in the procurement (directly or indirectly) 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.

EPOS ERIC shall take appropriate measures to effectively identify, prevent and remedy conflicts of interest arising from the conduct of the procurement to ensure the integrity and equal treatment of all Suppliers and Tenderers and to avoid any distortion of competition.

## **Article 11 - Confidentiality**

EPOS ERIC shall not disclose information communicated to it by a Supplier or a Tenderer that has been reasonably and designated by that Supplier or Tenderer as confidential and that, according to EPOS ERIC's assessment, would likely prejudice the legitimate commercial interests of that Supplier or Tenderer, or would impede fair competition, unless disclosure of that information is ordered by a court or administrative body as required under EU laws or the laws of Italy.

## **Article 12 - Procurement Procedures**

EPOS ERIC shall have the freedom to organise the procurement procedure leading to the award of a contract in the way it deems fit, subject to compliance with these rules.

For contracts with an estimated value of between EUR 10,001 and EUR 50,000, EPOS ERIC shall ensure restricted competition through requests for quotation and price comparison.

For contracts with an estimated value equal to or above EUR 50,001 EPOS ERIC shall make known its intention to conduct a new procurement by means of a Call for Tenders (see Article 13), unless the circumstances justify direct negotiations in accordance with Article 7.

## **Conduct of the Procurement**

The Articles under this chapter shall only apply to Contracts with an estimated value equal to, or above EUR 50,001.

## **Article 13 - Call for Tenders**

A Call for Tenders shall be published, as a minimum requirement, on the EPOS ERIC's website in a designated area accessible to Suppliers via the Internet. Depending on the subject matter and the value of the Contract, EPOS ERIC may publish the Call for Tenders in other media to ensure transparency and competition, including, where appropriate, in the Supplement to the Official Journal of the European Union.

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. In particular, the Call for Tenders shall include the following information:

- 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) deadline for submission of proposals;



- c) award criteria used for the assessment of proposals;
- d) where relevant, selection criteria used to short-list Tenderers in accordance with Article 15;
- e) where relevant, estimated time frame for the performance of the contract;
- f) any other information that may be relevant in the circumstances.

When fixing the time limits for the receipt of proposals, EPOS ERIC shall take account of the complexity of the contract and the time required for preparing proposals by Suppliers.

#### **Article 14 - Technical Specifications**

The technical specifications shall define the components required for the works, supplies, or services to be performed under the Contract and shall be set out in the Tender documents.

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 resulting in unfair discrimination.

Where relevant to the subject matter of the Contract, the technical specifications may be drawn up to promote the objectives of innovation, sustainability, social responsibility, or other relevant policy consideration.

Technical specifications shall not refer to a specific make or source or a particular process that characterises the products or services provided by a specific Supplier with the effect of favouring or eliminating certain Suppliers or individual products.

Notwithstanding the paragraph above, when a reference to a specific make or source cannot be objectively avoided to describe the subject matter of the Contract, it shall be accompanied by the words “or equivalent”.

#### **Article 15 - Selection Criteria**

EPOS ERIC may establish selection criteria for the qualitative selection of Tenderers to be invited to tender or, where applicable, to negotiate the Contract.

The selection criteria used shall be based on objective measures that the EPOS ERIC may determine, provided it makes the requirements available to Suppliers in advance. The criteria chosen must be proportionate and relate to the subject matter of the Contract. They may include (but are not limited to): personal standing of the Tenderer, suitability to pursue a professional activity, economic and financial standing, and technical and professional ability.

#### **Article 16 - Award Criteria**

EPOS ERIC shall award Contracts based on best-value-for-money assessed based on objective criteria according to the principles and objectives set out in Article 3, as well as the objectives of innovation, sustainability, social responsibility but only where relevant to the subject matter of the contract.

The objective criteria used to assess the best value for money shall be linked to the subject matter of the Contract and shall not confer an unrestricted freedom of choice on EPOS ERIC.

The criteria used to assess the best value for money shall be set out in the Tender documents and be sufficiently clear to allow Tenderers to understand on what basis their Tenders will be assessed and to allow the information provided by the Tenderers to be effectively verified.

#### **Article 17 - Notice of Decision to Reject a Tenderer or to Award a Contract**

EPOS ERIC shall send a Notice to Tenderers who failed to meet the selection criteria under Article 15. The Notice shall be sent as soon as possible after a decision has been made and include an explanation of why the Tenderer failed to meet those criteria.

Before entering a Contract, EPOS ERIC shall send all unsuccessful Tenderers, who have yet to be informed of their rejection, a Notice communicating its decision to award the Contract. The Notice shall include the following information:

- a) the criteria used for the award of the Contract;
- b) the name of the Tenderer or Tenderers to be awarded the Contract;
- 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.

## **Other Procurement Arrangements**

### **Article 18 - Collaborative and Joint Procurement**

EPOS ERIC may award a contract jointly or in collaboration with other contracting authorities in other countries.

When acting in collaborative procurement with other contracting authorities subject to other procurement procedures under Directive 2014/24/EU, or procurement procedures of other international organisations, EPOS ERIC may choose to organise the joint or collaborative procurement according to such other procurement procedures. In such cases, EPOS ERIC shall be deemed to have complied with these procurement rules.

### **Article 19 - Framework Agreements**

EPOS ERIC may award a framework agreement and in such a case all references to a Contract under these rules should be read as including a framework agreement, except where the context requires otherwise.

The duration of the framework agreement shall be reasonable and justified by the subject matter of the contract and shall not exceed 5 years, save for exceptional circumstances duly justified.

Where a framework agreement is concluded with more than one supplier, specific contracts shall be awarded on the basis of objective criteria and if appropriate, they may be awarded by way of additional competition amongst the suppliers that are party to the framework agreement.

EPOS ERIC shall not misuse a framework agreement in order to prevent, restrict or distort competition.

### **Article 20 - Cancellation of a Procurement Procedure**

EPOS ERIC may cancel a procurement procedure at any time before entering a Contract, provided such a decision is motivated by objective reasons.

EPOS ERIC shall inform all Tenderers of its decision within a reasonable time. 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.

### Article 21 - Appeals

Suppliers impacted by a potential breach of these rules may appeal a procurement decision by EPOS ERIC.

Appeals must be written and sent to EPOS ERIC's Tenders Appeal Board within 14 days of recognizing the grounds but not exceeding 3 months from when the grounds initially appeared.

The Tenders Appeal Board consists of 2-3 members appointed by the CEO and operates independently from the procurement personnel. The chair of the Tender Appeal Board shall be a person who is legally qualified and competent in EU public procurement law.

If the Tenders Appeal Board identifies an infringement, they may order rectification or other suitable remedies. Appeals will be rejected if no breach is found.

Decisions will be communicated in writing within 30 working days, detailing the reasoning.

### Article 22 - Amendments to contracts during their term

Contracts may not be amended during their term unless one or more of the following conditions are fulfilled:

- a) where the amendment is not substantial;
- b) where the amendment has been foreseen 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 amendment 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 amendment has become necessary due to unforeseen and urgent issues related to technical or economic reasons, and the replacement of the contractor would result in a significant increase of costs or substantial delays to EPOS 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 amendment (determining an increase or a reduction) is below 20% of the original contract, provided the amendment does not change the overall nature of the contract.

For this Article, a 'substantial amendment is any modification which:

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

### Article 23 - Extension of contract term

The contract term extension is subject to the fulfilment of the conditions set in Article 22.

### Article 24 - Interpretation

These rules shall be interpreted considering the principles of the European Union and Italian legislation on public procurement.

### Article 25 - Revisions

Material amendments to these procurement rules shall require the approval of the General Assembly following a recommendation by the Director of EPOS ERIC.

## **Final Provisions**

### **Article 26 - General Audit**

The internal auditing function may conduct an annual review of procurements against the procurement rules of EPOS ERIC.

### **Article 27 - General Assembly Oversight**

The EPOS ERIC General Assembly shall oversee the annual procurement plan for contracts with a value above Euro 200,000 (two-hundred-thousand).

### **Article 28 - Entry into Force**

These procurement rules shall enter into force on 21<sup>st</sup> February 2024

