

**General Conditions
for Invitations to Tender by CERN**

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GENERAL CONDITIONS FOR INVITATIONS TO TENDER BY CERN

The European Organization for Nuclear Research is an Intergovernmental Organization with its seat in Geneva, Switzerland. Its facilities are located on either side of the border between Switzerland and France.

Definitions

- The term “bidder” shall mean any party submitting a bid in reply to an invitation to tender by CERN.
- The term “CERN” shall mean the European Organization for Nuclear Research.
- The term “closing date” shall mean the deadline for submitting bids.
- The term “combination of firms” shall mean a consortium, joint venture or any other arrangement between legal entities for the joint submission of a bid and the joint execution of the contract but shall exclude any sub-contractors. The terms “party”, “bidder” and “contractor” shall include any and all members of the combination of firms.
- The term “confidential information” shall mean any information related to the invitation to tender or the bid which has been identified as confidential or which can reasonably be understood as confidential.
- The term “conforming bid” shall mean a bid that complies with the market survey and the invitation to tender, without any variation to the requirements specified therein.
- The term “contract” shall mean a contract, a purchase order or other agreement for the provision of supplies or services to CERN.
- The term “contractor” shall mean the party other than CERN who has entered into the contract.
- The term “country(ies) of origin” shall mean:
For supplies: the country(ies) of manufacture or last major transformation of the supplies (including sub-assemblies and components) by the bidder or his sub-contractor(s);
For services: the country(ies) in which the bidder is established.
- The terms “day”, “week” and “month” shall mean a calendar day, week or month but shall exclude the period of CERN’s end-of-year closure.

- The term “invitation to tender” shall mean a set of documents, including price enquiries, issued by CERN, inviting a party to submit a bid for the provision of supplies or services.
- The term “market survey” shall mean the market survey, if one has been carried out, preceding the invitation to tender.
- The term “laws” shall mean all CERN rules and regulations relevant for the bid and all laws, treaties, rules, regulations and orders of any local, national or other authority having jurisdiction over the bidder.
- The term “intellectual property” shall mean all intellectual property, including know-how, in forms such as drawings, designs, documents, inventions, software programmes, reports, processes and protocols, and protected by means such as secrecy, patents, copyrights and trademarks.
- The terms “sub-contractor” and “sub-contracting” shall include sub-sub-contractors and sub-sub-contracting respectively, as the case may be.
- The term “successful bidder” shall mean the bidder designated by CERN to enter into a contract on the basis of the invitation to tender or any part thereof.
- The term “tender conditions” shall mean the general conditions for invitations to tender by CERN.

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1. Applicability

The tender conditions shall apply to invitations to tender which stipulate that they apply. Any reference made to a clause is a reference to a clause in the tender conditions.

2. Eligible bids

- 2.1 Only conforming bids submitted by bidders who have been selected and invited by CERN shall qualify for consideration by CERN for the award of a contract.

- 2.2 The bidder shall forthwith, and in any case two weeks prior to the closing date, notify CERN in writing of any change of the information provided in his reply to the market survey or in his bid, including a change:
- of the country(ies) of origin or of the composition of the combination of firms; or
 - of the percentage shares of the amount of the bid or of the obligations allocated to each member of the combination of firms.
- 2.3 CERN reserves the right to reject the bid if the information provided therein or in the reply to the market survey is incorrect or incomplete at any time.

3. Amendment of the invitation to tender

CERN reserves the right to amend the invitation to tender. Any amendment shall be communicated in writing to all bidders no later than one week prior to the closing date and shall, from the date of issue, form an integral part of the invitation to tender.

4. Clarification of the invitation to tender

- 4.1 The bidder shall request CERN in writing to provide any information missing in the invitation to tender and to clarify any ambiguity therein.
- 4.2 Except as provided in clause 4.3, CERN shall respond in writing to any request concerning the invitation to tender received earlier than two weeks prior to the closing date. If CERN receives a request after that time limit, it shall respond thereto only if it deems it practicable.
- 4.3 If the request concerns an amendment to the invitation to tender, CERN shall respond if the request is received within one week of communication of the amendment. If CERN receives a request after that time limit, it shall respond thereto only if it deems it practicable.
- 4.4 CERN shall forward copies of its response to all bidders and shall include a description of the request, the source of which shall remain anonymous.

- 4.5 The bidder shall forthwith notify CERN in writing of any circumstance that threatens to affect the obligations which he would have as a contractor, as specified in the invitation to tender.

5. Bidder's obligations

- 5.1 By submitting a bid, the bidder confirms that he is fully conversant with and accepts all his obligations as a bidder as well as those obligations that he would have as a contractor, as specified in the invitation to tender.
- 5.2 The bidder shall ensure that his bid is in compliance with laws.
- 5.3 The bidder shall be liable for any information prepared by him or on his behalf in relation to his bid.
- 5.4 The bidder shall hold CERN free and harmless from and indemnify CERN for loss or damage, including legal costs, resulting from any failure by the bidder to fulfil his obligations under the invitation to tender.

6. Completion of the bid

- 6.1 All documents comprising the bid shall be in English or French.
- 6.2 All prices contained in the bid shall be drawn up in accordance with the provisions of the invitation to tender. They shall be quoted in Swiss francs or if the bidder wishes to be paid in another currency, in that currency. In the latter case the currency chosen by the bidder must be his national currency or the currency in which he will have major expenses under the contract.
- 6.3 For the purpose of adjudication, CERN shall convert any amount quoted in another currency into Swiss francs by using the European Central Bank (ECB) fixing rate which applies on the closing date.

- 6.4 All prices contained in the bid shall be net, firm and inclusive of all costs relating to the performance of the contractor's obligations as specified in the invitation to tender and take into account CERN's exoneration from VAT and import duties.

7. Signature of the bid

- 7.1 The bid shall be signed by the bidder.
- 7.2 If the bidder is a combination of firms, his bid shall be signed by the authorized signatory(ies) of each member of the combination of firms.
- 7.3 Any alterations of the bid shall be initialled by the person(s) signing the bid.

8. Documents comprising the invitation to tender

- 8.1 The invitation to tender shall comprise the documents listed below, where they exist, including any amendments thereto:
- the commercial tender form, including its cover letter and its annexes but excluding the tender conditions;
 - the draft service level agreement;
 - the technical specification, including its annexes but excluding the tender conditions and the general conditions of CERN contracts;
 - the tender conditions and the general conditions of CERN contracts.

In the event of any ambiguity or contradiction between these documents, they shall apply in decreasing order of priority, starting from the top.

- 8.2 The invitation to tender shall in no event be subject to the bidder's general conditions, whether or not they form part of his bid or are referred to in any correspondence between the parties.

9. Combination of firms

- 9.1 If the bidder is a combination of firms, its members shall jointly appoint one member from amongst them as their lead firm in all matters concerning the tender procedure and the contract, save for the signature of the bid and the contract. The representative so appointed shall provide CERN with evidence in writing of its appointment. If the lead firm was appointed for the market survey, that appointment shall also be valid for the tender procedure and the contract.
- 9.2 The members of the combination of firms shall be jointly and severally liable for the performance of the bidder's obligations under the invitation to tender.

10. Countries of origin

- 10.1 In his bid, the bidder shall specify the country(ies) of origin of the supplies and services as well as the percentage shares of the amount of the bid allocated to such country(ies) of origin.
- 10.2 The countries of origin shall be CERN Member States.

11. Sub-contracting

- 11.1 The bidder shall specify in his bid any part and the value of the obligations which he proposes to sub-contract. He shall specify the name(s) of the proposed sub-contractor(s) and the address(es) of the premises where the sub-contracted obligations would be performed.
- 11.2 CERN shall be entitled to reject in whole or in part the bidder's proposal concerning the sub-contracting of his obligations, it being understood that in any event:
- supplies and services representing more than 50% of the amount of the bid shall not be sub-contracted to a single sub-contractor; and
 - obligations to be performed on the CERN site shall not be sub-subcontracted; and
 - the management of the contract shall not be sub-contracted.

12. Confidentiality

- 12.1 The bidder shall keep confidential and shall not without prior permission in writing by CERN disclose confidential information to any third party, or use it for any purpose other than the performance of his obligations under the invitation to tender. The bidder shall limit the circle of recipients of confidential information on a need-to-know basis and shall ensure that the recipients are aware of and comply with the obligations defined in this clause 12.
- 12.2 Notwithstanding clauses 12.1 and 12.4, the bidder is entitled to disclose confidential information which he is required by law to disclose. He shall notify CERN of such disclosure and shall ensure that the recipients are aware of and comply with the obligations defined in this clause 12.
- 12.3 The obligations specified in clauses 12.1 and 12.4 shall not apply in respect of confidential information:
- which has become public knowledge other than as a result of a breach by the bidder of these clauses; or
 - which, in a lawful manner, the bidder has obtained from a third party without any obligation of confidentiality; or
 - which the bidder has developed independently of the invitation to tender.
- 12.4 The bidder shall continue to comply with the obligations defined in clause 12.1 for a period of five years from the date of disclosure.

13. Intellectual property

- 13.1 The disclosure of intellectual property by CERN to the bidder shall not create any right for him in respect of that intellectual property, other than a license to use the intellectual property in so far as necessary for the performance of his obligations under the invitation to tender.
- 13.2 The disclosure of intellectual property by CERN to the bidder is without any warranty, express or implied, by CERN and CERN accepts no liability in relation thereto. The bidder shall be solely liable for the use by him of any intellectual property disclosed by CERN.

14. Alternative proposals

- 14.1 Any alternative proposed by the bidder in addition to the conforming bid shall be accompanied by all technical and financial information necessary for CERN to evaluate it fully.
- 14.2 The bidder shall distinguish in his bid the price(s) of his conforming bid from the price(s) of any alternative proposed.
- 14.3 The adjudication shall be made on the basis of the conforming bid. However, CERN shall at its sole discretion decide whether to base the contract on the successful bidder's conforming bid or on any alternative proposed.

15. Representatives and correspondence

- 15.1 Each party shall be represented exclusively by, and all notices and correspondence concerning the invitation to tender shall be communicated exclusively by and to, its contact person(s) or unit(s) appointed to deal with the matter concerned. Any communication by or to any other person(s) or unit(s) shall have no effect under the invitation to tender.
- 15.2 The bidder's contact person(s) or unit(s) shall be named in the bid. If the bidder is a combination of firms, he shall appoint the contact person(s) or unit(s) from the lead firm appointed in accordance with clause 9.1.

16. Communications in writing

Whenever the invitation to tender stipulates that a communication is to be made in writing, this requirement shall be deemed to be met if it is made by letter, fax or electronic mail, it being understood that the burden of proving that the communication was made shall at all times remain with the issuing party. Written notification shall be deemed to have taken place on the date of receipt of such notification by the receiving party.

17. Currency of payment

The contractor shall be paid in the currency quoted in his bid.

18. Dispatch of the bid

The bidder shall submit his bid in electronic form, in accordance with the CERN secure electronic tendering procedure.

CERN reserves the right to request the bidder to submit his bid in paper form, in which case the bidder shall send his bid to CERN by registered mail, courier service or deliver it by hand by the closing date. The bid shall bear the reference of the invitation to tender in a visible and legible manner. The postmark shall be proof of the sending date. CERN reserves the right to reject bids which have been posted after the closing date.

19. Costs of submitting the bid

The bidder shall bear all costs associated with the preparation and submission of his bid including his costs for attending meetings and conferences at CERN, whether compulsory or not. CERN shall under no circumstance reimburse such costs.

20. Validity of the bid

20.1 The bid shall be valid for six months from the closing date.

20.2 Prior to the expiry of the original validity period, CERN may request in writing to all bidders that they extend the validity of their bids by a period of no more than three months from the original expiry date.

20.3 The bidder shall not be allowed to modify his bid during the validity period save where he is requested by CERN to do so.

20.4 If so requested by CERN during the validity period, the bidder shall enter into a contract on the basis of his bid. He shall be liable for any costs resulting for CERN from his failure to do so.

21. Additional information

CERN may, after receipt of a bid and during its validity period, request the bidder to substantiate any information contained therein. CERN may request the bidder to provide any additional information which it deems necessary for the purposes of evaluating the bid. CERN reserves the right to reject a bid if the bidder fails to provide such evidence or additional information.

22. Award of contract

Any decision in relation to the invitation to tender or the award of a contract shall be at the sole discretion of CERN, without any right of recourse by the bidder. CERN reserves the right to award a contract to one, several or none of the bidders and on the basis of the whole or of part of the invitation to tender.

23. Governing law

23.1 The provisions of the invitation to tender shall be interpreted in accordance with their true meaning and effect.

Without prejudice to CERN's status as an Intergovernmental Organization, reference shall be made to Swiss substantive law where:

- a matter is not specifically covered by the invitation to tender; or
- a provision of the invitation to tender is ambiguous or unclear.

23.2 Such reference shall be made exclusively for the matter or provision(s) concerned, and shall in no event apply to the other provisions of the invitation to tender.

24. Arbitration

Any dispute arising from the invitation to tender which cannot be settled amicably shall be submitted to arbitration, to be held in Geneva, Switzerland, in accordance with CERN's status as an Intergovernmental Organization. The arbitration procedure specified in clause 35 of the general conditions of CERN contracts shall apply mutatis mutandis.
