

# **General Conditions of CERN Invitations to Tender**

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## GENERAL CONDITIONS OF CERN INVITATIONS TO TENDER

The European Organization for Nuclear Research is an intergovernmental organisation with its seat in Geneva, Switzerland. Its facilities are located on either side of the border between Switzerland and France. By virtue of its international legal status, the Organization enjoys certain privileges and immunities in its Member States<sup>1</sup>.

### Definitions

For the purpose of the General Conditions of CERN Invitations to Tender (hereinafter referred to as the “Tender Conditions”):

- The term “Associate Member State(s)” shall mean both associate member state(s) and associate member state(s) in the pre-stage to membership of CERN, except where expressly stipulated otherwise.
- 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 “Compliant Bid” shall mean a bid that complies with the requirements of the Invitation to Tender.
- The term “Confidential Information” shall mean any information related to the Invitation to Tender or the bid that has been identified as confidential or that can reasonably be understood to be confidential.
- The term “Contract” shall mean a contract, a purchase order or any other agreement with CERN for the delivery of supplies or the provision of services.
- The term “Contractor” shall mean the party(ies) other than CERN that has (have) 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 and its proposed subcontractor(s);  
For services: the country(ies) in which the Bidder and its proposed subcontractor(s) are established.

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<sup>1</sup> <http://home.cern/about/member-states>

- The term “Group of Firms” shall mean a consortium, joint venture or any other arrangement concluded between legal entities for the joint submission of a bid and the joint execution of the Contract but shall exclude any subcontractors. The terms “party”, “Bidder” and “Contractor” shall include each and every member of the Group of Firms.
- The term “Intellectual Property” shall mean all intellectual property, including know-how, in its various forms such as drawings, designs, documents, inventions, software programmes, reports, processes and protocols, that is protected by means such as secrecy, patents, copyrights and trademarks.
- The term “Invitation to Tender” shall mean a set of documents including price enquiries issued by CERN, inviting a firm or a Group of Firms to submit a bid for the delivery of supplies or the provision of services.
- 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 “Market Survey” shall mean the market survey by CERN, if one has been carried out, preceding the Invitation to Tender.
- The term “Member State(s)” shall mean both full member state(s) and Associate Member State(s) of CERN, except where expressly stipulated otherwise.
- The term “Subcontract(s)” shall mean any arrangement whereby the Contractor contracts with another legal entity (the subcontractor), except legal entities under its direct control, for the delivery of a major part of the supplies (including sub-assemblies and components) or any part of the provision of the services. The term “Subcontract(s)” shall include sub-subcontract(s).
- 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 terms “Week” and “Month” shall mean a calendar week or month and shall, except where expressly stipulated otherwise, exclude the period of CERN’s end-of-year closure.

## **1. Applicability**

The Tender Conditions shall apply to Invitations to Tender in which it is stipulated that they apply. The tendering process shall not be subject to any conditions other than those established by CERN for this purpose. Any reference made to a clause shall be understood as a reference to a clause in the Tender Conditions.

## **2. Amendments**

CERN reserves the right to amend the Invitation to Tender. Any amendment shall be communicated in writing to all Bidders no later than two Weeks prior to the Closing Date and shall, from the date of communication, form an integral part of the Invitation to Tender.

## **3. Clarifications**

- 3.1 The Bidder shall request CERN in writing, no later than two Weeks prior to the Closing Date, to clarify any ambiguity in the Invitation to Tender and to provide any information it deems necessary to establish a Compliant Bid.
- 3.2 Except as provided in clause 3.3, CERN shall respond in writing to any such request received within the deadline. If CERN receives a request after the deadline, it shall respond only if it deems it practicable to do so.
- 3.3 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 deadline, it shall respond only if it deems it practicable to do so.
- 3.4 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. Eligible bids**

- 4.1 Only Compliant Bids that have not been rejected on the basis of the Tender Conditions, submitted by Bidders that have been selected and invited by CERN and that meet the requirements of the Market Survey at all times shall qualify for consideration by CERN for the award of a Contract.
- 4.2 The Bidder shall forthwith notify CERN in writing of any change in the information provided in its reply to the Market Survey or in its bid, including a change:

- in the Country(ies) of Origin or in the composition of the Group of Firms; or
- in the percentage shares of the amount of the bid of each member of the Group of Firms; or
- in the parts of the supplies or services to be delivered or provided by each member of the Group of Firms; or
- of its administrative situation, including its financial and legal situation.

Based on the timing of the Bidder's notification to CERN and the substance of the change, CERN will inform the Bidder whether it is still qualified for consideration by CERN for the award of a Contract.

- 4.3 If CERN receives a bid that appears to be abnormally low taking into account the requirements of the Invitation to Tender, CERN shall request the Bidder to explain the basis on which the bid was calculated.

The Bidder shall provide all relevant information concerning, for example, the processes and technical solutions chosen, any exceptionally favourable conditions enjoyed by the Bidder and/or the original nature of the supplies or services, as well as evidence of compliance with the Laws.

If no explanations are provided by the applicable deadline or if CERN considers that the explanations provided indicate non-compliance with the requirements of the Invitation to Tender, that the price is not economically viable or any other substantial risk to the proper performance of the Contract, it shall reject the bid.

## 5. **Bidder's obligations**

- 5.1 By submitting a bid, the Bidder confirms that it is fully conversant with and accepts all its obligations as a Bidder, as well as those obligations that it would have as a Contractor, as specified in the Invitation to Tender. The Bidder shall forthwith notify CERN in writing of any circumstance that could affect the performance of its obligations as a Contractor should it be awarded the Contract.
- 5.2 The Bidder shall draw up its bid in such a way as to ensure that the Contract, if awarded, can be performed in compliance with the Laws.
- 5.3 The Bidder shall bear full liability for the information provided in its bid.

- 5.4 The Bidder shall hold CERN free and harmless from and indemnify CERN for any loss or damage, including legal costs, resulting from a failure by the Bidder to fulfil its obligations under the Invitation to Tender.

**6. Completion of the bid**

- 6.1 The bid shall be drawn up in accordance with the provisions of the Invitation to Tender.
- 6.2 All documents constituting the bid shall be submitted in English or French.
- 6.3 All prices 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 its national currency or the currency in which it will incur the major expenses under the Contract.
- 6.4 Where prices are quoted in a currency other than the Swiss franc, for the purpose of adjudication CERN shall convert the amounts into Swiss francs using the European Central Bank (ECB) reference rate that applies on the Closing Date.
- 6.5 All prices stipulated 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 shall take into account CERN's exoneration from VAT and import duties, where applicable.

**7. Signature of the bid**

- 7.1 The bid shall be signed by the Bidder.
- 7.2 If the Bidder is a Group of Firms, its bid shall be signed by the authorised signatory(ies) of each member of the Group of Firms.
- 7.3 Any alterations of the bid shall be initialled by the person(s) signing the bid.

**8. Documents constituting the Invitation to Tender**

The Invitation to Tender shall comprise the documents listed below, where they exist, including any amendments thereto:

- the cover letter and the tender form, including the annexes to the tender form but excluding the Tender Conditions and the General Conditions of CERN Contracts;
- 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.

## **9. Group of Firms**

- 9.1 If the Bidder is a Group of Firms, its members shall jointly appoint one member from amongst them as their lead firm for all matters concerning the Invitation to Tender and the Contract, save for the signature of the bid and of the Contract. The lead firm shall provide CERN with written evidence of its appointment. The lead firm designated for the Market Survey shall be appointed as the lead firm for the Invitation to Tender and the Contract.
- 9.2 The members of the Group of Firms shall be jointly and severally liable for the performance of the Bidder's and the Contractor's obligations under the Invitation to Tender and the Contract.

## **10. Country of Origin**

- 10.1 In its bid, the Bidder shall specify in percentage terms the Country(ies) of Origin of the supplies and services.
- 10.2 The Countries of Origin shall be Member States.

## **11. Subcontracting**

- 11.1 Where subcontracting is permitted, the Bidder shall specify in its bid any part of the obligations that it proposes to subcontract and the value thereof. It shall specify the name, address and Country of Origin of the proposed subcontractor(s).
- 11.2 CERN shall be entitled to reject in whole or in part the Bidder's proposal concerning the subcontracting of its obligations, it being understood that in any event:



- supplies and services representing a total amount exceeding 50% of the amount of the bid shall not be subcontracted to a single subcontractor;
- obligations to be performed on the CERN site shall not be sub-subcontracted; and
- the management of the Contract shall not be subcontracted.

## **12. Confidentiality**

- 12.1 The Bidder shall keep confidential and shall not, without prior written permission from CERN, disclose Confidential Information to a third party or use it for any purpose other than the performance of its obligations under the Invitation to Tender. The Bidder shall not distribute Confidential Information except on a strictly need-to-know basis and shall ensure that the recipients are aware of and comply with the obligations defined in clause 12.
- 12.2 Notwithstanding clause 12.1, the Bidder shall be entitled to disclose any Confidential Information that it is required by law to disclose. It shall notify CERN of such disclosures and shall ensure that the recipients are aware of and comply with the obligations defined in clause 12.1.
- 12.3 The Bidder shall continue to comply with the obligations defined in clause 12 for a period of five years from the date of disclosure of the Confidential Information.
- 12.4 The obligations defined in clauses 12.1 and 12.3 shall not apply in respect of Confidential Information:
- that has become public knowledge due to circumstances other than a breach by the Bidder of these obligations; or
  - that the Bidder has obtained from a third party in a lawful manner without any obligation of confidentiality; or
  - that the Bidder has generated independently of the Invitation to Tender.

## **13. Intellectual Property**

- 13.1 The disclosure of Intellectual Property by CERN to the Bidder shall not create any right for the Bidder in respect of that Intellectual Property, other than a license to use it in so far as is necessary for the performance of its obligations under the Invitation to Tender.

- 13.2 The disclosure of Intellectual Property by CERN to the Bidder shall be without any warranty, express or implied, by CERN, and CERN shall accept no liability in relation to such disclosure. The Bidder shall be solely liable for the use it makes of any Intellectual Property disclosed by CERN.

**14. Alternative proposals**

- 14.1 Any alternative proposal submitted by the Bidder in addition to a Compliant Bid shall be accompanied by all the technical and financial information needed for CERN to evaluate it.
- 14.2 In its bid, the Bidder shall distinguish the price(s) of its Compliant Bid from the price(s) of any alternative proposed.
- 14.3 The adjudication shall be made on the basis of the Compliant Bid. However, if an alternative is proposed, CERN shall, at its sole discretion, decide whether to base the Contract on the Successful Bidder's Compliant Bid or on its proposed alternative.

**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, the contact person(s) or unit(s) it has identified 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 Group of Firms, it shall appoint the contact person(s) or unit(s) from the lead firm appointed in accordance with clause 9.1.

**16. Written communication**

Whenever the Invitation to Tender stipulates that information is to be communicated in writing, this requirement shall be deemed to have been met if the information is communicated by letter or electronic mail, it being understood that the burden of proving that the information has been communicated shall at all times remain with the issuing party. Written communication shall be deemed to have taken place on the date of receipt of such communication by the receiving party.

**17. Currency of payment**

The Contractor shall be paid in the currency quoted in its bid.

**18. Dispatch of the bid**

The Bidder shall submit its bid electronically, in accordance with CERN's secure electronic tendering procedure. In cases where CERN requests the Bidder to submit its bid in paper form, the Bidder shall be informed that bids must not be sent by electronic mail and shall, by the Closing Date at the latest, send its bid to CERN by registered mail or courier service, or, if authorised by the Head of the CERN Procurement Service, deliver it by hand in a sealed envelope. The bid shall bear the reference of the Invitation to Tender in a visible and legible manner. The postmark shall constitute proof of the sending date. CERN reserves the right to reject bids that have been posted after the Closing Date.

**19. Cost of submitting the bid**

The Bidder shall bear all costs associated with the preparation and submission of its bid, including the cost of its attendance at 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 end of the original validity period, CERN may request all Bidders, in writing, to 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 permitted to modify its bid during the validity period, save where it 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 its bid. The Bidder shall be liable for any costs incurred by CERN as a result of its 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 also request the Bidder to provide any additional information that it deems necessary for the purposes of evaluating the bid. If the Bidder fails to provide such evidence or additional information by the applicable deadline or if CERN considers that the evidence or additional information provided by the Bidder indicates non-compliance with the requirements of the Invitation to Tender, CERN reserves the right to reject the bid.

**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 all or part of the Invitation to Tender. The award decision shall not imply any obligations for CERN until a Contract is signed, except where CERN has expressly committed itself otherwise.

**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 organisation, 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 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 that cannot be settled amicably shall be submitted to arbitration, to be held in Geneva, Switzerland, in accordance with CERN's status as an intergovernmental organisation. The arbitration procedure specified in clause 35 of the General Conditions of CERN Contracts shall apply mutatis mutandis.

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