

---

## Cherenkov Telescope Array Observatory ERIC

### Constitutional Meeting of the Council

12-13 February 2025  
Bologna Research Area, via P. Gobetti nr. 101, Italy

---

## 20. Approval of the Procurement Policy

### Document(s) included in this note:

- Procurement Policy of CTAO ERIC

### Distribution:

Council (for approval), Administrative and Finance Committee (for information)  
Internal distribution after Council approval

### Purpose:

- (1) To adopt a Procurement Policy for CTAO ERIC as required by the CTAO ERIC Statutes

### Background information:

Pursuant to Art. 8.1 of the Statutes, the Procurement Policy shall provide “*detailed rules on procurement procedures and criteria and respect the principles of transparency, competition, proportionality, mutual recognition, equal treatment, non-discrimination and sustainability.*”

The proposed Procurement Policy was prepared based on those requirements and endorsed by the CTAO Board of Governmental Representatives.

The power to adopt the Procurement Policy of CTAO ERIC is conferred upon the Council by Art. 25.12(i) of the Statutes.

### Council Action Required:

The Council is invited to approve the proposed Procurement Policy Rules of CTAO ERIC.

<b>Proposed Resolution(s) to be voted:</b>	<b>Required Majority:</b>
<b>The Council adopts the proposed Procurement Policy of CTAO ERIC.</b>	Unanimous Vote



---

# **PROCUREMENT POLICY OF CTAO ERIC**

---

VERSION HISTORY				
VERSION	CREATED	APPROVED BY	REVISION DATE	CHANGE(S) IMPLEMENTED
V1	15.01.2025 Document endorsed by the BGR	Submitted to Council in its constitutional meeting		

## TABLE OF CONTENTS

<b>PREAMBLE</b> .....	6
<b>CHAPTER I: GENERAL PROVISIONS</b> .....	6
1. Scope .....	6
2. General Principles .....	6
3. Procurement Authority and Thresholds .....	6
4. Estimation of the value of contracts .....	7
5. Exclusions .....	7
6. Nationality Rule.....	7
7. Nationality Verification .....	8
8. Language .....	8
9. Currency.....	8
10. Conflict of Interest.....	8
<b>CHAPTER II: PROCUREMENT PROCEDURES</b> .....	9
11. General Provisions .....	9
12. Information on possible Forthcoming Procurement .....	9
13. Call for Tenders .....	10
14. Choice of Procurement Procedure .....	10
15. Open Procedure .....	10
16. Restricted Procedure.....	10
17. Competitive Procedure with Negotiation .....	11
18. Innovation Partnership.....	12
19. Direct Negotiation .....	13
<b>CHAPTER III: LOW VALUE PROCUREMENT</b> .....	14
20. General Provisions .....	14
21. Contracts estimated to be less than EUR 10,000 .....	14
22. Contracts estimated to be between EUR 10,000 and EUR 30,000 .....	14
23. Contracts estimated to be between EUR 30,001 and EUR 200,000 .....	14
<b>CHAPTER IV: PROCUREMENT ARRANGEMENTS</b> .....	15
24. Framework Agreements .....	15
25. Collaborative and Joint Procurement.....	16

<b>CHAPTER V: CONDUCT OF THE PROCEDURE</b>	16
26. Preliminary Market Consultations and prior involvement of suppliers	16
27. Technical Specifications	17
28. Exclusion Grounds	17
29. Qualification criteria	18
30. Reduction of number of candidates	19
31. Award criteria	19
32. Notice to reject a tender or to award a contract	20
33. Cancellation of a procurement procedure	21
34. Confidentiality	21
<b>CHAPTER VI: AUDIT</b>	21
35. General Audit	21
<b>CHAPTER VII: CONTRACT PERFORMANCE</b>	21
36. Contract Conditions	21
37. Subcontracting	22
38. Modification of Contract	22
<b>CHAPTER VIII: APPEAL</b>	22
39. Right of Appeal	23
40. Handling of the Appeal	23
<b>CHAPTER IX: FINAL PROVISIONS</b>	24
41. Reporting	24
42. Interpretation	24
43. Amendments	24
44. Entry into force	24

## DEFINITIONS

TERM	DEFINITION
AFC	The Administrative and Finance Committee that acts as advisory committee to the Council pursuant to Art. 27 of the CTAO ERIC Statutes.
Contributing Party	Any of the Members, Observers, Strategic Partners and Third Parties that joined CTAO ERIC and provide contributions in cash and/or in-kind to the construction and/or operation of the CTAO Observatory.
Member	A Member State of the European Union associated country as referred to in Regulation 723/2009 (ERIC Regulation), third country other than associated country or intergovernmental organisation that has joined CTAO ERIC.
Observer	A Member State of the European Union associated country as referred to in Regulation 723/2009 (ERIC Regulation), third country other than associated country or intergovernmental organisation that has joined CTAO ERIC as an Observer without voting rights.
Strategic Partner	Non-EU Member State or intergovernmental organisation that has signed a strategic partnership agreement (SPA) with CTAO ERIC and whose SPA results effective.
Third Party	Any physical or legal person willing to contribute to the construction and operation of the CTAO that has signed a Third-Party agreement with CTAO ERIC. Third Parties are not Members, Observers, Strategic Partners or their representing entities nor Research institutes or Organisations belonging to the aforementioned entities.

## 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, which establishes that “*An ERIC is an international organisation within the meaning of Article 15(c) of Directive 2004/18/EC*”;

Having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and in particular Article 9(1)(b) thereof, which establishes that “*this Directive shall not apply to public contracts and design contests which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those laid down in this Directive established by [...] an international organization*”;

Having regard to the Commission implementing decision (EU) of 07/01/2025 setting up the Cherenkov Telescope Array Observatory (CTAO) ERIC (hereafter CTAO ERIC) and in particular Article 8 of the CTAO ERIC Statutes (hereafter the “Statutes”);

The Council of CTAO ERIC adopts the following Procurement Policy.

## CHAPTER I: GENERAL PROVISIONS

### 1. Scope

- 1.1. The procurement policy applies to all contracts for pecuniary interest for the provision of goods, works or services, concluded between CTAO ERIC and a third party or parties, other than those exempted as per Article 5 of this policy.
- 1.2. Upon request by CTAO ERIC, ESO carries out procurements and establishes contracts for the construction of CTAO-South site. For these procurements, the ESO procurement procedures apply.

### 2. General Principles

- 2.1 According to Article 8 of the Statutes, the procedures for award of contracts by CTAO ERIC shall respect the principles of transparency, competition, proportionality, mutual recognition, equal treatment and non-discrimination.
- 2.2 While conducting procurement, CTAO ERIC shall seek to promote the objectives of best value for money, publicity, integrity, innovation, sustainability and social responsibility.

### 3. Procurement Authority and Thresholds

- 3.1. All procurements shall aim at performing the tasks and activities set out in Article 2 of the Statutes and shall be covered by a corresponding budget. An appropriate procedure to ensure this principle based on suitable approval steps and thresholds shall be defined in the Financial Rules of Procedure.

- 3.2. According to the Statutes, the Director General has the authority to approve transactions up to values that shall be defined in the Financial Rules. Transactions above the set values require approval by the Administrative and Finance Committee (AFC) as set out in the Financial Rules.

## 4. Estimation of the value of contracts

- 4.1. The estimated value of a procurement shall be based on the total amount payable, net of VAT, including any form of option and any renewal of the contract as explicitly set out in the procurement documents.
- 4.2. 4.2 With regard to framework agreements, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement.
- 4.3. 4.3 CTAO ERIC shall neither divide its procurement nor use a valuation method for estimating the value of procurement so as to limit competition among suppliers or to otherwise avoid its obligations under these Rules.
- 4.4. 4.4 Notwithstanding para. 4.2 above and provided that transparency and competition are preserved, CTAO ERIC might seek to subdivide contracts into separate lots, to facilitate market access opportunities for small and medium enterprises and to reduce the risk of over-dependency on one supplier.

## 5. Exclusions

- 5.1. The Procurement Policy does not apply to contracts:
- a) for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property;
  - b) for employment, secondment and personnel placement contracts;
  - c) for arbitration, conciliation or other legal services, including document certification and authentication services provided by notaries;
  - d) for the delivery of In-Kind contributions entered between CTAO ERIC and a delivering body, provided that the financing of such In-Kind contribution is through the budget of a Member, Observer, Strategic Partner or Third Party. For the purpose of this paragraph, it does not matter if the financing provided is done by way of a direct payment to the delivering body, or through a designated cash contribution to CTAO ERIC, which is transferred further to the delivering body;
  - e) for banking services and loans;
  - f) for educational services;
  - g) for hotel, accommodation and catering services;
  - h) for meeting and conference services;
  - i) for health and work environment related services; or
  - j) entered into between CTAO ERIC and the hosting institutions.

## 6. Nationality Rule

- 6.1. In general, participation in procurement activities managed by CTAO is open on equal terms to all natural or legal persons effectively established in the territory of:
- a) CTAO ERIC Members,



- b) CTAO ERIC Observers,
- c) CTAO ERIC Strategic Partners,
- d) CTAO ERIC Third Parties, and
- e) Member States of the European Union.

- 6.2. Natural of or legal persons established in States different from the ones included in the list under para. 6.1 above may also be invited to participate in a procurement activity, subject to the existence of one or/and more of the following conditions:
- the goods and services are not available in any of the eligible States,
  - companies in other States offer a more advanced technology or quality than firms from the listed eligible States, and/or
  - possibility to achieve significant financial or time savings.

## 7. Nationality Verification

- 7.1. For the purpose of verifying compliance with the nationality rule, the tender dossier will require tenderers and applicants being natural persons to state the country of which they are nationals. For legal persons, the tender dossier will require that the country in which they are effectively established is stated.
- 7.2. If CTAO ERIC suspects that a candidate/tenderer does not comply with the rule of nationality, it must ask the candidate/tenderer to provide evidence demonstrating actual compliance. In view to demonstrate the actual compliance with the "effective establishment" criteria, the legal person has to demonstrate that they are formed in accordance with the law of an eligible State and have their registered office, central administration or principal place of business within the territory of an eligible State.

## 8. Language

- 8.1 Generally, tender documents and correspondence as well as contract documents shall be in English, unless decided otherwise by CTAO ERIC where the following conditions are fulfilled: a) the decision is justified by the subject matter of the contract; and b) where, due to technical or geographical reasons, only domestic suppliers or contractors are likely to be interested in submitting tenders.
- 8.2 Responses to calls for tenders shall be in the language of the tender documents or in any other language permitted by the tender documents.
- 8.3 For procurement documents in languages other than English, requests for quotations and calls for tenders published on the CTA ERIC website shall always include a summary in English.

## 9. Currency

As a rule, CTAO ERIC shall ask suppliers to submit tender quotes in EUR.

## 10. Conflict of Interest

- 10.1 CTAO ERIC shall take appropriate measures to effectively identify, prevent and remedy conflicts of interest arising from the conduct of the procurement so as to ensure integrity, equal treatment of all suppliers and tenderers and to avoid any distortion of competition.

- 10.2 For the purpose of this policy, a conflict of interest shall, at the least, be deemed to arise in any situation where a relevant staff member of CTAO ERIC 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.

## **CHAPTER II: PROCUREMENT PROCEDURES**

### **11. General Provisions**

- 11.1 The provisions under this article shall apply to contracts with an estimated value of EUR 200,000 and above.
- 11.2 The procurement documents shall be free of charge and accessible to suppliers from the date of publication of a call for tenders.
- 11.3 In some cases due to the subject matter of the contract, the tender documents may not be made available by means of the Internet, potential suppliers may request the delivery of the tender documents, in which case CTAO ERIC shall provide the tender documents within five (5) working days of receipt of such request, provided such request was made at least five (5) working days before the time limit for receipt of tenders or request to participate.
- 11.4 In the case referred to in para. 11.3 above, the time limits for the receipt of tenders referred to in Articles 15 to 18 shall be extended by five (5) days.

### **12. Information on possible Forthcoming Procurement**

- 12.1 CTAO ERIC shall, where possible, publish information regarding future procurement activities.
- 12.2 CTAO ERIC may also publish a Procurement Advance Notice (PAN) of a future procurement being planned. A PAN shall include information relevant to the procurement and must be sufficiently precise, insofar as that information is available to CTAO ERIC, to enable suppliers to identify the nature and scope of the future procurement.
- 12.3 Where, in relation to contracts with a value exceeding EUR 200,000, a PAN is published between 30 days and 12 months in advance of the publication of a call for tenders, and the conditions in para. 12.4 below are met, the time limit for submitting a request to participate or for the submission of a tender may be shortened in accordance with Articles 13 to 16.
- 12.4 For the purpose of para. 12.3 above, a PAN shall include the following information, insofar as that information is available at the time the PAN is published:
- 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) estimated date for the performance of the contract;
  - c) estimated time frame for the publication of a call for tenders in respect of the contract referred to in the PAN;
  - d) any other information that may be relevant in the circumstances.

- 12.5 Any publication in accordance with this Article does not constitute a call for tenders and does not confer any rights on suppliers or tenderers.

## 13. Call for Tenders

- 13.2 CTAO 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 19.
- 13.2 The information provided with the call for tenders shall be sufficiently precise so as to enable suppliers to identify the nature and scope of the procurement. CTAO ERIC shall set out their needs and requirements as well the chosen award criteria and indicative timeframe in the tender documents.
- 13.3 A call for tenders (CfT) shall be published, as a minimum, via the Internet on the CTAO ERIC's website in the designated area accessible to suppliers. Depending on the subject matter and the value of the contract, CTAO ERIC may publish the call for tenders in additional media to ensure transparency and competition, including – where appropriate – the Industry Liaison Officers' network and the Supplement to the Official Journal of the European Union.

## 14. Choice of Procurement Procedure

- 14.1 CTAO ERIC shall organise the procurement procedure leading to the award of a contract in accordance with any one of the procedures described in Articles 15 to 18, provided that a call for tenders has been made in accordance with Article 13.
- 14.2 The choice of the procurement procedure shall be made taking into account the specific circumstances of the procurement, the nature of the goods, services, or works being procured, their degree of innovativeness and complexity, as well as the relevant market. The procedure shall be selected in such a way as to best ensure the fulfilment of the objectives and principles set forth in Article 2.

## 15. Open Procedure

- 15.1 Upon publication of a call for tenders, any interested supplier may submit a tender in response.
- 15.2 The minimum time limit for receipt of tenders shall be reasonable and proportionate to the subject matter of the contract and consist of at least twenty (20) days from the date on which the call for tenders was published. For contracts where no PAN was published in accordance with Article 12, the minimum time limit for receipt of tenders shall be at least thirty (30) days.
- 15.3 CTAO ERIC shall assess the tenders submitted on the basis of the award criteria set out in the tender documents and in line with Article 31.

## 16. Restricted Procedure

- 16.1 Upon publication of a call for tenders, any interested supplier may submit a request to participate.

- 16.2 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 shall comply with Article 30 and shall be published with the call for tenders.
- 16.3 The minimum time limit for receipt of a request to participate in response to a restricted call for tenders shall be at least twenty (20) days. For contracts where no PAN was published, the minimum time limit for receipt of a request to participate shall be at least thirty (30) days.
- 16.4 Only those suppliers invited to do so by CTAO ERIC following the qualitative assessments 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 two.
- 16.5 The minimum time limit for the receipt of tenders shall be reasonable and proportionate to the subject matter of the contract and consists of at least twenty (20) days. For contracts where no PAN was published, the minimum time limit for the receipt of tenders shall be at least thirty (30) days.
- 16.6 CTAO ERIC shall assess the tenders submitted based on the award criteria set out in the tender documents and in line with Article 31.

## 17. Competitive Procedure with Negotiation

- 17.1 Upon publication of a call for tenders, any interested supplier may submit a request to participate.
- 17.2 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 shall comply with Article 30 and shall be published with the call for tenders.
- 17.3 In addition to para. 17.2 above, the call for tenders may also require the submission of an initial tender, which shall be the basis for the subsequent negotiations.
- 17.4 The minimum time limit for receipt of a request to participate shall be at least twenty (20) days, or, for contracts where no PAN was published, at least thirty (30) days.
- 17.5 Following the qualitative assessment of the information provided in response to the call for tenders, only those suppliers invited to do so by CTAO ERIC may take part in the negotiations. Where the call for tender is made in accordance with para.s 17.1 and 17.2 above, the invitation to negotiate may be accompanied by a requirement to submit an initial tender, which shall form the basis for such negotiations. The number of tenderers invited to take part in the negotiations shall be at least two.
- 17.6 CTAO ERIC shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tenders, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

17.7 CTAO ERIC may award contracts based on the initial tenders without negotiation where it has indicated, in the contract notice or in the invitation to confirm interest, that it reserves the possibility of doing so.

17.8 During the negotiations, CTAO ERIC shall ensure equal treatment for all tenderers. To that end, CTAO ERIC shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. CTAO ERIC shall inform all tenderers, whose tenders have not been eliminated pursuant to para.17.6 above, in writing of any changes to the technical specifications or other procurement documents, other than those setting out the minimum requirements. Following those changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

CTAO ERIC shall not reveal to the other participants confidential information communicated by a candidate or a tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

17.9 Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified.

## 18. Innovation Partnership

18.1 CTAO ERIC might identify the need for an innovative product, service or work that cannot be met by purchasing products or services already available on the market. In this case, it may set up an innovation partnership, following the steps indicated in the next paragraphs.

18.2 Pre-qualification. Any supplier may submit a request to participate in response to a contract notice, which shall indicate the minimum requirements to be met.

In selecting candidates, CTAO ERIC shall apply criteria concerning the suppliers' capacity in the field of R&D and in developing and implementing innovative solutions.

Following the assessment of the information provided, only those suppliers invited to do so by CTAO ERIC may participate in the subsequent steps of the procedure.

18.3 Submission. The suppliers invited may submit research and innovation projects, aimed at meeting the needs identified by CTAO ERIC that cannot be met by existing solutions.

18.4 Negotiations. CTAO ERIC shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender. The minimum requirements and the award criteria shall not be subject to negotiations.

Negotiations may take place in successive stages to reduce the number of tenders, provided that the use of such option has been foreseen in the procurement documents.

- 18.5 Award. The contract shall be awarded on the sole basis of the best price-quality ratio criterion. CTAO ERIC may decide to set up an innovation partnership with one or several partners conducting separate R&D activities.

The innovation partnership shall aim at the development of an innovative product or service and the purchase of the resulting supplies or services, if they correspond to the performance levels and maximum costs agreed with the participants.

- 18.6 Phases. The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products or the provision of the services. It shall set intermediate targets to be attained and provide for payment of the remuneration in appropriate instalments.

After each phase, CTAO ERIC may decide to terminate the innovation partnership or, in the case of several partners, to reduce their number by terminating individual contracts, provided that it has indicated in the procurement documents those possibilities and the conditions for their use.

- 18.7 CTAO ERIC shall ensure that the structure of the partnership and the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.
- 18.8 In the procurement documents, CTAO ERIC shall define the arrangements applicable to intellectual property rights.
- 18.9 In case of an innovation partnership with several partners, CTAO ERIC shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner, without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

## 19. Direct Negotiation

- 19.1 In the specific cases and circumstances laid down in this Article, CTAO 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 32 shall not be applicable.
- 19.2 CTAO ERIC may award contracts following the procedure under this Article in the following circumstances:
- a) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
    - the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
    - competition is absent for technical reasons;
    - the protection of exclusive rights, including intellectual property rights.
  - b) 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 tender documents are not substantially altered, and that the original exclusion and selection criteria are maintained and that no more than one year has elapsed since the publication of the original call for tenders;

- c) for research and development contracts which are performed by non-commercial entities solely for purpose of research, testing, experimentation, study or development in connection with the mandate of CTAO ERIC, provided that the contract does not include quantity production to establish commercial viability or for recovering general research and development costs;
- d) in circumstances of extreme urgency, as declared by the Director General, due to events unforeseeable by CTAO ERIC and not attributable to it and where the time limits in Articles 15, 16 and 17 cannot be complied with;
- e) for additional deliveries by the original supplier where a change of supplier would oblige CTAO 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-related reasons;
- g) for the procurement of second-hand equipment at particularly advantageous terms; or
- h) for contracts at particularly advantageous terms from a supplier which is winding up business activities, or from receivers or liquidators of a bankruptcy, an agreement with creditors, or similar procedures.

## **CHAPTER III: LOW VALUE PROCUREMENT**

### **20. General Provisions**

The provisions under this Chapter shall only apply to contracts and framework agreements with an estimated value of up to EUR 200,000, which do not fall under one of the exemptions listed in Article 5.

### **21. Contracts estimated to be less than EUR 10,000**

For contracts with an estimated value of less than EUR 10,000, CTAO ERIC may award the contract by way of direct negotiations with one or more suppliers, without prior publication of a contract notice. the Council and the Chair of the AFC as well as representatives of Contributing Parties in connection with specific tasks assigned to them by the Council.

### **22. Contracts estimated to be between EUR 10,000 and EUR 30,000**

22.1 For contracts with an estimated value between EUR 10,000 and EUR 30,000, CTAO ERIC shall ensure limited competition through requests for quotation and price comparison.

22.2 CTAO ERIC shall ensure that best-value-for-money is obtained.

### **23. Contracts estimated to be between EUR 30,001 and EUR 200,000**

23.1 For contracts with an estimated value of between EUR 30,001 and EUR 200,000, CTAO ERIC may publish the contract opportunity on the CTAO ERIC's website in a designated area accessible to suppliers. Publication under this Article does not constitute a call for tender in accordance with Article 11.



- 23.2 CTAO ERIC may also maintain a suppliers database, from which it shall seek requests for proposals. The suppliers' database shall be subject matter specific, easily defined on the basis of purchases made under the category concerned.
- 23.3 CTAO ERIC shall ensure appropriate competition by inviting at least three (3) suppliers to submit proposals.
- 23.4 Where, for objective reasons, the number of suppliers available to respond to the publication or to the request for quotation is less than three (3), CTAO ERIC shall seek to ensure an optimal level of competition in the circumstances.
- 23.5 For planned procurements with an estimated value of EUR 30,000 to EUR 200,000, CTAO ERIC shall notify the Industrial Liaison Office (ILOs) at least three (3) weeks in advance of opening the Request for Quotation for selected suppliers to give the ILOs the chance to provide CTAO ERIC with suitable suppliers that can be added to the invitee list. In cases of extreme urgency, safety-related or unforeseen circumstances, CTAO ERIC and the ILOs can agree on a shorter notification period.

## **CHAPTER IV: PROCUREMENT ARRANGEMENTS**

### **24. Framework Agreements**

- 24.1 CTAO ERIC may conclude framework agreements, if they apply the procedures set forth in this policy.  
A framework agreement means an agreement between CTAO ERIC and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, regarding price and, where appropriate, the quantity envisaged.
- 24.2 The term of a framework agreement shall not exceed four (4) years, save in exceptional cases duly justified by the subject of the framework agreement.
- 24.3 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.
- 24.4 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, orders shall be placed without reopening the competition. Conditions for placing the order shall be stipulated in the original tender documents or in the framework agreement.
- 24.5 Notwithstanding para. 24.4 above, CTAO ERIC reserves the right to reopen competition amongst suppliers who are party to the framework agreement provided that the choice of whether to reopen competition is reasonable given the circumstances at hand and that the award criteria used are objective, communicated to tenderers in advance, and relate to the subject matter of the specific contract.
- 24.6 Where a framework agreement is concluded with more than one supplier, the CTAO ERIC may award a contract to one supplier for which not all the terms and conditions are laid down in the framework agreement provided that:



- a) The initial tender documents stipulated that competition amongst suppliers who are party to the framework may be reopened for the award of specific contracts;
- b) The specific contract is awarded following competition; and
- 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.

24.7 CTAO ERIC shall not misuse a framework agreement to prevent, restrict or distort competition.

## **25. Collaborative and Joint Procurement**

25.1 CTAO ERIC may award a contract or conclude a framework agreement jointly or in collaboration with other contracting authorities in the Host Countries or in other countries.

25.2 When acting in collaborative procurement with other contracting authorities that are subject to other procurement procedures pursuant to Directive 2014/24/EU, or international rules, CTAO ERIC may choose to organise the joint or collaborative procurement in accordance with such other procurement procedures.

25.3 CTAO ERIC may enter a contract or establish a framework agreement for use by other contracting authorities, provided that it has clearly identified, by name or by category, those contracting authorities entitled to rely on the contract or framework agreement in the call for tenders and tender documents.

25.4 Where one or more of the contracting authorities mentioned in para. 25.3 above are subject to other procurement procedures pursuant to Directive 2014/24/EU or international rules, CTAO ERIC may organise the award of the contract or the framework agreement in accordance with such other procurement procedures.

## **CHAPTER V: CONDUCT OF THE PROCEDURE**

### **26. Preliminary Market Consultations and prior involvement of suppliers**

26.1 CTAO ERIC may conduct a market survey or a prior consultation to plan the conduct of procurement, prepare the tender documents and inform the market on forthcoming procurement plans.

26.2 CTAO ERIC may engage external independent experts or market participants, provided this does not have the effect of distorting competition.

26.3 Where a supplier or an undertaking related to it has advised CTAO ERIC or has otherwise been involved in the preparation of the procurement procedure, CTAO ERIC shall take appropriate measures to ensure that competition is not distorted by the participation of that supplier.

26.4 CTAO ERIC may exclude a supplier if it has grounds to conclude that the prior involvement of that supplier in the procurement process is capable of distorting competition or compromising the integrity of the procedure.

- 26.5 Such measures shall include the communication to the other suppliers of relevant information exchanged in the context of the involvement of the supplier in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The supplier concerned shall only be excluded where there are no other means to ensure compliance with the principle of equal treatment.

## 27. Technical Specifications

- 27.1 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.
- 27.2 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 result in unfair discrimination.
- 27.3 Where relevant to the subject matter of the contract, technical specifications shall be drawn up so as to promote the objectives of innovation, sustainability and social responsibility.
- 27.4 Technical specifications may refer to a specific make or source, or a particular process that characterizes the products or services provided by a specific supplier only if they allow an equivalent solution to be proposed and is accompanied by the words “or equivalent”.

## 28. Exclusion Grounds

- 28.1 CTAO ERIC may treat as ineligible and may choose not to invite a supplier to tender or award a contract to a supplier if it has actual knowledge that the supplier or any other person who has powers of representation, decision, or control of the supplier:
- a) has been convicted of any of the following offenses in the last three years: participation in criminal organisations and illegal cartels; corruption; fraud; money laundering; terrorist offenses or offences linked to terrorist activities; child labour or other forms of illegal trafficking in human beings;
  - b) has failed to comply with applicable environmental, social or labour laws in the last three years;
  - c) is guilty of grave professional misconduct, which renders the supplier's integrity questionable;
  - d) is involved, or has been involved in the last three years, in collusion; or where CTAO ERIC has actual knowledge of the existence of any of the following circumstances:
  - e) a conflict of interests affecting the supplier or tenderer that cannot be remedied by other means than exclusion;
  - f) an unfair advantage that may distort competition as a result of the prior involvement of the supplier or tenderer in the preparation of the procurement process;
  - g) significant, documented and notified previous deficiencies in the performance of prior contracts awarded by CTAO ERIC;
  - h) serious misrepresentation while supplying information required as part of a tender procedure; or

- i) where the supplier or tenderer is bankrupt, or is the subject of insolvency or where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations.

- 28.3 At any time during the procurement procedure, CTAO ERIC may exclude a supplier or a tenderer where, due to new information brought to light, it becomes aware that the supplier or tenderer is in one of the situations referred to in para. 28.1 (a)-(i) above or for other exclusion grounds specified in the procurement documents.
- 28.3 CTAO ERIC may request that official registers, certificates, statements, and other means of proof are submitted as evidence against grounds for exclusion in accordance with para. 28.1 above.
- 28.4 A supplier that is in one of the situations referred to in para. 28.1 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 that possible admission to the procurement procedure be examined.
- 28.5 Such compliance measures may particularly include 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.
- 28.6 The compliance measures taken by the supplier shall be evaluated by CTAO ERIC, considering the circumstances of the offence or misconduct. CTAO ERIC shall give the supplier a statement of the reasons for its decision if it considers the compliance measures taken to be insufficient. Such decision shall be made at the sole discretion of CTAO ERIC.

## 29. Qualification criteria

- 29.1 CTAO ERIC may impose criteria on economic operators as requirements for participation in a procurement procedure. Such selection criteria shall be limited to those that are appropriate to ensure that a tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be non-discriminatory and proportionate to the subject-matter of the contract and shall be set out in the contract notice or documents made available to suppliers.
- 29.2 Regarding suitability to pursue professional activity, CTAO ERIC may require economic operators to be enrolled in one of the professional or trade registers kept in their Member State of establishment.

In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, CTAO ERIC may require them to prove that they hold such authorisation or membership.

- 29.3 Regarding economic and financial standing, CTAO ERIC may impose requirements ensuring that economic operators possess the necessary economic and financial

capacity to perform the contract. For that purpose, CTAO ERIC may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, it may require that economic operators provide information on their annual accounts showing the ratios, for instance, between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance.

The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services, or supplies.

Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, CTAO ERIC may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots if the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement shall be calculated based on the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement.

29.4 Regarding technical and professional ability, CTAO ERIC may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

CTAO ERIC may require that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past. CTAO ERIC may assume that an economic operator does not possess the required professional abilities where it has been established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

In procurement procedures for supplies requiring site preparation or installation work, services or works, the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated regarding their skills, efficiency, experience, and reliability.

29.5 CTAO ERIC shall indicate the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

## 30. Reduction of number of candidates

Where relevant and appropriate, CTAO ERIC may make recourse to a two-step procedure, with a pre-qualification stage, in order to reduce the number of candidates to be invited to submit tenders or to negotiate.

## 31. Award criteria

31.1 CTAO ERIC shall base the award of contracts on the most advantageous tender, which shall be identified based on objective criteria in accordance with the principles set out in Article 2.

31.2 The criteria referred to in Art. 31 para. 31.1 shall be the price or cost, using a life-cycle costing approach, and may include the best price-quality ratio, which shall be

assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the contract and shall not confer an unrestricted freedom of choice on CTAO ERIC.

32.3 Such criteria may comprise, for instance:

- a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- b) organisation, qualification, and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

CTAO ERIC may not use price only or cost only as the sole award criterion or restrict their use to certain types of contracts.

## 32. Notice to reject a tender or to award a contract

32.1 CTAO ERIC shall send a notice to tenderers who were excluded pursuant to Article 28 or failed to meet the selection criteria pursuant to Article 29. The notice shall be sent as soon as possible after a decision has been made and include the reasons why the tenderer was unsuccessful in meeting those criteria.

32.2 Prior to entering into a contract or concluding a framework agreement, CTAO ERIC shall send all unsuccessful tenders who have not been informed of their rejection pursuant to paragraph 1 above, a notice communicating its decision. The identity of awarded tenderer(s) or the tenderer(s) selected for the next stage in a tender procedure conducted in several stages (i.e., restricted, or competitive with negotiation, innovation partnership and competitive dialogue) will remain confidential until the award decision.

32.3 The notice referred to in para. 32.2 shall include:

- a) the criteria used for the award of the contract;
- b) the name of the tenderer or tenderers to be awarded the contract or to become a party to the framework agreement;
- 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 or to become a party to the framework agreement; and
- d) where paragraph 32.4 below is applicable, the earliest date CTAO ERIC intends to enter into the contract or to conclude the framework agreement.

32.4 For contracts covered under Chapter 2 (with the exception of contracts awarded based on the procedure without publication of Article 19) CTAO ERIC must not enter into the contract or conclude the framework agreement before the end of a standstill period.

The standstill period shall end at midnight at the end of the 10th day following the date of the notice, which means the date on which the notice was sent and which for the purpose of calculating the standstill period shall be counted as the first day.

32.5 For contracts falling under Chapter 3, the decision of whether to follow the provisions of this Article shall be at CTAO ERIC's discretion.

### 33. Cancellation of a procurement procedure

33.1 CTAO ERIC may decide to cancel a procurement procedure at any time before entering into a contract, provided that such decision is in conformity with the principles set out in Article 2.

33.2 For procurement procedures conducted in accordance with Articles 16 to 18, CTAO ERIC shall cancel the procedure in the event no or only one supplier has qualified to submit a tender.

33.3 CTAO ERIC shall inform all tenderers of its decision within a reasonable time.

33.4 Participation in a tender procedure that has been cancelled shall not give rise to any right to compensation for foregone profits or costs incurred by suppliers or tenderers.

### 34. Confidentiality

34.1 In its communications with suppliers or any other third party, CTAO ERIC shall not disclose any information if the non-disclosure of such information is necessary for the protection of essential interests of CTAO ERIC.

34.2 CTAO ERIC shall not disclose information communicated to it by a supplier or a tenderer that has been reasonably designated by that supplier or tenderer as confidential and that, according to CTAO ERIC 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.

## CHAPTER VI: AUDIT

### 35. General Audit

The Director General shall appoint an internal auditor, who shall be independent from the CTAO ERIC's procurement function, to conduct an annual review of procurements against the procurement policy of CTAO ERIC. The auditor shall provide a written report of its findings.

## CHAPTER VII: CONTRACT PERFORMANCE

### 36. Contract Conditions

36.1 CTAO ERIC may require compliance with obligations in the fields of environmental, social, tax and employment law that apply at the place of execution of the works or provision of the services, in addition to obligations resulting from laws, regulations, decrees, collective agreements and decisions applicable in the relevant Host State.

- 36.2 CTAO ERIC may also require additional stipulations relating to the performance of the contract, concerning innovation-related, environmental, social or employment-related considerations, or financial penalties in the event of non-performance or non-compliance with the contractual terms.

### 37. Subcontracting

- 37.1 Tenderers must indicate in their tenders any share of the contract that may be subcontracted to third parties and the identity of such proposed subcontractors.
- 37.2 CTAO ERIC may exclude subcontractors, subject to conditions indicated in Articles 28 and 29, in which case it may require a tenderer to replace those subcontractors so identified.

### 38. Modification of Contract

- 38.1 Contracts may be modified during their term only if one or more of the following conditions are fulfilled:
- a) the modification is not substantial within the meaning of para. 38.2 below;
  - b) 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) 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) additional works, services or supplies by the same contractor have become necessary or the modification has become necessary due to unforeseen and urgent circumstances related to technical and economic reasons and the replacement of the contractor is not possible or would result in a significant increase of costs or substantial delays for CTAO ERIC. In any event, the increase in the value of the contract due to such modification - or successive modifications - must not exceed 50% of the value of the original contract; or
  - e) the value of the modification (either in terms of price or risk allocation) is below 25% of the original contract, provided the modification does not change the main objectives of the initial procurement.
- 38.2 A substantial modification is any modification that:
- a) could 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; or
  - d) considerably changes the economic balance of the contract in favour of the contractor.

## CHAPTER VII: APPEAL



### 39. Right of Appeal

- 39.1 Subject to para. 2 below, any supplier or tenderer who suffered or risks suffering loss or damage due to breach of these rules, may appeal a procurement decision taken by CTAO ERIC.
- 39.2 The tenderer shall mandatorily previously submit the complaint to the CTAO ERIC Director General, in order to clarify the issue and identify an eventual solution, within ten (10) days from the day on which the tenderer knew or ought to have known the grounds for the appeal and in any event no later than three (3) months from the date when the grounds for submitting the appeal first arose.
- 39.3 If no solution has been identified, the tenderer may submit the appeal to the CTAO-ERIC's Tender Appeal Board, within ten (10) days from the day on which the tenderer was communicated the outcome of the procedure described in para. 2 above.
- 39.4 The Tender Appeal Board shall be appointed by the Director General and composed of at least three (3) and no more than five (5) competent members of the CTAO ERIC's staff and/or external parties, chaired by a person who is legally qualified and competent in the field of public procurement. The members of the Tender Appeal Board shall be independent of CTAO ERIC's procurement Division or any relevant staff member in accordance with Article 10.
- 39.5 The Tender Appeal Board may appoint an ad-hoc internal auditor, independent from the CTAO ERIC's procurement function, in relation to a specific procurement procedure. The auditor shall provide its report in writing to the Tenders Appeal Board within fourteen (14) days of its appointment.
- 39.6 In exceptional circumstances, the Tender Appeal Board may extend the time limit set out in paragraph 2 above, where it considers that there are compelling reasons for doing so. However, no such extension of the time limit shall be granted to permit an appeal to be reviewed more than three (3) months from the date when the grounds for submitting that appeal first arose.

### 40. Handling of the Appeal

- 40.1 If the Tender Appeal Board considers that a decision taken by the CTAO ERIC infringes this Procurement policy, it shall order that the tender procedure or parts of it be rectified, or it shall grant any other remedy that would be adequate and reasonable in the circumstances. Where no infringement is considered to have taken place, the Tender Appeal Board shall reject the appeal.
- 40.2 The Tenders Appeal Board may issue an order suspending the procurement procedure or the contract award until its final decision.
- 40.3 For investigating an appeal, the Tenders Appeal Board may order that an audit be conducted in accordance with Article 35 paragraph 2 prior to taking its decision.
- 40.4 The Tender Appeal Board shall notify the appellant in writing of its final decision within thirty (30) working days from the date of receipt of the appeal. Such notification shall state the grounds on which the decision is based. In case of rejection of the appeal, the CTAO ERIC may proceed with the award notice.



## **CHAPTER VII: FINAL PROVISIONS**

### **41. Reporting**

41.1 CTAO ERIC shall monitor its procurement activities with the aim of preparing and submitting annual reports to the CTAO ERIC Council and to the Administrative and Finance Committee.

41.2 The monitoring of CTAO procurement activities will involve the collection and analysis of data for quantitative and qualitative purposes. For example, the first purpose will cover statistical data's comparison with data collected during previous reporting periods and the geographical distribution of procurement activities; the second will be related to the implementation of the principles of transparency, competitiveness and equal treatment.

### **42. Interpretation**

The provisions of this Policy shall be interpreted in the light of the relevant principles of the European Union legislation.

### **43. Amendments**

Any amendment to the Procurement Policy shall require the approval of the Council by unanimous vote following the recommendation of the Administrative and Finance Committee.

### **44. Entry into force**

The Procurement Policy shall enter into force on the date of approval by the Council of CTAO ERIC.