



LifeWatch ERIC Procurement Rules

As adopted by the seventh LifeWatch ERIC General Assembly on 20 October 2020

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PREAMBLE

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

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

Having regard to Commission Implementing Decision (EU) 2017/C of 22 March 2017 setting up the e-Science and Technology European Infrastructure for Biodiversity and Ecosystem Research — European Research Infrastructure Consortium (LifeWatch ERIC).

Whereas:

LifeWatch ERIC considers it desirable to regulate procurement so as to promote, among others, the principles of transparency, non-discrimination and competition.

The General Assembly of LifeWatch ERIC has adopted these procurement rules:

GENERAL PROVISIONS

Article 1

Definitions

"LifeWatch ERIC" means the e-Science and Technology European Infrastructure for Biodiversity and Ecosystem Research — European Research Infrastructure Consortium established by Commission Implementing Decision (EU) 2017/C of 22 March 2017.

"contract" means a contract for pecuniary interest for the purchase of goods, works or services, concluded in writing between LifeWatch ERIC and a third party or parties.

"contractor" means a party who has been awarded and entered into a contract with LifeWatch ERIC.

"contract notice" means the publication of a contract opportunity on a designated area accessible to suppliers on LifeWatch ERIC's website.

"days" means calendar days, unless otherwise indicated.

"CEO" means the Chief Executive Officer of LifeWatch ERIC in accordance with Article 9 of the statutes.

"framework agreement" means an agreement with one or more suppliers, the purpose of which is to establish the terms governing specific contracts to be awarded during a given period, in particular with regard to price, technical aspects and, where appropriate, quantity envisaged.

"host state" means Spain, where LifeWatch ERIC has its statutory seat.

"statutes" means the statutes of LifeWatch ERIC.

"supplier" means any natural or legal person, a public entity or group of such persons and/or entities, which offer the execution of works, supply of products or services on the market.

Article 2

Scope

1. These procurement rules apply to contracts that are financed, for the most part, by LifeWatch ERIC's budget and are carried out by LifeWatch ERIC or on behalf of LifeWatch ERIC.

Article 3

General principles

1. The award of contracts by LifeWatch ERIC shall respect the principles of transparency, non-discrimination, competition and best value for money.
2. Relevant staff members of LifeWatch ERIC shall take appropriate measures to effectively identify, prevent and remedy conflicts of interest arising from or during the conduct of the procurement so as to ensure integrity and equal treatment of all suppliers.

Article 4

Estimation of the value of contracts

1. The estimated value of a procurement shall be based on the total amount payable over the duration of the contract, net of VAT, as estimated by LifeWatch ERIC, including any forms of options and renewals, taking into account all forms of remuneration.
2. Unless objectively justified by the specific circumstances of the contract, LifeWatch ERIC shall neither divide its procurement nor use a particular valuation method for estimating the value of the procurement so as to limit competition among suppliers or to otherwise avoid its obligations under these rules.
3. Notwithstanding paragraph (2) and provided that transparency and competition are preserved to the extent possible, LifeWatch ERIC may seek to subdivide contracts into separate lots to facilitate market access opportunities for small and medium sized enterprises and to reduce the risk of over dependency on one supplier.

Article 5

Exclusions

1. These procurement rules do not apply to contracts:
 - a. with a value of less than EUR 10,000;
 - b. for the acquisition or rental of land, buildings, offices or other immovable property;
 - c. for employment, secondment and personal placement contracts;
 - d. for arbitration, conciliation or other legal services;
 - e. for banking services and loans;
 - f. for hotel and accommodation services;
 - g. for health and work environment related services;
 - h. entered into between LifeWatch ERIC and representing entities;
 - i. are awarded in extreme urgency due to external and unforeseeable circumstances not attributed to LifeWatch ERIC;
 - j. in the absence of competition for technical reasons or due to exclusive rights including intellectual property rights, where no reasonable alternatives are available;

- k. where only one or no suitable suppliers have been submitted in response to a contract notice issued in the past 12 months, provided that the initial conditions of the contract are not substantially altered;
 - l. for additional deliveries by the original supplier where a change of supplier would oblige LifeWatch ERIC to acquire supplies or services having different characteristics which would result in incompatibility or disproportionate technical difficulties in operation, maintenance or application;
2. In the circumstances referred to under paragraph (1) LifeWatch ERIC may award the contract by way of direct negotiations with one or more suppliers, without prior publication of a contract notice.

CONDUCT OF THE PROCUREMENT

Article 6

Procurement procedures

1. LifeWatch ERIC shall have the freedom to organise the procurement procedure leading to the award of a contract in the way it deems fit, subject to compliance with these rules.
2. For contracts with an estimated value of between EUR 10,000 and EUR 50,000, LifeWatch ERIC shall, at minimum, ensure appropriate competition by sending requests for quotations to at least three suppliers. Where, for objective reasons, the number of suppliers available to respond to the request for quotation is less than three, LifeWatch ERIC shall seek to ensure an optimal level of competition in the circumstances.
3. For contracts with an estimated value equal to or above EUR 50,000 LifeWatch ERIC shall make known its intention to conduct a new procurement by means of a contract notice, unless the circumstances justify direct negotiations in accordance with Article 5 are met. Depending on the subject matter and the value of the contract, LifeWatch ERIC may also publish the contract opportunity in additional media to ensure transparency and competition, including, where appropriate and in LifeWatch ERIC's sole discretion, the Official Journal of the European Union.
4. The information provided with the contract notice shall be sufficiently precise as to enable suppliers to identify the nature and scope of the procurement. In particular, the contract notice shall include the following information:
 - a. description of the procurement including the nature and extent of works, nature and quantity or value of supplies, nature and extent of services, as applicable;
 - b. deadline for submission of proposals;
 - c. award criteria used for the assessment of proposals;
 - d. where relevant, qualification criteria used to short-list suppliers in accordance with Article 10;
 - e. where relevant, estimated time frame for the performance of the contract in accordance with Article 11;

- f. any other information that may be relevant in the circumstances.
5. When fixing the time limits for the receipt of proposals, LifeWatch ERIC shall take account of the complexity of the contract and the time required for preparing proposals by suppliers.

Article 7

Collaborative and joint procurement

1. LifeWatch ERIC may award a contract jointly or in collaboration with other entities in the host state or in other countries.
2. When engaging in a collaborative procurement with entities subject to national law implementing the EU directives on public procurement, LifeWatch ERIC may choose to organise the joint or collaborative procurement in accordance with that national law where such entity or entities are located. In such cases, LifeWatch ERIC will be deemed to have complied with these procurement rules.
3. When engaging in a collaborative procurement with other ERICs, or with international organisations who have adopted their own procurement procedures, LifeWatch ERIC may choose to organise the joint or collaborative procurement in accordance with such other procurement rules. In such cases, LifeWatch ERIC will be deemed to have complied with these procurement rules.
4. LifeWatch ERIC may enter into a contract that has been procured and set up centrally by another entity referred to in paragraphs (2) and (3), provided that LifeWatch ERIC was identified, by name or by category, as a relevant entity entitled to rely on the contract in the call for tenders and/or in the tender documents issued by the other central procurement entity.

Article 8

Framework agreements

1. LifeWatch ERIC may award a framework agreement and in such a case all references to a contract under these rules should be read as including a framework agreement, except where the context requires otherwise.
2. The duration of the framework agreement shall be reasonable and justified by the subject matter of the contract and shall not exceed 5 years, save for exceptional circumstances duly justified.
3. Where a framework agreement is concluded with more than one supplier, specific contracts shall be awarded on the basis of objective criteria and if appropriate, they may be awarded by way of an additional competition amongst the suppliers that are party to the framework agreement.
4. LifeWatch ERIC shall not misuse a framework agreement in order to prevent, restrict or distort competition.

Article 9

Technical specifications

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 contract notice or in accompanying documents made available to suppliers.
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.
3. Technical specifications shall not refer to a specific make or source, or a particular process that characterises the products or services provided by a specific supplier with the effect of favouring or eliminating certain suppliers or certain products. When a reference to a specific make or source cannot be objectively avoided in order to describe the subject matter of the contract, it shall be accompanied by the words "or equivalent".

Article 10

Qualification

1. Where relevant and appropriate, LifeWatch ERIC may establish objective criteria for the exclusion and qualification of suppliers, which may also be used to reduce the number of suppliers that will be invited to submit final tenders or to negotiate a contract. Such objective criteria shall be non-discriminatory and proportionate to the subject-matter of the contract and be set out in the contract notice or accompanying documents made available to interested suppliers.
2. LifeWatch ERIC may request suppliers to submit self-declarations or relevant information and documentation in accordance with the objective criteria established under paragraph (1) for the exclusion and qualification specified in the contract notice or accompanying documents. For this purpose, LifeWatch may also rely on, and require suppliers to make use of the European single procurement document (ESPD) service.

Article 11

Award criteria

1. Contracts shall be awarded on the basis of objective award criteria which comply with the principles set out in Article [3] and which ensure that proposals are assessed, to the extent possible, in conditions of effective competition.
2. The award criteria shall be linked to the subject-matter of the contract and shall not confer an unrestricted freedom of choice on LifeWatch ERIC.

Article 12

Confidentiality

1. In its communication with suppliers or any other third party in connection to a procurement, LifeWatch ERIC shall not be obliged to disclose any information which may jeopardise the protection of essential interests of LifeWatch ERIC.
2. LifeWatch ERIC shall not disclose information communicated to it by a supplier or a contractor that has been reasonably designated by that supplier or a contractor as confidential and that, according to LifeWatch ERIC's assessment, would likely prejudice the legitimate commercial interests of that supplier or contractor, or would impede fair competition, unless disclosure of that information is ordered by a court or administrative body, or as otherwise required under EU laws or the laws of the host state.

Article 13

Notice of decisions

1. LifeWatch ERIC shall send a notice to suppliers who did not qualify in accordance with Article [10] as soon as possible after a decision has been made and include the reasons why the supplier was unsuccessful in meeting such qualification criteria.
2. Prior to entering into a contract, LifeWatch ERIC shall send all unsuccessful tenderers, who have not been informed of their rejection pursuant to paragraph (1), a notice communicating its decision to award the contract.
3. The notice referred to in paragraph (2) shall include:
 - a. the name of the supplier or suppliers to be awarded the contract;
 - b. the criteria used for the award of the contract;
 - c. the score for each award criterion obtained by the supplier which is to receive the notice and the supplier or suppliers to be awarded the contract;
4. For contracts with a value above EUR 50,000, LifeWatch ERIC must not sign the contract before the end of a standstill period.
5. The standstill period shall end at midnight at the end of the 10th day following the relevant sending date of the notice in accordance with paragraphs (2) and (3). The "relevant sending date" means the day on which the notice is sent, which for the purpose of calculating the standstill period, shall be counted as the first day.
6. For contracts with a value of below EUR 50,000, the decision of whether to follow the provisions of this Article shall be solely at LifeWatch ERIC's discretion.

Article 14

Cancellation of a procurement

1. LifeWatch ERIC may decide to cancel a procurement procedure at any time before entering into a contract, provided such decision is motivated by objective reasons.
2. LifeWatch ERIC shall inform all suppliers of such a decision within a reasonable time.

3. Participation in a procurement procedure that has been cancelled shall not give rise to any compensation claims for foregone profits, loss of opportunity or otherwise any damage or costs incurred by suppliers.

APPEALS

Article 15

Right of appeal

1. Subject to paragraph (2), any supplier who suffered or risks suffering loss or damage due to breach of these rules, may appeal a procurement decision taken by LifeWatch ERIC.
2. Appeals must be submitted in writing to LifeWatch ERIC's Tenders Appeal Board within 14 days from the day on which the supplier submitting the appeal knew or ought to have known of the grounds for the appeal and in any event no later than 3 months from the date when the grounds for submitting the appeal first arose.
3. In exceptional circumstances, the Tenders Appeal Board may extend the time limit of 14 days set out in paragraph (2), where the Tenders Appeal Board considers that there are compelling reasons for doing so. However, no such extension of the time limit shall be granted so as to permit an appeal to be reviewed more than 3 months from the date when the grounds for submitting that appeal first arose.

Article 16

Handling of appeals

1. If the Tenders Appeal Board considers that a decision taken by LifeWatch ERIC infringes these rules, it shall order that the procedure or parts of it be rectified or grant any other remedy that would be adequate and reasonable in the circumstances. Where no infringement is considered to have taken place, it shall reject the appeal.
2. The Tenders Appeal Board may make an order suspending the procurement procedure or the award of contract until it has issued its final decision.
3. The Tenders Appeal Board shall notify the appellant in writing of its final decision within 30 working days following the date of receipt of the appeal; such notification shall state the grounds on which its decision is based.
4. The Tenders Appeal Board shall be independent of the LifeWatch ERIC personnel handling the procurement process.
5. The Tenders Appeal Board shall be appointed by the CEO and composed of at least 2 but not more than 4 individuals from LifeWatch ERIC or external parties, chaired by a person who is legally qualified and competent in EU public procurement law.
6. The Arbitration and Mediation Institute of the Spanish Chamber of Commerce ("SCC") shall have exclusive jurisdiction over any dispute between LifeWatch ERIC and a

supplier arising out of or in connection with the final decision of the Tenders Appeal Board.

7. The rules for fast track arbitration in force at any time shall apply, unless the SCC in its discretion determines, taking into account the complexity of the matter, the amount in dispute and other circumstances, that other rules shall apply. The dispute shall be decided by a single arbitrator unless the SCC finds that special circumstances warrant that the dispute shall be decided by three arbitrators.
8. The seat of the arbitration shall be in Seville, Spain, and the language to be used in the arbitral proceedings shall be English.
9. Filing a request for arbitration under this Article shall only be allowed following the final decision of the Tenders Appeal Board and no later than 30 days following the date on which that decision was communicated to the appellant in writing.

FINAL PROVISIONS

Article 17

Language

1. As a general rule, the procurement documents and ancillary correspondence shall be in English, unless decided otherwise by LifeWatch ERIC where the following conditions are fulfilled:
 - a. the value of the contract is less than EUR 50,000;
 - b. the decision is justified by the subject matter of the contract; and where, due to technical or geographical reasons, only domestic suppliers are likely to be interested in the procurement.
2. Responses to a contract notice shall be accepted in the language of the tender documents or in any other language permitted by the tender documents.

Article 18

Interpretation

1. These rules shall be interpreted in light of principles of European Union law.

Article 19

Amendments

1. Material amendments to these procurement rules shall require the approval of the General Assembly following a recommendation by the CEO.

Article 20

Review

1. These procurement rules shall be reviewed by the General Assembly at minimum every five years from the date of their entry into force.

Article 21

Entry into force

1. These Procurement Rules shall enter into force on 20 October, 2020.