

Contract Procurement Management Training	<i>Case study 3: Contractor fails to perform</i>
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ALL GROUPS

CERN wants to place a contract for the supply 15 tons of magic powder. The magic powder is an essential ingredient for the upgrade of the LHC. It will be introduced in the beam and its effects shall last for at least three years.

The CERN DG has called the media and CERN member state politicians to witness the effect of the magic powder on the LHC on 10 December 2019. It is essential that the first batch of 7.5 tons of powder is delivered by this date.

Following the Invitation to Tender stage it appears that Harry Potter, a well known company in the world of wizards, is the lowest bidder. The second lowest bidder, Melusine GmbH, is 20% more expensive than Harry Potter, the 3rd bidder, Befana sarl. is 30% more expensive.

What solution do you propose for the adjudication of the contract? Shall the contract be split amongst several contractors or not? Justify your reply.

GROUP 1

Finally CERN decides to place a single contract with Harry Potter for the supply of 15 tons of magic powder (see Annex1). The contract is based on the General Conditions of CERN Contracts (Annex 2), without modifications.

On 11 October 2019 the CERN technical officer does not receive any of the documents requested by the contract (composition of the powder and detailed instructions). He decides to call Harry Potter on the 14 October 2019 to make sure that he will be able to supply the magic powder on time and according the contract.

During the phone call conversation, Harry Potter promises the CERN technical officer that all documents will be made available at the date of the tests at the contractor's premises.

What is wrong with this way of proceeding? Justify your reply

A week before the tests Harry Potter calls the CERN technical officer explaining that the day foreseen for the test there is Quidditch game and therefore the tests will be delayed by 2-3 days.

Following this telephone conversation with the contractor how do you, as the technical officer ensure delivery of the magic powder in time?

As the procurement officer, how would you advise to the CERN technical officer?

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GROUP 2:

Finally CERN decides to place a single contract with Harry Potter for the supply of 15 tons of magic powder (see Annex1). The contract is based on the General Conditions of CERN Contracts (Annex 2), without modifications.

On 11 October 2019, the CERN technical officer receives the contractual documents comprising the composition of the powder and the detailed instructions as requested. All documents seem to comply with the specification in all respects. The CERN technical officer approves the documents and feels reassured on his choice of contractor.

On the 1 November 2019, the tests carried out with the magic powder reveal that the powder does not comply with the specification in all respects. However, the magic powder as it is may suffice to do the demonstrations by the DG on the 10 December 2019.

Harry Potter is willing to make the changes necessary to make the powder 100% compliant but requires one additional week to implement these changes.

How do you, as the technical officer, deal with the situation? Justify your proposed course of action. Which contractual actions would you take?

As the procurement officer, how would you advise to the CERN technical officer?

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GROUP 3:

Finally CERN decides to place a contract with Harry Potter for the supply of 10 tons of magic powder (see Annex1) and an identical contract with Melusine GmbH for 5 tons of magic powder. The contract is based on the General Conditions of CERN Contracts (Annex 2), without modifications.

Harry Potter and Melusine have supplied the magic powder in time and according to specification. However, six months after the powder has been paid, a portion of Harry Potter's powder does not perform properly and damages some components of the LHC. It seems that the powder has lost its magical properties, other portions may be affected.

The CERN technical officer calls Harry Potter. Harry Potter blames Voldemort for the problems with the powder and declines all responsibility. Due to his financial difficulties he will not be able to replace the powder anyway.

How do you, as the technical officer, deal with the situation? Justify your proposed course of action. Which contractual actions would you take?

As the procurement officer, how would you advise to the CERN technical officer?