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EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH

FINANCE COMMITTEE

CONTRACTS PROCEDURE

- 1) This paper has now been redrafted in order to take account of the points raised at the second meeting of the Finance Committee Working Party.
- 2) The revised questionnaire referred to in paragraph 9, page 4, is not yet ready, but will be circulated as an Annex as soon as possible

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CONTRACTS PROCEDURE

I

- 1) The procedure for drawing up tender lists and for the adjudication of tenders and the final letting of contracts should be such as to reconcile as far as possible the following legitimate aims :
  - i) The placing of a contract with the best qualified contractor at the lowest possible price.
  - ii) The satisfaction of the technical requirements of the job or of the research worker who will be using the article concerned.
  - iii) The maximum administrative economy and speediest procedure.
  - iv) An equitable distribution of the contracts between the Member States, so far as is compatible with economical supply.
- 2) In order to secure these objectives, Articles 10 (b) i, ii and iii of the Financial Rules lay down that all contracts should normally be placed only after at least 3 competitive tenders have been considered, that no contract worth 100.000 Sw. frs. should be placed without competitive tendering unless the approval of Finance Committee is first obtained and that any contracts for more than 500.000 Sw. frs. should in any case be approved by the Finance Committee.

II

- 3) But it must be recognized that this procedure is an attempt to reconcile objectives which are in part conflicting, and that, however important it may be that competitive tendering should be used whenever possible, if only to satisfy the Member States that orders have been placed impartially, justly and with maximum economy for CERN, this method may not always be practicable because of technical or market considerations or because of the time and administrative effort which it would cost. The word "normally" in the Financial Rules should not therefore be taken to mean that full and formal competitive tendering will always be used (with the sole exception of such cases as that of the linear accelerator, where there are overwhelming technical reasons in favour of a single supplier) but should be interpreted rather in the light of the following description of the principles and methods of contract procedure which are being developed in practice.
- 4) a) For the very large made-to-measure contracts competitive tendering to a precise specification is obviously the most efficient method, except in such special cases as the linear accelerator. The same will also apply to certain common user items, semi-manufactures or such raw materials as constructional steel, cables and cement. It need only be noticed that for certain of these latter items, in which the value is relatively low compared to the weight, the cost of transport may make a relatively restricted tendering list, limited to neighbouring countries, inevitable.

- b) In a separate category come those items of laboratory equipment and tools, generally of a value running into thousands or tens of thousands of francs, and which may be bought once only or many times during the construction programme. In so far as different makes of these items are genuinely comparable and can be adequately described in a technical specification, they will certainly be bought by competitive tendering, but this may not always be the case. Often there may be small but significant differences in the performance, mode of operation, and adaptability for instance of the various makes which render them differently suited to the particular needs of the research worker or the laboratory, and which might well outweigh differences in price. In some such cases, for example of machine tools, the method has been adopted of running exhaustive trials in the maker's works of a number of machines of the type required, and finally making a recommendation to purchase based upon both price and the result of these trials. It is often possible at this stage to secure a price reduction by bargaining. Another method, particularly applicable to items which may be bought several times, is to buy several competitive models as a result of price and catalogue survey and the recommendation of the research workers concerned, and to try them out against each other in the laboratory. The result is often that the relative order of merit is clearly demonstrated, and that subsequent orders can be placed in the most complete knowledge of suitability and price. A real element of competition enters into these procedures, which therefore present many of the advantages of formal competitive tendering. Nevertheless, they should only be used with due precaution;
- i) They should not be adopted except when there is a genuine technical case for them.
  - ii) Wherever possible they should be combined with formal competitive tendering, for instance among the last few models coming successfully out of the test.
  - iii) Repeat orders should not continue to be placed with a successful supplier without frequent tests and re-surveys of the market to make sure that he is still producing the best available goods.
- c) Small items and emergency requirements obviously cannot be bought by competitive tendering. The delay or the administrative cost would be intolerable. But wherever possible small items should be requisitioned as part of a running contract placed as the result of competitive tendering, and good planning should eliminate many emergencies.
- d) In some cases bargaining combined with or following competitive tendering may be of advantage and in some cases, because for instance of wide variations in specification (e.g. barytes) may have to take the place of competitive tendering. In many cases the design of an item may be affected by the particular techniques and capabilities of the supplier. It may therefore be impossible to draw-up before tenders are asked for, a complete specification on which firm tender prices can be based. In these cases the most that could be done would be to decide on the supplier as the result of several non-binding estimates put up by competing firms and based upon a general description and then to work out the detail design in cooperation with the supplier before a contract is placed at a firm price.

The decision as to which procedure should be adopted would normally be taken by the Purchasing Officer and the Divisional Director responsible in consultation, but in order to ensure that the wider considerations arising from the international status of CERN are always borne in mind, it is suggested that arrangements should be made which would ensure that all contracts of a value of 5,000 Swiss francs or more, and in which formal competitive tendering is not used, are brought to the attention of the Director of Administration.

### III

- 5) There is another and quite different point that arises when competitive tenders are to be sought, this is the procedure for the compilation of the tender list. The procedure up to the present has been that for any large contract the Division concerned or the Purchasing Office in co-operation draw up a list of firms who may be considered for contracts on the basis of :
  - i) The lists of possible contractors supplied by countries in June 1954.
  - ii) Any catalogues, trade lists and other information in their own possession.
  - iii) Any information which can be obtained from the Consuls or the Chambers of Commerce.
  - iv) Personal knowledge of scientific and technical officers.
- 6) All the firms on this list have then circulated to them a short description of the article it is wished to buy and are asked at the same time whether they wish to be invited to tender. At the same time Delegations have in the past been asked whether they wish to suggest other firms who might be invited to tender. As a result of this exercise CERN will produce a second reduced list of firms who are invited to tender and these will be given full details and drawings on which they can base their estimates. The resulting tenders are then adjudicated by the Division concerned and the Purchasing Office in consultation, adjudication being approved by the Director-General, in sufficiently important cases, and of course submitted to Finance Committee over 500,000 Sw.frs., and as a result a contract is let to the successful firm.
- 7) This procedure looks perfect on paper but in practice it has turned out to be long and expensive. If it is continued in full, and for all cases of large contracts, it is bound to have a sensible effect on the progress of construction while, in view of the great increase in expenditure during 1955, it will occupy a continuously increasing staff. There is also the minor, but nevertheless real point, that if we normally circulate too long a tender list, we should find that CERN is becoming unpopular among the possible contracting firms, who will discover by painful experience that they may go many times to the trouble and expense of producing a detailed estimate to a technical specification, with an almost vanishingly small chance of getting an order on any occasion.

- 8) It is important therefore that some means should be found of streamlining and shortening this procedure and of reducing the list of firms which actually receive tenders to a reasonable length. An obvious course would be to recognize that CERN need not consult Member States on every occasion before drawing up the list of firms to be asked whether they wish to be invited to tender. This practice is not in fact required by the Finance Rules, but grew up informally during the period of the Interim Organization, when the relatively inexperienced central organization obviously needed the maximum help and advice from Member States. Now however that the Purchasing Office and the technical Divisions have begun to accumulate an increasingly valuable dossier of information about suitable firms in Member Countries the need to continue these consultations in the ordinary case appears to have largely vanished, although the organization will obviously always have to make use of specialized local knowledge in any case of a special nature.
- 9) The first step appears to be therefore to make quite sure that CERN has available the greatest practicable amount of information from Member Countries about possible suppliers. The lists supplied by Member Countries in June 1954 has turned out in practice to be insufficiently detailed and precise, and a more accurate questionnaire has therefore been drawn-up on the basis of the past six to nine months experience of purchasing. If the questionnaire could be completed by Member Countries it would provide the basis, together with the other information set out in paragraph 5, on which CERN would normally draw up the list of firms to be invited to tender. But in any case in which the suitable firms were not clearly indicated by the information in CERN's possession, CERN would naturally still wish to go to the countries for advice. In these cases therefore the procedure set out in paragraphs 5 and 6 would be followed in full. But here again a certain streamlining may be possible. In some countries delegations may be prepared to agree that CERN should get in touch with the Government Intelligence Services, thus saving time in the transmission of questions and information. Whether this can be done or not, it is very desirable that the time for reply should be cut to the minimum say normally ten to fourteen days.
- 10) Finally, countries should be willing to recognize that, if on those occasions on which they are invited to comment on the possible tender list, they are not themselves prepared to exercise the most severe restraint in suggesting extra names for the list, the CERN administration will have to use its own discretion in reducing the eventual total list to a reasonable length, say 12 to 20 firms, before issuing enquiries as to whether the firms wish to be invited to tender. This selection would be made by the Purchasing Officer and the Director of the division concerned in consultation.
- 11) If all these points are accepted therefore the procedure which will be followed for handling competitive tenders for large contracts (say above 100,000 francs in value) would be as follows :
  - a) CERN will produce an appropriate first list of firms who may wish to tender. This will be based on all the information at the disposal of the Division and the Purchasing Office. In any case of doubt or difficulty or when the available information does not clearly indicate suitable possible firms, CERN will get into contact with Member Countries or their agents, for additional information.

If the list is too long and in appropriate cases, the Purchasing Office and the Division in consultation may cut it to a relatively small number (say 12 to 20) of firms more particularly interested in the supplies concerned. In doing so the Purchasing Office will make sure that over a period the selected list represents a reasonable proportion of firms in the various Member Countries.

- b) All the firms on the above list will be asked whether they wish to receive tender forms.
- c) Those firms indicating that they do wish to be considered will receive the full tender details.

In any case the endeavour will be to ensure that the full tender forms and specification are sent only to a reasonable number of suppliers, say six to twelve.

#### IV

- 12) Finally, in order that Member Countries may be satisfied that the discretion proposed in this paper is being satisfactorily used, it is suggested that, quite apart from the formal reports which will be needed when reference is made to the Finance Committee on particular cases under article 10, ii and iii of the Finance Rules, the Finance Committee should be provided at, say, quarterly intervals, with a full report on purchasing activity during the period, which would set out by number, value and supplying country the contracts placed with full competitive tendering procedure or, with some modification of it or without competitive tendering.

#### V

- 13) Member Countries are therefore asked to agree :
    - i) That the requirement for normal competitive tendering should be regarded as covering the procedures set out in paragraphs 3 and 4 above, and subject to the safeguards provided therein.
    - ii) To complete and return to CERN the improved questionnaire attached as an annex to this paper.
    - iii) To indicate whether they wish enquiries to be made through the Delegation or whether they can be made direct to the national Commercial Information Service.
    - iv) That for the large contracts, say above 100,000 francs in value, the procedure set out in paragraph 11 may be followed, again subject to the safeguards provided.
  - 14) Nothing in the paper proposes an abandonment of the mandatory procedure laid down in the Financial Rules, referred to in paragraph 2 above :
- NOTE All proposals for non-competition contracts of 100,000 Sw. frs. or more, and all contracts of 500,000 francs or more will be submitted to the Finance Committee.