

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**PROCUREMENT  
STANDARD OPERATING PROCEDURES  
(SOP)**

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These Procedures shall be implemented in a manner consistent with the responsibilities of the Prosecutor and of the Registrar as set out in article 42, paragraph 2, and article 43 paragraph 1, of the Statute.

## **1. RESPONSIBILITY**

### **1.1 Responsibility for Acquisition**

Pursuant to Rule 110.13 (a) of the Financial Rules and Regulations of the Court, the Registrar is responsible for all procurement functions of the Court.

In accordance to Financial Rule 110.13 (a), the over-all responsibility for the acquisition and the procurement process of supplies, equipment and services are delegated to the Chief of the Procurement Section duly designated by the Registrar. To this end, the Chief Procurement Officer shall ensure that the relevant Financial Regulations and Rules on Procurement are strictly complied with.

### **1.2 Responsibility for Procurement planning**

The Procurement planning is essential for the effective and timely solicitation of bids, proposals, award of contracts and delivery of the goods and services required for the operations of the Court. Chiefs of Section are responsible for developing their procurement plans in cooperation with the Procurement Section and the budget officers of the Court.

## **2. REQUISITION**

### **2.1 Requisitions for Supplies, Equipment and Services**

Supplies, equipment and services are ordered by requisitions which are raised by the Section Chiefs and/or requisitioning officers.

All requisitions must be first certified by a duly designated Certifying Officer, as provided under Financial Rule 110.3. Certifying Officers are officials designated by the Registrar for the account(s) pertaining to a section or sub-section of an approved budget, or by the Prosecutor in areas falling under his authority, in accordance with Financial Rule 110.4. The main responsibilities of the Certifying Officers with regard to authorizing the requisitions are as follows:

- (a) Review all requisitions in the light of actual needs for procurement and to establish that funds are available for the goods/services being processed.
- (b) Specifications should be comprehensive and unambiguous, and the description of scope of work in the requisition must be clear. A complete description or detailed specifications which may be available should be listed on the requisition for each item. It is of utmost importance for evaluating offers and for the winning supplier that Certifying Officers make sure that technical specifications of goods and/or services are sufficiently detailed.
- (c) Ensure that the requisitions are consolidated by line and type as much as possible

## **2.2 Procurement Requisitions**

All requests for procuring supplies, equipment and services shall be submitted to the Procurement Section with a requisition using the Court's ERP System SAP. The requisitions shall include the following information:

- (a) A clear, concise statement of what is required. This may consist of a simple description or a fully developed specification. To develop this specification, the Section Chiefs and/or the requisitioning officers may use experts within the Sections of the Court or, where appropriate, an outside source;
- (b) A detailed technical specification or Statement of Work, where applicable, prepared by the Section Chiefs and/or the requisitioning officers on a separate sheet and as an attachment to the requisition;
- (c) A contact person designated to answer questions concerning the requisition. In the case of contracts for large or complex goods or services, the contact person designated should be available throughout the procurement process;
- (d) Delivery or completion date required;
- (e) The total estimated quantities and costs;
- (f) The budget code and WBS Element;
- (g) The recommended supplier(s) if available;
- (h) General comments or note on the requisitions necessary and relevant to the conduct of a conclusive and successful procurement exercise.

The specifications should be generic in nature, in order to facilitate fair competition for the goods and services being acquired. Specifications shall not specify brand names, products of one company or features which are particular to the products of one company, unless it has been determined in writing by the requisitioner that these particular products or those particular features are essential to the Court's requirements, and that products of another company would not meet the requirements. Where proprietary items are specified or standardization is evoked, the requisitioner must provide justifications in writing to the Registrar or the Designated Officer for approval before the procurement action is initiated.

On occasion, brand name could be stated to clarify requirements, however adding "or similar equipment" or "equivalent" is compulsory.

It should be noted that Procurement Section will not process any requisition without proper certification of funding. Pursuant to Financial Rule 110.4, the approval in SAP of the Certifying Officer is proper certification of available budget funding. Certifying Officers are also responsible for maintaining detailed records of all obligations and expenditures against the accounts for which they have been delegated the responsibility. It is the responsibility of the Certifying Officers not to exceed the budget lines under his/her authority without prior authorization.

### **3. PURCHASING METHODS**

#### **3.1 Competition**

The Court recognizes the basic principles of competition and equal treatment of bidders as outlined in Financial Rules 110.12 and 110.15. The principles of fair and equal competition ensure that the Court can obtain the best value for money by soliciting participation of a number of qualified bidders. The principle of equality requires the Court to avoid preferring or discriminating against any bidder to the detriment or benefit of the other bidders.

#### **3.2 Required Competition Level**

If under €3,000.00 per purchase order, whether an item is to be bid will be at Procurement Section' discretion and should be based upon many factors, including but not limited to the following: quantity, lead-time, and availability.

If between €3,000.00 and €10,000.00 per purchase order, three (3) written competitive bids whenever possible should be obtained.

If over €10,000.00 per purchase order, a minimum of three (3) competitive bids are required.

### **3.3 Sealed Bids**

Sealed bidding is a method of soliciting competitive offers to purchase goods or services. The Court shall make an award to the supplier providing the best overall value to the Court, considering price and other related performance and quality factors.

3.3.1 The sealed bidding method of contracting is to be used when:

- (a) time permits solicitation, submission and evaluation of sealed bids;
- (b) the award is to be made on the basis of price and other factors related to performance and quality;
- (c) it is not necessary to conduct discussions with bidders because the goods or services being procured are quantitatively and qualitatively described in a manner which permits all bidders to bid on the same basis; and
- (d) there is a reasonable expectation of the Court receiving more than one sealed bid in the process.

3.3.2 The bidding documents (“the solicitation”) are the means by which the Court informs potential bidders of the Courts requirements and conditions and by which interested bidders obtain the information needed to submit their bids. The solicitation should reflect the nature and complexity of the goods or services being purchased and usually will include:

- (a) a Statement of Work (SOW) describing carefully and in full detail what the Court requires the supplier to perform or provide, including technical specification if applicable. The SOW must not be overly restrictive so as to eliminate qualified bidders;
- (b) the evaluation criteria upon which the Court will determine which bid meets the Court’s requirements. In sealed bidding, evaluation focuses on price and other related factors such as:

- Commercial Items:
  - Base Bid Price
  - Required Options
  - Terms of Payment

Freight Terms  
Schedule of Terms and Conditions  
- Technical Terms:  
Performance Differentials  
Specification Compliance  
Staffing Credentials

For specialized areas of procurement, other specialized factors may be included:

- (c) the mandatory Court terms and conditions which will be included in the agreement or purchase order;
- (d) bid forms, guarantee or bond requirements, if applicable;
- (e) date and time for submissions of bids;
- (f) name and address to which the bid is to be sent;
- (g) Court assigned bid number;
- (h) instructions requiring the prospective bidders to place their bids in an envelope and mark the outside of the envelope with Court assigned bid number and date, time and location for submission of bids.

#### **4. SOLICITATION DOCUMENTS**

Solicitation Documents shall be used to request quotations or proposals from suppliers for goods, works or services required. While the details and complexity of Solicitation Documents will vary according to the nature and value of the requirements, they will contain all information necessary to prepare a suitable Offer.

If, for any reason, it becomes necessary to clarify Solicitation Documents, all recipients of the solicitation documents shall be notified simultaneously in writing. At any time before the deadline, the Procurement Section may, for any reason, whether on its own initiative or because of a request for clarification by a supplier, modify the solicitation documents by issuing an addendum. The addendum will be communicated to all suppliers who have been provided with the solicitation documents and will be binding upon them.

##### **4.1 Types of Solicitation Documents**

Financial Rules 110.15 and 110.16 provide for Formal Methods of Solicitation which are either in the form of a formal Invitation To Bid (ITB), or Request For Proposals (RFP) and for Informal Methods of Solicitations, such as Requests For Quotations (RFQ).

#### 4.1.1 Expression Of interest

Expressions Of Interest (EOI) shall be advertised on the Court's webpage and using the United Nations Global Marketplace (UNGM). This procedure shall be used for requests that are above or have the potential to exceed, €50.000,00. The details of the EOI shall be saved electronically in the Trim records of the Procurement Section.

#### 4.1.2 Request for Quotations

Invitations to Bid (ITB) or Request for Quotations (RFQ) shall be used for the procurement of simple, uncomplicated goods of standard and firm specifications or very specifically defined and continuously used services. Based on analysis of quotations, the award is given to a supplier that meets specifications, delivery terms and lowest price.

#### 4.1.3 Requests for Proposals

Requests for Proposals (RFP) should be used in order to obtain proposals to satisfy a requirement of goods and services where the scope of work, technical specifications or characteristics cannot be precisely determined or described, or are of a complex/specialized technical nature which requires significant input from the supplier. The acquisition of goods or services through RFPs procedure requires careful coordination with requisitioners. **Clarity, completeness in preparing the RFP is critical to a successful competition.**

The Court shall make award to the supplier providing the best overall value to the Court in accordance with the evaluation criteria defined in the RFP.

Besides the requirements outlined above RFP shall also include:

- (a) A Statement of Work (SOW) describing carefully and in full detail what the Court requires the supplier to do or to provide, including technical specifications;
- (b) The evaluation criteria upon which the Court will determine which bid best meets the Court's requirements;
- (c) The mandatory ICC terms and conditions which will be included in the agreement or purchase order;
- (d) Instructions to bidders.



## **5. SOLE OR SINGLE SOURCE**

- 5.1** Due to the fact that competition is the preferred acquisition method of the Court, careful consideration must be given to, and appropriate justification provided for all Sole or Single Source procurement actions to ensure that they are more advantageous to the Court rather than an award obtained through competition.
- 5.2** Sole Source contracting is a method of acquisition where a contract is awarded after soliciting and negotiating with only one source, or when no formal methods of solicitation are used under Financial Rule 110.17.
- 5.3** Situations that may justify single source acquisition are when:
- (a) the proposed procurement contract is the result of cooperation with an organization of the United Nations system, with the Government of a State Party, another public international organization, non-governmental organization or specialized private enterprise to the extent authorized by the Committee on Budget and Finance (Financial Rule 110.18); or
  - (b) offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered remain competitive; or
  - (c) within a reasonable prior period, a formal solicitation has not produced satisfactory results; or
  - (d) there is a genuine exigency for the requirement; or
  - (e) the proposed procurement relates to obtaining services that cannot be objectively evaluated;
  - (f) the need for continuity of professional services; or
  - (g) there has been a previous determination or when there is a need to standardize the requirement; or
  - (h) the Registrar has determined that a formal solicitation will not give satisfactory results;
  - (i) there is no competitive marketplace for the requirement, such as where a monopoly exists, where prices are fixed by legislation or government regulation, or where the requirement involves a proprietary product or services;

- (j) the proposed procurement contract is for the purchase or lease of real property;
- (k) the value of the procurement is below the monetary threshold established for formal methods of solicitation.

**5.4** For all Sole/Single Source actions, a well-documented, thorough written justification must be submitted to the Procurement Section by the Certifying Officer to support why this method of acquisition is considered more advantageous to the Court than a competitive acquisition. The Procurement Section may request additional documentation in support of this justification and may or may not agree. If approval is granted, the approved justification shall be part of the purchase file after approval and signature of the Chief Procurement Section or alternate.

## **6. SUBMISSION AND RECEIPT OF BIDS**

Bidders must comply with the specified procedure for submission of bids as well as the technical requirements in the solicitation to allow for the fair and non-discriminatory evaluation of their bids.

When bids are received, they shall be secured by the assigned Procurement personnel and kept until the date and time set for the opening.

Bids may be modified or withdrawn by a bidder before the date and time set for the opening, without the Court's approval. Bids may not be modified or withdrawn by a bidder after the opening unless a justifiable and documented reason is approved by the Procurement Section.

### **6.1 Bid Opening**

The purpose of the bid opening is to verify that all formalities indicated in the solicitation are met, including the timeliness of the bid receipt and its sealed condition.

At the date and time designated in the solicitation, bids shall be opened and read by a minimum of two (2) Court personnel, one of whom is from the Procurement Section.

The Court personnel, as noted above, shall review the bids for completeness, mathematical accuracy, price and responsiveness. They shall tabulate the results on a bid abstract form which must be certified by those in attendance at the bid opening. Each page of the price proposal shall be initialed by the Court personnel.

Bid opening are not required to be public, unless otherwise specified in the solicitation.

## **6.2 Evaluation of Bids**

Once bids have been opened, they shall be evaluated to determine which respond best to the requirements of the solicitation.

Bids submitted in different currencies, if allowed, will be converted to Euros at the rate of exchange in effect at the date specified in the solicitation, to enable the Court to compare the bid's prices.

The evaluation of bids shall be coordinated by Procurement Section personnel. They may obtain assistance in the evaluation process from experts within the Court or from outside consultants, as required.

The commercial evaluation of bids shall be the responsibility of the Procurement Section.

When technical evaluation is required, the requisitioning office or his designee shall review the bids to:

- Determine whether each offer meets all principal specifications of the solicitation;
- Prepare and sign a technical evaluation report, solely on the basis of the technical merit of the tender or proposal but excluding any consideration of the cost of the bid. Any such report shall include a listing of the recommended suppliers in order of priority, together with the reasons for such recommendation.

Except when negotiations have been authorized by the Procurement Section, bidders will not be allowed to alter any bid after the deadline for bid opening without prior approval from the Procurement Section. The Procurement Section may request clarification of any bid during the evaluation process.

## **7. PROCUREMENT REVIEW COMMITTEE**

The Registrar is empowered under Financial Rule 110.14 to establish a Procurement Review Committee (PRC) to render written advice to him/her on:

- (i) all contractual agreements to be entered into involving commitments to a single supplier, in respect of a single requisition or series of related

requisitions exceeding €50,000.00 or such other amount as may be amended from time to time by the Registrar;

(ii) all proposals for the amendment, modification or renewal of contracts and/or agreements previously recommended by the PRC, except where:

- a) such amendments or modifications do not increase the value previously recommended for approval by the PRC by more than 20% or exceed €50,000.00;
- b) such amendments or modifications would not, in the judgment of the Chief Procurement Officer, significantly affect the procurement process, such as the costs and period or duration of the contract;
- c) renewal was an option provided for in the contract and/or agreement, and the price revision, if any, remains within the contractually agreed indexation level;

(iii) all proposals for the amendment, modification or renewal of any contracts and/or agreements not previously submitted to the PRC where the amount in the aggregate now exceeds €50,000.00.

(iv) any other matter as may be referred to the PRC by the Registrar or a duly designated chief procurement officer under Financial Rule 110.13 (b).

## **7.2 Vendor performance**

If a vendor has been successful in a tender competition or when the contract of a vendor is to be extended, which has resulted in a submission to the Procurement Review Committee (PRC), a completed vendor performance questionnaire shall be completed by the Certifying Officer. The completed questionnaire shall form part of the submission to the PRC.

## **8. CONTRACT TYPES**

A contract is a legally binding agreement between two or more parties and its contents reflect the parties' mutual obligations to one another. The type of contract most suitable to the procurement (e.g., Purchase Order or Agreement) and its pricing depends, in large measure, upon the scope and nature of the parties' obligations. The Procurement Section shall prepare the agreement or purchase order and ensure, with the support of technical and professional assistance as required, that it contains all the provisions necessary to protect the Court's interest.

As a matter of policy, the Court does not normally use one-person companies. It is not considered prudent to assign the responsibility for the management and delivery of an activity to a single individual, as an essential element of any contractual or outsourcing activity is to provide reliable, independent delivery of such services on an uninterrupted basis.

## **8.1 Purchase Orders**

Purchase orders are used when contracting for the provision of goods and simple services.

Purchase orders constitute the Court's offer to the supplier. As such, they are signed only by authorized Court representatives before being provided to the supplier. The supplier manifests his acceptance of the offer by his conduct, e.g. delivery of the goods or services. If, however, the purchase order has a value in excess of €20,000.00, it must be signed and returned to the Court by an authorized representative of supplier.

The purchase order is designed to convey the provisions of the contract to the supplier and to provide maximum uniformity in recording all aspects of the agreement.

The Court's terms and conditions are an integral part of the purchase order. Procurement Section personnel in consultation with Legal Section are responsible for ensuring that the terms and conditions included are appropriate, considering the value of the agreement, the nature of the goods or services provided, trade practice, and other factors.

Purchase order must be amended whenever the Court and/or the supplier make changes.

## **8.2 Written Procurement Contracts**

Written procurement contracts (hereinafter referred to as 'Agreements') (Financial Rule 110.19) are generally used to obtain the services from a specific company for a given task or period of time, or to procure goods and/or services.

Fixed price agreements provide a firm pricing arrangement, e.g., lump sum, unit price, per diem rate, etc., established by the parties at the time of contracting. The price is not subject to adjustment based upon the supplier's actual cost experience in performing the contract. The Court prefers to use fixed price type agreements.

Agreements should be prepared to fit the actual circumstances involved and, accordingly, will not be uniform. However, all agreements are expected to

achieve the best overall value for the Court, taking into consideration quality, timeliness, and minimization of risk to the Court.

The Court' terms and conditions are an integral part of the agreement. Procurement Section personnel are responsible for ensuring that the terms and conditions included are appropriate, considering the value of the Agreement, the nature of the goods or services provided, trade practice, and other factors.

Agreements should be formally amended whenever the Court and/or the supplier make changes to their Agreement.

### **8.3 Terms and Conditions**

Terms and conditions are a key component of agreements and purchase order documents. Together with the Statement of Work or Scope of Work (SOW) and applicable specifications, they form the written intent of the parties to the agreement and purchase order.

The Standard Terms and Conditions in Court Agreements are developed by the Legal and Procurement Sections. However, when necessary, terms and conditions may be changed with the prior approval of the Procurement Section and the Legal Section.

Contracts of a complex nature or involving provisions which have not been previously used should be reviewed by the Court Legal Section prior to contract signing. When, during the course of a negotiation, formal or otherwise, the supplier is represented by an attorney, the Court must also have a representative of the Legal Section present.

### **8.4 Procurement Plan and Contracts database**

It is important that all contracts and agreements are reviewed, placed and renewed in a timely manner. To this end, all contracts or agreements which have a duration clause must be recorded in the contracts database. This database will form part of the Procurement Plan.

During the regular quarterly meetings with the Certifying Officers contract renewals and future requirements for goods and services shall be recorded in the Procurement Plan. This is to ensure adequate time is give to compete the necessary procurement tendering process (EOI, RFP/RFQ, PRC and contract conclusion) in accordance with the Financial Regulations and Rules.