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## ESS RULES FOR ETHICS IN CONTRACTING

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## 1. INTRODUCTION

The Procurement Rules [1] of the European Spallation Source ERIC (“ESS” or the “Organisation”) are based upon, *inter alia*, the principles of value for money, innovation, sustainability and integrity. In terms of integrity, the rules provide that “*all procurement shall be conducted in a manner above reproach and with complete impartiality and preferential treatment for none.*” Corrupt or unethical behaviour of any type is prohibited.

The Rules for Ethics in Contracting is subordinated to the ESS Code of Conduct [2] and supports the content therein, in particular section 2.2 thereof, which touches upon the issue of conflicts of interest, and **all ESS staff** must act in a manner consistent with that Code of Conduct. However, in acknowledgement of the particularly sensitive position in which relevant staff may find themselves, this additional Rules for Ethics in Contracting has been adopted and must be adhered to by all ESS Relevant Staff Members. A ‘Relevant Staff Member’ is anyone engaged by ESS who is involved in the procurement process or who may be in a position to place a contract with third parties or influence the outcome of a procurement procedure. For the avoidance of doubt, a Relevant Staff Member also includes any stakeholder in ESS (be it an employee, a consultant, an external adviser or a governance member [e.g., representatives in the ESS Council, the Administration and Finance Committee and other governance committees]) who may be in a position to request a contract, influence a decision to award a contract, approve payments, introduce changes to the scope of an existing contract, or is generally involved in contract management.

## 2. GENERAL RULES

All Relevant Staff Members must strive for genuine, fair and transparent engagement with suppliers, using competitive procedures wherever practicable or feasible and in line with applicable ESS procedures for procurement and contract formation and sound judgment. The Organisation has a zero tolerance policy for all sorts of corruption. Knowingly engaging either actively or passively in corrupt behaviour of any form will lead to disciplinary measures and, depending on the specific circumstances, such conduct may also be referred to the appropriate public authorities for further investigation. Additionally, such conduct may disqualify present or potential suppliers from doing business with the Organisation.

### 2.1. Conflict of interest

When conducting procurements, placing contracts or entering into any financial arrangement with third parties, Relevant Staff Members must declare any actual, potential or perceived conflicts of interest either of a financial or personal nature including any conflicting interest of a family member, or related to a personal (e.g. previous friendship) or business interest. In the event of an actual conflict, the Relevant Staff Member must either dispose of the conflicting interest or cease to have any involvement in the contract or the procurement process as is considered necessary. In

case of doubt, the Relevant Staff Member should seek the advice of the Head of the Supply, Procurement and Logistics (SPL) Division or the Director of Project Support or Administration (PSA) prior to his/her involvement.

Relevant Staff Members should not use any information gained during the procurement procedure to further their own (including any related entity or person) financial or personal interests and should adhere to the terms of the ESS Procurement Rules on confidentiality.

## **2.2. Bribery**

The offering, promising, giving, accepting or soliciting of an advantage either directly or through third parties is prohibited. In addition to “kickback” payments, all other forms of inducement such as political and charitable contributions and sponsorships, acceptance of any other benefits or business, and any other favours which may be provided to the Relevant Staff Member or to a member of his/her family are prohibited. In determining whether or not any payment or other advantage constitutes a bribe, the timing of the said payment or advantage is irrelevant and may occur prior to, during or following the outcome of the procurement procedure.

## **2.3. Corruption**

Facilitation payments such as value payments or other benefits demanded to secure the performance of a contract where no legal right to payment exists, constitute corruption. Any Relevant Staff Member in receipt of a request for such a payment or of any other favour or action in return for performance/quicker performance of a contract should bring the matter to the immediate attention of the Director for PSA or the Head of the SPL Division.

## **2.4. Gifts, Rewards and other benefits**

Other than declared gifts of nominal value, Relevant Staff Members must not accept, directly or indirectly, gifts, hospitality or expenses (including money, loans, private business, credits or prejudicial discounts) from present or potential suppliers whenever they could influence or reasonably be perceived to influence improperly, the placing of a contract, the outcome of procurement procedures, or any other procurement decision, contract management decision or process.

## **2.5. Coercion**

The use of force to intimidate another party into acting unethically is prohibited. A Relevant Staff Member subjected to any intimidating behaviour should immediately report this to his/her line manager.

## **2.6. Collusion**

Relevant Staff Members must not take part in any scheme amounting to collusion and should be alert to the possibility of collusion among tenderers and suppliers. Collusion is

any agreement, direct or implicit, aimed at removing the element of competition from the process, with a view to obtaining an unfair advantage.

## **2.7. Unusual Commercial Expenses**

Relevant Staff Members should not approve or give rise to unusual commercial expenses. Unusual commercial expenses include (but are not limited to) fees or commissions exceeding or not mentioned in a properly concluded contract, commissions not paid in return for any actual or legitimate service, inflated fees or inflated commissions in relation to a service provided, commissions paid to a recipient who is not clearly identified, or commissions paid to a company which has every appearance of being a front company. All forms of graft are explicitly prohibited.

## **3. RESPONSIBILITIES WITHIN THE ORGANISATION**

### **3.1. Procurement Authority and Budget Commitment**

Relevant Staff Members with budget authorisation powers or those granted a signature authority in accordance the Organisation's relevant policies [3] should follow the correct levels of procurement authority and of having a specifically defined budgetary commitment for any expenditures. These authorisations are available in the Authorisation and Delegation Plan [4].

### **3.2. Due Diligence**

Relevant Staff Members shall follow the ESS Procurement Rules in terms of carrying out background checks and assessing the ethical profile of potential contractors in line with the relevant provisions of the ESS Procurement Rules.

### **3.3. Record Keeping and Communication During the Procurement Process**

All steps in the procurement process must be clearly documented. Once a procurement procedure has commenced, only contact between the nominated Procurement Officer, or otherwise delegated Staff Member, and the supplier or tenderer's nominated representative is permitted. No other member of staff should have any independent contact with that supplier/tenderer throughout the duration of the procurement procedure up until conclusion of contract, unless specifically delegated by the Head of SPL Division. All confidential information received during a procurement process should be managed and handled accordingly.

## **4. RAISING CONCERNS AND SEEKING GUIDANCE/ROUTINES FOR REPORTING VIOLATIONS**

If any member of ESS Staff perceives or experiences behaviour or actions that go against this Rules for Ethics in Contracting, he/she should report that information immediately to

his/her line manager, with the assurance that there will be no retaliation or other negative consequences for persons acting in good faith. If for some reason a member of the ESS Staff feels that he/she cannot confide in his/her line manager, the next step would be to report the situation to the line manager's line manager ("grandfather" principle). For issues of a sensitive nature, which would be inappropriate to direct to a line manager as stated above, the Head of SPL Division or the Director for PSA should be contacted.

On receipt of a complaint, all ESS managers are required to investigate and resolve the matter complained of and report on its progress and outcome to the Director for PSA or Head of SPL Division, as may be appropriate in the circumstances.

Failure to comply with this Rules for Ethics in Contracting may result in disciplinary measures and in extreme cases, ESS may initiate civil law proceedings or refer the matter to the appropriate public authority for investigation.

## 5. GLOSSARY

Term	Definition
ESS	European Spallation Source ERIC, including the Data Management and Software Centre (DMSC) and other sub-entities that may be established by ESS
ESS Staff	Employees, students, trainees, secondees, consultants and visiting scientists having ESS as their permanent or temporary place of work
PSA	Project Support and Administration
SPL	Supply, Procurement and Logistics Division

## 6. REFERENCES

- [1] ESS Procurement Rules (ESS-0039684)
- [2] ESS Code of Conduct (ESS-0002208)
- [3] ESS Rules for Delegation of Signature Authority (ESS-0012814)
- [4] Authorisation and Delegation Plan (ESS-0027645)

## DOCUMENT REVISION HISTORY

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