



**Administrative Instruction**

**ICC/AI/2023/002**

**Date: 14 July 2023**

**TERMS OF REFERENCE FOR THE PROCUREMENT REVIEW COMMITTEE**

The Registrar, with the consent of the President and the Prosecutor, pursuant to sub-sections 3.2 and 3.3 of ICC/PRES/D/G/2003/001 (*“Procedures for the promulgation of administrative issuances”*) and Financial Rule 110.14, promulgates the following Administrative Instruction:

**Section 1**

**Purpose**

- 1.1 The purpose of this administrative instruction is to review and amend the terms of reference of the Procurement Review Committee (“PRC”) that were originally established by the Registrar, pursuant to section 1 of the Administrative Instruction ICC/AI/2004/004, and subsequently reviewed and amended by the Administrative Instruction ICC/AI/2017/006.

**Section 2**

**Mandate, role and functions of the Procurement Review Committee**

- 2.1 The mandate of the PRC is to advise the Registrar, on (i) proposed procurement actions leading to the award or amendment of procurement contracts; and (ii) proposed contracts that involve income to the Court. In areas falling under the authority of the Prosecutor, by virtue of Article 42, paragraph 2, of the Rome Statute, the award or amendment shall be authorised by the Registrar upon the request of the Office of the Prosecutor and taking into account the PRC’s advice.

- 2.2 In accordance with Financial Rule 110.14(c), where the advice of the PRC is required, no contractual commitment may be entered into before such advice is received and acted upon by the Registrar or his or her authorized delegate.
- 2.3 The PRC is an integral part of the Court's internal controls and serves as an advisory body to the Registrar in discharging his or her procurement related responsibilities under the Financial Regulations and Rules.
- 2.4 The PRC shall, prior to the contractual commitment being entered into:
- 2.4.1 Review proposed procurement actions and income-generating contracts that are subject to its review pursuant to section 3 below;
- 2.4.2 Advise the Registrar in writing whether the proposed actions comply with all applicable financial regulations and rules, related administrative instructions, procurement guidelines and standard operating procedures and if the principles set out in Financial Rule 110.12 have been given due consideration. Those principles are:
- (a) Best value for money;
  - (b) Fairness, integrity and transparency;
  - (c) Effective international competition; and
  - (d) The interests of the Court.
- 2.4.3 Provide recommendations to the Registrar on whether to approve the completion of the procurement action or income-generating contract; and
- 2.4.4 As may be considered necessary or advisable on the basis of reviews conducted, provide comments and other recommendations on the procurement process to the Registrar, after due consultation with the Director of Management Services Division, the Chief of General Services or the Procurement Head.
- 2.5 Notwithstanding any other provisions contained herein, the PRC shall not provide advice on the adequacy or necessity of the requirements leading to the proposed procurement action. Such responsibility rests with other officials, including certifying officers and managers. Similarly, the PRC is not responsible for determining how to conduct a

particular procurement action, as this responsibility rests with the Head of the Procurement Unit.

### **Section 3**

#### **Types of proposed procurement actions subject to review**

- 3.1 Prior to any contractual commitment being entered into, the PRC shall render written advice to the Registrar on procurement actions leading to the award or amendment of procurement contracts, including agreements or other written instruments such as purchase orders, as follows:
  - 3.1.1 All proposed procurement contracts to a single contractor in respect of a single requisition or a series of related requisitions received and processed in a financial year which exceeds € 50,000.00 in contract value, including any optional extension periods;
  - 3.1.2 Any proposed amendment, modification or renewal (hereinafter “modification”) of an existing procurement contract previously reviewed by the PRC, where the proposed modification either increases the previously approved procurement contract value by more than 20% or exceeds € 50,000.00;
  - 3.1.3 Any proposed modification of a procurement contract previously reviewed by the PRC where, in the judgement of the Head of the Procurement Unit, such modification would significantly affect the procurement process that led to the original procurement contract award or the original contract terms. The PRC shall review such proposed modification with reference to the criteria on which the original award was approved;
  - 3.1.4 Any proposed modification of a procurement contract not previously submitted to the PRC, where the aggregate procurement contract value exceeds € 50,000.00; and
  - 3.1.5 Any other matter relating to a proposed procurement action or contract referred to the PRC by the Registrar or the Head of the Procurement Unit.

- 3.2 Prior to any contractual commitment being entered into, when any of the following categories of cases applies to a contract which involves income to the Court, the advice of the PRC and subsequent approval of the Registrar shall be obtained:
- 3.2.1 Any contract or series of related contracts involving income to the Court of € 50,000.00 or more, and any contract relating to the Court's activities where the estimated annual income when aggregated with the estimated annual income from any other contract already made with the same purchaser in the same year exceeds € 50,000.00;
  - 3.2.2 Any proposed modification of an income-generating contract, previously reviewed by the PRC, which results in an increase or decrease in income during the financial year by either more than 20% or € 50,000.00;
  - 3.2.3 Any proposed modification of an income-generating contract, previously reviewed by the PRC, where in the judgement of the Head of the Procurement Unit, such modification would significantly affect the procurement process that led to the original contract award or the original contract terms. The PRC shall review such proposed modification with reference to the criteria on which the original award was approved;
  - 3.2.4 Any proposed modification of an income-generating contract, not previously reviewed by the PRC, where, as a result of the modification, the income from the contract exceeds € 50,000.00; and
  - 3.2.5 Any other matter relating to a proposed or existing income-generating contract referred to the PRC by the Registrar or by the Head of the Procurement Unit.
- 3.3 The provisions in sub-sections 3.2.1, 3.2.2 and 3.2.4 shall not apply to contractual provisions resulting from recommendations of the Property Survey Board.
- 3.4 The Registrar may from time to time modify the monetary threshold for both procurement and income as required.

**Section 4**  
**Procurement Review Committee**

*Requirements for members and their authorized delegates*

- 4.1 To the extent possible, the PRC shall be composed of staff members at a P-3 level or above, who shall attend the meetings when required.
- 4.2 The members of the PRC, and their authorized delegates, shall have commercial, financial or legal academic training and experience or other relevant qualifications, including training in procurement.
- 4.3 The Court shall offer general and specific training on topics relevant for the PRC to all members and their authorized delegates.

*Composition*

- 4.4 The PRC shall have, at least, seven voting members, each serving in his or her individual expert capacity. Each member, including the Chair, shall have one or more authorized delegates from his or her office, who will serve in his or her absence.
  - 4.5 The PRC shall be composed of the following members:
    - 4.5.1 From the Presidency:
      - (a) Chef de Cabinet of the President or his or her authorized delegate(s);
    - 4.5.2 From the Office of the Prosecutor:
      - (a) Senior Manager of the Services Section or his or her authorized delegate(s);
    - 4.5.3 From the Registry:
      - (a) Chief of the Legal Office or his or her authorized delegate(s);
      - (b) Chief of the Finance Section or his or her authorized delegate(s);
      - (c) Chief of the Budget Section or his or her authorized delegate(s);
      - (d) Chief of the Security and Safety Section or his or her authorized delegate(s);
      - (e) Chief of the Human Resources Section or his or her authorized delegate(s);
- and

4.5.4 Any other staff members of the Court who meet the requirements established in sections 4.1 to 4.3 above, as determined by the Registrar, in consultation with the President and the Prosecutor.

*Recusal*

4.6 Members of the PRC, and their authorized delegates, shall recuse themselves from reviewing cases in which they have a requisitioning role or where there may be a conflict of interest.

*Term of office*

4.7 The authorized delegates of the PRC members shall be appointed by the Registrar, in consultation with the President and the Prosecutor, for a two-year term, renewable for additional terms of two years. There shall be no limit to the total number of terms a staff member may serve as an authorized delegate to a PRC member.

4.8 The Registrar shall also appoint, among the PRC members and their authorized delegates, one Chair and one or more Deputy Chairs, for a term of two years, renewable for additional terms of two years. There shall be no limit to the total number of terms a staff member may serve as the Chair or Deputy Chair.

*Quorum*

4.9 The quorum of the PRC shall be three members, including the Chair and a representative from either the Presidency or the Office of the Prosecutor ("PRC Panel"). In exceptional circumstances where the representatives from the Presidency and the Office of the Prosecutor are not available, due to other official exigencies, and/or are in a conflict of interest situation, the PRC Panel may be composed solely of representatives from the Registry.

*Secretary*

4.10 The Secretary and his or her alternate(s) are appointed by the Registrar and shall be staff members from Procurement Unit. They are not members of the PRC and shall serve in a non-voting capacity.

### *Meetings*

- 4.11 The PRC shall meet at such times and frequency as may be decided by the Chair. The frequency of such meetings shall be, in principle, once in a fortnight unless there are no presentations or other matters for consideration by the PRC. Unless otherwise decided by the PRC Panel, the PRC meetings shall be limited to its members and the Secretary.
- 4.12 The Chair may submit to the PRC Panel a request to review the case by circulation of e-mails, as an alternative to the meeting. The review of a case by e-mail circulation requires the favorable vote of all members of the PRC Panel.

### Submissions

- 4.13 The PRC submissions shall be sent to the Chair and Secretary of the PRC by the Procurement Unit before the planned date of the meeting.
- 4.14 Requests for clarification on the cases submitted to the PRC may be addressed to the Procurement Unit by the PRC Panel, through the Secretary, at any time.

## **Section 5**

### **Secretariat of the Procurement Review Committee**

- 5.1 The PRC shall be supported by a secretariat, headed by the Chair of the PRC. The secretariat shall be responsible for organising and servicing meetings of the PRC and preparing recommendations for the final approval of the Registrar. The Deputy Chairs shall perform the functions of the Chair in his or her absence.
- 5.2 The Chair is responsible for, *inter alia*:
- 5.2.1 Approving case submissions for inclusion on the agenda;
  - 5.2.2 Reviewing submissions prior to the meetings to ensure their completeness;
  - 5.2.3 Convening and chairing meetings;

- 5.2.4 Submission, for approval by the other members of the panel, of requests for review of specific cases by circulation of e-mails, as an alternative to a meeting;
  - 5.2.5 Bringing issues relating to fairness, integrity and transparency throughout the acquisition process to the attention of the Registrar;
  - 5.2.6 Notifying the Head of the Procurement Unit of proposals rejected or deferred by the PRC, specifying the reasons therefor;
  - 5.2.7 Nominating a member of the PRC to serve as Acting Chair in the absence of both the Chair and the Deputy Chairs; and
  - 5.2.8 Supervising and managing the work of the PRC's secretariat and advising the Registrar on substantive developments and related issues.
- 5.3 Under the general supervision of the Chair, the Secretary shall, *inter alia*:
- 5.3.1 Arrange and coordinate meetings;
  - 5.3.2 Ensure the timely and efficient distribution of submissions and relevant documentation to members;
  - 5.3.3 Draft meeting minutes and recommendations;
  - 5.3.4 Submit minutes and recommendations for approval to the Registrar;
  - 5.3.5 Liaise with the Procurement Unit on issues involving procedures, request additional information or clarifications with respect to submissions and transmit any enquiries raised by members regarding submissions under review;
  - 5.3.6 Maintain a permanent and secure record of all minutes, recommendations and case presentations reviewed by the PRC; and
  - 5.3.7 Compile statistics on the workload, activities and other matters pertaining to the PRC's functioning.



