

Facility for Antiproton and Ion Research

Rules for Procurement and
the Award of Contracts of FAIR
GmbH



(as approved by the Council on 13. March 2023)

Preamble.....	3
Article 1 Scope.....	3
Article 2 General public procurement principles.....	4
Article 3 Procurement procedures.....	4
Article 4 Liaison Officers	5
Article 5 Purchase request.....	5
Article 6 Signing of contracts between the parties	6
Article 7 Statistics about awarded contracts	6
Article 8 Currency.....	6
Article 9 Language.....	6
Article 10 Entry into force	7
Annex 1	8



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Seite 2 von 8

	Dokumenttyp: Work Instruction FAIR Procurement Rules	Datum: 23.03.2023
		Seite 3 von 8

Preamble

The FAIR GmbH is established as a limited company (“Gesellschaft mit beschränkter Haftung - GmbH”) under German private law. Due to its shareholders from 9 countries and due to its scope as an International research centre, FAIR GmbH is registered as an “International Organization”. However, it is essentially funded and controlled by public institutions and thus is to be considered a “body governed by public law”. Therefore, in accordance with the current valid European Directive (hereinafter referred to as “EU Directive”) and German legislation, which implements the EU Directive within its scope, the FAIR GmbH’s procurement procedures comply with the provisions for public procurement under the German law.

Article 1 Scope

1.1 Since the FAIR GmbH is mainly publicly funded, it abides by the German public procurement law in its current valid version, which is based on European public procurement law. There, the EU threshold values are regularly updated.

1.2 Below the EU thresholds, the Company shall apply the German public procurement law set by the German federal authorities in its current valid version. At present, the German federal public procurement law below the EU thresholds is regulated in the German regulation on sub-threshold procurement (“Unterschwellenvergabeordnung” = UVgO), applicable to purchases of deliverables and services, and in VOB/A (Vergabe- und Vertragsordnung für Bauleistungen - Teil A / Regulations for the awarding and contracting of construction works – Part A), applicable to construction-related purchases, which will be changed or adjusted by the legislation from time to time.

1.3 Within the set legal framework mentioned above, for purchases below the EU thresholds, the Company is authorized to adopt all waivers, guidelines, and similar rules set by the German federal authorities, applicable to the centers of the Helmholtz Association (e.g. GSI). See Annex 1.

1.4 The currently applicable national limit values can be found in Annex 1.

1.5 In line with the public procurement regulations, the Management Board is allowed to establish General Conditions of Purchase (Allgemeine Einkaufsbedingungen = AGB).

	Dokumenttyp: Work Instruction FAIR Procurement Rules	Datum: 23.03.2023
		Seite 4 von 8

Article 2

General public procurement principles

2.1 All procurements shall aim at achieving the Company's goals set in its Articles of Association and shall be covered by a corresponding budget. They are to be carried out in compliance with the principles of non-discrimination, transparency, and best value for money.

2.2 Non-discrimination means that the Company shall treat suppliers subject to the rules and regulations subject set by German law equally and in a nondiscriminatory fashion, independent of their nationality. Technical specifications set out in the contract documentation shall permit equal access for all suppliers and shall not have the effect of creating unjustified obstacles to opening the procurement to competition. Transparency means that all tendering procedures must be comprehensible by the suppliers and contain sufficient information for all suppliers.

2.3 Best value for money means that the Company shall award contracts to the suppliers offering the "most economically advantageous tender" able to meet, in particular, technical quality standards and delivery requirements.

Article 3

Procurement procedures

3.1 All public procurement procedures of the Company, including its documentation, are administered by the Procurement department and other units of GSI or FAIR which have been authorised by FAIR to carry out procurements. Within the framework of these procurement guidelines and other company regulations, the company's internal rules for awarding public contracts are defined by currently applicable law.

	Dokumenttyp: Work Instruction FAIR Procurement Rules	Datum: 23.03.2023
		Seite 5 von 8

Article 4

Liaison Officers

4.1 The Company invites all its Shareholders and Scientific Associates to appoint Liaison Officers as direct contacts or representatives, among others, for the transfer of information on procurement matters to and from the Company, conclusively regulated as follows:

- a) A regularly updated list of planned purchases with an estimated value above 100.000 € shall be communicated to the Liaison Officers and simultaneously published on the FAIR website by Project Management office FAIR.
- b) For all open, restricted and negotiated procedure with prior call for competition tenders above the EU thresholds, the public contract notice shall also be communicated to the Liaison Officers simultaneously.
- c) In case of market research prior to launching a procurement procedure, the Procurement Department may contact the Liaison Officers when searching for possible suppliers.

Article 5

Purchase request

5.1 In general, any procurement subject to these Procurement Rules shall be initiated by a purchase request that indicates the nature and purpose of the procurement as well as the budget code on which the corresponding payment is to be drawn.

5.2 Purchase requests shall be released by an authorized person according to Art. 5.3 of these Procurement Rules, in accordance with the estimated value of the procurement. Whoever signs a purchase request certifies that, within his or her range of responsibility, the principles of efficiency, economy, and optimum use of the Company's resources have been observed.

5.3 Purchase requests must be released analogously to the FAIR internal regulations regarding the release process applicable at the time of the purchase request.

	Dokumenttyp: Work Instruction FAIR Procurement Rules	Datum: 23.03.2023 Seite 6 von 8
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Article 6

Signing of contracts between the parties

6.1 Contracts with a value equal to and over 100.000 €, or any other limit set by the Management Board, shall be signed by two members of the Management Board according to the valid signature rules at the relevant date.

6.2 Contracts with a value up to 100.000 €, or any other limit set by the Management Board, shall be signed by 2 authorized persons in line with the valid signature rules at the relevant date.

6.3 Amendments to contracts resulting from technical or financial changes agreed to by the contracting parties require signatures at the same level as indicated in 6.1. and 6.2.

Article 7

Statistics about awarded contracts

On a half-yearly basis, the Administrative and Finance Committee shall be provided with statistics about awarded contracts above 100.000 € by Project Management office FAIR.

Article 8

Currency

8.1 All prices contained in the public procurement procedures and correspondingly awarded contracts should be quoted in Euro.

8.2 All amounts referred to in these rules are net value, excluding value added tax.

Article 9

Language

9.1 If the contract value is equal to or greater than 30.000 €, all documents, as well as any correspondence associated with the tendering procedure, shall be composed in English. The publication will be made in the TED (Supplement of the EU). In addition, the documents may contain copies in any other language as specified in the invitation for tender.

In certain exceptional cases, the Company may compose the tender documents and the publication, or parts thereof, in German language¹. Such cases are:

- a) All tendering procedures related to Site & Buildings
- b) IT contracts for which the Company applies the German EVB-IT (Ergänzende Vertragsbedingungen für die Beschaffung von IT-Leistungen / supplementary contract

¹ Only one language can be published in the TED (Supplement of the EU). But TED also offers for all publications a short summary and the headers in English

	Dokumenttyp: Work Instruction FAIR Procurement Rules	Datum: 23.03.2023
		Seite 7 von 8

condition for the procurement of IT-Services) contract templates, with the exception of the related invitation to tender,

c) All procedures, if

— the potential market requests a language other than English²,

— concluding contracts with several clients, the purchasing conditions of the client whose part in the procurement is the largest shall apply.

9.2 If the contract value is below 30.000 €, the tendering documents and related correspondence shall be composed in German.

The currently applicable national limit values can be found in Annex 1.

Article 10 **Entry into force**

These Procurement Rules shall enter into force on the date of their approval by the Council.

² Another language could be for example German for orders or services based on German regulations or (procurement) law.

	Dokumenttyp: Work Instruction FAIR Procurement Rules	Datum: 23.03.2023
		Seite 8 von 8

Annex

Annex 1:

BMBF

Bonn, 13/06/2018

Maximum figure for negotiated awards according to Section 8 (4) No. 17
Lower Threshold Public Award Regulation (UVgO)

For institutionally-funded award recipients

here: Implementing regulations

Following the repeal of the implementing regulations of 30/06/2008, the maximum figure for negotiated awards for the above-mentioned research institutions remains at €30,000 (excluding VAT).

Subject to the following provisions, contracts up to the stated amount may be awarded in the form of a negotiated award without the need for further reasons according to Section 8 (4) UVgO.

- 1) To ensure the economic viability of the award, the following implementing provisions shall apply:
 - a) Trade receivables with an estimated contract value of between €1,000 (excluding VAT) and €30,000 (excluding VAT) may be awarded by way of a negotiated award upon the receipt of at least three written bids.
 - b) For trade receivables with an estimated contract value of between €10,000 (excluding VAT) and €30,000 (excluding VAT), a written request to submit a bid (including work specifications) is also required.

The awarding of contracts pursuant to Section 6 UVgO must be documented.

- 2) The requirements of the Federal Government Directive on the Prevention of Corruption in the Federal Administration must also be complied with in the case of negotiated awards pursuant to Section 8 (4) No. 17 UVgO. In particular, award of the aforementioned contracts must be reviewed at regular intervals for inadmissible influencing factors (cf. No.11.1 of the guideline).

This review is the responsibility of an independent body (e.g., Internal Audit); random spot checks of an appropriate extent shall be carried out annually. in coordination with the contact person for the prevention of corruption.