

**GUIDELINES: RULES AND REGULATIONS FOR SELECTION OF CONTRACTORS AND SUPPLIERS BY THE ITALIAN TRADE AGENCY FOR SUPPLY CONTRACTS OF GOODS AND SERVICES FOR CONSIDERATIONS BELOW THE THRESHOLDS SET FORTH BY APPLICABLE EUROPEAN DIRECTIVES – NAIROBI OFFICE (ITA)**

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**PREAMBLE**

These Guidelines regulates ITA's procurement procedure and are aimed at protecting the rights and interests of ITA and the other parties involved in the procurement of goods and services by ITA improving economic efficiency while ensuring the quality and fairness of procurements.

These Guidelines set forth the procedures for the registration of contractors and suppliers in the "List of Contractors/Suppliers" to be established and kept by the ITA Nairobi Office. The "List of Contractors/Suppliers" will be published on the official website of the ITA Nairobi Office.

By means of the registration in the "List of Contractors/Suppliers", a contractor/supplier is eligible to participate in the procedures for the purchase by ITA of goods and services for amounts below the economic thresholds set forth, from time to time, at European level for each type of procurement. Therefore, these Guidelines shall apply only in respect of contracts for an overall estimated consideration, VAT excluded, including any options or renewals, below the amounts set forth by art. 4, paragraph 1, of the European Directive No. 2014/24/UE of February 26, 2014.

These Guidelines do not preclude or prejudice the procurement procedures set forth by art. 7 of the Decree of the Italian Ministry of Foreign Affairs and International Cooperation No. 192/2017 of November 2, 2017 for contracts for a consideration below Euro 40,000. These Guidelines supersedes and replaces any and all prior guidelines and/or rules and/or regulations on the subject matter hereof, whether oral or written, and set forth the entire guidelines with respects to the subject matters contained herein. Any amendment to these Guidelines must be made in writing by ITA.

The following Articles of these Guidelines are intended to be replaced, amended, revoked and automatically cancelled if they do not comply with current applicable laws and regulations of Italy and Kenya. Should any Articles of these Guidelines be, for any

reason whatsoever, invalid or unenforceable, the remaining Articles shall not be in any way affected.

These Guidelines, for anything not expressly regulated herein, shall be integrated by the applicable founding principles of European competition law and of the Italian Legislative Decree No. 50/2016 of April 18, 2016, the Decree of the Italian Ministry of Foreign Affairs and International Cooperation No. 192/2017 of November 2, 2017 and the applicable laws and regulations of Kenya.

**Note:** *For conversion in Euro of amounts expressed in local currencies, pursuant to art. 7 of the Decree of the Italian Ministry of Foreign Affairs and International Cooperation No. 192/2017 of November 2, 2017, the exchange rate of the date of the first act of procurement procedure, as resulting from the website of Bank of Italy, shall apply.*

## **ARTICLE 1 DEFINITIONS**

For the purposes of these Guidelines, the term "Procurement" means the supply of goods or services.

For the purposes of these Guidelines, the term "Goods" means all types and categories of articles including furniture, equipment, tools, machineries and other products, etc.

For the purposes of these Guidelines, the term "Services" means the subjects of Procurement other than goods, such as all kinds of professional advisory services, advertisement and commercial promotion, exhibitions and trade fairs, etc.

## **ARTICLE 2 STRUCTURE OF THE “LIST OF CONTRACTORS/SUPPLIERS”**

On the basis of the subject of the Procurement, the “List of the Contractor/Suppliers” is divided into the following 5 macro-categories:

Category A: ORGANIZATION OF EXHIBITIONS AND TRADE FAIRS

Category B: SUPPLY OF OFFICE EQUIPMENT

Category C: FURNITURES AND TOOLS/MACHINERIES FOR OFFICE

Category D: CONTRACTORS SERVICES AND RENOVATION

Category E: CONSULTANCY SERVICES AND ADVISORY

Each category is comprised of sub-categories based on the sector and economic value. Contractors/suppliers are required to indicate, in accordance with their business scope,

under which macro-categories and relevant sub-categories they wish to be listed, provided that each contractor/supplier may be listed in no more than 2 macro-categories and no more of 5 sub-categories. A detailed list of the categories of goods and service is published on ITA's official website [www.ice.it](http://www.ice.it), in the section dedicated to the selection of contractors.

[The registration of a contractor/supplier in the "List of the Contractor/Suppliers" does not grant it any rights or titles whatsoever to be invited, selected or appointed in any following Procurement to be awarded by ITA.

### **ARTICLE 3 REQUIREMENTS FOR CONTRACTORS /SUPPLIERS**

To be registered in the "List of the Contractors/Suppliers", a contractor/supplier shall satisfy the following criteria:

- a) Be legally established according to the applicable laws and regulations of its country of incorporation and have a valid business license/registration to conduct business (issued by a local authority where required under applicable laws);
- b) Have full civil capacity;
- c) Have a good commercial reputation and sound financial accounting systems;
- d) Have a good record of paying taxes and social insurance in accordance with applicable laws and regulations;
- e) Have no record in its business activities of grave professional misconduct, which renders its integrity questionable;
- f) Respect and observe all the relevant labor and employment laws employing workers according to the applicable laws and regulations;
- g) No breach of any contracts with ITA in the past three years; and
- h) Meet any other criteria set out by art. 80 of the Italian Legislative Decree No. 50/2016 of April 18, 2016, as amended from time to time, and the corresponding Kenyan laws and regulations.

**Note:** *where the contractor and supplier is a group of economic operators (including temporary associations, joint ventures, consortium) each member must fulfill the abovementioned criteria.*

#### **ARTICLE 4 APPLICATION INSTRUCTION**

Applicants shall send the application forms herein attached to the following e-mail address: [●]

**[NOTA PER ICE: TALE FORM DOVRA' INCLUDERE L'AUTODICHIARAZIONE DEL POSSESSO DI TUTTI I REQUISITI DI CUI ALL'ART.3]**

The application forms shall be signed by the legal representative of the applicant; the signed application forms shall be sent by an official e-mail address of the contractor or supplier as follows:

- If signed manually, the documents shall be scanned together with a copy of the identification document of the person who has signed them;
- If signed digitally, the documents shall be scanned without any identification document of the person who has signed them.

**Note:** *Please refer to Articles 5 and 6 for the other documents to be provided together with the application form.*

**Note:** *The filing of the application forms does not entail the registration in the "List of the Contractor/Suppliers", which will occur only after the positive examination by ITA of the submitted documentation. In this respect reserves the right to conduct independent checks and searches on the criteria under Article 3 and documentation submitted pursuant to Articles 4, 5 and 6.*

#### **ARTICLE 5 DOCUMENTS TO BE PROVIDED BY APPLICANTS**

Together with the application form under Article 4, applicants shall submit the following documentation:

##### **- Individuals**

- a) Valid ID documents, such as ID Card or passport;
- b) Curriculum Vitae, including information such as education backgrounds, related previous experience, professional skills and professional certificates, etc.;
- c) Specific licenses or registration required to perform sales of specific Goods or provide specific Services;
- d) Insurance policies against professional risks in force;

- e) At least two references provided by previous clients who over the last three years purchased from the applicant Goods or Service falling in the macro/sub categories for which the registration is sought. Alternatively, at least the copies of two significant contracts performed over the last three years together with the relevant invoices and a self-declaration such copies are true reproduction of the originals;

**- Companies**

- a) Valid company registration documents, such as business license, certificate of incorporation, etc.;
- b) Presentation of the company (including average number of person employed, available equipment, etc.);
- c) Financial statements for the last three years;
- d) Tax registration certificates;
- e) Specific licenses or registration required to perform sales of specific Goods or provide specific Services;
- f) Insurance policies against professional risks in force;
- g) At least two references provided by previous clients who over the last three years purchased from the applicant Goods or Service falling in the macro/sub categories for which the registration is sought. Alternatively, at least the copies of two significant contracts performed over the last three years together with the relevant invoices and a self-declaration such copies are true reproduction of the originals.

**ARTICLE 6 ADDITIONAL DOCUMENTS REQUIRED FOR THE REGISTRATION UNDER CATEGORY A “ORGANIZATION OF EXHIBITIONS AND TRADE FAIRS”**

In addition to the requirements under Article 3 and the documentation to be provided pursuant to Articles 4 and 5, in order to be registered in the “List of the Contractor/Suppliers” under Category A, a contractor/supplier shall provide also the following information:

- a) Relevant information on the installations realized during the last 3 years including pictures, technical specifications (details of the measures of the area, materials used, etc.) and geographic location;
- b) Detailed list of available equipment and warehouses.

A contractor/supplier can be registered in the “List of the Contractor/Suppliers” under Category A and may be considered by ITA for invitation for a Procurement for the organization of exhibitions and trade fairs only if such additional documentation has been provided.

### **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

Together with the application form under Article 4 and the documentation under Article 5, each applicant shall represent and warrant to ITA that at the date of submission of the application:

- a) It meets all qualifications and conditions required by the applicable laws and regulations of its country of incorporation to conduct business;
- b) It is an independent legal person duly incorporated and legally existing in accordance with the laws and regulations of its country of incorporation; or, if an individual, that it has full civil capacity;
- c) Its legal representative is duly authorized to sign all necessary application documents required by ITA;
- d) Its application to be registered in the ITA’s “List of Contractor/Supplier” will not:
  - (i) violate any provision of its business license, incorporation documents, articles of association or similar organizational documents;
  - (ii) violate any applicable laws or any governmental authorization or approval;
  - (iii) violate any other contract or agreement to which it is a party or any of its commitments or undertakings; and
  - (iv) violate any verdict or arbitral award issued against it, or any order or ruling of any government or regulatory body to whom it is subject;
- e) It has disclosed to ITA all relevant documents and information issued by any competent governmental department that may have a material adverse effect on its ability to fully perform its contractual obligations with ITA, and the documents

previously provided by it to ITA do not contain any false, cheating, misleading or omissive information with respect to material facts;

- f) All the documentation submitted do not include any false or misleading information.

#### **ARTICLE 8 ANTI-CORRUPTION**

In addition to the representation and warranties under Article 7 above each contractor/supplier shall also represent and warrant that in connection with its application to be registered in the “List of Contractors/Suppliers” and in the provision of Goods and Services to ITA:

- a) It has not committed and will not commit any act which violates or may violate any laws or any rules or regulations of any governmental, regulatory, or administrative authority, including without limitation any act which confers, directly or indirectly, any unlawful benefit (whether under the laws of Kenya or an applicable foreign jurisdiction) to any officer of any government or governmental, regulatory or administrative authority, or to any other person or where such offer, payment or gift is intended to influence a decision in a manner that is inconsistent with ITA’s policy of conducting business fairly and ethically.
- b) it has acted and will act in compliance with all applicable anti-corruption laws and regulations of Kenya, and that it has not taken, and will not take, any action that could cause ITA to violate any such anti-corruption laws and regulations, which includes offering, paying, giving, promising or authorizing the payment of any money, gift or anything of value to: (i) any government officer (defined as any officer, employee or person acting in an official capacity for any government department, agency, including state-owned or state-controlled enterprises and public international organizations, as well as a political party or candidate for political office), or (ii) any person the contractor/supplier believes, or has reasons to believe, will offer, pay or give, directly or indirectly, all or a portion of such money, gift or thing of value to any government officer (as defined above). Each contractor/supplier by way of submitting its application to be registered in the “List of Contractors/Suppliers” agrees that should it become aware, or have reason to know, of any payment or transfer (or any offer or promise to pay or transfer) that

would violate any applicable anti-corruption laws and regulations, it shall immediately disclose it to ITA.

#### **ARTICLE 9 TIMELINE**

ITA shall check the documentation submitted within thirty (30) days from the date of receipt. ITA reserve the right to extend such term of additional (30) days in case of high number of applications.

In case of any incompleteness or inaccuracy, ITA is entitled to require applicants to integrate or correct the documentation submitted.

#### **ARTICLE 10 PERIODICAL CHECKS**

ITA has the right to conduct periodical and random checks on information/documents provided by contractors/suppliers, including but not limited to qualifications, incorporation certificates, financial statements, professional certificates, specific certificates or permits, etc.

ITA has the right to conduct periodical and random checks on performances of a contractor/supplier, including but not limited to quality of Goods and Service, price, continuous performance capability, performance promptness and stability, etc.

The contractors/suppliers registered in the “List of Contractor/Supplier” who fail to pass the periodical checks conducted by ITA from time to time may be removed from the list.

#### **ARTICLE 11 INFORMATION UPDATE**

Contractors/suppliers registered in the “List of Contractors/Suppliers” shall inform ITA of any changes in the information previously provided to ITA within 30 days from the occurrence of such change by sending an email to the following email address:

#### **ARTICLE 12 REGULAR UPDATE OF THE “LIST OF CONTRACTORS/SUPPLIERS”**

The “List of Contractors/Suppliers” shall be updated by ITA at least once a year. In this respect, ITA reserves the right to request to the contractors/suppliers to update the information provided during the application process. Failure by a contractor/supplier to provide a feedback to ITA to a request of update of information within 30 days from such request may entail the removal of such contractor/supplier from the “List of Contractors/Suppliers”.

### **ARTICLE 13 EVALUATION OF CONTRACTORS/ SUPPLIERS**

The selected contractors/suppliers then awarded of a Procurement to provide Goods or Services to ITA will be subject to an evaluation by the Italian Public Administration office called RUP.

The evaluation of the awarded contractor/supplier is based on a scoring ranking system from “1” to “5” (“1” refers to really low; “2” refers to not sufficient; “3” refers to sufficient; “4” refers to good; “5” refers to excellent).

For each of the Categories under Article 2 there are different evaluation criteria (not only under a technical point of view but also with reference to the timing of the supply, quality of the goods/services provided, numbers of any malfunctions, problem solving capabilities).

The evaluations are examined also by the Nairobi ITA Office, who elaborates an average score for each contract. The number of scores gained in this way will be materialalso for future selections.

If a contractor/supplier is awarded with more than one contract with ITA, each contract is subject to an evaluation and each evaluation is taken in consideration for the average score.

### **ARTICLE 14 ROTATION PRINCIPLE**

Contractors and suppliers to be invited to participate in the awarding procedure by providing their quotation for a specific Procurement will be selected among those registered in the “List of Contractors/Suppliers” through a rotation principle among the contractors/suppliers within a specific sub-categories in accordance with the provisions of the Italian Legislative Decree No. 50/2016 and its implementing regulations and the Decree of the Italian Ministry of Foreign Affairs and International Cooperation No. 192/2017.

ITC will issue an invitation to provide a quotation to the selected contractors/suppliers.

For each contract to be awarded, at least 5 contractors/supplier will be invited provided that the number of contractors/suppliers registered in the relevant category is sufficient.

In cases of urgency at least 3 contractors/supplier will be invited provided that the number of contractors/suppliers registered in the relevant category is sufficient.

With respect to the rotation principle the following criteria will also be considered:

- a) Number of registered contractors/suppliers in the relevant sub-categories;
- b) Contracts previously awarded (ongoing or completed) and quality of the performance rendered;
- c) Particular requirements (both technical and financial) needed in respect of a specific contract;
- d) The evaluation results under Article 13;
- e) The exceptionality of the invitation of the awarded contractor/supplier in the previous procedure;
- f) Failure to respond to previous invitations.

ITC will issue an invitation to provide a quotation to the selected contractors/suppliers.

Such invitation will include the following information:

- a) Type of Procurement and the specific activity for which the quotation is sought;
- b) Value of the Procurement;
- c) Terms and conditions of payments;
- d) Deadline for submitting the quotation;
- e) Timeline for the completion of the Procurement;
- f) Any required guarantees/security deposits;
- g) Amount of any applicable penalties;
- h) The awarding criteria;
- i) Sample agreement and technical specifications (if available);
- j) Place and date of the award public session (if applicable);
- k) Request of confirmation of the continuing holding of the requirements for the registration in the "List of Contractors/Suppliers".

#### **ARTICLE 15 DUTY OF INTEGRITY**

Contractors/suppliers are forbidden to get involved in any of the following misconducts:

- a) Collude in relation to the quoted price, force out other contractors/suppliers from fair competition, or infringe the rights and interests of the ITA and in general the public interest;
- b) Collude with ITA's staff or agents to the detriment of ITA's interests, the public interest or the rights and interests of any other person;
- c) Bribe the ITA's staff or agents in order to be registered in the "List of Contractors/Suppliers" or get the chance to enter into contracts with ITA.
- d) Provide falsified or altered licenses, certificates or permits;
- e) Misrepresent the company's financial status or performances;
- f) Provide untruthful resumes of and proof of employment relationship with the person-in-charge of the project or of key technical personnel;
- g) Misrepresent its credit status;
- h) Other false and deceptive means.

**ARTICLE 16 TEMPORARY REMOVAL FROM THE "LIST OF CONTRACTORS/SUPPLIERS"**

A contractor/supplier may be temporarily removed from the "List of Contractors/Suppliers" due to the occurrence of any of the following circumstances:

- a) A contractor/supplier is involved in any litigation or arbitration procedure with ITA until such legal proceeding is finally settled.
- b) A contractor/supplier fails to provide any necessary information requested by ITA.
- c) A contractor/supplier is in any delay in the delivery to ITA of the Goods or Services.

The decision of a temporary removal of a contractor/supplier from the "List of Contractors/Suppliers" shall be made by the director of the ITA Office of Nairobi. The contractor/supplier temporarily removed from the List may be re-added again to the "List of Contractors/Suppliers" once the abovementioned circumstances are thoroughly corrected or eliminated. Should the circumstances under letter b) and c) above not be corrected or eliminated within the applicable time-period, the relevant contractor/supplier temporarily removed from the List will be permanently removed from the list.

The communications between ITA and the contractor/supplier regarding the temporary removal will be conducted via the e-mail address of the contractor/supplier provided during the application process.

**ARTICLE 17 PERMANENT REMOVAL FROM THE “LIST OF CONTRACTORS/SUPPLIERS”**

A contractor/supplier may be permanently removed from the “List of Contractors/Suppliers” due to the occurrence of any of the following circumstances:

- a) Following the registration in the “List of Contractors/Suppliers” a contractor/supplier lost the requirements under Article 3.
- b) A contractor/supplier receive an average score lower than “3” in at least two Procurement.
- c) A contractor/supplier has been temporarily removed from the List for at least 3 times over the past 3 years.
- d) A contractor/supplier has been excluded by a procurement procedure of another public administration due to acts or omissions attributable to its responsibility, like for example the submission of untruthful documents or information or it has attempted to unduly influence the award decision process or it has tried to obtain confidential information for its own benefit, etc.
- e) A contractor/supplier is liable for a breach of a contract with ITA resulting in the termination of such contract.
- f) The application form under Article 4 or the documents under Articles 5 and 6 are subsequently found to include false or misleading information.
- g) A contractor/supplier fails to pass the periodical check conducted by ITA according to Article 10.
- h) A contractor/supplier’s representations and warranties listed in Article 7 and 8 are proved that were or has become false in any material respect.
- i) A contractor/supplier is found involved in any of the misconducts listed in Article 15.

- j) A contractor/supplier shows lack of interest in the award of Procurements, such as in case of lack of communication and failure to reply without reasonable grounds to at least 3 quotations over the past 2 years.

The communications between ITA and the contractor/supplier regarding the removal will be conducted via the e-mail address of the contractor/supplier provided during the application process.

With specific reference to the last above listed circumstance, no communication of the removal is to be provided by ITA and the removed contractor/supplier can apply for being re-added in the “List of Contractors/Suppliers” only after two years from its removal.

The decision of permanent removal of a contractor/supplier from the List shall be made by the director of the ITA Office of Nairobi.

#### **ARTICLE 18 PRIVACY**

All the information and data transmitted by each contractor/supplier to ITA pursuant to these Guidelines are collected and managed by ITA solely for the purpose permitted by applicable laws and regulations.

#### **ARTICLE 19 CONFIDENTIALITY**

During the application for the registration in the “List of Contractors/Suppliers”, the applicants may have access to confidential information of ITA.

All contractors/suppliers expressly acknowledge the confidentiality and the intellectual property nature of any such information, each contractor/supplier undertakes to keep such information confidential and warrants that its employees, representatives and agents will keep the same degree of confidentiality in accordance with these Guidelines. In any case, each contractor/supplier or any of its employees, representatives or agents shall not be released from their confidentiality obligations under these Guidelines, even if these are terminated, unless: a) such information becomes public; or b) the other party has released it from such obligation in writing.

#### **ARTICLE 20 DISCLAIMER**

ITC shall not bear any responsibility and/or liability for any losses and/or damages incurred because of any decision made and/or action taken by the contractor/supplier

based upon and/or in connection with any content or information included in these Guidelines.

These Guidelines are solely for the purposes of the contractors/suppliers' reference on how to apply to be registered in the "List of Contractors/Suppliers" of ITA. ITA reserves full rights and discretion to update, amend and interpret these Guidelines.