

Revision	Date	Nature of modifications
3	02/02/2011	Art. 7 modified, removing the distinction, in the rules on digital signatures, between open invitations to tender and other electronic procurement procedures

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SECTION I - GENERAL PROVISIONS

Art. 1 – Purpose

1.1 These Regulations govern:

- the conduct of Electronic Procurement Procedures for the supply of works, goods and services, carried out by the Hera Group using a dedicated computerised system residing on the Internet;
- the electronic exchange of documents between Hera and suppliers;
- the management of the qualification process, the updating of supplier lists and the evaluation of suppliers.

1.2 These Regulations cancel and replace any previous provisions established in this regard.

Art. 2 – Scope of application

2.1 These Regulations are applicable to all e-Procurement Procedures that the Hera Group carries out for the supply of works, goods and services by means of automated systems for the selection of the contractor.

Art. 3 – Definitions

3.1 For the purposes of these Regulations, the terms below shall have the following meanings:

Hera: Hera SpA (Fiscal Code / VAT No. / Bologna Companies Register No. 04245520376) and its subsidiaries or affiliates pursuant to Art. 2359 of the Civil Code;

Supplier: the supplier of works, goods and services - in the form of an individual or an individual business, including artisanal in nature, a commercial company, a cooperative company or an association of entrepreneurs - qualified under these regulations to participate in e-procurement procedures by means of the qualification process.

Parties: Hera and the Supplier considered collectively (hereinafter referred to as “Party” if considered in the singular);

Temporary association of companies (TAC): combinations of individual, commercial or artisanal firms and consortiums that have conferred a special collective mandate of representation on one of their number designated as parent company, which makes the bid on its own behalf and that of the mandators;

Orders/Contracts: contracts for works or supplies of goods and services;

Tender subject to public scrutiny: tender procedure preceded by a notice of tender and falling, with regard to value and content, within the scope of application of Community legislation;

e-Procurement tender: contractor selection procedure implemented by electronic means (hereinafter referred to as “Tender”). The definition of e-Procurement tender includes both Tenders subject to public scrutiny and negotiations of a private nature;

Qualification system: procedure subject to public scrutiny for the drawing-up of a list of qualified Suppliers, governed by Art. 232 of Legislative Decree 163/06;


Portal: Hera’s e-Procurement portal accessible at www.gruppohera.it, in the suppliers area, subdivided into a public area (accessible to all) and a private area (accessible only to authorised users);

Standard qualification: the process that attributes, to the firm requesting it, eligibility to receive orders and enter into contracts. The system is aimed at all interested firms and ensures the maintenance of an up-to-date list of suppliers of proven technical and economic reliability, to be used for future tenders.

Electronic document transmission: the electronic transmission of information via computerised systems;

User authorisation: the result of the process that allows the supplier, through the allocation of a Userid and Password, to access the system, obtain qualification and participate in e-procurement tenders;

User Name (Userid): the identification that an authorised Supplier must use when accessing the system;

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Password: the secret information which, in combination with the User Name (Userid), allows the Supplier to be authenticated by the server.

Access codes: the User Name and Password considered collectively;

System: the solutions and electronic instruments that allow the use of the computerised applications cited in these Regulations;

Administrator user: the person, autonomously identified by the supplier, who is entrusted with the task of signing binding bids for the firm and for managing any authorisations for other users;

Ordinary users: the persons who, authorised by the Administrator user, may access the applications and use the associated services;

Records: the electronic archives containing the data, documents and information relating to e-procurement procedures;

Merchandise groups: the categories of merchandise into which the supplies of goods, services and works that Hera is interested in procuring are grouped;

Regulations: these Regulations on accessing and using e-procurement Tenders, the qualification Process and the other functionalities of the system.

Art. 4 – Computer equipment

4.1 For the purposes of **e-Procurement Tenders**, the Supplier must equip itself, at its own expense and on its own responsibility, with the technological means necessary for accessing and using the system. These requirements are listed on the Hera Portal in the Section “Suppliers – E-procurement”.

4.2 The Parties hereby agree that the costs associated with the hardware, software and Internet connection necessary for the purposes envisaged in these Regulations, as well as all necessary equipment, will be borne by each Party in relation to the measures falling under its responsibility.

Art. 5 – Communications between the Parties

5.1 The Supplier, in signing and accepting the content of these e-procurement regulations, agrees, including in derogation of the provisions of Art. 77 of Legislative Decree 163/2006, that in all e-procurement tender procedures implemented by Hera, including where these are preceded by a notice of tender subject to public scrutiny:


- a) all communications pertaining to the tenders shall be regarded as being validly made by Hera if sent to the e-mail address or fax number indicated by the supplier at the time of registration of its details, which it shall be the supplier’s responsibility to keep constantly up to date in the SRM system;
- b) all communications pertaining to the tenders shall be regarded as being validly made by the supplier if sent to the e-mail address or fax number indicated by Hera in the tender documentation.

5.2 **In e-procurement tenders**, Hera reserves the right to limit or exclude the use of fax for submitting bids, by giving advance notice to this effect in the call for bids.

5.3 The Supplier shall inform Hera in good time, via the “Management of details” functionality, of any modifications that may occur in relation to the recorded data cited in Art. 13 below.

Art. 6 – Authorisation process: Authorisation and Access Codes

6.1 In order to access the System, it is necessary to connect to the Portal and follow the instructions given there for registering and obtaining the Access Codes (userid and password) required for authorisation. The authorisation consists of the dispatch by e-mail, to the Supplier’s address, of the user name (userid) and password. The userid and password, at the time of making the first connection, must be personalised in order to ensure secrecy of communications.

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6.2 Possession of the access codes allows the Supplier to take part in e-procurement tenders, submit bids and request qualification, but is not sufficient for entering into contracts with Hera, since it is necessary to be qualified for the Merchandise Group forming the subject of the supply, as indicated in Art. 17 of the Regulations.

6.3 The Supplier is solely and exclusively responsible for keeping the Access Codes secret and confidential, and is therefore solely and exclusively responsible for all uses of the Access Codes, whether or not such uses are authorised by the Supplier. The Supplier also assumes exclusive responsibility for any activity that it carries out within the context of the System, and undertakes to indemnify and hold Hera harmless against any demand, claim or threat relating to or deriving from the use or abuse of its participation in online operations.

6.4 The authorised Supplier takes note of the fact that knowledge of the Access Codes by third parties allows them to access the System and enables them to carry out acts of legal significance attributed to the Supplier itself.

6.5 In relation to the above, the Supplier undertakes to inform Hera immediately, by e-mail subsequently confirmed via fax, of any unauthorised use of its access codes by third parties or of any breach of security that may come to its attention, and in any event hereby undertakes to indemnify and hold Hera harmless against any demand, including for compensation of damages, arising and/or deriving directly or indirectly from such use or abuse by any person.

SECTION II – E-PROCUREMENT TENDERS

Art. 7 – Regulation of Tenders


7.1 The types of tenders that Hera proposes to implement using the e-procurement procedure are, by way of non-limitative example, as follows:

- *e-Auction*: special type of auction conducted online, in real time and with immediate communication to the supplier of the current status of the awarding of the contract.
- *Negotiated contract*: private contract, not subject to any public regulation. This type of tender may be configured on an ad hoc basis according to the particular business requirements involved; in particular, it is possible to define the procedure for the opening of bids, the type of documentation required and the procedure for the evaluation of bids.
- *Tender subject to public scrutiny*: tender process created in relation to the publication of a Notice of Tender subject to public scrutiny where required for amounts exceeding the thresholds established by the EU.
- *Qualification System (QS)*: procedure subject to public scrutiny preceded by the publication of a notice of tender that can be examined by all suppliers accessing the system. Subsequently, negotiated procedures may be carried out with the suppliers who have successfully undergone the Qualification System.

7.2 Hera activates a computerised procedure whereby the suppliers eligible to take part in each Tender, from the moment of its commencement, may submit the relevant documents electronically by accessing the System. The invitation to enter into a negotiated contract takes place by the dispatch of the notice of tender by e-mail or, at the discretion of Hera, by fax. The activation of a public tender takes place by the publication of the call for bids both in the public area of the Portal and in the Reserved Area of the System, as well as in the traditional channels for publication of tender notices (Official Journal of the European Communities, Official Journal of the Republic of Italy, etc.).

7.3 In all e-procurement tenders, where provided for in the tender documentation, the awarding of the contract may be conditional upon confirmation of the bid by the first-ranking bidder, by signing either with a digital signature or on paper. Failure to confirm the bid in accordance with the procedures and terms established in the tender documentation may result in exclusion from the e-procurement tender.

7.4 Each Tender begins at the moment fixed in the notice of tender or in the call for bids. The official valid time is the System time. The best bid is identified on the basis of the criteria set out in the Tender documentation.

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7.5 Hera assumes that the person who accesses the System in order to formulate and submit bids is provided by the Supplier with an appropriate power of attorney, with reference to the estimated maximum amount of the individual order, except in the event of any different provisions contained in the tender documentation.

7.6 In the event of receipt, during the Tender, of a bid deemed to be anomalous, Hera is entitled to request, even after the compilation of the provisional ranking list or one of its phases, justifications for all the elements comprising that bid. Hera retains the right to exclude the anomalous bid or to cancel the Tender concerned, if the conduct of the Tender has been seriously compromised by the forwarding of the anomalous bid, without the possibility of any claim, including for compensation, or demand for indemnification of any kind being made against Hera by any Supplier.

7.7 Hera identifies, on the basis of the criteria set out in the notice of tender or in the call for bids, the bidder/s who has/have passed the individual Tender phase and the best bid thus defined according to the economic evaluation parameters or the joint technical/economic evaluation parameters set out in the call for bids.

7.8 Where provided for by current legislation, Hera reserves the right to negotiate the contents of the bids with a limited number of firms (short list) considered to be the best bidders. The negotiation will normally be carried out on the SAP-SRM platform, under the same procedures and guarantees of secrecy and security already applied in the first bidding phase. In this event it is obligatory for the Supplier to re-present its bid via the System even in the case of simple confirmation of the previous bid. If this is not done, the first bid may no longer be regarded as valid since it is physically no longer available to the Client (the System returns the envelope to the bidder).

7.9 Suppliers who, during the conduct of a Tender, have fallen into serious breach ascertained by Hera by any means, as well as being excluded from the procedure concerned, will be subject to a non-conformity dispute procedure which may result in their being barred from receiving calls for bids and therefore from entering into contracts with Hera (black list).

7.10 Bids received for individual e-procurement tenders are immediately binding for the Supplier but not for Hera, which reserves the right not to award any contract.

7.11 The user manuals present on the Portal are intended only to provide useful information for guiding Users in the use of the System and must not be regarded in any way as rules governing the conduct of e-procurement tenders.

7.12 The Supplier, in accepting the content of these Regulations, agrees that the SAP-SRM system represents the official channel of communication with Hera for the management of e-procurement tenders, including those for amounts exceeding the Community thresholds.


Art. 8 – Help Desk

In order to provide further support to suppliers regarding the operation of the system, a Suppliers Help Desk is active on the days and at the times and addresses made available on the Portal or specified in the notice of tender or in the call for bids. The technical support of the Help Desk service for computer problems is provided up to the day before the scheduled deadline for the procedure, unless specified otherwise in the tender documentation.

Art. 9 – System Malfunctions

9.1. In the event of any inability to access the platform that might be caused by malfunctions of the platform, even after the “guaranteed” period of support cited in Art. 8 above, and effectively ascertained by Hera, the latter will take the necessary measures to ensure equality of treatment of the participants in the procedure.

9.2 Hera reserves the right to suspend, postpone or cancel individual e-procurement tenders if, during the course of negotiations, the anomalies in the functioning of the System, the Hera infrastructure or the network should be such as to make it impossible for the participants to access the Portal or to prevent them from

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formulating their bids. The Users exonerate Hera from any responsibility in relation to any malfunction or defect relating to the connectivity services necessary for connecting to the System.

Art. 10 – TACs / Consortiums

10.1 In the event of a request being submitted by a Temporary Association of Companies (TAC), the relevant mandatory Company must deliver to Hera, in accordance with the procedures indicated in the notice of tender or in the call for bids, a declaration signed by its Legal Representatives in which the mandatory is authorised for the specific Tender, on behalf of the TAC, to accept the e-Procurement Regulations.

10.2 In the case of a TAC, only the Mandatory follows the Tender on the System, accessing the Portal with its own Access Codes.

10.3 In the case of a Consortium, to which the same prescriptions cited in point 9.1 will apply, the Consortium takes part directly with its own Access Codes.

Art. 11 – Electronic exchange of documents and associated conservation

11.1 Documents may be attached to the bid and to the request for participation in the tender, or alternatively, where provided for by the notice of tender and in all qualification processes, the exchange of documents takes place via the use of electronic system files whose use requires upload and download functionalities. Some of the documents may be made available on the Portal www.gruppohera.it/fornitori (and thus subject to free, direct and unconditional access), with an indication of the reference link.

11.2 Hera reserves the right to request suppliers to re-send documents in formats compatible with its systems.

11.3 The Supplier is obliged to ensure the conservation of the original paper versions of the documents loaded on the platform in response to a specific call for bids, for the period of time established by current legislation, and to transmit them to Hera on request. The Supplier guarantees that all documents loaded on the platform will be in conformity with these originals.

SECTION III – SUPPLIERS’ DETAILS


Art. 12 – Management of the application

12.1 The Supplier must ensure, via electronic means, by accessing the System, that its previously recorded details relating to the firm are kept up to date.

12.2 The Supplier must attend, exclusively at its own expense and on its own responsibility, to the updating of the e-mail address of the sales manager, since it is not possible for Hera to modify this even in response to a notification from the Supplier. The system sends all communications and notifications relating to the procedures to this address. It is therefore solely in the Supplier’s interest to ensure an e-mail address that is constantly active and monitored. No plea will be accepted regarding non-receipt of the communications that will be forwarded to this address.

Art. 13 – Amendment of details

13.1 Once access to the system has been obtained by means of a Userid and Password, the Supplier is obliged to add, to the data supplied at the time of initial registration on the Portal, the details of the sales contact and other contact persons. The details provided by the supplier during the self-registration phase concerning the company name, Fiscal Code and VAT number can be amended only by Hera at the formal request of the Supplier (via fax).

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13.2 Hera reserves the right to decide whether or not to accept the amendments made, and if they are accepted, the system records the new data and sends a confirmation message to the Supplier in order to communicate the acceptance of the amendments made.

13.3 Any amendment of data entails the deletion of the data previously provided.

TITOLO IV – ADMINISTRATOR USER

Art. 14 – Authorisation process: Authorisations

14.1 The authorisation issued to the Administrator User is understood to be issued to the Supplier, as are the authorisations issued by the Administrator User to the Ordinary Users that it identifies. The Administrator User may authorise one or more internal users to access the System.

14.2 The Administrator User is authorised to manage the following applications:

- **Online qualification** (so-called “qualification request”): this application allows suppliers to request qualification for new Merchandise Groups;
- **e-Procurement tenders**: this application allows suppliers to take part in each Tender by accessing the System.
- **Contact details management**: this application allows the amendment and maintenance of contact details relating to the individual supplier.

14.3 Ordinary Users may be authorised by the Administrator User to take part in e-procurement tenders.

Art. 15 – De-authorisation, Revocation and Replacement

15.1 Each supplier may request to be de-authorised, without prejudice to the obligations already assumed. The de-authorisation request must be sent by fax.

15.2 After the dispatch of the request, the Supplier undertakes not to use the system, except for the conduct of the activities required for correct and complete fulfilment of the obligations already assumed.

15.3 Hera reserves the right to revoke, at any moment, the authorisations issued. The revocation of authorisations is communicated by Hera to the Supplier by fax.

SECTION V – QUALIFICATION


Art. 16 – Qualification process

16.1 Hera implements a computerised procedure whereby suppliers can, by electronic means, submit requests to access the list of firms that might potentially be consulted in procurement procedures. The procedures for qualifying as a Supplier of Hera are as follows:

- **Standard Qualification**
- **Qualification System**
- **Tender subject to public scrutiny** (providing for standard qualification of the successful bidder and of the second- and third-ranking bidders).

16.2 The Merchandise Groups may be open or closed for the qualification process. For “open” Merchandise Groups only, the Supplier may request commencement of the standard qualification procedure. The Supplier authorised on the System may request qualification for a new “open” Merchandise Group by selecting it in the area dedicated to online Qualification.

16.3 The qualified Supplier undertakes to inform Hera immediately of any changes or any loss of the essential qualification requirements for an individual Merchandise Group. Hera reserves the right to verify, at any moment, the accuracy of the data recorded in the application cited in this article. The Supplier hereby undertakes to provide appropriate documentation in good time at Hera’s request.

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16.4 In order to be able to take part in tenders subject to public scrutiny and submit requests for participation in the qualification systems, it is necessary to be authorised on the System. The authorisation request is obtained by completing the Supplier Contact Details form, which is accessible via a suitable link in the area “Become a Portal supplier”.

16.5 On completion of the qualification process, the Supplier will become an “effective” supplier and will be able to receive orders and enter into contracts. The Supplier will receive an initial minimum qualification score, which will be updated periodically according to the quality of the supplies and services delivered.

SECTION VI – FINAL PROVISIONS

Art. 17 – Security and validity of registered documents

17.1 All of the systems (Web Server, Application Server Databases) on which the e-Procurement platform is based are situated at a Data Centre that guarantees high standards of physical and logical security.

17.2 All communications between the Supplier and the e-Procurement System are secured through the use of an encryption protocol that guarantees the confidentiality of the transmitted data. Access to the System from the public network is protected through the use of firewalls and reverse proxies, which protect the internal systems from any attempted attacks.

17.3 Monitoring tools are provided which verify the availability and regular functioning of the e-Procurement infrastructure and record any unauthorised access attempts.

17.4 The operations carried out within the context of e-procurement tenders and the computerised negotiation systems can be traced to the user on the basis of the authorisation process, and are deemed to have been carried out at the time and on the date shown in the system records. The System time is synchronised with Italian time with reference to the UTC (IEN) time scale, as cited in Decree No. 591 of the Minister of Industry and Trade of 30 November 1993. The System time is updated via a connection with the *Istituto Galileo Ferraris* in Turin. The system records are created and archived in conformity with current provisions.

Art. 18 – Liability for damages

18.1 Hera accepts no liability for any malfunction or any impossibility of connection arising from causes independent of its own technological infrastructure.

18.2 The Supplier therefore exonerates Hera from any liability for prejudicial consequences of any nature or for direct or indirect damages that might be caused to the Supplier or to third parties due to unauthorised, improper or prejudicial use of Access Codes, and undertakes to compensate Hera for any damages of any nature that it might suffer as a consequence of such events.


18.3 The Supplier is liable for damages caused to Hera by any act, negligence or omission due to facts attributable to the third parties whose services it employs in relation to the provision of the services cited in these Regulations.

Art. 19 – Processing of personal data

19.1 The information provided pursuant to Art. 13 of Legislative Decree 196/2003 may be consulted at the following website address: www.gruppohera.it/fornitori.

Art. 20 – Competent court

20.1 The Courts of Bologna have exclusive competence for the settlement of any dispute arising from the application of these Regulations, or in any way connected with the same, which the Parties are unable to settle amicably within forty-five days of the arising of such dispute.

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Art. 21 – Conduct implying an intent

21.1 Use of the System, and therefore, by way of non-limitative example, participation in Tenders and/or the electronic exchange of documents, entails in all cases acceptance of these Regulations and any successive amendments or additions to the same.

21.2 Hera reserves the right, at its exclusive and unquestionable discretion, to modify the Regulations at any moment. Such modifications shall become fully effective from the moment of their publication on the Portal; it is therefore the exclusive duty and responsibility of the Supplier to ensure that it is familiar at all times with the current contents of the Regulations.

Art. 22 – Code of Ethics and QES Policy

22.1 Hera's Code of Ethics and Quality, Environment and Safety Policy, which are available on the Group's Portal at www.gruppohera.it, constitute an integral part of these e-Procurement regulations.

22.2 Hera reserves the right, at its exclusive and unquestionable discretion, to modify the documents mentioned in the preceding point at any moment. Such modifications shall become fully effective from the moment of their publication on the Portal; it is therefore the exclusive duty and responsibility of the Supplier to ensure that it is familiar at all times with the current contents of the said documents.

Art. 23 – Applicable law

For any matter not expressly provided for in these Regulations and/or explicitly governed by the Tender documentation, reference shall be made to the relevant legal provisions in force.