

CHAPTER III

REGULATIONS APPLYING TO THE CASH RESOURCES OF THE ITER ORGANIZATION

Article III.1 General Principles

III.1.1 The following Regulations shall govern the administration of the cash resources of the ITER Organization regardless of the sources and applications of funds.

III.1.2 The annual budget of the ITER Organization, hereinafter called “the Budget”, shall be the instrument which shall authorize annually and in advance the estimated expenditure and income of the ITER Organization.

III.1.3 The Budget shall contain commitment appropriations, payment appropriations, and a statement of income. Commitment appropriations represent the upper limit of the legal obligations which can be met from the Budget. The payment appropriations represent the upper limit of payments to be made in the course of each financial year to cover the commitments entered into in the course of that same year or previous years. The Statement of Income shall equal the Payments Appropriations for the year.

III.1.4 The financial year shall correspond to the calendar year.

III.1.5 In these Regulations, the term ‘expenditure’ shall cover commitments and payments.

Article III.2 Budgetary Principles

III.2.1 All income and expenditure shall be credited or charged against an article in the Budget. No commitment or payment shall be entered into in excess of the allotted appropriations.

III.2.2 There shall be no offset of income against expenditure save for cash and trade discounts and adjustments of amounts paid or received in error.

III.2.3 The appropriations entered in the Budget shall be used in accordance with the principles of economy and sound financial management.

Article III.3 Currency

III.3.1 The Budget shall be drawn up in Euro.

Article III.4 Presentation and Adoption of the Budget

III.4.1 Based upon the approved ITER Resource Estimates, and the forecasts of cash expenditures and contributions in cash from the Members and expected additional resources provided in cash to the ITER Organization under Article I.2.1 c), the Director-General shall prepare and submit to the Council by 31 October each year:

1. the Draft Budget for the following year;
2. the Interim Draft Budget for the year following the Draft Budget year;
3. the Preliminary Draft Budget for the year following the Interim Draft Budget Year.

III.4.2 The Draft Budget statements referred to in Article III.4.1 shall be sub-divided in accordance with the work breakdown structure used for the Project Resource Estimates as agreed from time to time by the Council. Further sub-divisions will be made as proposed by the Director-General. The Draft Budget statements shall be drawn up and detailed in accordance with the Implementing Measures provided for in Article III.19 and shall, in particular, show:

- a) the new appropriations proposed for the Budget years by phases, and further sub-divisions;
- b) under the same headings, the appropriations available for the current year including any carry-over, and estimated expenditure in the current year;
- c) for each sub-division appropriate commentaries;
- d) in an annex, the number of posts for each category of staff.

III.4.3 The Council shall adopt the Budget of the ITER Organization normally at least one month before the start of the Budget year, and shall approve the statements of the Interim Draft Budget and of the Preliminary Draft Budget for their respective Budget years.

III.4.4 Upon the adoption of the Budget and the approvals of the Interim Draft Budget and of the Preliminary Draft Budget, the Director-General shall forthwith transmit to the Members the budgetary information as approved.

Article III.5 Supplementary Budgets

III.5.1 The Director-General may present draft supplementary or rectifying Budgets during the financial year, if and when necessary.

III.5.2 Such supplementary or rectifying Budgets shall be presented, adopted and notified to the Members in the same manner and through the same procedure as the Budget whose estimates they modify. They must be justified by reference to that Budget.

Article III.6 Unused Appropriations

III.6.1 Commitment appropriations not used by the end of the financial year shall remain valid for the purpose for which they were established.

III.6.2 At the end of the financial year those unspent payment appropriations which are needed to settle outstanding commitments shall be transferred to a special account to meet payments directly incurred in connection with these commitments. Should the payments made against a commitment be less than the payments appropriation transferred to the account to meet that commitment, the surplus shall be credited to income; should the payments made against a commitment exceed the payment appropriation transferred to the account to meet that commitment, the excess shall be paid from current appropriations.

Article III.7 Late adoption of the Budget

III.7.1 If the Budget is not adopted at the beginning of the financial year, the total commitment appropriations, sub-divided at a level as determined by Council, which may be entered into monthly shall be subject to a limit of one quarter of the commitment

appropriations of the previous financial year, with the addition of one twelfth for each month past.

III.7.2 Payments shall be made, as they fall due, against current year commitments authorized under Article III.7.1 above, and against commitments outstanding from prior years. However, all such payments shall be strictly in accordance with the terms of individual contracts, or when no contract terms are applicable, in accordance with normal commercial practice. To meet these payments the Members shall advance contributions in conformity with the financial regulations of their respective Designated Agencies.

Article III.8 Implementation of the Budget

III.8 Adoption of the Budget by the Council shall constitute an authorization to the Director-General to issue to the Members the call for contributions in respect of the budget year and to enter into expenditure as from the start of the year in accordance with that budget, save for the following which shall be subject to prior approval by the Council:

- i. contract award in excess of 500,000 Euro, following full competitive tender;
- ii. contract award in excess of 100,000 Euro on single or limited tendering, except in cases of proven urgency, in which cases the Director-General shall immediately inform the Council of the circumstances and of the actions taken;
- iii. proposals for expenditure on staff amenities in excess of 50,000 Euro.

In determining the values above, all relevant expenditure, except staff salaries, shall be aggregated, notwithstanding that the value of each individual contract within the proposal could be less than the approval limit.

Article III.9 Principles of Budget Implementation

III.9.1 The implementation of the Budget shall be carried out according to the principle of separation of authorizing and accounting officers.

III.9.2 The authorizing officer shall be the Director-General who alone shall have the power, without prejudice to any delegation of his powers decided by him/her, to enter into expenditure, to establish the sums due to be collected and issue receivable orders and payment orders. In entering into expenditure, the authorizing officer shall take into account the advice of the accounting officer.

III.9.3 The accounting officer shall be responsible to the Director-General for the correct application of these Regulations. In particular he shall manage the ITER Organization's financial resources; compile the budget statements; prepare annual and other periodical statements of account; check financial operations, accounts and commitments; check the inventory of non-consumable items; prepare when required financial, cost and related data for the management of the ITER Organization.

III.9.4 In accordance with Article I.5.7 of these Regulations, the Director-General shall report to the Council and as otherwise directed by the Council on the implementation of the Budget.

Article III.10 Internal Audit

III.10.1 The Director-General shall establish an internal audit service under his own authority which shall undertake the audit of the legality and regularity of the implementation of the budget in accordance with present articles and shall examine whether the financial management of the ITER Organization has been sound.

III.10.2 The internal audit service shall report directly to the Director-General.

III.10.3 The measures taken in respect of appointment and promotion, disciplinary action or transfer of the head of the internal audit service shall be subject to reasoned decisions to be forwarded for information, to the Council and the Financial Audit Board provided for in Article 17 of the Agreement.

III.10.4 The Director-General shall make available to the Financial Audit Board, on its request, the records established by the internal audit service.

Article III.11 Budget Transfers

III.11 The Director-General may decide upon transfers between Chapters and Articles of the budget; he may

- a) transfer appropriations between articles within each chapter;
- b) transfer appropriations between chapters within the same title, up to a maximum total of 10% of the appropriations for the year shown on the chapter from which the transfer is made.

He shall subsequently inform the Council of such transfers made.

The Director-General may propose to the Council transfers other than those referred to in points a) and b). The Council shall have one month to give its decision.

Article III.12 Members' Contributions in Cash

III.12.1 The contributions in cash of the Members in each year shall be as set out in the Budget for that year as adopted by Council.

III.12.2 The contributions shall be defined in Euro in accordance with Article III.3 of these Regulations. The Director-General shall, at the beginning of each financial year, notify the Members of the amount of their contributions. The Members' obligations to contribute shall be in Euro. By agreement between the Director-General and the Party concerned and where justified in the interests of the ITER Organization, some part of the contribution may be made in the currency of the Member of equal value according to the currency exchange rates applying at the time of the contribution. Members shall make their contribution in accordance with and following the schedule to be set out in the Implementing Measures provided for in Article III.19.

III.12.3 If there should exist a temporary shortfall in cash, the Director-General may, subject to the approval of Council, ask the Members for advances on their contributions.

Article III.13 Authorization of Financial Commitment

III.13.1 All measures which may give rise to a payment chargeable to the Budget must be preceded by a requisition for commitment. The requisition must indicate:

- the financial year to which the commitment is to be charged;
- the line in the budget and if necessary the sub-division of the line;
- the amount to pay and the currency;
- the name and address of the recipient;
- the objective of the commitment.

III.13.2 In tendering the advice foreseen by Article III.9.2 to the authorizing officer, the accounting officer shall confirm that:

- a) the requisition is in order; and
- b) the proposed commitment is within the limits of the appropriate chapter of the budget.

Article III.14 Authorization of Payment

III.14.1 The accounting officer shall be responsible for the approval of payment upon receiving certifications specifying that the conditions for payment have been fulfilled.

III.14.2 The authorization of a payment is subject to the presentation of supporting documents and is intended to:

- verify the creditor's claim,
- determine or verify the existence and the amount of the debt,
- verify the conditions under which payment falls due.

III.14.3 The order of payment, signed by the accounting officer in accordance with Article III.14.2, together with its supporting documents, must give the information noted in Article III.13.

III.14.4 The accounting officer shall make the payment within the limits of the funds available. In the event of an error in fact, or if the validity of the discharge is contested or if the formalities set out in the present provisions are not observed, the accounting officer must withhold the payment.

Article III.15 Awarding of Contracts

III.15 The arrangement for awarding contracts for supplies, works or services, or hire contracts by the ITER Organization are specified in the Annex, 'Awarding of Contracts', which shall form an integral part of the present Regulations. The objective of the procedures set out in that annex shall be to select the tenders giving the economically and technically most efficient solution, it being noted that the Director-General shall, in collaboration with the Members of the ITER Organization, strive to achieve a distribution of contracts which reflects the international collaborative nature of the Project.

Article III.16 Assets (transferred to Article I.6)

Article III.17 Presenting and auditing of Accounts

III.17.1 The accounts shall be kept in Euro in accordance with normal standards of financial accounting, on the basis of the calendar year. They shall show all income and expenditure for the financial year. They shall be authenticated by supporting documents.

III.17.2 Entries shall be classified according to a nomenclature of budgetary items which makes a clear distinction between the balance sheet accounts and the accounts of budgetary expenditure and income. The detailed conditions for drawing up and operating the accounting plan shall be determined by the implementing measures provided for in Article III.19.

III.17.3 The accounts shall be closed at the end of the financial year to enable a balance sheet and the income and expenditure accounts to be drawn up.

III.17.4 The annual income and expenditure accounts shall be presented in the same form with the same sub-divisions as the Budget and shall be prefaced by a commentary of the financial management for the year in question.

III.17.5 The balance sheet shall show the assets and liabilities of the ITER Organization as at 31 December of the financial year.

Article III.18 External Financial Audit

III.18.1 Within two months of the end of each financial year the Director-General shall submit the annual income and expenditure accounts and the balance sheet of the previous year to the Financial Audit Board. The audit shall be made in accordance with Article 17 of the Agreement; detailed procedures shall be set out in a document to be agreed between Council and the Financial Audit Board and attached to the Implementing Measures provided for in Article III.19.

III.18.2 The Director-General shall present these accounts and balance sheet to the Council for consideration together with the report of the Financial Audit Board. Upon approval of the accounts and balance sheet, the Council shall discharge the Director-General in respect of the implementation of the Budget.

Article III.19 Implementing Measures

III.19 On proposal by the Director-General, the Council shall establish the measures required for implementing this Chapter of the Regulations. These implementing measures will in particular include:

- a) systems of internal project and budgetary control coupled with appropriate sub-delegations of authority to enter into commitments and to authorize payments;
- b) management of changes;
- c) awarding of contracts;
- d) recording of expenditure under a specific nomenclature of budgetary items and drawing up an operating accounting plan;
- e) accounting Rules and Procedures;
- f) external Financial Audit procedures;
- g) asset management, including:
 - inventory recording and control;
 - control of cash and bank accounts including cheque signatories;
 - where appropriate, receipts and issues of stock by the Stores;

- disposal of surplus or redundant stocks and equipment;
- proprietary information.

Article III.20 Adjustments for Inflation

III.20 All sums shown in these Regulations and the Annex thereto may be adjusted by the Council, on a proposal from the Director-General, to take into account changes in currency values.

Article III.21 Internal Taxation

III.21 In the event that a staff member is subject to national income taxation by a Party with respect to the salaries and emoluments actually paid to him or her by the ITER Organization, and provided that there is a tax reimbursement agreement in force between the ITER Organization and the Party concerned, the Director-General is authorized to reimburse the staff member concerned the amount of those taxes to the extent that such amounts are reimbursed to the ITER Organization by the Party concerned.

ANNEX TO CHAPTER III AWARDING OF CONTRACTS

1. Contracts and orders concluded by the ITER Organization shall be in writing and concluded and normally drawn up in Euro and/or in the currency of the State in which the contractor is located and/or in the currency of the country in which the work is to be carried out. They may be made against invoice or memorandum only where the expected value of goods or services supplied does not exceed 3000 Euro.
2. Each contract and order shall be governed by General Terms and Conditions consistent overall with the normal standards applying to public sector purchases in comparable areas of activity in the territories of the Members and shall contain provisions safeguarding the rights conferred on the Members under the ITER Agreement, in particular as concerns Information and Intellectual Property.
3. Subject to the provisions of paragraph 12 of this Annex, the ITER Organization shall award contracts, in accordance with Article III.15 of the Project Resource Management Regulations, following competitive tenders on a basis of transparency and non-discrimination among the Members of the ITER Organization.
4. For this purpose, the ITER Organization shall prepare and present to the ITER Council once a year, or more frequently as it may deem appropriate, a summary of procurement actions that it foresees conducting in the coming 24 months. Members shall solicit expressions of interest from among qualified firms in their respective territories and advise the ITER Organization accordingly. The ITER Organization shall prepare and send to persons designated by each Member for this purpose the following information, which shall be held in confidence:
 1. a description of the work;
 2. an estimate of the approximate value;
 3. delivery requirements;
 4. planned dates of call for tender, tender closing and selection;
 5. a list of the proposed criteria for the evaluation of the tenders.
5. For specific procurement proposals the ITER Organization shall notify Members of the firms to be invited to tender, which shall be held in confidence. The Members' designated persons shall be invited to comment within 14 days on the tender list and on any other matter pertaining to the proposed procurement.
6. Taking into account any comments received under paragraph 5 above, the ITER Organization shall prepare a revised list of tenderers and issue a call for tender.
7. Where appropriate, the Director-General may decide, instead of the procedures set out in paragraphs 5 and 6 above, to publish an open call for tenders. In this case, the ITER Organization shall ensure that publication of the call for tenders occurs at the same time and in comparable fashion in the territories of each Member.
8. The ITER Organization shall take appropriate measures to safeguard commercial information contained in offers made in response to calls for tender; in particular the prices quoted shall be kept strictly confidential.

9. Tenders shall be selected on the basis of an evaluation of the technical acceptability, price and the financial status, technical capacity and professional competence and any other criteria listed in accordance with paragraph 5.6 of this Annex, as submitted by each of the tenderers. The reasons for the selection shall be recorded.

10. The ITER Organization shall inform the candidates and tenderers as soon as possible of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract for which there has been competitive tendering or to restart the procedure.

11. The ITER Organization may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

12. The procedures outlined in paragraphs 4-11 above may not apply and contracts and orders may, therefore, be made by direct agreement:

1. where the Council deems that, in the interest of the ITER Organization, competitive tendering is not appropriate;
2. where contracts and orders are valued at less than 100,000 Euro for work by single orders/contracts constituting a self-standing unit of work unless a study or design contract may lead to manufacturing order of more than 500,000 Euro. The Director-General shall nonetheless be bound as far as reasonable and by all appropriate means to ensure competition between possible suppliers;
3. where the placing of a contract or order is so urgently required for unforeseen reasons that it is not possible to wait for a full tendering process;
4. where the call for tenders does not give any result or where prices quoted are not acceptable in spite of the fact that all contractual and technical specifications have been established completely and clearly;
5. where for technical or legal reasons, the supply of goods and services can only be done by a particular supplier;
6. for contracts and orders for the supply of goods and services or for construction works which technically cannot be separated from a main contract that has already been decided.

13. The award of contracts and orders by single order/contract or by several orders/contracts constituting a unit of work shall be decided:

1. for items not more than 500,000 Euro to be procured following competitive tendering action as outlined in Paragraphs 5-11 of this Annex – by the Director-General;
2. for items above 500,000 Euro – by the Council on proposal of the Director-General;
3. for items not more than 100,000 Euro to be procured under single or limited tendering - by the Director-General;
4. for items above 100,000 Euro to be procured under single or limited tendering – by the Council on proposal of the Director-General.

In exceptional circumstances, the Director-General may place orders/contracts as defined in paragraph 12.1-12.6 of this Annex subject to reporting the placing of such orders/contracts to the next meeting of the Council.

14. The ITER Organization shall ensure that satisfactory records are made and retained of procurement actions, on the basis of which the Director-General shall submit a general report to the Council at each meeting of the Council.

15. Without prejudice to paragraph 16, no contractual negotiations shall take place before awarding the contract or offer where an invitation to tender is made. At this stage contacts between the ITER Organization and tendering firms shall be limited to correcting errors and clarifying queries regarding their offers in order to be able to compare offers and to make a well-founded proposal for decision on the award of contract or order. This does not exclude, however, the possibility that the decision to award a contract or order is taken under the condition that further advantages might be obtained by subsequent negotiations with the firm concerned.

16. If the services or supplies to be procured are of an advanced technical or scientific nature, discussions on technical and scientific matters may take place with interested firms before the award of the contract in order to reach the best technical solution. In such an event, all tendering firms must be treated equally.

17. Any modification in the invitation to tender, as well as any supplementary information, shall be communicated simultaneously to all firms to which the invitation was sent.

18. The principle of aggregation shall apply in the case of amendments to contracts. In approving the award of contracts in accordance with paragraph 13 of this Annex, the Council may set an aggregate ceiling within which contract amendments may be approved under the authority of the Director-General. Where a proposed amendment is such as to cause the aggregate cost of the contract to exceed the threshold values set out in paragraphs 13.1 or 13.3 as applicable to the nature of process by which the contract was first awarded, the Director-General shall submit the proposed amendment for approval by the Council.