

FIA

Single suppliers and tendering: Frequently asked questions

1. Introduction

As the world governing body for all international motor sport, the FIA assumes both regulatory and organisational functions.

Its regulatory functions include ensuring that motor sport is conducted in a manner that is safe, fair and orderly. It does this by exercising certain regulatory powers which have been entrusted to it by operation of law or through the FIA's democratic processes. As part of its functions, it has a detailed system of regulation designed to ensure that the equipment used in motor sport meets certain minimum objective safety and fairness standards.

These safety and fairness standards are set out in the FIA's International Sporting Code and all international competitions must comply with this code.

In addition to its regulatory functions, the FIA has a second role. In common with many other sports bodies, the FIA also organises its own competitions (such as the FIA Formula One World Championship, the FIA World Rally Championship, the FIA European Truck Racing Cup etc.). The FIA's own competitions naturally must meet the same minimum safety and fairness criteria as those organised by third parties.

In common with all organisers of sporting competitions, the FIA has the ability to require that participants in its competitions comply with any additional rules and requirements that are deemed necessary (provided always that such rules are not incompatible with the International Sporting Code).

In this context, as both regulator and organiser, the FIA occasionally identifies specific circumstances related to one of its own competitions which merit the appointment of a single supplier of certain items of equipment.

The FIA will only make such an appointment for the benefit of the competition in question and in accordance with its regulatory and sporting functions. When such an appointment is made, this will only be for a limited period of time and only following a transparent tendering procedure.

2. When might it be necessary to appoint a single supplier?

The decision to award a single supply contract for a specific piece of equipment is not taken lightly. Where possible the FIA will prefer that as many different manufacturers as possible (provided they all meet the relevant minimum safety and technical criteria) are capable of supplying equipment, as choice will normally benefit the participants and the sport.

However, in certain cases, the interests of the sport do require a limitation of the number of suppliers that can be admitted. The following are indicative examples.

- (i) **“Fairness”**: Having a single supplier dramatically improves the FIA's ability to verify that each competitor is using equipment that is in compliance with the applicable rules. Furthermore, in some disciplines, even where two or more products are homologated but are nevertheless slightly different from each other, these small differences can have such a significant impact upon the outcome of a

race that the element of sporting competition between participants is significantly reduced. This can arise without any one product necessarily being “better” than another. In such cases, it can be necessary to “level the playing field” between participants in order to preserve the element of sporting chance and to ensure that sporting skill (rather than investment in technology) continues to be properly rewarded.

- (ii) **“Safety”**: Although all equipment must meet minimum safety criteria, in some circumstances having a single product is the best way to ensure that compliance with the relevant standards is properly verifiable.
- (iii) **“Cost”**: In some disciplines the appointment of a single supplier can lead to significant cost reductions for participants. This is true both because of economies of scale, a reduction in the cost of participating in equipment inspections and because it reduces the need for participants to invest heavily in developing their own R&D solutions. Cost reduction ensures that the sport remains primarily a test of sporting skill (rather than a competition to see who can raise the largest budget to spend on R&D through sponsorship). In addition, the reduction of equipment costs allows motor sport competitions to remain open to greater numbers of participants.

In some cases the reasons underpinning the objective need for a single supplier may involve a number of different overlapping elements, perhaps including elements of each of cost saving, safety promotion and the guarantee of fairness.

3. Who decides that a tender is required?

When appropriate, the World Motor Sport Council (rather than the FIA executive) decides to appoint a single supplier.

This is because the FIA complies in every respect with its democratic mandate and seeks to be representative and fair, even when it is acting as a organiser, rather than fulfilling its regulator role. The involvement of the World Motor Sport Council guarantees this fairness.

When the need arises (for example when there is sufficient concern at the “grass roots” level of the particular competition), the usual route for a single supplier decision to be taken is that the elected representatives of those involved will bring the matter to the attention of the relevant sub-committee or committee attached to one of the World Motor Sport Council’s dedicated Sporting Commissions.

The matter will then be debated and voted through this process and, if the justifications are good, the decision will be taken by the World Motor Sport Council to instruct the FIA’s Secretariat to appoint a single supplier.

4. What happens once it is decided that a single supplier is required?

Once a decision has been taken to appoint a single supplier, the FIA organises an objective, non-discriminatory and transparent tendering process for the right to supply the particular input

for the relevant FIA competition¹. The successful bidder is then granted the exclusive right to supply the competition in question for an appropriate period, which is no longer that is objectively required.

5. How does the tendering process operate?

Once the FIA's Secretariat has been instructed to arrange for a single supplier, it does so by organising an open tender. The FIA goes to great lengths to ensure that the process is fair and transparent and that it achieves a demonstrably fair result.

The usual procedure is as follows (though this may vary from case to case).

In the first instance, the relevant technical department within the FIA will compile a dossier describing what the requirements and parameters are for the product in question, together with a copy of all of the technical and sporting rules associated with the particular competition. In addition, the dossier will include a form for the submission of any supplier's bid and an indication of the broad contractual terms which it is proposed that the successful bidder will agree to, as well as an indication of the procedure to be followed.

The proposal to organise a tender will be communicated to relevant manufacturers that the FIA is aware of by the most appropriate means. This may include posting on the FIA's website, direct mail or by advertising in the press. The FIA encourages the broadest possible participation and any interested party is free to request a copy of the dossier to allow them to consider whether to submit a bid.

Interested parties are invited to send their sealed tenders by a specified date (normally some months away) to the office of an independent *Huissier de Justice* (rather than to the FIA).

The *Huissier de Justice* concerned will, at a specified time and date, open the replies to the invitation to tender, and all undertakings that have tendered are free to attend this opening. An affidavit confirming those who responded in time to the invitation to tender is duly drawn up by the *Huissier*. Once the specified date has passed no further bids are considered.

The relevant executive of the FIA then proceeds to evaluate the tenders and announces the winner on a pre-notified date. In evaluating the tenders, naturally those that manifestly do not meet the objective criteria and terms of the tender are discarded first. Of the remaining tenders, the FIA selects the most competitive offer and notifies all of those that made bids accordingly. Occasionally it may organise a second round amongst the most attractive offers to allow bids to be refined.

6. What is required of a successful bidder?

It is often a precondition in the invitation to tender that the supplier provide samples of the product to be supplied, so that they may be tested for compliance with the objective criteria set out. These criteria are usually the FIA's own standards (for example the parameters of the chemical composition of fuel might be determined) or may be other objectively verifiable standards such as the applicable ISO specifications.

¹ In March 2004, the European Commission specifically confirmed and endorsed the FIA's entitlement to appoint single suppliers for motor sport competitions in such circumstances through the use of such tendering procedures. A "case study" describing the Commission's Decision is attached.

In addition, bidders are generally requested to supply a bank guarantee and performance bond. These are essential to reduce the risk that a supplier will for some reason cease to make and supply the product in question in the middle of a season. As the appointment will be exclusive, it could threaten the integrity of a competition if a supplier of key inputs were altered mid-season. In addition, as the events calendar is already set it might create serious logistical difficulties to try to alter unexpectedly the supplier of any key input during the course of the competition.

The company that wins the tender and enters into an exclusive contract is committed to supplying that element upon the pricing terms set out in the contract.

The contract does not normally state a specific quantity of goods to be manufactured or distributed or services to be offered, as that depends on the orders placed by the competitors. Nevertheless, the FIA requires of the selected supplier that the quantities be sufficient for the period stated in the contract, which varies from case to case but may often be from one to three years.

7. Does the successful bidder then supply goods to the FIA?

No. The successful bidder is granted the exclusive right to supply those who participate in the competition in question. A framework contract to supply the FIA's competition is concluded with the FIA. The contracts to supply the goods themselves are concluded between the appointed supplier and the individual competitors.

8. Does the FIA profit from this process?

The FIA receives no consideration for its role in appointing a single supplier. It performs this role solely in pursuit of the objectives set out above (i.e. to make the discipline fair, safe and affordable). Any fees payable are only to cover the costs of verification, the running of the tender process etc. As explained above, all actual supply contracts are concluded between the suppliers and the individual competitors rather than with the FIA.

9. What about those that do not win a single supply contract?

The FIA seeks to preserve and advance the interests of motoring generally as well as the interests of motor sport. It certainly has no interest or desire to impede innovation or to reduce the commercial opportunities that might be available to manufacturers of motor sport related equipment.

Against this, the FIA must weigh the interests of participants in motor sports and the long term success and safety of competitions.

For this reason the decision to appoint a single supplier is taken only after careful consideration and after weighing up the advantages and disadvantages.

In principle, single suppliers will be appointed only for the most limited period practicable to allow the FIA to achieve its sporting objectives without imposing unnecessary burdens on participants to change equipment too frequently.

Decisions to appoint a single supplier apply only to the relevant FIA competition. They do not apply to other competitions within the same discipline, for example national events or series, or international series authorised by the FIA but not organised by it. The FIA is one of thousands of event organisers that exist across the world. It acts as organiser for twenty four Championships whereas there are tens of thousands of events held annually in the member countries of the FIA.

Therefore, the appointment of a single supplier will not impede any equipment manufacturer from supplying participants through any of the thousands of other channels open to them.

10. Does the tendering process allow a single supplier to become “endorsed” by the FIA?

Whilst the FIA may wish to secure an exclusive supplier for particular products, it does not normally agree to imply that it is officially endorsing any particular product. Nor, in this context, is the purpose of appointing a single supplier to grant any supplier the status of exclusive, authorised, or selected supplier for any commercial purposes. In particular, the FIA would not normally agree to endorse any public statement that one supplier’s products are in any way technically superior to any others, as this is not the FIA’s role.

It is for this reason that the exclusive supply contracts typically mention that the extent of the agreement is limited to supplying the product for due consideration. Save in unusual circumstances, no “endorsement” by the FIA accompanies the award of the contract.

11. Conclusion

As part of its governance and sporting mandate, the FIA must occasionally take difficult decisions in balancing the interests of motor sport with the interests of equipment suppliers. To the maximum extent possible to FIA endeavours to conduct its activities in this regard on an open, transparent and fair basis. However, as with all decisions affecting diverse interests, it may not always be possible to satisfy all parties’ interests equally.

The FIA fully welcomes the participation of all interested parties in the democratic processes which bring about decisions to appoint single suppliers. It is also very open to suggestions and constructive criticism where interested parties can identify areas for improvement at any stage in a tendering process.

If you have any suggestions, queries or complaints in relation to this policy or any aspect of a single supply issue, please make contact with the Legal Department and the fullest consideration will be given to your concerns.