EUROPEAN COMMISSION
DIRECTORATE GENERAL
JOINT RESEARCH CENTRE
Resources
Finance and Procurement

CALL FOR TENDERS
Open Procedure
JRC/KRU/2018/G.II.6/0052/OC

Support and maintenance for Open VMS-based Hybrid K-edge / XRF software

Tender specifications:
Part 1- Administrative Annex

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For British tenderers:

Please be aware that after the UK's withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to candidates or tenderers from the UK depending on the outcome of the negotiations. In case such access is not provided by legal provisions in force candidates or tenderers from the UK could be rejected from the procurement procedure.

1. INFORMATION ON TENDERING

1.1. Who may submit a tender

Participation in this procurement procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties, as well as to international organisations.

It is also open to all natural and legal persons established in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the participation to this procedure is open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions it lays down.

1.2. How economic operators can organise themselves to submit a tender

Economic operators can submit a tender either as a sole tenderer or as a group of tenderers (joint tender, Section 1.2.1). In either case subcontracting is permitted (Section 1.2.2). A tenderer can also rely on the capacities of other entities to fulfil the selection criteria (Section 1.2.3).

The tenderer must clearly specify the role of each economic operator involved in the tender – as a member of a group, a subcontractor or a third party on whose capacity is being relied upon. This also applies where the entities involved belong to the same economic group.

Changes in the composition of the group or change of subcontractors during the procurement procedure (after submission of the tender) or contract execution is subject to the prior written approval of the Contracting Authority.

The Contracting Authority may require the tenderer to remove or, in case of subcontracting or reliance on a third party for the selection criteria, to replace an entity which is in an exclusion situation or does not fulfil a relevant selection criterion.

1.2.1. Joint tenders

A joint tender is a situation where a tender is submitted by a group (with or without legal form) of economic operators (natural or legal persons) regardless of the link they have between them.

All members of the group assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole, i.e. both financial and operational liability.

The joint tender must clearly indicate the role and tasks of each member and designate one legal entity ("the leader") as the single point of contact for the Contracting Authority for administrative and financial aspects as well as operational management of the contract. The leader will have full authority to bind the group and each of its members during contract execution.

If the joint tender is successful, the Contracting Authority will sign the contract either with all members of the group, or with the leader, authorised by the other members to sign the contract on their behalf (e.g. via powers of attorney).

1.2.2. Subcontracting

Subcontracting is the situation where the contractor enters into legal commitments with other legal entities which will perform part of the contract on its behalf. The contractor retains full liability towards the Contracting Authority for performance of the contract as a whole. Freelancing, drawing on the activities or staff of any other entirely different legal entity than the contractor, qualifies as subcontracting, independent of the applicable national law.

All tasks subject of the contract may be subcontracted unless the Technical Specifications reserve the execution of certain critical tasks to the tenderer itself, or in case of a joint tender, to a member of the group.

Tenderers must identify subcontractors ("identified subcontractors" hereafter):

- on whose capacities the tenderer relies upon to fulfil the selection criteria as described under Section 2.3;
- whose individual share of the contract is above 15%.

1.2.3. Reliance on a third party for fulfilment of selection criteria

For the fulfilment of selection criteria under Section 2.3 a tenderer may rely on the capacities of other entities, regardless of the legal nature of the links it has with them. It must in that case prove that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment by those entities to that effect.

If the contract is awarded to a tenderer relying on another entity to meet the minimum levels of economic and financial capacity, the Contracting Authority may require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.

2. EVALUATION AND AWARD

2.1. Order and basis of evaluation

Tenders received in conformity with the submission modalities of the call for tender will be subject to assessment with regard to the following criteria:

- Exclusion criteria (Section 2.2)
- Selection criteria (Section 2.3)
- Compliance with the minimum requirements of the Tender Specifications (Section 2.4)
- Award criteria (Section 2.5)

The Contracting Authority will assess these criteria in no particular order. A tenderer failing to pass a given category of criteria will not be evaluated under the other categories and will be informed of the ground for rejection without being given feedback on the non-assessed content of the tender.

The contract will be awarded to the tenderer, or in the case of multiple framework contracts, the tenderers, who offer the most economically advantageous tender(s) based on the award criteria specified in Section 2.5 provided that:

- the tender complies with the minimum requirements of the Tender Specifications, and
- the tenderer fulfils the exclusion and selection criteria specified in Sections 2.2 and 2.3 of this document, and is not subject to conflicting interests which may negatively affect the performance of the contract.

The Contracting Authority shall evaluate tenders as follows:

- Exclusion criteria shall be evaluated on the basis of "Declaration(s) on Honour on Exclusion and Selection criteria" (Annex 1) to be provided at tender submission stage as evidence of non-exclusion criteria (Section 3.2).
- Selection criteria shall be evaluated on the basis of evidence of legal and regulatory, financial and economic and technical and professional capacity specified in Section 2.3 of this document. For joint tenders, subcontracting or reliance on third parties for the fulfilment of the selection criteria, the evidence must be provided in accordance with the applicable basis for assessment of each criterion: in case of consolidated assessment – only by the entities who contribute to the fulfilment of the criterion, and in case of individual assessment – by each entity to whom the criterion applies individually.
- Compliance with the minimum requirements shall be evaluated on the basis of documents submitted for identification of the tenderer (Section 3.1), the Technical offer (Section 3.3) and the Financial offer (Section 3.4).
- Award criteria shall be evaluated on the basis of the Technical offer (Section 3.3) and the Financial offer (Section 3.4).

Where the value of the awarded contract is equal to or above EUR **144.000,00** the successful tenderer **shall** be required to provide before contract signature and within a deadline given by the Contracting Authority the following documentary evidence:

- Supporting documents of non-exclusion listed in the "Declaration on Honour on Exclusion and Selection criteria" (Annex 1). In case of a joint tender this evidence must be provided by each member of the group. The Contracting Authority reserves the right to require the evidence also from identified subcontractors (see Section 1.2.2) and/or other entities on whose capacity is being relied for fulfilment of the selection criteria (see Section 1.2.3).

The Contracting Authority reserves the right to require the above documentary evidence at any time during the procurement procedure and contract execution. Failure to provide the requested evidence may lead to the tender being rejected. If any of the declarations or information provided as a condition for participating in this procedure proves to be false the Contracting Authority may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

Tenderers shall not be required to submit:

- Documentary evidence that has already been submitted for the purposes of another procurement procedure of the Commission, provided that the documents are still valid and, in case of supporting documents of non-exclusion, the issuing date does not exceed one year from the date of the request of the Contracting Authority. In such cases, the tenderer shall declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that that there has been no change in its situation.

- A specific document which the Contracting Authority can access on a national database free of charge. In this case the tenderer shall provide the Contracting Authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document.

International organisations are exempt from the obligation to submit supporting documents of non-exclusion.

2.2. Exclusion criteria

The objective of the exclusion criteria is to assess whether an economic operator is allowed to participate in the procurement procedure or to be awarded the contract.

Tenderers will be rejected from the procurement procedure if they are in any of the situations listed in Article 106 or 107 of the Financial Regulation[1]. Where the tenderer is a legal person, certain exclusion situations apply also to the natural persons having power of representation, decision-making or control over the tenderer and to natural or legal persons assuming unlimited liability for the debts of the tenderer. All these situations are explicitly described in the "Declaration on Honour on Exclusion and Selection Criteria" (Annex 1).

2.3. Selection criteria

The objective of selection criteria is to assess the capacity of the tenderer to carry out the work subject to this procurement procedure. This includes legal and regulatory, economic, financial, technical and professional capacity.

To fulfil the selection criteria a tenderer may rely on the capacities of other entities (Section 1.2.3).

2.3.1. Legal and regulatory capacity

Tenderers must prove that they are allowed to pursue the activity necessary to carry out the work that is the subject to this call for tenders.

The legal and regulatory capacity shall be proven by supporting documents provided with the Legal Entity Form (Section 3).

[1] Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union - http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32015R1929

2.3.2. Economic and financial capacity

The tenderer must have the necessary economic and financial capacity to perform this contract until its end. In order to prove their capacity, the tenderer must comply with the following selection criteria.

Please provide the following evidence with the tender

Criterion F1: Average annual turnover of the last three financial years for which accounts have been closed above EUR **80.000,00**.

- **Evidence F1:** Copy of the profit and loss accounts for the last three years for which accounts have been closed from each concerned legal entity, or, failing that, appropriate statements from banks.
- **Basis for assessment F1**: This criterion applies to the tenderer as a whole (consolidated assessment) - the combined capacities of all members of the group in case of a joint tender, all identified subcontractors and all entities on whose capacity is relied for the fulfilment of this criterion.

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, it may prove its economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification. The Contracting Authority reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

The Contracting Authority reserves the right not to award the contract to a tenderer where the evidence provided gives rise to major concerns on its financial viability to perform the contract and the tenderer has failed to mitigate these concerns by submitting observations or other evidence of financial viability.

2.3.3. Technical and professional capacity

The tenderer must have the necessary technical and professional capacity to perform this contract until its end. In order to prove their capacity, the tenderer must comply with the following selection criteria.

Please provide the following evidence with the tender

Criterion T1: The tenderer must prove experience relevant to the subject of the contract.

- **Minimum level of capacity T1:** At least 2 similar projects completed in the last three years preceding the tender deadline.
- **Evidence T1**: A list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total contract/project amount and scope, role and amount invoiced by the economic operator. In case of contracts still on-going only the portion completed during the reference period will be taken into consideration.

- **Basis for assessment T1**: This criterion applies to the tenderer as a whole - the combined capacities of all members of the group in case of a joint tender, all identified subcontractors and all entities on whose capacity is relied for the fulfilment of this criterion.

Criterion T2: Aptitude of the proposed manpower to perform the contract.

- **Minimum level of capacity T2:** The designated staff for the purposes of performance of the contract shall:
  a) prove a sound experience (at least 3 years) in developing emulator and driver-level software in C and C++,
  b) prove a sound knowledge of the Open VMS operating system,
  c) have at least 3 years' experience with the AVANTI Open VMS emulator,
  d) have experience with migrating old software to new hardware platforms (at least 2 similar projects).
- **Evidence T2**: The tenderer must provide at least one CV (preferably in Europass format) meeting the minimum capacity levels for this criterion. The precise contractual link with the tenderer must be specified. It is reminded that freelancing qualifies as subcontracting.
- **Basis for assessment T2**: This criterion applies to the tenderer as a whole - the combined capacities of all members of the group in case of a joint tender, all identified subcontractors and all entities on whose capacity is relied for the fulfilment of this criterion.

2.4. Verification of compliance with Tender Specifications

The aim of this verification is to assess the compliance of the tender with:
(1) The administrative formalities of the call for tender set out in the Tender Specifications: Part 1 - Administrative Annex.
(2) The minimum technical requirements set out in the Tender Specifications: Part 2- Technical Specifications.

The tender must comply with the applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU[2].

For requirements, standards, brand names, processes or formats named in the Technical Specifications fully equivalent objects shall be accepted unless otherwise specified. It shall be for the tenderer to justify this full equivalence.

Tenders may be considered non-compliant with the Tender Specifications if they:

- do not provide the information and documents required for identification of the tenderer (see Section 3),
- contain an incomplete or inconsistent financial offer,
- propose a price exceeding the maximum budget set or an abnormally low price,
- do not cover all or deviate from the minimum requirements of the Technical Specifications,
- propose a solution different from the one prescribed in the Technical Specifications (variants are not allowed),

[2] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

- do not comply with the applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU,
- do not present mandatory options where required.

These tenders may be rejected on the basis of non-compliance with the Tender Specifications and will not be evaluated.

2.5. Award criteria

The objective of the award criteria is to evaluate the technical and financial offer with a view to choosing the most economically advantageous tender in accordance with the award method indicated below.

Lowest price award method

The contract shall be awarded to the tender that offers the lowest price. The price considered for evaluation will be the total price of the offer, covering all the requirements and, where applicable, all options set out in the Tender Specifications.

The total price must be a fixed amount including all charges (all-inclusive price).

2.6. Ranking and award

Tenders shall be ranked according to price in descending order i.e. the second lowest price shall be ranked second, etc.

The contract shall be awarded to the tenderer ranked first, who is not in an exclusion situation, whose tender is compliant with the requirements of the Tender Specifications and who fulfils the selection criteria.

3. STRUCTURE AND CONTENT OF THE TENDER

Tenders shall be structured as follows.

3.1. Identification of the tenderer

The tender must include:

- A cover letter signed by an authorised representative of the tenderer (in case of joint tenders an authorised representative of each member or only of the leader duly authorised by the other members). The letter must clearly indicate:
    - the name of the tenderer, including the names of all members of the group in case of a joint tender, as well as their tasks during contract execution,
    - the tender reference number and title,
    - if applicable, the names of subcontractors and entities on whose capacity the tenderer relies for fulfilling the selection criteria, as well as their tasks during contract execution,
    - the period of tender validity (in the absence of such indication the Contracting Authority shall assume that the tender is valid at least for the minimum validity period set in the Invitation letter),
    - contact details for communications with the Contracting Authority (including contact person and email),

  - confirmation of acceptance of all terms and conditions of the Tender Specifications and the Draft Contract,
  - indication whether the tenderer (each member in case of a joint tender) is a Small or Medium Size Enterprise in accordance with Commission Recommendation 2003/361/EC (this information is used for statistical purposes only).

- Evidence confirming that the person signing the cover letter and other documents on behalf of the tenderer is so authorised (e.g. copy of notice/publication of appointment or extract from trade register). Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

- (if applicable) Evidence that the leader of the joint tender is authorised to sign the cover letter and, if the joint tender is successful, the contract on behalf of the other members of the group.

- (if applicable) Document proving the commitment of subcontractors/third parties on whose capacity the tenderer relies for fulfilling the selection criteria and confirming that the tenderer will have at its disposal the resources necessary for the performance of the contract.

- Legal Entity Form signed by an authorised representative of the tenderer (each member of the group in case of joint tender) and the supporting documents indicated in the form.

The form is available at the following link:
http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been contractors of the Commission) must provide the form but are not obliged to provide the supporting documents.

- Financial Identification Form signed by an authorised representative of the tenderer (only the leader in case of joint tender) and the supporting documents indicated in the form.

The form is available at the following link:
http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial-id_en.cfm

3.2. Non-exclusion and selection

As evidence of non-exclusion criteria it is sufficient at the tender submission stage to submit the "Declaration on Honour on Exclusion and Selection criteria" (Annex 1), signed and dated by an authorised representative of:

  - the tenderer (each member of the group in case of joint tender), and
  - (if applicable) each identified subcontractor (see Section 1.2.2), and
  - (if applicable) each third party on whose capacity is being relied for fulfilment of the selection criteria (see Section 1.2.3).

As evidence of selection criteria the tenderer should submit the documents as specified in Section 2.3 of this document.

3.3. Technical offer

The technical offer must cover all aspects and tasks required in the Technical Specifications and provide all the information needed to assess the compliance with the minimum requirements and apply the award criteria.

3.4. Financial offer

The financial offer must be:

- **fixed**
- **free of all duties, taxes (e.g. VAT) and charges** (the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union),
- **all-inclusive** (covering all requirements of the Tender Specifications and including all possible renewals, options), and
- **expressed in Euro** (the price quoted may not be revised in line with exchange rate movements - it is for the tenderer to bear the risks or the benefits deriving from any variation).

4. ANNEXES

Annex 1: Declaration on Honour on Exclusion and Selection criteria

Annex 2: Formular for the evaluation of the selection criteria