



EUROPEAN COMMISSION

DIRECTORATE-GENERAL CLIMATE ACTION

European Commission

Call for tenders CLIMA/2020/RP/0002

Services of the third common auction platform

Restricted procedure

TENDER SPECIFICATIONS

ADMINISTRATIVE SPECIFICATIONS

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1 SCOPE AND DESCRIPTION OF THE PROCUREMENT

1.1 Contracting authority: who is the buyer?

This restricted call for tenders is for the joint procurement between the European Union, represented by the European Commission (hereafter referred to as Commission), and the following states for which the Joint Procurement Agreement to Procure Common Auction Platforms¹ (hereafter referred to as *JPA-CAP*) has entered into force:

Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Ireland, Spain, France, Finland, Greece, Italy, Cyprus, Croatia, Latvia, Lithuania, Luxembourg, Hungary, Malta, The Netherlands, Austria, Portugal, Romania, Slovenia, Slovakia, Sweden, Iceland, Liechtenstein, Norway (hereafter referred to as *contracting states*).

The list of *contracting states* may be extended to include any other state in accordance with Article I.19 of the draft contract after the launch of this *call for tenders*. Article I.20 of the draft contract also sets out who may use the common auction platform without becoming a *contracting state*.

The Commission assisted by its Directorate General for Climate Action and acting on its own account and on behalf of the *contracting states* pursuant to Article 4(2) of the *JPA-CAP* for the purposes of this *call for tenders* and the resulting contract, publishes the *call for tenders*, organises the evaluation, signs and manages the contract (including any amendments thereto).

The *contracting states* and the Commission are collectively referred to hereafter as the *contracting authority*.

1.2 Subject: what is this *call for tenders* about?

The subject of this *call for tenders* is to procure the services to be performed by the third common auction platform (hereafter referred to as *CAP3*) under the EU Emission Trading System (hereafter referred to as *EU ETS*).

1.3 Lots: is this *call for tenders* divided into lots?

This *call for tenders* is not divided into lots.

¹ [Joint Procurement Agreement to Procure Common Auction Platforms](#).

1.4 Description: what do we want to buy through this call for tenders?

1.4.1 Background and objectives

The *EU ETS* was established in 2005 in accordance with Directive 2003/87/EC of the European Parliament and of the Council² (hereafter referred to as *ETS Directive*). Since 1 January 2013³ auctioning is the main method for allocating *allowances* within the *EU ETS*. The rules on the conduct, timing and administration of the auctioning are laid down in Commission Regulation (EU) No 1031/2010⁴ (hereafter referred to as *Auctioning Regulation*).

- **Auctioning**

According to the *Auctioning Regulation*, at least two entities are required for the performance of the auctions of *allowances* under the *EU ETS*: the auction platform and a *clearing system* or *settlement system* connected to the auction platform.

The auction platforms are responsible for the conduct of the auctions by bringing together the *auctioneers*, who sell the *allowances*, and the bidders who buy them. This includes the setting of the auction calendar, the procedures for admission to auctions and for submission of bids, the calculation of successful bids and of the auction clearing price, the identification of the successful bidders, and the announcement of auction results. The auctions may only be conducted on an auction platform authorised as a *regulated market* whose operator organises a secondary market in *allowances* or *allowances derivatives*.

The *clearing system* or *settlement system* is responsible for the handling of payments made by successful bidders, the distribution of the auction proceeds to the *auctioneer*, the delivery of the auctioned *allowances* to the successful bidders, and managing *collateral* provided by the *auctioneers* or bidders, including any *margining*.

The *Auctioning Regulation* allows that the auctions are conducted by a common auction platform or by opt-out platforms. 25 Member States decided to appoint the common auction platform, while Germany, Poland and the United Kingdom (UK) opted out. Iceland, Lichtenstein and Norway (hereafter referred to as *EEA-EFTA States*) joined the *JPA-CAP* on March 2019 and also auction their *allowances* on the common auction platform. Any opt-out Member State can join the joint action for using the common auction platform and if an opt-out Member State has not nominated its own platform it may use the common auction platform to auction its *allowances*.

The common auction platforms are procured by a joint procurement between the Commission and the states participating in the joint action pursuant to Article 26 of the *Auctioning Regulation*. The practical modalities of the public procurement for the

² [Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC \(OJ L 275, 25.10.2003, p. 32\).](#)

³ [Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community \(OJ L 8, 13.1.2009, p. 3–21\).](#)

⁴ [Commission Regulation \(EU\) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a system for greenhouse gas emission allowances trading within the Union \(OJ L 302 18.11.2010, p. 1\).](#)

procurement of the common auction platforms are agreed between these participating states and the Commission by means of the *JPA-CAP*.

The European Energy Exchange was appointed as transitional common auction platform on 23 August 2012 pursuant to Article 26(2) of the *Auctioning Regulation* following an open call. On 13 July 2016, the European Energy Exchange was appointed as the second common auction platform pursuant to Article 26(1) of the *Auctioning Regulation* via a [competitive dialogue](#)⁵. As Poland has not yet appointed its own opt-out auction platform, it has been auctioning its *allowances* on the common auction platform since 2014.

Since November 2012, the common auction platforms have been auctioning the following types of *allowances* in accordance with the Auction Regulation:

- a) allowances in accordance with Chapter II of the *ETS Directive* (hereafter referred to as *aviation allowances*);
- b) allowances in accordance with Chapter III of the *ETS Directive* (hereafter referred to as *general allowances*).

- **Changes in the rules applying to the auctions**

On 28 August 2019, the Commission adopted a delegated regulation⁶ revising the *Auctioning Regulation*, *inter alia* to ensure a stronger competitive procurement process for the common auction platforms.

The *Auctioning Regulation* requires that fees to the auction platform are paid only by the bidders. The structure and level of these fees as well as any related conditions applied by any auction platform, *clearing system* or *settlement system* should not be less favourable than comparable standard fees and conditions applied on the secondary market. However, the revised *Auctioning Regulation* allows the maximum fee level to be increased in a limited manner where this is foreseen by the procurement procedure and the annual auction volumes are reduced by more than 200 million *allowances* due to the operation of the market stability reserve in accordance with Decision (EU) 2015/1814 of the European Parliament and of the Council concerning the establishment and operation of a market stability reserve⁷ (hereafter referred to as MSR Decision). This option is included in the current joint procurement procedure.

Pursuant to Article 35(1) of the revised *Auctioning Regulation*, a regulated market whose operator organises a wholesale energy market as defined in Article 2(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council⁸, but does not organise a secondary market in allowances or allowances derivatives, may participate in the procurement procedure

⁵ Pursuant to Article 104(1)(e) of the then applicable Financial Regulation 1966/2012, corresponding to Article 164(1)(e) of the Financial Regulation 2018/1046 currently applicable.

⁶ [Commission Delegated Regulation \(EU\) 2019/1868 of 28 August 2019 amending Regulation \(EU\) No 1031/2010 to align the auctioning of allowances with the EU ETS rules for the period 2021 to 2030 and with the classification of allowances as financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council \(OJ L 289, 8.11.2019, p. 9\).](#)

⁷ [Decision \(EU\) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC \(OJ L 264 9.10.2015, p. 1\);](#)

⁸ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

where it is foreseen in the procurement documents. This option is *not* included in the current joint procurement procedure.

The rules for the transfer of *allowances* within the *Union Registry*⁹ to the auction platform and its *clearing system* or *settlement system* prior to each auction are provided for in Commission Regulation (EU) No 389¹⁰ (from 1 January 2021 - Commission Delegated Regulation (EU) 2019/1122¹¹) (hereafter referred to as Registry Regulation).

- **Financial market rules**

In 2014, the rules governing financial markets were revised to cover all segments of the carbon market. In particular, the new Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments¹² (hereafter referred to as *MiFID II*) classified *allowances* as financial instruments and transactions in *allowances* were included within the scope of the Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse¹³ (hereafter referred to as *Market Abuse Regulation*). As a result, not only derivative transactions in *allowances* but also spot transactions in *allowances* are subject to financial market legislation, including:

- *MiFID II*;
- *Market Abuse Regulation*;
- Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments¹⁴ (hereafter referred to as *MiFIR*);
- Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories¹⁵ (hereafter referred to as *EMIR*);
- Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities *settlement systems*¹⁶ (hereafter referred to as *Settlement Finality Directive*);
- Directive 2002/47/EC of the European Parliament and of the Council on financial collateral arrangements,¹⁷ (hereafter referred to as *Financial Collateral Directive*);

⁹ See https://ec.europa.eu/clima/policies/ets/registry_en

¹⁰ [Commission Regulation \(EU\) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations \(EU\) No 920/2010 and No 1193/2011 \(OJ L 122, 3.5.2013, p. 1\).](#)

¹¹ [Commission Delegated Regulation \(EU\) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry \(OJ L 177, 2.7.2019, p. 3\).](#)

¹² [Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU \(OJ L 173, 12.6.2014, p. 349\).](#)

¹³ [Regulation \(EU\) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse \(Market Abuse Regulation\) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC \(OJ L 173, 12.6.2014, p. 1\).](#)

¹⁴ [Regulation \(EU\) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation \(EU\) No 648/2012 \(OJ L 173, 12.6.2014, p. 84–148\).](#)

¹⁵ [Regulation \(EU\) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories \(OJ L 201, 27.7.2012, p. 1\).](#)

¹⁶ [Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems \(OJ L 166, 11.6.1998, p. 45\).](#)

¹⁷ [Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, OJ L 168 \(27.6.2002, p. 43\).](#)

- Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories¹⁸ (hereafter referred to as *Central Securities Depositories Regulation*).

The provisions of Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of *money laundering or terrorist financing*¹⁹ (hereafter referred to as *Anti-Money Laundering Directive*) also apply to the auctioning process and the auction platform should be considered as an obliged entity under Article 2(1) of the *Anti-Money Laundering Directive*.

Further information on the auctioning of *allowances* under the *EU ETS* may be found on the Commission’s dedicated auctioning webpage at:

https://ec.europa.eu/clima/policies/ets/auctioning_en

- **Objective**

The objective of this contract is to appoint *CAP3* that must be linked to at least one *clearing system* or *settlement system*. *CAP3* is to start auctioning at the beginning of 2021 the *allowances* to be monetised at the common auction platform pursuant to the rules of phase 4 of the *EU ETS* (2021-2030) of the *ETS Directive* and to the *Auctioning Regulation*. Notably, these will be the *aviation allowances* and *general allowances*:

- of the 25 Member States participating in the joint action pursuant to Article 26(1) of the *Auctioning Regulation*;
- of the 3 EEA-EFTA states; and
- made available to the *Innovation Fund* and to the *Modernisation Fund* pursuant to respectively Articles 10a(8) and 10d of *ETS Directive*. In accordance with Article 24(1) of the *Auctioning Regulation* the European Investment Bank is the Auctioneer for the *allowances* to be auctioned for the Innovation Fund and the Modernisation Fund from 2021.

In addition, *CAP3* is to provide services to the Commission in accordance with Article 29 of the *Auctioning Regulation*.

1.4.2 Characteristics of the procured services and deliverables

The services that are the subject of this *call for tenders* are briefly described below. The detailed description of the services, including any minimum requirements and deliverables, will be set out in part 2 of the tender specifications: *technical specifications*. The *technical specifications* will be provided to the *candidates* which meet the exclusion and *selection criteria* of the *administrative specifications*.

¹⁸ [Regulation \(EU\) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation \(EU\) No 236/2012 \(OJ L 257, 28.8.2014, p. 1\).](#)

¹⁹ [Directive \(EU\) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation \(EU\) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC \(OJ L 141 5.6.2015, p. 73\).](#)

Task 1: Services to be provided by *CAP3* to the contracting states, as well as for the *Innovation Fund* and for the *Modernisation Fund* established pursuant to respectively Articles 10a(8) and 10d of ETS Directive, that consist of the auctioning of *allowances* pursuant to Article 27 of the *Auctioning Regulation*, as follows:

- a) providing access to the auctions, pursuant to Articles 15 to 21 of the *Auctioning Regulation*, including the provision and maintenance of the necessary internet-based electronic interfaces and website;
- b) conducting the auctions in accordance with Articles 4 to 7 of the *Auctioning Regulation*;
- c) managing the auction calendar in accordance with Articles 8 to 14 of the *Auctioning Regulation*;
- d) announcing and notifying the results of an auction, pursuant to Article 61 of the *Auctioning Regulation*;
- e) providing, or ensuring the provision of, the requisite *clearing system* or *settlement system* needed for:
 - (i) the handling of payments made by successful bidders or their successors in title and distribution of the proceeds of the auctions to the *auctioneer*, pursuant to Articles 44 and 45 of the *Auctioning Regulation*;
 - (ii) delivering the auctioned *allowances* to successful bidders or their successors in title, pursuant to Articles 46, 47 and 48 of the *Auctioning Regulation*;
 - (iii) managing collateral including any *margining*, provided by the *auctioneer* or bidders, pursuant to Articles 49 and 50 of the *Auctioning Regulation*;
- f) providing the Commission with any information relating to the conduct of the auctions pursuant to Article 53 of the *Auctioning Regulation* on the monitoring of the auctions;
- g) surveying the auctions, notifying suspicions of money laundering, *terrorist financing*, *criminal activity* or *market abuse*, administering any required remedial measures or sanctions including the provision of an extra-judicial dispute resolution mechanism, pursuant to Article 54 to 59 and Article 64(1) of the *Auctioning Regulation*;
- h) reporting, pursuant to Article 36 of the *Auctioning Regulation* in line with *MiFIR*.

The services under Task 1, points a) to d) are hereafter referred to as the *functions of the auction platform*.

The services under Task 1, points e) are hereafter referred to as the *functions of the clearing system or settlement system*.

Task 2: Services to be provided by *CAP3* to the Commission consist of services pursuant to Article 29 of the *Auctioning Regulation*.

The auction platform shall provide the Commission with technical support services with respect to the Commission's work relating to the following:

- a) any coordination of the auction calendars for Annex III of the *Auctioning Regulation*;

- b) the reports by the Commission pursuant to Articles 10(5) of the *ETS Directive*;
- c) any review of the *Auctioning Regulation*, the *ETS Directive* or the *Registry Regulation* which has an impact on the functioning of the carbon market including the implementation of the auctions;
- d) any other joint action relating to the functioning of the carbon market including the implementation of the auctions agreed between the Commission and the Member States participating in the joint action under Article 26(1) of the *Auctioning Regulation*.

1.5 Place of performance: where will the contract be performed?

The services will be performed at the contractor's premises. Meetings may take place at the premises of the Commission.

The details of the place of performance are set out in Article I.3.5 of the draft contract.

1.6 Nature of the contract: how will the contract be implemented?

This procedure will result in the conclusion of a direct contract between the *contracting authority* and the successful tenderer who will become the contractor.

In direct contracts all the terms governing the provision of the services are defined at the outset. Once signed, they can be implemented directly without any further contract procedures.

⚡ Candidates to participate in this call for tenders need to take full account of the provisions of the draft contract as the latter will define and govern the contractual relationship(s) to be established between the *contracting authority* and the successful tenderer(s). Special attention is to be paid to the provisions specifying the rights and obligations of the contractor, in particular those on payments, performance of the contract, confidentiality, and checks and audits.

1.7 Volume and value of the contract: how much do we plan to buy?

The estimated total amount of all services to be purchased under this contract is indicated under Heading II.1.5 of the contract notice.

The services to be provided over the total duration of the contract will be specified in the *technical specifications* (tender specifications – part 2).

For Task 1 the contractor shall provide all required services in relation to the auctioning of:

- *aviation allowances* and *general allowances* of the Member States participating in the joint action pursuant to Article 26(1) of the *Auctioning Regulation* and of the

EEA-EFTA states; and

- *general allowances* made available to the *Innovation Fund* and to the *Modernisation Fund* pursuant to respectively Articles 10a(8) and 10d of *ETS Directive*.

The fees under Task 1 are to be paid by bidders in the auctions in accordance with the Article I.4.1 of the draft contract.

The maximum annual budget for Task 2 is EUR 150 000 (one hundred and fifty thousand euros) to be paid by the Commission.

Within three years following the signature of the contract(s) resulting from the current call for tenders, the *contracting authority* may use the negotiated procedure under point 11.1.e of Annex 1 to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council²⁰ (hereafter referred to as *Financial Regulation*) to procure new services from the contractor(s) up to a maximum of 50 % of the initial contract value. These services will consist in the repetition of similar services entrusted to the contractor(s) and will be awarded under the conditions established in the *technical specifications*.

1.8 Duration of the contract: how long do we plan to use the contract?

The contract resulting from the award of this *call for tenders* will be concluded for at most five (5) years. 1 January 2021 is the indicative start date of the auctions on *CAP3*.

The details of the initial contract duration and possible renewals are set out in Article I.3.3 of the draft contract.

Where the conditions under Article 172(3) of the *Financial Regulation* are fulfilled, the *contracting authority* may extend the maximum duration of the contract to maximum seven (7) years.

1.9 Electronic exchange system: can exchanges under the contract be automated?

For all exchanges of information with the contractor during the implementation of the contract as well as for future possible subsequent proceedings for the purposes of the [European Union's Early Detection and Exclusion System](#), the *contracting authority* may use an electronic exchange system meeting the requirements of Article 148 of the *Financial Regulation*. At the request of the *contracting authority* the use of such a system shall become

²⁰ [Regulation \(EU, Euratom\) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations \(EU\) No 1296/2013, \(EU\) No 1301/2013, \(EU\) No 1303/2013, \(EU\) No 1304/2013, \(EU\) No 1309/2013, \(EU\) No 1316/2013, \(EU\) No 223/2014, \(EU\) No 283/2014, and Decision No 541/2014/EU and repealing Regulation \(EU, Euratom\) No 966/2012 \(OJ L 193 of 30.07.2018, p.1\).](#)

mandatory for the contractor(s) at no additional cost for the *contracting authority*. Details on specifications, access, terms and conditions of use will be provided in advance.

2 GENERAL INFORMATION ON TENDERING

2.1 Legal basis: what are the rules?

This *call for tenders* is governed by the provisions of the *Financial Regulation*.

The *contracting authority* has chosen to award the contract resulting from this *call for tenders* through a restricted procedure pursuant to Article 164(1)(b) of the *Financial Regulation*.

A restricted procedure is conducted in two stages:

- During the first stage, any interested economic operator (any natural or legal person who offers to provide services) (hereafter referred to as *candidate*) may submit a request to participate in the call for tenders (hereafter referred to as *request to participate*) comprising of the administrative proposal (see section 4.2.) to allow the *contracting authority* to assess the compliance of the *candidate* with the exclusion and *selection criteria* specified under **sections 3.1. and 3.2** of Part 1 of the tender specifications (hereafter referred to as the ‘*administrative specifications*’).
- During the second stage, the *contracting authority* will invite the successful *candidates* that have satisfied the exclusion and *selection criteria* to submit a full tender. In the invitation to the successful *candidates*, the *contracting authority* will provide Part 2 of the tender specifications (hereafter referred to as the ‘*technical specifications*’) the technical specifications which include the award criteria, the template for the technical offer, the requirements for the financial offer and its template, as well as the templates of documents that need to be submitted by the contractor during the contract implementation.

The tenderer who submits a tender at the second stage must be composed of the same economic operators, sole tenderer or group of tenderers, as the *candidate* who submitted the *request to participate* and were invited to submit a tender. Failing to comply with this requirement will automatically exclude the tenderer from further participation in this *call for tenders*, except in the cases of merger or takeover of a member of the group explained in section 2.4.1.

2.2 Rules on access to procurement: who may submit a tender?

Participation in this *call for tenders* is open on equal terms to all natural and legal persons coming within the scope of the [Treaties](#), as well as to international organisations. Participation is also open to all natural and legal persons registered or having their domicile in a non-EU country which has an agreement with the European Union in the field of public procurement on the conditions laid down in that agreement, such as the EEA-EFTA States.

It is also open to all natural and legal persons established in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. Where the Agreement on Government Procurement²¹ concluded within the World Trade Organisation applies, the participation to this *call for tenders* is open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions laid down therein.

The rules on access to procurement do not apply to subcontractors. *Subcontracting* may not be used with the intent to circumvent the rules on access to procurement.

To enable the *contracting authority* to verify the access, each *candidate* must indicate its country of establishment (and in case of joint *request to participate* – the country of establishment of each group member) and must present the supporting evidence normally acceptable under the law of that country/-ies. The same document(s) could be used to prove country/-ies of establishment and the delegation(s) of the authorisation to sign as described in **section 4.3**.

2.3 Registration in the *Participant Register*: why register?

Any economic operator willing to submit a request to participate in this *call for tenders* must be registered in the [Participant Register](#) - an online register of organisations and natural persons participating in Commission's calls for tenders or proposals.

On registering each participant obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the *Participant Register*. A participant needs to register only once – the information provided can be further updated or re-used by the participant in other European Commission's calls for tenders or calls for proposals.

At any moment during the procurement procedure the Research Executive Agency Validation Services (hereafter the EU Validation Services) may contact the participant and ask for supporting documents on legal existence, status and financial capacity. The requests will be made through the register's messaging system to the e-mail address of the participant's contact person indicated in the register. It is the responsibility of the participant to provide a valid e-mail address and to check it regularly.

The documents that may be requested by the *EU Validation Services* are listed in the [EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment](#).

⚠ Please note that a request for supporting documents by the *EU Validation Services* in no way implies that the *candidate* has been successful.

²¹ https://www.wto.org/english/tratop_E/gproc_e/gp_gpa_e.htm.

2.4 Ways to submit a request to participate: how can economic operators organise themselves to submit a request?

Economic operators can submit a *request to participate* either as a *sole candidate* or as a group of *candidates*. In either case *subcontracting* is permitted under the limitations specified in **section 2.4.2**.

In order to fulfil the *selection criteria* set out in **section 3.2** the *candidate* can rely on the capacities of subcontractors or other entities (not subcontractors).

The role of each entity involved in a *request to participate* (hereafter referred to as *involved entity*) must be clearly specified: *sole candidate*, member of a group or group leader, subcontractor or an entity on whose capacities the *candidate* relies to fulfil the *selection criteria*²². This applies also where the *involved entities* belong to the same economic group.

2.4.1 Joint tenders

A joint tender is a situation where a *tender* is submitted by a group (with or without legal form) of economic operators regardless of the link they have between them. The group as a whole is considered a *tenderer*²³.

All members of the group assume joint and several liability towards the *contracting authority* for the performance of the contract as a whole.

Group members must appoint the entity to perform the *functions of the auction platform as group leader* and single point of contact authorised to act on their behalf in connection with the submission of the *request to participate* and all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature. The model power of attorney attached in **Annex 3** is to be used.

The joint *request to participate* must clearly indicate the role and tasks of each member and of the *group leader* who will act as the *contracting authority's* contact point for the contract's administrative or financial aspects and operational management. The *group 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* shall sign the contract with the *group leader*, authorised by the other members to sign the contract on their behalf via power of attorney drawn up in the model attached in **Annex 3**.

Changes in the composition of the group during the procurement procedure (after the submission deadline for the *request to participate* and before contract signature) shall lead to rejection of the tender except in case of a merger or takeover of a member of the group (universal succession), provided that the new entity has access to procurement (see **section 2.2**) and is not in an exclusion situation (see **section 3.1**).

²² Such an entity is not considered a subcontractor, see **section 2.4.3**.

²³ References to *tenderer* or *tenderers* in this document shall be understood as covering both sole tenderers and groups of economic operators submitting a joint tender.

In any case the *selection criteria* must be still fulfilled by the group and the terms of the originally submitted tender may not be altered substantially, i.e. all the tasks assigned to the former entity must be taken over by the new entity member of the group, the change must not make the tender non-compliant with the tender specifications, and the evaluation of award criteria of the originally submitted tender may not be modified.

2.4.2 Subcontracting

Subcontracting is the situation where the contractor enters into legal commitments with other economic operators, 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.

The following shall not be considered *subcontracting*:

- a) Use of workers posted to the contractor by another company owned by the same group and established in a Member State (“intra-group posting” as defined by Article 1, 3, (b) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#)).
- b) Use of workers hired out to the contractor by a temporary employment undertaking or placement agency established in a Member State (“hiring out of workers” as defined by Article 1, 3, (c) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#)).
- c) Use of workers temporarily transferred to the contractor from an undertaking established outside the territory of a Member State and that belongs to the same group (“intra-corporate transfer” as defined by Article 3, (b) of [Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer](#)).
- d) Use of staff without employment contract (“self-employed persons working for the contractor”), without the tasks of the self-employed persons being particular well-defined parts of the contract.
- e) Use of suppliers and/or transporters by the contractor, in order to perform the contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of this *call for tenders* (see **section 1.4**).
- f) Performance of part of the contract by members of an EEIG (European Economic Interest Grouping), when the EEIG is itself a contractor or a group member.

The persons mentioned in points a), b), c) and d) above will be considered as “personnel” of the contractor as defined in the contract.

All contractual tasks may be subcontracted with the exception of the functions of the auction platform specified in points a) to d) for Task 1 under *section 1.4.3*, which are considered critical tasks. The critical tasks must be executed by the contractor itself, in case of a *sole candidate*, or by a member of the group in case of a joint *tender*.

Any *subcontracting* is subject to the prior written approval by the *contracting authority* and cannot be used to cause the contract to be performed in fact by third parties.

The *candidates* are required to fill in and submit the form available in **Annex 4** listing all subcontractors. In that form, the *candidates* must indicate the proportion of the contract that

they intend to subcontract, as well as identify and describe briefly the envisaged contractual roles/tasks of all subcontractors (hereafter referred to as *identified subcontractors*):

- on whose capacities the tenderer relies upon to fulfil the selection criteria as described under **Section 3.2**;
- whose individual share of the contract, known at the time of submission, is above 10%.

Any such subcontractor must provide the *candidate* with a commitment letter drawn up in the model attached in **Annex 5.1** and signed by its authorised representative.

Changes concerning subcontractors identified in the *request to participate* (withdrawal/replacement of a subcontractor, additional *subcontracting*) during the second phase of the procurement procedure (after the submission deadline for the *request to participate* and before contract signature) require the prior written approval of the *contracting authority* subject to the following verifications:

- any new subcontractor is not in an exclusion situation;
- the *candidate* still fulfils the *selection criteria* and the new subcontractor fulfils the *selection criteria* applicable to it individually, if any;
- the terms of the originally submitted tender are not altered substantially, i.e. all the tasks assigned to the former subcontractor are taken over by another *involved entity*, the change does not make the tender non-compliant with the tender specifications, and the evaluation of award criteria of the originally submitted tender is not modified.

For identified subcontractors, the decision of the *contracting authority* to award the contract to the successful tenderer shall constitute approval by the *contracting authority* of the nominated subcontractor, without prejudice to Articles I.14 and II.10 of the draft contract on subcontracting.

2.4.3 Entities on whose capacities the *candidate* relies to fulfil the *selection criteria*

In order to fulfil the *selection criteria* a *candidate* may also 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 letter in the model attached in **Annex 5.2**, signed by the authorised representative of such an entity, and the supporting evidence that those other entities have the respective resources.

If the contract is awarded to a successful tenderer intending to rely on another entity to meet the minimum levels of economic and financial capacity, the *contracting authority* will require the entity to sign the contract to be jointly liable for the performance of the contract.

With regard to the legal and regulatory *selection criteria*, and to the technical and professional *selection criteria*, a *candidate* may only rely on the capacities of other entities where the latter will perform services for which these capacities are required (i.e. the latter will assume the role of subcontractors). The *candidate* may not rely on other entities to fulfil the *selection criteria* L1 and T1 specified under section 3.2.1 and 3.2.3 respectively, as these criteria refer to the capacity of the *candidate* to carry out the critical tasks.

⚡ **Relying on the capacities of other entities is only necessary when the capacity of the *candidate* is not sufficient to fulfil the required minimum levels of capacity. Abstract commitments that other entities will put resources at the disposal of the *candidate* will be disregarded.**

⚡ ***Involved entities* must not be subject to conflicting interests which may negatively affect the contract performance.**

The presence of conflicting interests shall be examined during the evaluation phase based on the statements made through the Declarations on Honour and, where applicable, the commitment letters (*Annex 5.1 and Annex 5.2*).

3 EVALUATION ON EXCLUSION AND *SELECTION CRITERIA*

The evaluation that the *request to participate* complies with the submission conditions will consist of the following elements:

- Check if the *candidate* has access to procurement (see *section 2.2*);
- Verification of administrative compliance (if the *request to participate* is drawn up in one of the official EU languages and signed by duly authorised representative(-s) of the candidate);
- Verification of non-exclusion of *candidate* and its subcontractors on the basis of the exclusion criteria;
- Selection of *candidates* on the basis of *selection criteria*.

The *contracting authority* will evaluate the abovementioned elements in the order that it considers to be the most appropriate. If the evaluation of one or more elements demonstrates that there are grounds for rejection, the *request to participate* will be rejected and will not be subjected to further full evaluation. The unsuccessful *candidates* will be informed of the ground for rejection without being given feedback on the non-assessed content of their tenders. Only candidate(s) for whom the verification of the exclusion and *selection criteria* did not reveal grounds for rejection can be invited to submit a tender at the second stage of this *call for tenders*.

The evaluation will be based on the information and evidence contained in the *request to participate* and, if applicable, on additional information and evidence provided at the request of the *contracting authority* during the first stage of the *call for tenders*. If any of the declarations or information provided proves to be false, the *contracting authority* may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

For the purposes of the evaluation related to exclusion and *selection criteria* the *contracting authority* may also refer to publicly available information, in particular evidence that it can access on a national database free of charge.

3.1 Exclusion criteria

The objective of the exclusion criteria is to assess whether any *involved entity* is in any of the exclusion situations listed in Article 136(1) of the *Financial Regulation*.

As evidence of non-exclusion each *candidate* must submit a Declaration on Honour²⁴ in the model available in *Annex 2*.²⁵ The declaration must be signed by an authorised representative of the entity providing the declaration.

The verification of non-exclusion of *candidates* will be done on the basis of the submitted declarations and consultation of the [European Union's Early Detection and Exclusion System](#). The documents mentioned as supporting evidence in the Declaration on Honour need to be provided whenever requested and where this is necessary to ensure the proper conduct of the procedure within a deadline given by the *contracting authority*²⁶.

Annex 1 specifies which of the *involved entities* participating need to provide the Declaration on Honour and, when requested by the *contracting authority*, the supporting evidence.

⚠ **Please note that a request for evidence in no way implies that the *candidates* has been successful.**

3.2 Selection criteria

The objective of the *selection criteria* is to assess whether the *candidate* has the legal, regulatory, economic, financial, technical and professional capacity to perform the contract.

The *selection criteria* for this *call for tenders*, including the minimum levels of capacity, the basis for assessment and the evidence required, are specified in the following subsections.

Requests to participate in the *call for tenders* submitted by *candidates* not meeting the minimum levels of capacity will be rejected.

When submitting its requests to participate in the *call for tenders* each *candidate* shall declare on honour that it fulfils the *selection criteria* for the call for tender. The model Declaration on Honour available in *Annex 2* shall be used.

The initial assessment of whether a *candidate* fulfils the *selection criteria* will be done on the basis of the submitted declaration(s).

²⁴ The European Single Procurement Document (ESPD) may not be used yet in European Commission's calls for tenders.

²⁵ Unless the same declaration has already been submitted for the purposes of another award procedure of the European Commission, the situation has not changed, and the time elapsed since the issuing date of the declaration does not exceed one year.

²⁶ The obligation to provide the supporting evidence will be waived in the following situations:

- if the same documents have already been provided in a previous award procedure of the Commission, have been issued no more than one year before the date of their request by the Commission and are still valid at that date;
- if such evidence can be accessed by the Commission on a national database free of charge, in which case the economic operator shall provide the Commission with the internet address of the database and, if needed, the necessary identification data to retrieve the document;
- if there is a material impossibility to provide such evidence.

The subsections below specify which *selection criteria* evidence must be provided with the *request to participate*. In any case, to the extent that there is no ground for a waiver²⁷, the evidence must be provided with the *request to participate*. The evidence must be provided in accordance with the applicable basis for assessment of each criterion: in case of a consolidated assessment – only by the *involved entities* who contribute to the fulfilment of the criterion, and in case of individual assessment – by each *involved entity* to whom the criterion applies individually.

3.2.1 Legal and regulatory capacity

Candidates must prove that they have legal capacity to perform the contract and the regulatory capacity to pursue the professional activity necessary to carry out the services subject to this *call for tenders*.

In accordance with Article 44(1) of *MiFID II*, references to *the regulated market* in these tender specifications and their annexes shall be understood, depending on the context, as referring to one of the following:

- The *regulated market*;
- The operator of the *regulated market*.

Candidates must comply with the following *selection criteria* in order to prove that they have the necessary legal and regulatory capacity to perform the contract:

Criteria L1	
The <i>candidate</i> must prove the required legal and regulatory capacity of the entity to perform the <i>functions of the auction platform</i> .	
Minimum level of capacity	The <i>candidate</i> itself, or a member of the group in case of a joint <i>request to participate</i> , must: <ul style="list-style-type: none"> a) be a <i>regulated market</i> authorised pursuant to Article 44(1) of <i>MiFID II</i> by a competent authority of one of the 27 EU Member States or one of the 3 <i>EEA-EFTA States</i>; b) be authorised to trade in emission <i>allowances</i> in accordance with Title III of <i>MiFID II</i> and is supervised in accordance with Title IV of <i>MiFID</i>;
Basis for assessment	This criterion applies individually to the <i>candidate</i> to perform the <i>functions of the auction platform</i> . An individual assessment of the

²⁷ The obligation to provide the supporting evidence will be waived in the following situations:

- if the same documents have already been provided in a previous award procedure of the Commission, have been issued no more than one year before the date of their request by the Commission and are still valid at that date;
- if such evidence can be accessed by the Commission on a national database free of charge, in which case the economic operator shall provide the Commission with the internet address of the database and, if needed, the necessary identification data to retrieve the document.

	capacities of that <i>candidate</i> will be carried out.
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Criteria L2	
The <i>candidate</i> must prove the required legal and regulatory capacity of the entity to perform the <i>functions of the clearing system or settlement system</i> .	
Minimum level of capacity	<p>a) The <i>clearing system</i> or <i>settlement system</i>, which the <i>candidate</i> is connected to and it relies on to perform the <i>functions of clearing system or a settlement system</i>, must be designated as a system under Article 2(a) of the Settlement Finality Directive by a competent authority of one of the 27 EU Member States or one of the 3 <i>EEA-EFTA States</i>;</p> <p>b) The <i>clearing system</i> or the <i>settlement system</i> under point a), must be a <i>clearing system</i> or a <i>settlement system</i> in the sense of the definitions of points 31²⁸ and 36²⁹ of Article 3 of the <i>Auctioning Regulation</i> and must have the necessary authorisation by a competent authority of one of the 27 EU Member States, one of the 3 <i>EEA-EFTA States</i>. For example, the entities may be authorised as CCP under EMIR for a <i>clearing system</i>, or as central securities depository under the <i>Central Securities Depositories Regulation</i> for a <i>settlement system</i>;</p> <p>c) The <i>clearing system</i> or the <i>settlement system</i> under point a) must be authorised or approved by the competent authority in point b) to clear or settle <i>allowances</i>, as applicable.</p>
Basis for assessment	This criterion applies individually to the <i>involved entity</i> in the <i>request to participate</i> that has been identified by the <i>candidate</i> to perform the <i>functions of the clearing system or settlement system</i> . An individual assessment of the capacities of that <i>involved entity</i>

²⁸ Article 3(31) of the Auctioning Regulation:

31. ‘*clearing system*’ means one or more infrastructure connected to the auction platform that can provide clearing, margining, netting, management of collateral, settlement and delivery, and any other services, carried out by a central counterparty, accessed either directly or indirectly through members of the central counterparty who act as intermediaries between their clients and the central counterparty;

²⁹ Article 3(36) of the Auctioning Regulation:

36. ‘*settlement system*’ means any infrastructure whether or not connected to the auction platform that can provide settlement services, which may include clearing, netting, management of collateral, or any other services, which ultimately enable the delivery of allowances on behalf of an auctioneer to a successful bidder or its successor in title, and the payment of the sum due by a successful bidder or its successor in title to an auctioneer, carried out through either of the following:

(a) the banking system and the Union registry;

(b) one or more settlement agents acting on behalf of an auctioneer and a bidder or its successor in title, accessing the settlement agent either directly or indirectly through members of the settlement agent who act as intermediaries between their clients and the settlement agent;

	will be carried out.
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The legal and regulatory capacity shall be proven by the evidence listed below:

Evidence for criteria L1 and L2	
Evidence for criteria L1	Proof from the national competent authority designated under Article 67(1) of <i>MiFID II</i> , responsible for authorising the <i>regulated market</i> , that the <i>candidate</i> is authorised as a <i>regulated market</i> pursuant to Article 44(1) of <i>MiFID II</i> and is authorised to trade in <i>emission allowances</i> .
Evidence for criteria L2	<ul style="list-style-type: none"> a) Proof that the entity to perform the <i>functions of the clearing system or settlement system</i> is included in the list of designated systems published by <i>ESMA</i> (hereafter referred to as <i>ESMA</i>) pursuant to Article 10(1) of the Settlement Finality Directive b) proof from the competent authority that the entity to perform the <i>functions of the clearing system or settlement system</i> is authorised to be a <i>clearing system</i> or a <i>settlement system</i>; c) proof from the competent authority that the entity to perform the <i>functions of the clearing system or settlement system</i> is authorised to clear or settle emission allowances.

All of the above specified evidence of legal and regulatory capacity must be provided with the request to participate.

The *candidate* **may not subcontract** (see section 2.4.2) and **may not rely on other entities** (see section 2.4.3) to demonstrate its necessary legal and regulatory capacity under criteria L1.

📌 For candidates established in the United Kingdom (UK):

Please be aware that Article 35(1) of the *Auctioning Regulation* on the mandatory authorisation of the auction platforms as *regulated markets* under *MiFID II* does not cover to the entities established outside the EU under the equivalency regime of Article 25(4)(a) of *MiFID II*. Therefore, after the expiry of the transitional period of the Withdrawal Agreement between the UK and the EU, the *regulated markets* authorised by the UK national competent authorities will no longer be eligible to perform the *functions of the auction platform*.

Equally, designation as a system under Settlement Finality Directive is only possible for settlement systems authorised by an EU Member State or an EEA-EFTA State. As a result, after the expiry of the transitional period of the Withdrawal Agreement between the UK and the EU, the *clearing systems* or *settlement systems* designated as systems under Settlement Finality Directive by the UK will no longer comply with criteria L2.

In accordance with Article II.4.2 of the draft contract, the contractor must comply with the minimum requirements provided for in the tender specifications throughout the entire duration of the contract. Hence, requests to participate which involve entities authorised or designated by the UK to perform the *functions of the auction platform*, of *clearing*

system and/or of settlement system, will be rejected from the procurement procedure as non-compliant with criteria L1 and/or L2.

3.2.2 Economic and financial capacity

Candidates must comply with the following *selection criteria* in order to prove that they have the necessary economic and financial capacity to perform the contract.

Criterion F	
Minimum level of capacity	a) Average yearly turnover above EUR 3 500 000 (three million five hundred thousand euros) for the last two financial years for which the annual accounts have been closed; and b) Average yearly net assets above EUR 3 500 000 (three million five hundred thousand euros) for the last two financial years for which the annual accounts have been closed.
Basis for assessment	This criterion applies to the <i>candidate</i> as a whole, i.e. a consolidated assessment of the combined capacities of all <i>involved entities</i> will be carried out.

Evidence for criteria F	
Evidence for criteria F	a) Copy of the annual accounts, including the profit and loss accounts and balance sheets, for the last two years for which annual accounts have been closed from each concerned <i>involved entity</i> . The most recent year must have been closed within the last 18 months from the date of submission of request to participate in this <i>call for tenders</i> . b) Failing to provide all proof under point a), a satisfactorily reasoned explanation must be submitted by the candidate as to why the annual accounts are not available and must provide equivalent non-audited annual accounts for the respective years and a declaration on honour from the concerned <i>involved entity</i> certifying that the non-audited annual accounts provided give a true and fair view of the financial situation of the entity concerned (see Annex 6).

All of the above specified evidence of economic and financial capacity must be provided with the *request to participate*.

3.2.3 Technical and professional capacity

Candidates must comply with the following *selection criteria* in order to prove that they have the necessary technical and professional capacity to perform the contract.

Criterion T1

The *candidate* must prove experience as *regulated market* trading in emission *allowances* or *allowances* derivatives.

Minimum level of capacity	<p>a) In the five years preceding the deadline for submission of the requests to participate in this <i>call for tenders</i>, the <i>candidate</i> to perform the <i>functions of the auction platform</i> must have at least three years of experience as a <i>regulated market</i>.</p> <p>b) During the year preceding the deadline for submission of the requests to participate in this <i>call for tenders</i>, the <i>candidate</i> to perform the <i>functions of the auction platform</i> must have been operating continually a <i>secondary market</i> in <i>allowances</i> or <i>allowances</i> derivatives on the <i>regulated market</i> to perform the <i>functions of the auction platform</i>.</p> <p>c) Over a period of six consecutive months in the three years preceding the deadline for submission of the requests to participate in this call for tenders, at least one million <i>allowances</i> or derivatives contracts with one million <i>allowances</i> as underlying instruments must have been traded on the <i>regulated market</i> to perform the <i>functions of the auction platform</i>.</p>
Basis for assessment	This criterion applies individually to the <i>candidate</i> to perform the <i>functions of the auction platform</i> . An individual assessment of the capacities of that <i>candidate</i> will be carried out.

Criterion T2

The entity to perform the *functions of the clearing system or settlement system* must prove experience in *clearing system* or *settlement system*.

Minimum level of capacity	<p>a) In the five years preceding the deadline for submission of the requests to participate in this <i>call for tenders</i>, the entity to perform the <i>functions of the clearing system or settlement system</i> must have at least three years of experience, as applicable, in <i>clearing system</i> or <i>settlement system</i> in the sense of the definitions of points 32 or 34 of Article 3 of the <i>Auctioning Regulation</i>.</p> <p>b) During the year preceding the deadline for submission of requests to participate in this <i>call for tenders</i>, the entity to perform the <i>functions of the clearing system or settlement system</i> must have been operating continually a <i>clearing system</i> or <i>settlement system</i>, as applicable.</p>
Basis for assessment	This criterion applies individually to the <i>involved entity</i> in the <i>request to participate</i> that has been identified by the <i>candidate</i> to perform the <i>functions of the clearing system or settlement system</i> . An individual assessment of the capacities of that <i>involved entity</i> will be carried out.

Criterion T3

The *candidate* must dispose of a core team of natural persons having collectively the following qualifications and skills:

<p>Minimum level of capacity</p>	<p>a) at least three years of management-level experience in operating a <i>regulated market</i> obtained in the five years preceding the deadline for submission of the request to participate in this <i>call for tenders</i>, of which at least one year was in relation to operating a secondary market in <i>allowances</i> or <i>allowances derivatives</i>;</p> <p>b) at least three years of management-level experience in operating a <i>clearing system</i> or <i>settlement system</i> obtained in the five years preceding the deadline for submission of the request to participate in this <i>call for tenders</i>;</p> <p>c) at least three years of management-level experience in the surveillance of auctioning or trading on a <i>regulated market</i> obtained in the five years preceding the deadline for submission of the request to participate in this <i>call for tenders</i>;</p> <p>d) at least three years of management-level experience in organising the external communications of a <i>regulated market</i> obtained in the five years preceding the deadline for submission of the request to participate in this <i>call for tenders</i>; and</p> <p>e) at least three years of management-level experience with responsibility for the information technology infrastructure and the security of data at a <i>regulated market</i> obtained in the five years preceding the deadline for submission of the requests to participate in this <i>call for tenders</i>.</p> <p>f) All natural persons must be able to provide services in fluent English, both orally and in writing (to a level corresponding to at least level C1 on the scale of the common European framework of reference for languages developed by the Council of Europe³⁰ or equivalent).</p>
<p>Basis for assessment</p>	<p>This criterion applies to the <i>candidate</i> as a whole. It relates to the core team of natural persons that is at the disposal of the <i>candidate</i>. One natural person may satisfy more than one of the sub-criteria of this criterion, but not more than one person can be taken into consideration for the fulfilment of one of the individual qualification requirements (i.e., adding the years of experience of different persons). A consolidated assessment of the capacities of the core team of the <i>candidate</i> will be carried out.</p>

Evidence for criteria T1, T2, T3

³⁰ <https://www.coe.int/en/web/common-european-framework-reference-languages>

Evidence for criteria T1	Appropriate documentary evidence, e.g. extracts from lists of <i>ESMA</i> or national competent authorities, as required evidence for criteria L1, for the relevant time period; extracts from trading databases, etc.
Evidence for criterion T2	Appropriate documentary evidence, e.g. extracts from registers of <i>ESMA</i> or national competent authorities, as required evidence for criteria L2, for the relevant time period.
Evidence for criterion T3	Europass CVs ³¹ .

⚠All of the above specified evidence of technical and professional capacity must be provided with the *request to participate*.

The *candidate* **may not subcontract** (see section 2.4.2) and **may not rely on other entities** (see section 2.4.3) to demonstrate compliance with the *criterion T1*.

3.3 Compliance with the minimum requirements of the administrative specifications

By submitting a request to participate a candidate commits to perform the contract in full compliance with the terms and conditions of the procurement documents for this call for tender. Particular attention is drawn to the fact that candidates must comply with applicable data protection, 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.

The minimum requirements shall be observed throughout the entire duration of the contract. Compliance with these requirements is mandatory and cannot be subject to any assumptions, limitations, conditions, or reservations on the part of a tenderer.

⚠Tenders that are not compliant with the applicable minimum requirements shall be rejected.

4 FORM AND CONTENT OF THE TENDER

4.1 Form of the tender: how to submit the tender?

Requests to participate in the *call for tenders* are to be submitted according to the instructions laid down in the Invitation to tender letter.

³¹ Europass CVs is available at: <https://europass.cedefop.europa.eu/documents/curriculum-vitae>

⚠ **Make sure you prepare and submit your requests to participate in the *call for tenders* early enough to ensure it is received within the deadline specified under Heading IV.2.2 of the contract notice. Requests to participate in the *call for tenders* received after this deadline will be rejected.**

4.2 Content of the *request to participate*: what documents to submit with the *request to participate*?

The documents to be submitted with the *request to participate* are listed in *Annex I*.

The *request to participate* must include only the **administrative proposal** with the information required to assess the compliance of the *candidates* with the exclusion and *selection criteria*. The administrative proposal must contain all documents listed in *Annex I* for the identification and information about the *candidate*. *Annex I* specifies for which of the *involved entities* the *candidates* need to provide those documents. They must be duly signed in accordance with the requirements of section 4.3. An administrative proposal not covering all exclusion and *selection criteria* may be rejected on the basis of non-compliance and not evaluated further.

4.3 Signature policy: how can documents be signed?

Where a document needs to be signed, the signature must be either hand-written, a qualified electronic signature or an advanced electronic signature based on a qualified certificate as defined in [Regulation \(EU\) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market \(the eIDAS Regulation\)](#).

All documents must be signed by the signatories (when they are individuals) or by their duly authorised representatives.

For the following documents, when signed by representatives, the *candidates* must provide evidence for the delegation of the authorisation to sign:

- The Tender report indicated in *Annex I* (a document listing all the documents included in the request for participating in the *call for tenders*, to be signed by the *candidate* or the *group leader* in case of a joint request);
- The Declaration on Honour of the *candidate* (in case of joint request – the Declarations on Honour of all group members);
- If applicable – in the case of joint request the power(s) of attorney drawn up using the model attached in *Annex 3*.

The delegation of the authorisation to sign on behalf of the signatories (including, in the case of proxy(-ies), the chain of authorisations) must be evidenced by appropriate written evidence (copy of the notice of appointment of the persons authorised to represent the legal entity in signing contracts (together or alone), or a copy of the publication of such appointment if the legislation which applies to signatory requires such publication or a power of attorney). A document that the *contracting authority* can access on a national database free

of charge does not need to be submitted if the *contracting authority* is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

4.4 Confidentiality of tenders: what information and under what conditions can be disclosed?

Once the *contracting authority* has opened a *request to participate*, it becomes its property and shall be treated confidentially, subject to the following:

- For the purposes of evaluating the *request to participate* and, if applicable, implementing the contract, performing audits, benchmarking, etc., the *contracting authority* is entitled to make available (any part of) the *request to participate* to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the *contracting authority* or cooperating with it, including contractors or subcontractors and their staff provided that they are bound by an obligation of confidentiality.
- After the signature of the award decision, tenderers:
 - whose requests to participate in the *call for tenders/tenders* were received in accordance with the submission modalities;
 - who have access to procurement;
 - who are not found to be in an exclusion situation referred to in Article 136(1) of the FR, who are not rejected under Article 141 of the FR;
 - whose requests to participate in the *call for tenders/tenders* are not found to be incompliant with the procurement documents; and
 - who make a request in writing;

will be notified of the name of the tenderer to whom the contract is awarded, the characteristics and relative advantages of the successful tender and the price of the offer and/or contract value.

The *contracting authority* may decide to withhold certain information that it assesses as being confidential, in particular where its release would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them. Such information may include, without being limited to, confidential aspects of tenders such as unit prices included in the financial offer, technical or trade secrets³².

- The *contracting authority* may disclose the submitted *request to participate/tender* in the context of a request for public access to documents, or in other cases where the applicable law requires its disclosure. Unless there is an overriding public interest in

³² For the definition of trade secrets please see Article 2 (1) of DIRECTIVE (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

disclosure³³, the *contracting authority* may refuse to provide full access to the submitted tender, redacting the parts (if any) that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the tenderer, including intellectual property.

⚡ **The *contracting authority* will disregard general statements that the whole *request to participate* or substantial parts of it contain confidential information. Candidates need to mark clearly the information they consider confidential and explain why it may not be disclosed. The *contracting authority* reserves the right to make its own assessment of the confidential nature of any information contained in the *request to participate*.**

5 APPLICABLE LEGISLATION

5.1 EU legislation

The contractor must ensure that the performance of its tasks under the contract complies at all times with the applicable legislative framework as amended, complemented, extended, replaced, repealed or implemented, be it through the EU primary or secondary legislation or through national transposition or implementation, in particular - but not limited to:

- a) *ETS Directive*;
- b) *MSR Decision*;
- c) *Auctioning Regulation*;
- d) *Registry Regulation*;
- e) *MiFID II*;
- f) *MiFIR*;
- g) *Market Abuse Regulation*;
- h) *Anti-money Laundering Directive*;
- i) *Settlement Finality Directive*;
- j) *EMIR*;
- k) *Central Securities Depositories Regulation*;
- l) *Financial Collateral Directive*;
- m) *Delegated act adopted pursuant to with Article 10a(8) of the ETS Directive on the operation of the Innovation Fund*;
- n) *Implementing act adopted pursuant to 10d of the ETS Directive on the operation of the Modernisation Fund*.

5.2 International law

- a) Protocol on the Privileges and Immunities of the European Union³⁴ or, where appropriate,

³³ See Article 4 (2) of the REGULATION (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

³⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FPRO%2F07>.

b) Vienna Convention on Diplomatic Relations or Vienna Convention on Consular Relations.

APPENDIX: LIST OF REFERENCES AND DEFINITIONS

<i>Administrative specifications</i>	See section 2.1.
<i>Allowance</i>	Has the same meaning as in Article 3(a) of the <i>ETS Directive</i> .
<i>Anti-Money Laundering Directive</i>	<u>Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141 5.6.2015, p. 73)</u> ³⁵ .
<i>Auctioning Regulation</i>	<u>Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302 18.11.2010, p. 1).</u>
<i>Aviation allowances</i>	Allowances created pursuant to Chapter II of the <i>ETS Directive</i> .
<i>Candidate</i>	See section 2.1.
<i>CAP3</i>	The third common auction platform
<i>Central Securities Depositories Regulation</i>	<u>Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).</u>
<i>Clearing system</i>	Has the same meaning as in Article 3(31) of the <i>Auctioning Regulation</i> .
<i>Collateral</i>	Has the same meaning as Article 3(38) of the <i>Auctioning Regulation</i> .
<i>Commission</i>	European Commission, see section 1.1.

³⁵ The Anti-Money Laundering Directive has been substantially amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 (OJ L 156 19.6.2018 p. 43). Please make sure to consult the consolidated version of this Directive in the link.

<i>Contracting authority</i>	See section 1.1.
<i>Contracting states</i>	See section 1.1.
<i>Criminal activity</i>	Has the same meaning as in Article 3(19) of the <i>Auctioning Regulation</i> and as in Article 3(4) of the Anti-money Laundering Directive.
<i>EEA-EFTA States</i>	See 1.4.1.
<i>EMIR</i>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).
<i>ESMA</i>	European Securities and Markets Authority.
<i>ETS Directive</i>	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).
<i>EU ETS</i>	The EU system for greenhouse gas emission allowance trading established in 2005 by the <i>ETS Directive</i> .
<i>EU Validation services</i>	See section 2.3 EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment
<i>Exclusion criteria</i>	See section 3.1.
<i>Financial Collateral Directive</i>	Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, OJ L 168 (27.6.2002, p. 43)
<i>Financial Regulation</i>	Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union
<i>Functions of the auction platform</i>	See section 1.4.3.
<i>Functions of the clearing system or settlement system</i>	See section 1.4.3.
<i>General allowances</i>	Allowances created pursuant to Chapter III of the <i>ETS Directive</i> .
<i>Group leader</i>	See section 2.4.1.
<i>Identified subcontractors</i>	See section 2.4.2.
<i>Innovation Fund</i>	Fund established in accordance with Article 10a(8) of the <i>ETS Directive</i> .

<i>Involved entities</i>	See section 2.4.
Joint tender	See section 2.4.1.
<i>JPA-CAP</i>	Joint Procurement Agreement to Procure Common Auction Platforms.
<i>Margining</i>	Has the same meaning as in Article 3(33) of the <i>Auctioning Regulation</i> .
<i>Market abuse</i>	Has the same meaning as in Article 1 of Market Abuse Regulation.
<i>Market Abuse Regulation</i>	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).
<i>MiFID II</i>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).
<i>MiFIR</i>	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84–148).
<i>Modernisation Fund</i>	Fund established in accordance with Article 10d of the <i>ETS Directive</i> .
<i>Money laundering</i>	Has the same meaning as in Article 3(17) of the <i>Auctioning Regulation</i> and as in Article 1(3) of the Anti-money Laundering Directive.
<i>MSR Decision</i>	Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264 9.10.2015, p. 1)
<i>Participant Register</i>	See section 2.3 https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/participant-register
<i>Registry Regulation</i>	- Until 31 December 2020: Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC

	<p>and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 3.5.2013, p. 1);</p> <p>- From 1 January 2021: Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (OJ L 177, 2.7.2019, p. 3).</p>
Regulated market	Has the same meaning as in Article 3(39) of the <i>Auctioning Regulation</i> .
Request to participate	See section 2.1.
Selection criteria	See section 3.2.
Settlement Finality Directive	Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).
Settlement system	<p>Has the same meaning as in Article 3(36) of the <i>Auctioning Regulation</i>:</p> <p>Settlement system means any infrastructure whether or not connected to the auction platform that can provide settlement services, which may include clearing, netting, management of collateral, or any other services, which ultimately enable the delivery of <i>allowances</i> on behalf of an <i>auctioneer</i> to a successful bidder or its successor in title, and the payment of the sum due by a successful bidder or its successor in title to an <i>auctioneer</i>, carried out through either of the following:</p> <ol style="list-style-type: none"> a) the banking system and the Union registry; b) one or more settlement agents acting on behalf of an <i>auctioneer</i> and a bidder or its successor in title, accessing the settlement agent either directly or indirectly through members of the settlement agent who act as intermediaries between their clients and the settlement agent.
Sole candidate	See section 2.4
Subcontracting	See section 2.4.2
System	Has the same meaning as in Article 2(a) of the Settlement Finality Directive.
Technical specifications	See section 2.1.
Terrorist financing	Has the same meaning as in Article 3(18) of the <i>Auctioning Regulation</i> .
Treaties	The EU Treaties:

	https://europa.eu/european-union/law/treaties_en
<i>Union Registry</i>	Registry established in accordance with Article 19 of the <i>ETS Directive</i> to enable the execution of processes pertaining to the maintenance of the holding accounts, allocation, surrender and cancellation of <i>allowances</i> within the <i>EU ETS</i> .

ANNEXES

Annex 1. LIST OF DOCUMENTS TO BE SUBMITTED WITH THE *REQUEST TO PARTICIPATE*

The purpose of this table is to help *candidates* prepare their requests to participate in the *call for tenders* and set out clearly what documents must be submitted, by which *involved entities* and when (with the *request to participate* or later on request of the contracting authority).

Description	Sole candidate	Joint request		Identified Subcontractor	Entity on whose capacity is being relied	When and where to submit the document?	How to name the file?
		Group leader	Member of the group				
1. Identification and information about the tenderer.							
Declaration on Honour on Exclusion and Selection criteria (required in section 3.1) Model in Annex 2. Declaration on Honour on Exclusion and <i>Selection criteria</i>	☒	☒	☒	☒	☒	With the <i>request to participate</i>	'Declaration on Honour'
Evidence that the person signing the documents is an authorised representative of the entity ³⁶	☒	☒	☒	☒	☒	With the <i>request to participate</i>	'Authorisation to sign' documents'.

³⁶ A document that the Contracting authority can access on a national database free of charge does not need to be submitted if the Contracting authority is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

Power of attorney (required in section 2.4.1) Model in Annex 3. Power of Attorney			<input checked="" type="checkbox"/>			With the <i>request to participate</i>	'Power of attorney'
Commitment letter (required in section 2.4.2 and 2.4.3)				<input checked="" type="checkbox"/> (model in Annex 5.1)	<input checked="" type="checkbox"/> (model in Annex 5.2)	With the <i>request to participate</i>	'Commitment letter'
Evidence of non-exclusion (required in section 3.1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Only upon request by <i>the contracting authority</i> At any time during the procedure	n.a.
Evidence of legal existence and status	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Only upon request by <i>the EU Validation services</i> At any time during the procedure In the Participant Register	n.a.
Evidence of legal and regulatory capacity for L1 (required in section 3.2.1)	The evidence must be provided only for the <i>candidate (sole candidate)</i> or, in case of a joint request, for the member of the group who is to perform the <i>functions of the auction platform</i>			Not allowed	Not allowed	With the <i>request to participate</i>	'Evidence L1'
Evidence of legal and regulatory capacity for L2 (required in section 3.2.1)	The evidence must be provided only for the <i>involved entity</i> to perform the functions of <i>clearing system</i> or <i>settlement system</i>				Not allowed		'Evidence L2'

Evidence of economic and financial capacity for F (required in section 3.2.2)	The evidence must be provided only for the <i>involved entities</i> who contribute to reaching the minimum capacity level for criterion F			With the <i>request to participate</i>	‘Evidence F- Balance sheet entity year’ and ‘Evidence F - Profit Loss Account entity year’ Or ‘Evidence F Declaration on true and fair annual accounts’ (see Annex 6)		
Evidence of technical and professional capacity T1 (required in section 3.2.3)	The evidence must be provided only for the <i>candidate (sole candidate)</i> or, in case of a joint request, for the member of the group who is to perform the <i>functions of the auction platform</i>	Not allowed	Not allowed	With the <i>request to participate</i>	‘Evidence T1’		
Evidence of technical and professional capacity T2 (required in section 3.2.3)	The evidence must be provided only for the <i>involved entities</i> to perform the functions of <i>clearing system</i> or <i>settlement system</i>		Not allowed	With the <i>request to participate</i>	‘Evidence T2’		
Evidence of technical and professional capacity T3 (required in section 3.2.3)	The evidence must be provided only for the <i>involved entities</i> to perform the <i>functions of the auction platform</i>		Not allowed	With the <i>request to participate</i>	CVs		
<p>2. Tender report.</p> <p>Once all information and documents have been prepared and you consider that the <i>request to participate</i> is complete, please prepare a Tender Report listing all documents to be submitted with the <i>request to participate</i>. It will have to be signed (hand signature or electronic signature) and included in the <i>request to participate</i>.</p>							
Tender report	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				With the <i>request to participate</i>	'Tender report'

Annex 2. DECLARATION ON HONOUR ON EXCLUSION AND SELECTION CRITERIA

The undersigned [*insert name of the signatory of this form*], representing:

<i>(only for natural persons)</i> himself or herself	<i>(only for legal persons)</i> the following legal person:
ID or passport number: (‘the person’)	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number: (‘the person’)

The person is not required to submit the declaration on exclusion criteria if the same declaration has already been submitted for the purposes of another award procedure of the same contracting authority³⁷, provided the situation has not changed, and that the time that has elapsed since the issuing date of the declaration does not exceed one year.

In this case, the signatory declares that the person has already provided the same declaration on exclusion criteria for a previous procedure and confirms that there has been no change in its situation:

Date of the declaration	Full reference to previous procedure

I – SITUATION OF EXCLUSION CONCERNING THE PERSON

	YES	NO
(1) declares that the above-mentioned person is in one of the following situations:		
(a) it is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under Union or national law;	<input type="checkbox"/>	<input type="checkbox"/>
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		

³⁷ The same EU institution, agency, body or office.

(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or <i>selection criteria</i> or in the performance of a contract or an agreement;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(d) it has been established by a final judgement that the person is guilty of any of the following:		
(i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in other applicable laws;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) conduct related to a criminal organisation, as referred to in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) <i>money laundering</i> or <i>terrorist financing</i> , within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) it has shown significant deficiencies in complying with the main obligations in the performance of a contract or an agreement financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by a contracting authority, the European Anti-Fraud Office (OLAF) or the Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>

(g) it has been established by a final judgment or final administrative decision that the person has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business.	<input type="checkbox"/>	<input type="checkbox"/>
(h) (<i>only for legal persons</i>) it has been established by a final judgment or final administrative decision that the person has been created with the intent provided for in point (g).	<input type="checkbox"/>	<input type="checkbox"/>
(i) for the situations referred to in points (c) to (h) above the person is subject to: i. facts established in the context of audits or investigations carried out by the European Public Prosecutor's Office after its establishment, the Court of Auditors, the European Anti-Fraud Office (OLAF) or the internal auditor, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body; ii. non-final judgments or non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics; iii. facts referred to in decisions of entities or persons being entrusted with EU budget implementation tasks; iv. information transmitted by Member States implementing Union funds; v. decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law; or vi. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.	<input type="checkbox"/>	<input type="checkbox"/>

II – SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON AND BENEFICIAL OWNERS

Not applicable to natural persons, Member States and local authorities

(2) declares that a natural or legal person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers e.g. company directors, members of management or supervisory bodies, and cases where one natural or legal person holds a majority of shares), or a beneficial owner of the person (as referred to in point 6 of article 3 of Directive (EU) No 2015/849) is in one of the following situations:	YES	NO	N/A
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (g) above (creation of an entity with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (h) above (person created with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (i) above	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III – SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS ASSUMING UNLIMITED LIABILITY FOR THE DEBTS OF THE LEGAL PERSON

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations:	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV – GROUNDS FOR REJECTION FROM THIS PROCEDURE

(4) declares that the above-mentioned person:	YES	NO
Was previously involved in the preparation of the procurement documents used in this award procedure, where this entailed a breach of the principle of equality of treatment including distortion of competition that cannot be remedied otherwise.	<input type="checkbox"/>	<input type="checkbox"/>

V – REMEDIAL MEASURES

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines or of any taxes or social security contributions. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

VI – EVIDENCE UPON REQUEST

Upon request and within the time limit set by the contracting authority the person must provide information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners.

It must also provide the following evidence concerning the person itself and the natural or legal persons on whose capacity the person intends to rely, or a subcontractor and concerning the natural or legal persons which assume unlimited liability for the debts of the person:

- For situations described in (a), (c), (d), (f), (g) and (h), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.
- For the situation described in point (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

The person is not required to submit the evidence if it has already been submitted for another award procedure of the same contracting authority³⁸. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

VII – SELECTION CRITERIA

(1) declares that the above-mentioned person complies with the <i>selection criteria</i> applicable to it individually as provided in the tender specifications:	YES	NO	N/A
(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section 3.2.1 of the <i>administrative specifications</i> ;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section 3.2.2 of the <i>administrative specifications</i> ;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section 3.2.3 of the <i>administrative specifications</i> .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) if the above-mentioned person is the <i>sole candidate</i> or the leader in case of joint request , declares that:	YES	NO	N/A
(d) the candidate, including all members of the group in case of <i>joint request to participate</i> and including subcontractors if applicable, complies with all the <i>selection criteria</i> for which an individual and	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

³⁸ The same institution or agency.

consolidated assessment will be made as provided in the <i>administrative specifications</i> .			
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VIII – EVIDENCE FOR SELECTION

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender specifications and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure of the Commission. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

The above-mentioned person must immediately inform the contracting authority of any changes in the situations as declared.

The above-mentioned person shall be subject to rejection from this procedure and may be subject to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.

Full name

Date

Signature

Annex 3. POWER OF ATTORNEY

Call for tenders XXX/XX/XX/20XY/XYZ -

[TITLE OF THE PROCEDURE]

POWER OF ATTORNEY

The undersigned:

– Signatory (Name, Function, Company, Registered address, VAT Number)

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a joint *request to participate* / joint tender as a member of a group of tenderers (the Group), constituted by Company 1, Company 2, Company N (Group members), and led by Company 1 (Group leader), in accordance with the conditions specified in the tender specifications and the terms specified in the request to participate / tender to which this Power of attorney is attached.
- 2) If the *contracting authority* awards the contract resulting from this *call for tenders* to the *Group* on the basis of the *joint request to participate* / joint tender to which this power of attorney is attached, all *Group members* shall be considered parties to the contract in accordance with the following conditions:
 - (a) All *Group members* shall be jointly and severally liable towards the *contracting authority* for the performance of the contract.
 - (b) All *Group members* shall comply with the terms and conditions of the contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the contract.
- 3) Payments by the *contracting authority* related to the services and/or supplies subject to the Contract shall be made through the bank account of the *Group leader*: [Provide details on bank, address, account number].
- 4) The *Group members* grant to the *Group leader* all the necessary powers to act on their behalf in the submission of the request to participate / tender and the conclusion of the contract, including:
 - (a) The *Group leader* shall submit the request to participate / tender on behalf of all *Group members* and indicate in the "Tender Contact Info" the name and e-mail address of an individual - single point of contact authorised to communicate officially with the *contracting authority* in connection with the submitted request to participate / tender on behalf of all *Group members*, including in connection with all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature.
 - (b) The *Group leader* shall sign any contractual documents — including the contract, and amendments thereto — and issue any invoices related to the performance of the contract on behalf of all *Group members*.

(c) The *Group leader* shall act as a single contact point with the *contracting authority* in the delivery of the services and/or supplies subject to the contract. It shall co-ordinate the delivery of the services and/or supplies by the *Group* to the *contracting authority*, and shall see to a proper administration of the contract.

Any modification to the present Power of attorney shall be subject to the *contracting authority's* express approval. This Power of attorney shall expire when all the contractual obligations of the *Group* have ceased to exist. The parties cannot terminate it before that date without the *contracting authority's* consent.

Place and date:

Name (in capital letters), function, company and signature:

Annex 4. LIST OF IDENTIFIED SUBCONTRACTORS

Identification details	Roles/tasks during contract execution	Proportion of subcontracting (% of contract volume)
<i>[Full official name Registered address Statutory registration number VAT registration number]</i>		
<i>[Full official name Registered address Statutory registration number VAT registration number]</i>		
<i>[REPEAT AS MANY TIMES AS THE NUMBER OF IDENTIFIED SUBCONTRACTORS]</i>		
	TOTAL % of subcontracting	0,00%

Annex 5.1. COMMITMENT LETTER BY AN IDENTIFIED SUBCONTRACTOR

[Letterhead, if any]

EUROPEAN COMMISSION

Call for tenders Ref. [reference number]

Attn:

[Insert date]

Commitment letter by identified subcontractor

I, the undersigned,

Name:

Function:

Company:

Registered address:

VAT Number:

having the legal capacity required to act on behalf of the company *[insert name of the entity]* hereby confirm that our company agrees to participate as subcontractor in the offer of *[insert name of the tenderer]* for the Call for Tenders *insert reference number* – *[insert title of procedure]* Lot *[insert lot number]*.

In the event that the tender of the aforementioned tenderer is successful, *[insert name of the subcontractor]* commits itself to make available the resources necessary for performance of the contract as a subcontractor and to carry out the services that will be subcontracted to it in compliance with the terms of the contract. It further declares that it is not subject to conflicting interests which may negatively affect the contract performance and that it accepts the general conditions attached to the Tender Specifications for the above call for tender, in particular the contractual provisions related to checks and audits.

Done at:

Name:

Position:

Signature:

Annex 5.2. COMMITMENT LETTER BY AN ENTITY ON WHOSE CAPACITIES IS BEING RELIED

[Letterhead, if any]

EUROPEAN COMMISSION

Call for tenders Ref. [reference number]

Attn:

[Insert date]

Commitment letter by an entity on whose capacity is being relied

I, the undersigned,

Name:

Function:

Company:

Registered address:

VAT Number:

having the legal capacity required to act on behalf of the company *[insert name of the entity]* hereby confirm that our company **authorises the *[insert name of the tenderer]* to rely on its financial and economic capacity in order to meet the minimum levels** required for the Call for Tenders *[insert reference number]* – *[insert title of procedure]* Lot *[insert lot number]*.

In the event that the tender of the aforementioned tenderer is successful, *[insert name of the entity]* commits itself to make available the resources necessary for performance of the contract **and to be jointly and severally liable for the performance of the contract.** It further declares that it is not subject to conflicting interests which may negatively affect the contract performance, and that it accepts the general conditions attached to the Tender Specifications for the above call for tender, in particular the contractual provisions related to checks and audits.

Done at:

Name:

Position:

Signature:

