



**European Data Protection Supervisor
and the European Data Protection Board**

Call for tenders n° EDPS/2019/02

**Studies on the implication of several GDPR provisions,
case laws and other laws having an impact on data
protection**

Open procedure

TENDER SPECIFICATIONS

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1. SCOPE AND DESCRIPTION OF THE PROCUREMENT

1.1. Contracting authority: who is the buyer?

This call for tenders is launched and managed by the European Data Protection Supervisor (EDPS) on behalf of the European Data Protection Board (EDPB), referred to as the *Contracting authority* for the purposes of this call for tenders. In the framework of this call for tenders, the EDPS is acting on behalf of the EDPB. Once the contract will be concluded, the EDPB Secretariat will be the point of contact for any exchanges.

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

The subject of this call for tenders is the production of several studies in the field of data protection and more specifically on the implication of several General Data Protection Regulation Provisions (GDPR) provisions, case laws and other laws having an impact on data protection.

1.3. Lots

This call for tender is not divided into lots.

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

The studies that are the subject of this call for tender, including any minimum requirements, are described in detail below.

The studies will cover a variety of areas relating to the data protection and digital economy, such as big data, re-use of public sector data, artificial intelligence, blockchain, cybersecurity, disinformation online, processing of data in different professional contexts, such as law enforcement or scientific research, enforcement of the GDPR against importers in third country, data localisation requirements, children's data, data brokers, Mobile Digital Marketing Ecosystem, tracking by technology, data stored in apps and interaction of data protection with other legal areas such as copyright or freedom of press. This is a non-exhaustive list.

Each identified area can be subject to a different study.

There will be two types of studies:

- **Category A:** legal studies relating to the interpretation of EU or international law and their application, notably by the European Courts. Analysis of Category A may involve the need to conduct a comparative legal analysis in maximum 3 selected EEA States.

This type of study shall have a duration of maximum 4 months starting from the date mentioned in the specific contract. The duration is to be determined by the *Contracting authority*, in consultation with the *contractor*.

- **Category B:** more complex legal studies implying:

1. the need to conduct a comparative legal analysis in more than 3 EEA States or a legal analysis relating to non-EEA countries, or

2. the need to complete the legal study by an analysis of processing operations or the practical implementation or the relevant law by the stakeholders or the comparison of best practices published at sector level or by the public sector.

This type of study shall have a duration of maximum 7 months starting from the date mentioned in the specific contract. The duration is to be determined by the *Contracting authority*, in consultation with the *contractor*.

Variants (alternatives to the model solution described in the Tender Specifications) are not allowed. The *Contracting authority* will disregard any variants described in a tender.

1.4.1. Background and objectives

In order to be able to conduct its mission according to the GDPR and in particular to produce guidelines, recommendations and best practices as mentioned in the tasks of the EDPB (see article 70 GDPR), the EDPB would like to purchase several studies on diverse aspects. These studies will provide input for the work done by the expert subgroups (within the EDPB) or by the EDPB Secretariat.

1.4.2. Detailed characteristics of the purchase

The needs to be met and the minimum requirement of the studies are:

1. the studies must have a high level of quality;
2. the studies must take into account the GDPR, case laws and all other EU or national laws that can have an impact on data protection;
3. the language and the overall presentation of the study should be clear and easy to read;
4. each final study should in principle not exceed 30 pages (without the cover page and the table of content);
5. each study must be written in English ;
6. The work should be carried out by 1 or more experts with relevant higher education (of minimum 4 years) and at least 2 years of professional experience relevant for the study. The work should be revised by an expert with relevant higher education (of minimum 4 years) and having at least 7 years of professional experience relating to data protection law;
7. each final study must be available in an electronic format (MSWord);
8. each study must remain neutral in its content and explain all possible avenues/solutions with their consequences;
9. Depending on the topic of the study, a timing for the duration of the study will be agreed upon between the EDPB Secretariat and the contractor.

1.4.3. Deliverables

The contractor must deliver the studies as indicated below.

Content

Final study reports

The final study reports must include:

- an abstract of no more than 400 words and an executive summary of maximum 6 pages, in English;
- the following disclaimer:

“The information and views set out in this study are those of the author(s) and do not necessarily reflect the official opinion of the EDPB. The EDPB does not guarantee the accuracy of the data included in this study. Neither the EDPB nor any person acting on the EDPB’s behalf may be held responsible for the use which may be made of the information contained therein.”

Structure

The contractor will have to propose the most appropriate structure for each of the study to the EDPB Secretariat, depending on the topic that is analysed in the study. This structure will have to be approved by the EDPB Secretariat, in consultation with the EDPB members whenever appropriate.

Graphic requirements

The contractor must deliver the study and all publishable deliverables in full compliance with the corporate visual identity of the EDPB, by applying its graphic rules and the EDPB logo.

A simple Word template will be provided to the contractor after contract signature. The contractor must fill in the cover page in accordance with the instructions provided in the template. The use of templates for studies is exclusive to EDPB's contractors and can only be used in the framework of the studies ordered by the EDPS on behalf of the EDPB. No template will be provided to tenderers while preparing their tenders.

1.4.4. Review of the deliverables

The contractor must regularly inform the EDPB Secretariat about progress made when drafting the studies.

Once a first draft is finalized, the EDPB Secretariat will review and may comment and ask changes to the studies via maximum 3 feedback rounds. The contractor will revise as requested by the EDPB Secretariat within 21 days;

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

The EDPB will not provide a location to the contractor to perform the contract.

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

The procedure will result in the conclusion of a single framework contract

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

A framework contract establishes a mechanism for future repetitive purchases by the EDPS on behalf of the EDPB estimated to be awarded in the form of specific contracts. The signature of

a framework contract does not impose an obligation on the EDPS on behalf of the EDPB to conclude specific contracts with a framework contractor.

An indicative estimate of the volumes to be ordered in the first year of the framework contract is given in the financial model in Annex 6. These volumes are estimates only and there is no commitment as to the exact quantities to be ordered. The actual volumes will depend on the quantities which the EDPS on behalf of the EDPB will order through specific contracts. In any case, the framework contract ceiling, i.e. the maximum amount to be spent under the framework contract shall not be exceeded.

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

The contract(s) resulting from the award of this call for tenders will be concluded for an initial 12 months. The details of the initial contract duration and possible renewals are set out in Article I.3 of the Draft contract.

2. GENERAL INFORMATION ON TENDERING

2.1. Legal basis: what are the rules?

This call for tenders is governed by the provisions of [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](#) (the Financial Regulation)¹.

The *Contracting authority* has chosen to award the contract resulting from this call for tenders through an open procedure pursuant to Article 164(1) (a) of the Financial Regulation. In an open procedure any interested economic operator (any natural or legal person who offers to supply products, provide services or execute works) may submit a tender.

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.

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 Procurement² 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 tenderer must indicate its country of establishment (and in case of joint tender – 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**.

☞ *For tenderers established in the United Kingdom:*

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

¹ 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).

² https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.

2.3. Ways to submit a tender: how can economic operators organise themselves to submit a tender?

Economic operators can submit a tender either as a sole tenderer or as a group of tenderers. In either case subcontracting is permitted.

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

The role of each entity involved in a tender (hereafter referred to as *involved entity*) must be clearly specified: sole tenderer, member of a group or Group leader, subcontractor or an entity on whose capacities the tenderer relies to fulfil the selection criteria³. This applies also where the *involved entities* belong to the same economic group.

2.3.1. 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 tenderer⁴.

All members of the group assume joint and several liability towards the EDPS acting on behalf of the EDPB for the performance of the contract as a whole.

Group members must appoint a *Group leader* and a single point of contact authorised to act on their behalf in connection with the submission of the tender 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 tender must clearly indicate the role and tasks of each member and of the *Group leader* who will act as the EDPB Secretariat'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 EDPS acting on behalf of the EDPB 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 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**).

³ Such an entity is not considered a subcontractor, see Section 2.4.3.

⁴ 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.

2.3.2. 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 tender.
- 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 unless the *Technical specifications* expressly reserve the execution of certain critical tasks to the sole tenderer itself, or in case of a joint tender, to a member of the group.

By filling in the form available in **Annex 4**, tenderers are required to give an indication of the proportion of the contract that they intend to subcontract, as well as to identify and describe briefly the envisaged contractual roles/tasks of subcontractors meeting any of these conditions (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 20 %.

Any such subcontractor must provide the tenderer 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 tender (withdrawal/replacement of a subcontractor, additional subcontracting) during the procurement procedure (after the submission deadline 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 tenderer 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.

Subcontracting to subcontractors identified in a tender that was accepted by the *Contracting authority* and resulted in a signed contract, is considered authorised.

2.3.3. Entities on whose capacities the tenderer relies to fulfil the selection criteria

In order to fulfil the selection criteria a tenderer 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 tenderer intending to rely on another entity to meet the minimum levels of economic and financial capacity, the *Contracting authority* may require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

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

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

3. EVALUATION AND AWARD

The evaluation of the tenders that comply with the submission conditions will consist of the following elements:

- Check if the tenderer has access to procurement (see **Section 2.2**);
- Verification of administrative compliance (if the tender is drawn up in one of the official EU languages and signed by duly authorised representative(-s) of the tenderer);
- Verification of non-exclusion of tenderers on the basis of the exclusion criteria;
- Selection of tenderers on the basis of selection criteria;
- Verification of compliance with the minimum requirements defined in the Tender specifications;
- Evaluation of tenders on the basis of the award 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 tender will be rejected and will not be subjected to further full evaluation. The unsuccessful tenderers will be informed of the ground for rejection without being given feedback on the non-assessed content of their tenders. Only tenderer(s) for whom the verification of all elements did not reveal grounds for rejection can be awarded the contract.

The evaluation will be based on the information and evidence contained in the tenders and, if applicable, on additional information and evidence provided at the request of the *Contracting authority* during the procedure. 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 the tenderer is in any of the exclusion situations listed in Article 136(1) of the Financial Regulation.

As evidence of non-exclusion each tenderer needs to submit with its tender a Declaration on Honour in the model available in **Annex 2**. The declaration must be signed by an authorised representative of the entity providing the declaration.

The initial verification of non-exclusion of tenderers 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 authority⁵.

⁵ The obligation to provide the supporting evidence will be waived in the following situations:

Annex 1 specifies which of the *involved entities* participating in a tender 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 tenderer has been successful.

3.2. Selection criteria

The objective of the selection criteria is to assess whether the tenderer 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.

Tenders submitted by tenderers not meeting the minimum levels of capacity will be rejected.

When submitting its tender each tenderer 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 tenderer fulfils the selection criteria will be done on the basis of the submitted declaration(s).

The subsections below specify which selection criteria evidence must be provided with the tender or may be requested later, at any time during the procurement procedure⁶. In any case, to the extent that there is no ground for a waiver, the evidence must be provided, upon request and within a deadline given by the Contracting authority. 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

Tenderers do not need to prove specific legal and regulatory capacity to perform the contract.

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- if such evidence can be accessed by the *Contracting Authority* on a national database free of charge, in which case the economic operator shall provide *the Contracting authority* 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.

⁶ The obligation to provide the supporting evidence will be waived in the following situations:

- if such evidence can be accessed by the *Contracting Authority* on a national database free of charge, in which case the economic operator shall provide *the Contracting authority* with the internet address of the database and, if needed, the necessary identification data to retrieve the document.

3.2.2. Economic and financial capacity

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

Average yearly turnover of the last two financial years above EUR 300.000.

This criterion applies to the tenderer as a whole, i.e. a consolidated assessment of the combined capacities of all *involved entities* will be carried out.

The evidence of economic and financial capacity needs to be provided with the tender.

3.2.3. Technical and professional capacity

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

The tenderer must prove experience in the field of data protection by demonstrating the completion of at least 15 projects financed by the public sector and the completion of 12 publications, both relating to data protection or other areas identified under section 1.4 and fulfilling the first 3 criteria listed under 1.4.2 within the last five years preceding the tender submission deadline. At least a third of them should have been drafted in English. This criterion applies to the tenderer as a whole, i.e. the combined capacities of all involved entities.

Evidence to be given by the tenderer: A list of projects and publications relating to data protection or other areas identified under section 1.4. The list shall include details of their start and end date, scope and a short description in English.

All of the above specified evidence of technical and professional capacity must be provided with the tender. Additional supporting documents may be requested by the Contracting authority at any time during the procedure.

3.3. Compliance with the minimum requirements of the Tender specifications

By submitting a tender a tenderer 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 minimum requirements specified in Section 1.34 of these specifications and to the fact that tenders 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.

3.4. Award criteria

The objective of the award criteria is to evaluate the tenders with a view to choosing the most economically advantageous tender.

Tenders will be evaluated on the basis of the following award criteria and their weighting:

1. Price

The price considered for evaluation will be the total price (“TOTAL”) mentioned in **Annex 6**, covering all the requirements set out in the Tender Specifications.

2. Quality (100 points)

The quality of the tender will be evaluated based on the following technical award criteria:

• Quality and relevance of the methodology set out in the tender	50
• Management and coordination of the future contract: This includes the administrative support (flexible reactions to last-minute changes, personal consultation etc.) as well as team management, all in order to ensure maximum efficiency in terms, speed, flexibility and quality requested)	25
• balance of profiles of experts carrying out the studies	25

Tenders receiving a score of less than 70 points (out of 100) on the quality criterion will be rejected.

3.5. Award (ranking of tenders)

The contract will be awarded to the most economically advantageous tender, i.e. the tender offering the best price-quality ratio determined in accordance with the formula below. A weight of 70/30 is given to quality and price.

score for tender X	=	$\frac{\text{price of most inexpensive tender}}{\text{price of tender X}}$	*	100	*	0,3	+	total quality score (out of 100) for all award criteria of tender X	*	0,7
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The contract shall be awarded to the tender ranked first, which complies with the Tender Specifications and is submitted by a tenderer having access to procurement, not in an exclusion situation and fulfilling with the selection criteria.

4. FORM AND CONTENT OF THE TENDER

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

Tenders are to be submitted according to the instructions laid down in the Invitation to tender letter.

4.2. Content of the tender: what documents to submit with the tender?

The documents to be submitted with the tender are listed in **Annex 1**.

The following requirements apply to the technical and financial offer:

- *Technical offer.*

The technical offer must provide all the information needed to assess the compliance with Section 1.4 of these specifications and the award criteria. For this purpose, a description of the organisation & methodology in **Annex 7** shall be completed and duly signed.

Tenders deviating from the minimum requirements or not covering all the requirements may be rejected on the basis of non-compliance and not evaluated further.

- *Financial offer.*

A complete financial offer, including the breakdown of the price needs to be submitted. For this purpose, the Financial Model in **Annex 6** shall be completed and duly signed.

The financial offer shall be:

- expressed in euros. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the risks or the benefits deriving from any variation.
- quoted free of all duties, taxes and other charges, i.e. also free of VAT. The tenderer may indicate the amount of VAT but it must be shown separately.

🔑 The European Union Institutions are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 annexed to the Treaty on the Functioning of the European Union. Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT must be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT.

4.3. Signature policy: how can documents be signed?

Where a document needs to be signed, the signature must be hand-written.

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, tenderers must provide evidence for the delegation of the authorisation to sign:

- The Tender;
- The Declaration on Honour of the tenderer (in case of joint tender – the Declarations on Honour of all group members);
- (If applicable – in the case of joint tender) 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 tender, it becomes its property and shall be treated confidentially, subject to the following:

- For the purposes of evaluating the tender and, if applicable, implementing the contract, performing audits, benchmarking, etc., the *Contracting authority* is entitled to make available (any part of) the tender 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 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 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 secrets⁷.

⁷ 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.

- The *Contracting authority* may disclose the submitted 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 disclosure⁸, 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 tender or substantial parts of it contain confidential information. Tenderers 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 tender.

⁸ See Article 4 (2) of the REGULATION (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

APPENDIX: LIST OF REFERENCES

<i>Award criteria</i>	See Section 3.4
<i>Contracting authority</i>	See Section 1.1
<i>Entities on whose capacities the tenderer relies to fulfil the selection criteria</i>	See Section 2.3.3
<i>Exclusion criteria</i>	See Section 3.1
<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>Framework contract</i>	See Section 1.6
<i>Framework contract ceiling</i>	See Section 1.6
<i>Group leader</i>	See Section 2.3.1
<i>Identified subcontractors</i>	See Section 2.3.2
<i>Involved entities</i>	See Section 2.3
<i>Joint tender</i>	See Section 2.3.1
<i>Participating entities</i>	See Section 1.1
<i>Selection criteria</i>	See Section 3.2
<i>Sole tenderer</i>	See Section 2.3
<i>Subcontracting/subcontractor</i>	See Section 2.3.2
<i>Treaties</i>	The EU Treaties: https://europa.eu/european-union/law/treaties_en

ANNEXES

Annex 1. List of documents to be submitted with the tender or during the procedure

Description	Sole tenderer	Joint tender		Identified Subcontractor	Entity on whose capacity is being relied	When and where to submit the document?
		Group leader	Member of the group			
Declaration on Honour on Exclusion and Selection Criteria (see Section 3.1) model in Annex 2. Declaration on Honour on exclusion and selection criteria	☒	☒	☒	☒	☒	With the tender
Evidence that the person signing the documents is an authorised representative of the entity ⁹	☒	☒	☒			With the tender
Power of attorney (see Section 2.3.1) model in annex 3. Power of attorney			☒			With the tender
Commitment letter				☒	☒	With the tender

⁹ 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.

(see Section 2.3.2 and 2.3.3)				(model in Annex 5.1)	(model in Annex 5.2)	
Evidence of non-exclusion (see Section 3.1)	☒	☒	☒	[☒]	[☒]	Only upon request by <i>the Contracting authority</i> At any time during the procedure
Evidence of legal existence and status	☒	☒	☒			Legal Entity Form and supporting documents With the tender
Evidence of economic and financial capacity (see Section 3.2.2)	The documents must be provided only by the <i>involved entities</i> who contribute to reaching the minimum capacity level					With the tender (financial statements)
Evidence of technical and professional capacity (see Section 3.2.3)	The documents must be provided only by the <i>involved entities</i> who contribute to reaching the minimum capacity level					With the tender

Financial offer (see Section 4.2) - Annex6	☒	☒				With the tender
Organisation & Methodology (see Section 4.2) - Annex7	☒	☒				With the tender

Annex 2. Declaration on Honour on exclusion and selection criteria

Declaration on honour on exclusion criteria and selection criteria

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

(only for natural persons) himself or herself	(only for legal persons) 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 authority¹⁰, 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

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
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¹⁰ The same EU institution, agency, body or office.

(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 EU or national laws or regulations;	☐	☐
(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;	☐	☐
(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:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract or an agreement;	☐	☐
(ii) entering into agreement with other persons with the aim of distorting competition;	☐	☐
(iii) violating intellectual property rights;	☐	☐
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	☐	☐
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	☐	☐
(d) it has been established by a final judgement that the person is guilty 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;	☐	☐
(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and 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, and conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the applicable law;	☐	☐
(iii) conduct related to a criminal organisation, as referred to in Article 2 of Council Framework Decision 2008/841/JHA;	☐	☐
(iv) money laundering or terrorist financing, within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;	☐	☐
(v) terrorist-related 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;	☐	☐

(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;	☐	☐
(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;	☐	☐
(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;	☐	☐
(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.	☐	☐
(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).	☐	☐
(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 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.	☐	☐

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) The signatory 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)	☐	☐	☐
Situation (d) above (fraud, corruption or other criminal offence)	☐	☐	☐
Situation (e) above (significant deficiencies in performance of a contract)	☐	☐	☐
Situation (f) above (irregularity)	☐	☐	☐
Situation (g) above (creation of an entity with the intent to circumvent legal obligations)	☐	☐	☐
Situation (h) above (person created with the intent to circumvent legal obligations)	☐	☐	☐

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)	☐	☐	☐
Situation (b) above (breach in payment of taxes or social security contributions)	☐	☐	☐

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.	☐	☐

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 authority¹¹. 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

	YES	NO	N/A
(1) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:			
(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section 3.2 and 3.2.1 of the tender specifications;	☐	☐	☐
(b) It fulfills the applicable economic and financial criteria indicated in section 3.2.2 of the tender specifications;	☐	☐	☐

¹¹ The same institution or agency.

(c) It fulfills the applicable technical and professional criteria indicated in section 3.2.3 of the tender specifications.	☐	☐	☐
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(2) if the above-mentioned person is the sole tenderer or the leader in case of joint tender , declares that:	YES	NO	N/A
(d) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	☐	☐	☐

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 same contracting authority¹². 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 may be subject to rejection from this procedure and 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

¹² The same institution of agency.

Call for tenders EDPS/2019/02 -

Studies on the implication of several GDPR provisions, case laws and other laws having an impact on data protection

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 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 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 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 tender and the conclusion of the contract, including:
 - (a) The *Group leader* shall submit the tender on behalf of all *Group members* and indicate in the "Tender Contact Info" section in e-Submission 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 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)
[Full official name Registered address Statutory registration number VAT registration number]		
[Full official name Registered address Statutory registration number VAT registration number]		
[REPEAT AS MANY TIMES AS THE NUMBER OF IDENTIFIED SUBCONTRACTORS]		
Other subcontractors that do not need to be identified under Section 2.3.2		
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 EDPS/2019/02.

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. EDPS/2019/02

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 EDPS/2019/02.

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. 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 6. Financial offer form

The scenario on the basis of which the evaluation of the financial offer will be done, does not constitute a commitment as to the number of studies or the repartition between types A and B, that will be effectively ordered if the contract will be awarded.

Only the “TOTAL” will be taken into consideration for the evaluation of the financial offer.

Deviation from this template will lead to the rejection of the tender.

Category of study	Description	Number of studies	Unit price per study (EUR)	Total (EUR)
Category A:	Legal studies relating to the interpretation of EU or international law and their application, notably by the European Courts. Analysis of Category A may involve the need to conduct a comparative legal analysis in maximum 3 selected EEA States.	3		
Category B	B1 - More complex legal studies implying the need to conduct a comparative legal analysis in more than 3 EEA States or a legal analysis relating to non-EEA countries, B2 - More complex legal studies implying the need to complete the legal study by an analysis of processing operations	7		
			TOTAL	

ANNEX 7: ORGANISATION & METHODOLOGY

To be completed by the tenderer

Please provide the following information, when possible, to illustrate your organisation's capacity to fulfil

the award criteria and comply with the characteristics of the procurement:

Criteria / characteristics	Type of information that can be provided
• Quality and relevance of the methodology set out in the tender.	• A description of the methodology you propose to apply to achieve the objectives and expected results, thus demonstrating the degree of understanding of the contract. • Description of possible structures of final study reports.
• Management and coordination of the future contract: This includes the administrative support (flexible reactions to last-minute changes, personal consultation etc.) as well as team management, all in order to ensure maximum efficiency in terms, speed, flexibility and quality requested).	• An outline of the approach proposed for contract implementation. • A list of the proposed tasks you consider necessary to achieve the contract objectives relating to the management and coordination of the future contract.
• Balance of profiles of experts carrying out the studies.	• Capacity of team intervening as experts and team composition. • A work plan indicating the envisaged resources to be mobilised, including the review methods that will be applied to ensure a high level of quality. • A description of any possible subcontracting arrangements with capacity providers with a clear indication of the type of tasks that will be entrusted to subcontractors.