

**Commercial and Contractual Considerations**

From the commercial and contractual standpoint, the Call for tender (CFT) will include:

- Detailed requirements for the preparation by the bidders of their commercial proposal;
- A draft contract, subject to the General Conditions of ESO Contracts (provided herein as Annex 8 to this Preliminary Inquiry). In their tender, Bidders will have to confirm compliance with the draft contract, or exceptionally request and justify deviations, which will be factored into the overall evaluation of each tender.

At the present stage (Preliminary Inquiry) of the overall procurement process, this document highlights certain commercial and contractual characteristics of the forthcoming CFT, for information and preferably for feedback.

A. Administrative Considerations

All communications between ESO and a) the bidders (during the procurement process) and b) the Contractor (during project execution) will be in the English language.

B. Nature of the Price

Bidders will be asked to quote a price which is:

- Fixed, i.e. inclusive of all costs necessary for the complete performance by the Contactor/ Consortium of all his obligations under the Contract;
- Subject to escalation formulae. For that purpose, ESO will define the reference economic conditions (i.e. Jan 2013, tbc) and may either decide to impose price revision formulae or invite bidders to suggest their own, which in either case shall rely on indices which are both relevant to the scope of work and available from official government publications.

C. Payment – Guarantee of Performance

ESO will specify in his tender documentation payment milestones which bidders will be requested to incorporate in their proposed payment plan. Bidders will also have the opportunity to suggest additional payment milestones, in as much as they are relevant and achievement can be easily and precisely measured. Bidders will be asked to demonstrate that the payment profile resulting from their milestone payment plan is consistent with the expenditure profile foreseen in the work plan.

For payments which cannot be secured by tangible deliverable items of a corresponding value, for which property would be transferred to ESO at the time of such payments, ESO shall require that such payments be secured by Bank Guarantees emitted by banks acceptable to ESO and which are payable of first demand (by ESO). Corporate guarantees are not an alternative security measure which ESO is prepared to contemplate.

## **Annex 7 to Preliminary Inquiry ref. PI/ESO/12/0098-99/YWE**

### **D. Terms and Conditions**

The General Conditions of ESO Contracts (ESO GC) represent the cornerstone of all ESO contracts, and it is our practice to only address in the Contract proper a) matters which are specific to a given procurement and thus cannot be addressed generically in the ESO GC (i.e. price, payment plan, points of contact, etc.), and b) additions to and/or deviations from the General Conditions of ESO Contracts, if and as required given the nature of the procurement as well as the outcome of the discussions/ negotiations with the selected bidder (the Contractor).

### **E. Industrial Return**

As a general rule, ESO does not have an obligation to deliver “juste retour” to its Member States. It is nevertheless committed to maximize opportunities for the ESO industries of all ESO Member States to participate in ESO contracts.

It is expected that the CFT for the Dome and Telescope Main Structure will impose, as a mandatory requirement, that a percentage of the total contract price be assigned by the Prime Contractor/ Consortium, via partnership and/ or contracts/ subcontracts at any tier of the industrial team, to companies in selected ESO Member States. More information will be provided when the scheme matures.

<p>You are invited in Part 3 of your response to the PI to acknowledge that you have reviewed the above “high level” commercial and contractual characteristics and encouraged to provide feedback/ comments as you see fit.</p>
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