

Supplementary rules for procurement procedures carried out in accordance with Article 29 of Decision ECB/2007/5 laying down the rules on procurement

1. Scope of application

The rules set out below supplement the rules on the conduct of procurement procedures without publication of a notice as laid down in Article 29 of Decision ECB/2007/5 laying down the rules on procurement. Together, they govern the procurement procedure carried out by the ECB. These supplementary rules form an integral part of the Request for proposal (RfP) by which the ECB has invited the Tenderers to submit a proposal.

2. Communication; questions

2.1 During the preparation of proposals, all Tenderers are encouraged to submit questions to the ECB on any aspect of the procurement procedure, the business case or the RfP (including its annexes).

2.2 Tenderers shall address all queries regarding this procurement procedure to the contact person mentioned in the RfP. The ECB does not assume any responsibility for queries which are not submitted in writing.

2.3 The ECB shall endeavour to answer all queries as quickly as possible but cannot guarantee a minimum response time. The ECB shall not be bound to reply to queries received less than seven calendar days before the time-limit for the submission of proposals, but will try to do so if possible.

2.4 If a query is of general interest, the ECB shall communicate the query and the corresponding answer to all Tenderers invited to submit a proposal. The query shall be anonymised and information of a commercially confidential nature shall not be disclosed.

2.5 During the procurement procedure Tenderers shall not contact any other ECB staff members or organisations/persons working for the ECB with regard to the procurement procedure carried out by the ECB. Tenderers shall also not contact potential competitors unless they intend to form a temporary grouping with them or to involve them as subcontractors. Any violation of this communication rule may lead to the exclusion of the Tenderer in question.

2.6 Unless otherwise provided, all communication with the ECB shall be made in English.

3. Review of the procurement documentation

If Tenderers consider that the ECB's requirements laid down in the RfP or supporting documents are incomplete, inconsistent or illegal or that the ECB or another Tenderer has infringed the applicable procurement rules, they shall notify their objections to the ECB within 15 calendar days. (Article 21(2) of Decision ECB/2007/5). If the irregularities affect the RfP or other documents sent by the ECB, the time-limit shall start to run from the date of receipt of the documentation. In other cases, the time limit shall start to run from the moment the Tenderers become aware of the irregularity or could reasonably have become aware of it. The ECB may then either correct or supplement the requirements or remedy the irregularity as requested, or reject the request indicating the reasons therefor. Objections which were not communicated to the ECB within 15 calendar days may not be raised at a later stage.

4. Changes to tender documentation

The ECB may at any time prior to the expiry of the time-limit for the submission of tenders, change or supplement the requirements set out in the RfP. The ECB shall communicate the changes or additions to all Tenderers who were invited to submit a proposal.

5. Preparation of the proposals; property

5.1 Tenderers shall prepare their proposals on the basis of the tender specifications set out in the RfP and its annexes.

5.2 Tenderers shall obtain at their own responsibility and expense all information necessary for the preparation of their proposals. Tenderers are solely responsible for the costs and expenses incurred in connection with the preparation and submission of their proposals and all other stages of the procurement procedure. The ECB shall not be liable for any costs or expenses borne by Tenderers or persons involved by them.

5.3 The proposal including all attachments and samples shall become the property of the ECB and shall not be returned.

6. Evaluation process

6.1 The evaluation shall primarily be based on the written proposals. For this reason, Tenderers are invited to present and explain their proposal in the most detailed and accurate way possible.

6.2 The ECB may request Tenderers to supplement their proposal or to clarify specific points within the limits set out in Article 20 of Decision ECB/2007/5. Tenderers shall respond to such requests within the reasonable time-limits set by the ECB. The ECB will not consider replies submitted after the expiry of the time-limit.

6.3 For the purpose of the evaluation the ECB may also take account of any other relevant information from public or specialist sources. The ECB may contact the reference persons indicated by the Tenderers and ask specific questions. The questions and answers shall be documented in writing.

7. Temporary groupings

7.1 Tenderers may establish temporary groupings with a view to jointly obtaining the contract tendered by the ECB (the 'Contract'). If the Contract is awarded to a temporary grouping, its members shall be jointly and severally liable for all obligations arising from the Contract.

7.2 The ECB shall accept proposals from temporary groupings under the following conditions:

- (a) the proposal is submitted as a joint proposal;
- (b) the proposal includes the declaration for temporary groupings (included in the Tenderer's statement attached as Annex 2 to the RfP), signed by duly authorised representatives of each member;
- (c) the proposal clearly describes the responsibilities of each member of the grouping and how they intend to cooperate.

7.3 Temporary groupings shall remain unchanged throughout the procurement procedure.

8. Subcontracting

8.1 Tenderers may subcontract parts of the Contract. If Tenderers intend to involve subcontractors they shall list them in the Tenderer's statement (attached as Annex 2 to the RfP) and provide information about the subcontractors' capacities and their role in the performance of the Contract.

8.2 If Tenderers intend to rely on the capacities of subcontractors or other entities for the purpose of fulfilling mandatory selection criteria set out in the RfP, they shall prove to the ECB that they will have at their disposal the resources necessary for performance of the Contract. As proof, Tenderers shall provide a signed declaration of the subcontractor or other entity confirming that its capacities will be at the Tenderer's disposal and that it will perform the parts of the Contract assigned to it should the Contract be awarded to the Tenderer.

8.3 Tenderers shall not exchange subcontractors or appoint additional subcontractors after the submission of their proposal and prior to the signature of the Contract. Thereafter, the exchange or appointment of subcontractors shall be subject to the prior written approval of the ECB.

8.4 The involvement of subcontractors shall not affect the overall responsibility and liability of the successful Tenderer for the due performance of all obligations arising from the Contract.

9. Confidentiality; professional secrecy

9.1 Subject to the exceptions referred to in Section 9.2, Tenderers shall:

- (a) at all times treat the contents of the RfP and any related documents and information (together the 'Information') as confidential;
- (b) not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen;
- (c) not use any of the Information for any purpose other than for the purposes of submitting (or deciding whether to submit) a proposal; and
- (d) not undertake any publicity activity within any section of the media.

9.2 Tenderers may disclose, distribute or pass Information to third parties provided that either:

- (a) the Information is already publicly available (other than through a breach of these confidentiality rules); or
- (b) the Information is disclosed for the sole purpose of preparing a proposal and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms as if that person were the Tenderer; or
- (c) the Tenderer obtains the prior written consent of the ECB in relation to such disclosure, distribution or passing of Information; or
- (d) the Tenderer is legally required to make such a disclosure.

9.3 The ECB is by law subject to the highest standards of professional secrecy and confidentiality¹. The ECB may disclose detailed information relating to the proposals:

- (a) to its staff and other organisations, companies or persons involved in the procurement procedure;
- (b) to other Tenderers, if the information is materially relevant for all Tenderers or if the ECB is required by law to disclose such information in both cases subject to the duty to protect the Tenderer's commercial interests;

(c) to the general public to the extent the ECB is obliged to disclose the information in order to fulfil statutory transparency requirements.

10. Data protection

10.1 The ECB shall process personal data received (such as names, contact details and other information provided in a curriculum vitae) in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data² as well as with Decision ECB/2007/1 of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank³.

10.2 The ECB shall use such personal data solely for the purpose of evaluating the proposals received and maintaining a database of potential suppliers. Within these limits, the ECB may transfer the personal data to third parties supporting the ECB in the procurement process including external contractors, national central banks or other partner organisations. The data subjects concerned may request access to their personal data and request the rectification of any data that is inaccurate or incomplete.

10.3 For all queries relating to such data, data subjects may address the data controller who is the Head of the ECB's Central Procurement Office (Kaiserstraße 29, 60311 Frankfurt, procurement@ecb.europa.eu, Fax +49 69 1344 7110).

10.4 Data subjects shall have the right to have recourse to the European Data Protection Supervisor.

11. No obligation to award the Contract; cancellation

The initiation of the procurement procedure imposes no obligation on the ECB to award the Contract. Should the RfP cover several items or lots, the ECB reserves the right to award a contract for only some of them. The ECB may cancel the procurement procedure as a whole or in parts at any time before the Contract is signed without Tenderers being entitled to claim any compensation (Article 32 of Decision ECB/2007/5).

12. Jurisdiction

The General Court of the European Union in Luxembourg (Rue du Fort Niedergrünwald L-2925 Luxembourg) shall have exclusive jurisdiction in any dispute between the ECB and a Tenderer relating to this procurement procedure. The time-limit to bring proceedings under Article 263 of the Treaty on the Functioning of the European Union shall begin to run two months from receipt of the notification of the award decision or if the Tenderer requests additional information on receipt of such additional information.

13. European Ombudsman

A Tenderer may also lodge a complaint with the European Ombudsman (1 Avenue du Président Robert Schuman, CS 30403, FR - 67001 Strasbourg Cedex) in accordance with Article 228 of the Treaty on the Functioning of the European Union and the Statute of the European Ombudsman. A complaint must be made within two years from the date when the complainant becomes aware of the facts on which the complaint is based.

¹ See Article 37 of the Statute of the European System of Central Banks and of the European Central Bank and Article 19(5) of Decision ECB/2007/5.

² OJ L 8, 12.1.2001, p. 1.

³ OJ L 116, 4.5.2007, p. 64.

Candidate's Statement

ANNEX 2 TO THE
VOLUNTARY CONTRACT NOTICE FOR UPCOMING
PROCUREMENT PROCEDURE – PROVISION OF A
HOLISTIC VIEW AND ASSESSMENT OF THE
IMPACT OF GAS EXTINGUISHING SYSTEMS ON
HARD DISK STORAGE SYSTEMS IN DATACENTRE
ENVIRONMENTS

Ref. [26153/A/PRE/2013]

1 How to complete this Candidate's Statement

Please complete all parts of this form in black, providing all the necessary supplementary information.

Please do not alter the numbering and the format of this form. Your answers must be concise and clearly drafted.

Please include, where appropriate, any supporting documents, marking clearly on all enclosures the name of your company and the number of the question to which they refer. Where the space given for any answer is insufficient, please continue your answer on a separate page, again clearly marking your firm's name and the question number to which it relates.

Important

Amendments to this form or re-typing to recreate the document are not permitted.

The form must be signed handwritten by an authorised representative.

2 General information on the Candidate

Name of the Candidate (including legal form)	
Country of registration and registration number	
VAT (Value Added Tax) number	
Contact person	
Address	
City and postcode	
Country	
Phone number	
Fax number	
E-mail address	
Homepage/URL	
Ownership/shareholders	
Subsidiaries	

Please describe the organisational structure of your company including the branch offices and attach an organisation chart:

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Authorised signatories		
1.	Name	
	Position in company	
2.	Name	
	Position in company	
Proof of signing power (e.g. commercial register/power of attorney) is attached yes ☐		

3 Declaration of honour

Please confirm that you/your company meets the eligibility criteria set out in Article 24 of the Decision ECB/2007/5 by ticking the corresponding boxes.

I/We hereby confirm that:	
1. I/We have not been subject of a judgment which has the force of <i>res judicata</i> for fraud, corruption, money laundering, involvement in a criminal organisation or any other illegal activity detrimental to the financial interests of the European Union, the ECB or any national central bank.	☐
2. I am/we are not bankrupt, nor being wound up, nor am I/are we having my/our affairs administered by the courts, nor have I/we entered into an arrangement with creditors or suspended business activities, nor am I/are we the subject of proceedings concerning those matters or in any analogous situation arising from a similar procedure provided for in national legislation or regulations.	☐
3. I/We have not been convicted of an offence concerning my/our professional conduct by a judgment which has the force of <i>res judicata</i> .	☐
4. I/We have not been guilty of grave professional misconduct.	☐
5. I/We have fulfilled all obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which I am/we are established or with those of the country of the contracting authority or those of the country where the contract is to be performed.	☐
6. I/We have not been declared by a court or an arbitration tribunal to be in serious breach of contract for failure to comply with my/our contractual obligations following another tender procedure.	☐
7. I/We/our firm, management, staff or agents am/are/is not subject to a conflict of interest. Conflicts of interest arise where your firm, your management, staff or agents have private or personal interests which may influence or appear to influence the impartial and objective performance of your/their duties. Private or personal interests mean any potential advantage for your firm, your management, staff or agents, their families, their other relatives or their circle of friends and acquaintances.	☐
8. I am/We are not guilty of serious misrepresentation in supplying the information required by the ECB.	☐

9. I/We have not contacted any other candidates with the purpose of restraining competition.	☐
10. I/We will inform the ECB without undue delay if circumstances arise in the course of the procedure which may affect my/our eligibility.	☐

4 Temporary groupings

The application is being submitted on behalf of a temporary grouping : yes ☐ no ☐	
<i>If yes, please provide the following information for each of the members:</i>	
names of the companies forming part of the temporary grouping:	
Name and contact details of the authorised representative of the temporary grouping:	
Detailed explanation of the responsibilities of each member (please continue on a separate sheet if necessary):	

Please note the following:

1. The representative of the temporary grouping must be authorised to report to the ECB on behalf of the temporary grouping, and to make legal statements and accept payments on behalf of the temporary grouping and of each member of it.
2. The members of the temporary grouping must co-sign this statement.
3. Each member of the temporary grouping must provide the information requested in this form. Where necessary, please duplicate the boxes and mark clearly to which member of the grouping the information relates to.

5 Subcontracting

Does your company intend to involve other companies as subcontractors in the performance of the contract? yes ☐ no ☐

If yes, please list all subcontractors here and submit for each subcontractor a separate Candidate's statement. Please specify also the responsibilities of each subcontractor

Name of the subcontractor	Responsibilities

If you/your company intends to rely on the capacities of subcontractors to meet selection criteria listed in the RfP please provide a signed declaration from the subcontractor that you/your company will have at its disposal the subcontractor's resources and that the subcontractor will perform the parts of the Contract assigned to it should the Contract be awarded to your company.

6 DECLARATION

I/We hereby confirm that...

1. I/we submit ourselves to the terms and conditions of the tender procedure, as defined in the ECB's Decision laying down the rules on procurement rules and the Voluntary Contract Notice;
2. The information provided in the application, including all attachments, is complete and accurate to the best of our knowledge, and that I/we have not modified this form except by filling in requested information.
3. We will inform the ECB without undue delay if circumstances arise in the course of the procedure which affect the information provided in this statement;
4. I/We understand that false information could result in my/our exclusion from consideration for future contracts.

Name:	Name:
Date:	Date:
Signature:	Signature: