

SERVICE CONTRACT NOTICE

Provision of Documentum software development and maintenance services to maximize the benefits of the electronic court management system (Legal Workflow) used by the Kosovo Specialist Chambers (KSC) located in The Hague, The Netherlands

Suspensive clause

The current financing decision of the contracting authority runs for two years, starting on 15 June 2018 and ending on 14 June of 2020. Any contract resulting from this tender procedure is expected to come into effect after the 14 June 2020. Thus, the award of such contract, as well as its continuation beyond the same calendar day 14 June of the three years thereafter in case of renewals, will be subject to and be conditional upon:

- (i) continuation or extension of the mandate of the contracting authority;
- (ii) prior adoption of a financing decision and the prior conclusion of a financing agreement for the contracting authority;
- (iii) availability of funds in the relevant budget line(s) of such financing agreement.

If any of the above conditions are not satisfied, the contract shall be suspended with immediate effect and should the period of suspension exceed 90 days, the contract will automatically terminate.

1. Publication reference

KSCR/PROC/2020/0483

2. Procedure

Restricted

3. Programme title

Kosovo Specialist Chambers: Support for re-located judicial proceedings within a Member State under the mandate of EULEX Kosovo

4. Financing

EU Grant Contract CFSP/2018/12 Kosovo Specialist Chambers

5. Contracting Authority

Kosovo Specialist Chambers (KSC)

Clarifications may be sought from the contracting authority at the following email address joan.puig-vall@scp-ks.org at the latest 21 days before the deadline for submission of applications stated at the point 23 below.

Clarifications will be posted on the KSC website at the latest 5 days before the deadline.

CONTRACT SPECIFICATION

6. Nature of contract

Fee-based

7. Contract description

The purpose of the contract for which this tender is made is the provision of consultancy services to manage and increase the performance of the Legal Workflow system which is the electronic court management system used by the KSC and which is built upon the Documentum platform.

8. Number and titles of lots

One lot only

9. Maximum budget

900,000.00 € over a 4-year period

10. Scope for additional services

The contracting authority may, at its own discretion, extend the service contract in duration and/or scope subject to the availability of funding up to a maximum not exceeding the length and the value of the initial contract. Any extension of the contract shall be subject to satisfactory performance by the contractor and it shall be granted through a negotiated procedure.

CONDITIONS OF PARTICIPATION

11. Eligibility

Participation is open to all natural persons and legal persons (participating either individually or in a grouping – consortium – of tenderers) on condition that they are not in any of the exclusion situations listed in Section 2.6.10.1. of the PRAG. Participation is also open to international organisations.

12. Candidature

All eligible natural and legal persons (as per item 11 above) or groupings of such persons (consortia) may apply.

A consortium may be a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure. All members of a consortium (i.e., the leader and all other members) are jointly and severally liable to the contracting authority.

The participation of an ineligible natural or legal person (as per item 11) will result in the automatic exclusion of that person. In particular, if that ineligible person belongs to a consortium, the whole consortium will be excluded.

13. Number of applications

No more than one application can be submitted by a natural or legal person whatever the form of participation (as an individual legal entity or as leader or member of a consortium submitting an

application). In the event that a natural or legal person submits more than one application, all applications in which that person has participated will be excluded.

14. Shortlist alliances prohibited

Any tenders received from tenderers comprising firms other than those mentioned in the short-listed application forms will be excluded from this restricted tender procedure unless prior approval from the contracting authority has been obtained (see practical guide – PRAG – 2.6.3.). Short-listed candidates may not form alliances or subcontract to each other for the contract in question.

15. Grounds for exclusion

As part of the application form, candidates must submit a signed declaration, included in the standard application form, to the effect that they are not in any of the exclusion situations listed in Section 2.6.10.1. of the PRAG.

Candidates included in the lists of EU restrictive measures (see Section 2.4. of the PRAG) at the moment of the award decision cannot be awarded the contract.

Note for natural persons:

After the successful tenderer has been informed by the contracting authority about its provisional decision of contract award, the successful tenderer will be required to provide the following additional documents prior to signature of the contract:

- a) A copy of a photographic national identity document (Passport / Identity Card)*.
- b) The Security Questionnaire included in this tender dossier, duly filled out, dated and signed.
- c) A Criminal Record Check / Certificate of Conduct, in The Netherlands known as ‘Verklaring Omtrent Gedrag’ (VOG), issued by a relevant body not earlier than 6 months before the date of its submission to the contracting authority.

** To be verified against the original when requested by the contracting authority’s Head of Security and Safety Unit.*

Prior to final contract award, the contracting authority will execute a security investigation with the competent authorities of the Host State in respect of the tenderer. In addition, the contracting authority will assess the information provided by the tenderer. If the security investigation and/or if the contracting authority’s information assessment results in security concerns, as a result of which the contracting authority decides to not award a contract, the provisional decision of contract award will be revoked. In this event, the contracting authority may award the contract to another tenderer or cancel the tender procedure.

Note for legal persons:

After the successful tenderer has been informed by the contracting authority about its provisional decision of contract award, the successful tenderer will be required to provide the following additional documents for any and all of its personnel, officials, or agents who will be undertaking work at the KSC-SPO premises on a regular basis, prior to signature of the contract:

- a) A copy of a photographic national identity document (Passport / Identity Card)*.
- b) The Security Questionnaire included in this tender dossier, duly filled out, dated and signed.

- c) A Criminal Record Check / Certificate of Conduct, in The Netherlands known as ‘Verklaring Omtrent Gedrag’ (VOG), issued by a relevant body not earlier than 6 months before the date of its submission to the contracting authority.

** To be verified against the original when requested by the contracting authority’s Head of Security and Safety.*

Prior to final contract award, the contracting authority will execute a security investigation with the competent authorities of the Host State in respect of the tenderer’s personnel, officials, or agents who will be undertaking work at the KSC-SPO premises on a regular basis. In addition, the contracting authority will assess the information provided by the tenderer in respect of the tenderer’s personnel, officials, or agents. If the security investigation and/or if the contracting authority’s information assessment results in security concerns, as a result of which the contracting authority may decide to not award a contract, the contracting authority can request the tenderer to propose alternative personnel, officials, or agents. If ultimately reasons continue to exist for the contracting authority to decide to not award a contract, the provisional decision of contract award will be revoked. In this event, the contracting authority may award the contract to another tenderer or cancel the tender procedure.

16. Sub-contracting

Subcontracting is allowed.

17. Number of candidates to be short-listed

On the basis of the applications received, between 4 and 8 candidates will be invited to submit detailed tenders for this contract. If the number of eligible candidates meeting the selection criteria is less than the minimum of 4, the contracting authority may invite the candidates who satisfy the criteria to submit a tender.

PROVISIONAL TIMETABLE

18. Provisional date of invitation to tender

Sometime in June 2020.

19. Provisional commencement date of the contract

The commencement date of the contract shall be the date of its signature by both the contracting authority and the contractor.

20. Initial period of implementation of tasks

Any contract resulting from this tender procedure will take the form of a Framework contract and its implementation will be done through Order forms.

The period of implementation of each Order form shall correspond to the timelines therein indicated.

Any contract resulting from this tender procedure will be concluded for an initial period of 1 year starting from the date of its signature by both the contracting authority and the contractor.

Such contract shall then be renewed automatically up to 3 times – each time for a period of maximum 1 year each, bringing the total maximum duration to 4 years – under the same terms and conditions, unless written notification to the contrary is sent by one of the parties and

received by the other 3 months prior to the expiry of the initial period or any subsequent renewal thereof.

SELECTION AND AWARD CRITERIA

21. Selection criteria

The following selection criteria will be applied to candidates. In the case of applications submitted by a consortium, these selection criteria will be applied to the consortium as a whole unless specified otherwise. The selection criteria will not be applied to natural persons and single-member companies when they are sub-contractors.

1) Economic and financial capacity of candidate (based on item 3 of the application form). In case of candidate being a public body, equivalent information should be provided.

- The average annual turnover¹ over the last 3 accounting years for which the candidate's accounts have been closed must be equal to or exceed 1,000,000.00 Euro (EUR)².

2) Professional capacity of candidate (based on items 4 and 5 of the application form).

- The candidate – whether a natural or a legal person – is duly registered, licensed or otherwise empowered to provide the services for which this tender is being made;
- For natural persons: The candidate is currently working as manager and/or team-leader with a pool of at least 10 Documentum developers who have the following primary responsibilities: Administrating the Documentum platform; maintaining and augmenting applications built on the Documentum platform using xCP; bugfixing applications built on the Documentum platform using xCP; creating documentation; managing user requirements; conducting change management & release management.
- For legal persons: At least 10 persons of the permanent staff of the candidate are currently working as Documentum developers with the following primary responsibilities: Administrating the Documentum platform; maintaining and augmenting applications built on the Documentum platform using xCP; bugfixing applications built on the Documentum platform using xCP; creating documentation; managing user requirements; conducting change management & release management.

3) Technical capacity of candidate (based on items 5 and 6 of the application form).

The candidate has successfully provided Documentum software development and maintenance services under at least 3 contracts, with a budget of no less than 100,000.00 Euros (EUR) each, at any time during the 3 years before the deadline for submission of applications.

This means that the service contract the candidate refers to could have been started or completed at any time during the indicated period but it does not necessarily have to be started and completed during that period, nor implemented during the entire period. Candidates are allowed to refer either to service contracts completed within the reference period (although started earlier) or to service contracts not yet completed. In the first case

¹ Gross annual income if the candidate is a natural person.

² $[(2 \text{ years before last year turnover} + \text{Year before last year turnover} + \text{Last year turnover}) / 3] \geq 1,000,000.00 \text{ EUR.}$

the service contract will be considered in its whole if proper evidence of performance is provided (statement or certificate from the entity which awarded the contract, proof of final payment). In case of service contracts still on-going only the portion satisfactorily completed during the reference period although started earlier will be taken into consideration. This portion will have to be supported by documentary evidence (similarly to service contracts completed) also detailing its value. If a candidate has implemented the service contract in a consortium, the percentage that the candidate has successfully completed must be clear from the documentary evidence, together with a description of the nature of the services provided if the selection criteria relating to the pertinence of the experience have been used. Documentary evidence is not required at the application stage but will be requested with the invitation to tender.

Previous experience which caused breach of contract and termination by a contracting authority shall not be used as reference.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. If the tenderer relies on other entities it must prove to the contracting authority that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment by those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility and must comply with the selection criteria for which the economic operator relies on them. Furthermore, the data for this third entity for the relevant selection criterion should be included in the tender in a separate document. Proof of the capacity will also have to be provided when requested by the contracting authority.

With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the services for which these capacities are required.

With regard to economic and financial criteria, the entities upon whose capacity the tenderer relies become jointly and severally liable for the performance of the contract.

If more than 8 eligible candidates meet the above selection criteria, their relative strengths and weaknesses must be re-examined in order to rank their applications and identify the 8 best candidates in accordance with point 17 of this contract notice. The only additional comparative criteria that will be taken into consideration during this re-examination, in the order in which they appear below, are:

- 1) the highest number of service contracts that meet criterion 21.3
- 2) the highest cumulated value of all the service contracts that meet criterion 21.3

N.B.: additional comparative criterion No 1 shall be applied to all the eligible candidates that meet the selection criteria. If, after applying additional comparative criterion No 1, it is not possible to identify the 8 best candidates because two or more candidates are tied for the 8th position, additional comparative criterion No 2 shall be applied only to these tied candidates.

22. Award criteria

Best price-quality ratio.

APPLICATION

23. Deadline for submission of applications

The candidate attention is drawn to the fact that there are two different systems for sending applications: one is by post or private mail service, the other is by hand delivery.

In the first case, the application must be sent before the date and time limit for submission, as evidenced by the postmark or deposit slip³, but in the second case it is the acknowledgment of receipt given at the time of the delivery of the application that will serve as proof.

Applications must be submitted before 17:30 hours (local time in The Netherlands) on Monday 1 June 2020.

Any application sent to the contracting authority after this deadline will not be considered.

The contracting authority may, for reasons of administrative efficiency, reject any application submitted on time to the postal service but received, for any reason beyond the contracting authority's control, after the effective date of approval of the short-list report, if accepting applications that were submitted on time but arrived late would considerably delay the evaluation procedure or jeopardise decisions already taken and notified.

24. Application format and details to be provided

Applications must be submitted using the standard application form, the format and instructions of which must be strictly observed. The application form is available from the following Internet address:

<http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=B>

The application must be accompanied by a declaration on honour on exclusion and selection criteria using the template available from the following Internet address:

<http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>

Any additional documentation (brochure, letter, etc.) sent with an application will not be taken into consideration.

25. How applications may be submitted

Applications must be submitted in English exclusively to the contracting authority in a sealed envelope:

- **Highly recommended, EITHER by courier service**, in which case the evidence shall be constituted by the date of the deposit slip, to:

Kosovo Specialist Chambers
Procurement Unit
Raamweg 47
2596 HN The Hague
The Netherlands

³ It is recommended to use registered mail in case the postmark would not be readable.

- **OR, also highly recommended, hand delivered** by the participant in person or by an agent **directly** to the premises of the contracting authority in return for a **signed and dated receipt**, in which case the evidence shall be constituted by this acknowledgement of receipt, to:

Kosovo Specialist Chambers
Procurement Unit
Raamweg 47
2596 HN The Hague
The Netherlands

Please note that all KSC procurement staff has been ordered to work remotely as a precautionary measure to contain the spread of the COVID-19 pandemic. The telework status is expected to last until the 19 May 2020, but it may well be extended further if the current risk of infection persists. During this time, the KSC will not be able to issue acknowledgment receipts to tenderers who choose to hand-deliver their applications to the Raamweg 47 location, whilst at some stage in future it is not unlikely that the possibility of physical bid delivery may stop altogether.

- **OR, technically possible, but not recommended, by regular post/mail**, either (i) unregistered without track & trace, in which case the evidence shall be constituted by the postmark, or (ii) registered with track & trace, or (iii) registered with track & trace AND requiring a signature for receipt, in which case the evidence shall be constituted by the date of the registration slip, to:

Kosovo Specialist Chambers
Procurement Unit
P.O. Box 47
2501 CA The Hague
The Netherlands

IMPORTANT NOTE! Please note that the premises of the Kosovo Specialist Chambers and Specialist Prosecutor's Office, Raamweg 47, The Hague, does not have an external mailbox or readily accessible reception area. Any delivery is diverted by the Security staff to a designated expedition area. It is strongly recommended to submit applications by courier service or by hand-delivery. Registered and unregistered mail through the normal post system should always be sent to the P.O. Box 47 address. Sending registered and unregistered mail to the physical address Raamweg 47, but also to the P.O. Box 47 address, which is mail that will ultimately be handled by the official postal system of The Netherlands, has proven to not be 100% reliable and runs the risk of non-delivery/receipt. In spite of an applicant being able to provide proof of the date and time of sending an application, the responsibility of actually delivery of the application to the Kosovo Specialist Chambers lies fully with the applicant. The use of unregistered mail is fully at the risk of the applicant.

The contract title and the Publication reference (see item 1 above) must be clearly marked on the envelope containing the application and must always be mentioned in all subsequent correspondence with the contracting authority.

Applications submitted by any other means will not be considered.

By submitting an application candidates accept to receive notification of the outcome of the procedure by electronic means. Such notification shall be deemed to have been received on the date upon which the contracting authority sends it to the electronic address referred to in the application.

26. Alteration or withdrawal of applications

Candidates may alter or withdraw their applications by written notification prior to the deadline for submission of applications. No application may be altered after this deadline.

Any such notification of alteration or withdrawal shall be prepared and submitted in accordance with Item 25. The outer envelope (and the relevant inner envelope if used) must be marked 'Alteration' or 'Withdrawal' as appropriate.

27. Operational language

All written communications for this tender procedure and contract must be in English.

28. Date of publication of prior information notice

25 March 2020. The prior information notice is posted on the KSC website at the following link:
<https://www.scp-ks.org/en/procurement/calls-tender>

29. Legal basis

- Council Decision (CFSP)2018/856;
- EU Grant Contract CFSP/2018/12 Kosovo Specialist Chambers;
- Article 4 Kosovo Law No.05/L-053;
- Article 6 Agreement between the Kingdom of The Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in The Netherlands (Art. 4 of the related Interim Agreement).

30. Additional information

Financial data to be provided by the candidate in the standard application form must be expressed in EUR. If applicable, where a candidate refers to amounts originally expressed in a different currency, the conversion to EUR shall be made in accordance with the **InforEuro exchange rate of May 2020**, which can be found at the following address:
<http://ec.europa.eu/budget/graphs/inforeuro.html>

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