

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 (Sonnenmannstrasse 20, 60314 Frankfurt am Main, Germany, 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.