



Information Memorandum (Tendering Procedure)

“Provision of a Platform Supply Vessel”

Negometrix Tender No: 133307

**Information memorandum about Call for Competition (selection/qualification phase)
regarding**

**EU negotiated procedure with prior call for competition
pursuant to Section 13 para. 1, 15 para. 1 of the German Sector Ordinance (SektVO)**



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1. PRELIMINARY REMARKS

1.1 EU-wide Contract Notice

TenneT, hereinafter also referred to as the “Client” (the specific company can be found in the details of the EU notification) or the “contracting entity” has communicated its intention to award the contract for the relevant services throughout the EU. Based on this contract notice, all interested economic operators (interested parties) are requested to submit an application for participation pursuant to Section 15 (1) SektVO.

1.2 Award Procedure

The award procedure takes the form of a negotiated procedure with a preliminary Call for Competition (cf. Sections 119 para. 5 GWB, 13 para. 1, 15 SektVO). The contracting entity reserves the right to award the initial bids without negotiations (Section 15 para. 4 SektVO).

The objective of the award procedure is to award the relevant services to the appropriate economic operator that submits the most economical tender (best cost/performance ratio) based on the published award criteria.

The award procedure will take place in the form of a negotiated procedure with an initial call for competition (cf. Section 119 (5) GWB (law against the restriction of competition) and Sections 13 (1) and 15 SektVO).

The call for competition is intended to identify suitable economic operators. Only suitable economic operators will be admitted to submit an offer in the subsequent offer phase.

1.3 Information Memorandum for Call for Competition

This information memorandum shall form part of the documents which the contracting entity shall make available free of charge, without restriction, in full and directly to interested economic operators for consultation. It specifies the information contained in the notice on the tendering procedure and, in particular, the requirements regarding the qualification (ability and permit to professional practice, economic and financial as well as technical and professional performance) of the bidders or bidding consortia as well as the Call for Competition procedure. The information memorandum contains the forms to be completed and submitted (**Forms A1 to A7**).



Based on this information memorandum and the other application documents, all interested economic entities are invited to submit an application for participation pursuant to Section 15 para. 1 SektVO.

2. POINT OF CONTACT AND COMMUNICATION

The following body is the point of contact for the tendering procedure:

TenneT Offshore GmbH, Bernecker Straße 70, 95448 Bayreuth, Germany

Point of Contact: Dominik Schellhase (located in 32175 Lehrte, Eisenbahnlaengsweg 2a, Germany)

Communication takes place exclusively via Negometrix.

3. CONTRACTING ENTITY AND SUBJECT OF THE TENDERING PROCEDURE

3.1 Contracting Entity

Contracting entity is the transmission system operator TenneT Offshore GmbH.

3.2 Brief Description of the Subject of Contract

Subject of the contract to be awarded is the provision of a Platform Supply Vessel for the duration of 3 years plus two possible extensions of one year each.

Further details on the subject of contract can be found in the specification (Annex 1 Scope of Work) and in the general lot description in TED and Negometrix.

3.3 Lot Distribution

N/A

4. INFORMATION ABOUT THE TENDERING PROCEDURE

4.1 Tender Documents

The tender documents shall include all documents provided by the contracting entity or to which it refers in order to define parts of the tendering procedure. They shall



contain all necessary information to enable interested undertakings to make a decision on participation in the tendering procedure.

The documents provided by the contracting entity for the Call for Competition phase and named in point 4.2 of this information memorandum are hereinafter referred to as **qualification-related tender documents**.

The documents applicable to the negotiation and bidding phase following the Call for Competition are hereinafter referred to as **performance-related tender documents**.

If no distinction is made between qualification- and performance-related tender documents, the respective statement shall apply to all tender documents.

4.2 Qualification-related Tender Documents

The qualification-related tender documents (application documents) include the following documents:

- Letter of application for participation,
- this description of details of the Call for Competition procedure (**Information Memorandum for Call for Competition**), including the indication of the qualification criteria together with the forms
 - **Form A1** “Information on the Applicant/Member of the Bidding Consortium”
 - **Form A2** “Bidding Consortium”
 - **Form A3** “Statement of Reference to Qualification of Third Parties”
 - **Form A4** “Ability and Permit to Professional Practice”
 - **Form A5** “Economic and Financial Performance”
 - **Form A6** “Technical and Professional Performance”
 - **Form A7** “Statement of Grounds for Exclusion and Measures of Self-Cleaning and Reliability Restoration”

In addition, please hand in the **Application Form**.



Interested tenderers are required to review the tender documents immediately after the call, for completeness and to inform the contracting entity immediately of any missing documents, mistakes or clarifications.

In terms of confidentiality of these documents, reference is made to point 13 of this information memorandum.

4.3 Call for Competition Procedure

This Call for Competition procedure is as follows:

(a) Preparation and submission of the application for participation

Interested tenderers are requested to prepare an application for participation on the basis of the application documents made available to them (see point 4.2 of this information memorandum) and to submit it to the contracting entity in due form and time via the Negometrix platform. Postal as well as digital submissions by Email are not permitted and may lead to exclusion from the tender process. With the application for participation, the applicants shall provide all information requested by the contracting entity for the purpose of reviewing their qualification.

In order to participate in this tender, the interested economic operators are obliged to register on Negometrix, also in order to receive regular information on updated responses to applicant questions as well as Client notifications.

(b) Opening (Review) of applications for participation

The opening and review of applications for participation will take place immediately after the deadline of applications for participation has expired (cf. point 9.2 of this information memorandum) and will be carried out by the client's tender team.

(c) Carrying out the qualification test

The qualification test of the applications takes place in a two-stage procedure:

(i) Formal evaluation of applications for participation

The contracting entity shall first evaluate the present applications for participation regarding compliance with the formal and substantive requirements laid down in this information memorandum. The Client first checks



the timely submission, completeness and accuracy of the applications for participation.

(1) Exclusion of applications for participation

Applications for participation are excluded if

- they were not received in due form or time, unless the applicant is not responsible for this (cf. point 9.3),
- they do not contain the requested or subsequently requested documents, explanations or information requested (minimum requirements as per EU announcement),
- amendments were made by the applicant but his or her entries are not unequivocal,
- amendments or additions were made to the application documents and
- they are not received in proper format or do not contain a legally binding signature of a properly authorised representative of the bidder

(2) Reservation of the right to request missing/additional information

In compliance with the principles of transparency and equal treatment, the contracting entity may request the applicants to submit, complete or correct any missing, incomplete or incorrect company-related documents, in particular self-declarations, information, certificates or other evidence (Section 51 para. 2 SektVO).

The documents shall be submitted by the applicant at the request of the contracting entity within a reasonable period of time to be determined by the client.

Applicants are not entitled to request additional documents. The applicant has no right to object to a client's request for additional documents unless the request would be unlawful. Applications for participation which do not contain the requested documents or do not contain the requested documents when exercising the aforementioned option, will be excluded (see current point 4.3 (c) (i) (1)).



(ii) Evaluation of the content of applications for participation

After the formal evaluation of the applications for participation, the contracting entity shall evaluate the qualification of the applicants for the services put out to tender, Sections 142, 122 GWB in conjunction with Section 46 para. 2 SektVO. The Client uses the submitted proof of suitability to assess whether the applicant is likely to be able to fully provide the tendered services. The lack of a specifically requested declaration or specific verification may lead to the exclusion of the application for participation. A reference to previous applications is not accepted. The review of suitability takes place in consideration of all of the documents submitted by the applicant/bidding consortium.

The Client may ask the applicant to provide an explanation of the submitted documents where needed.

Applicant entries must be clear and unambiguous. The applicant bears the risk of unclear and ambiguous entries that may lead to exclusion from the tender process. The applicant is not entitled to expect the Client to clarify unclear or ambiguous entries. Any changes by the applicant to its entries must be unequivocal.

The contracting entity evaluates

- the qualification regarding
 - ability and permit to professional practice,
 - economic and financial standing, and
 - technical and professional ability as well as

- non-existing grounds for exclusion pursuant to Sections 123 and 124 GWB, and

- any proven self-cleaning measures by the economic entity pursuant to Section 125 GWB.

The contracting entity will take into account the suitability of other economic entities if an applicant relies on the capacities of other economic entities to prove its economic and financial or technical and professional performance (for more details, see 11.5) and if the applicant provides all necessary documentation and information as to the other economic entities.



Applicants who are considered unreliable on the basis of the results of this test or who do not meet the qualification requirements will be excluded from the further procedure.

(d) Invitation to tender – Request to submit an offer

The Client subsequently asks suitable applicants who successfully passed the call for competition phase to submit an initial offer. Further information can be found in the tender document “Procedural Guide PSV.”

4.4 Time frame of the Call for Competition

See Negometrix, section “Schedule”, the call for competition phase ends with the deadline for submission of applications.

The contracting entity reserves the right to change the time schedule during the course of the procedure, in particular to extend the deadlines provided, insofar as this proves necessary for the proper conduct of the procedure.

5. OBLIGATION TO INQUIRE AND REGISTRATION WITH THE CONTRACTING ENTITY

5.1 Obligation to Inquire

Interested economic entities are obliged to register on Negometrix in order to be regularly informed about new questions answered by applicants as well as about communications from contracting parties.

5.2 Registration

The Client has announced its intention to award the relevant services throughout the EU and publicly published the call for tender in the TED (Tenders Electronic Daily), the online version of the “Supplement to the Official Journal of the European Union” for European public tendering as well as the tendering platform Negometrix.

According to Section 9 para. 3 sent. 2 SektVO, registration is not required for access to contract notices and tender documents.



However, the contracting entity shall make use of the right granted in accordance with Section 9 para. 3 sent. 1 SektVO and shall oblige the interested economic entities to register with the contracting entity by Email, after retrieving the contract notice, the qualification-related tender documents and the non-disclosure agreement (“NDA”), in order to gain access to further tender documents. For this purpose, the economic entity shall send the previously downloaded, completed and signed NDA to the point of contact named in point 2 via the Negometrix platform or by Email. The contracting entity must be informed immediately and unsolicited of any amendments or additions to this information.

After receipt of the NDA and registration in Negometrix, further communication with the applicant or bidder during the tender process exclusively takes place via Negometrix.

6. QUERIES

6.1 Obligation to Inform in Case of Ambiguities or Errors

If, in the applicant's opinion, the tender documents contain ambiguities or errors, he must inform the contracting entity immediately and before submitting his application for participation via the e-Tendering Platform Negometrix.

6.2 Deadline for Queries and Applications for Information

Any enquiries or requests for additional information must **exclusively** be submitted via Negometrix in the “Question and Answer” (Q&A) area (communication by phone, fax and email is prohibited). The Questions will be answered by the contracting entity as soon as possible. The final date for the receipt of these enquiries or the requests for additional information is disclosed under “Schedule” in Negometrix.

6.3 Answering Questions from Applicants and other Information of the Contracting Entity

Both questions and answers, insofar as they contain important information, are simultaneously made available to all applicants in anonymous form. The contracting entity shall make the information available for retrieval on Negometrix. The applicants will be informed by Negometrix that questions and answers have been posted on the website under Q&A. Applicants will also be informed about other messages provided by the contracting entity (e.g. correction of documents).



7. NOTES ON THE TENDERING PROCEDURE

7.1 Approved Languages

The language of the procedure shall be English. All correspondence with the contracting entity shall be in English.

For information and evidence which is not in English (e. g. certificates from foreign authorities), certified translations must be enclosed in addition to copies of the originals in the original language.

The application for participation must be written in English.

7.2 No Reimbursement of costs

Applicants will not be reimbursed for any costs incurred in processing and preparing the application for participation during the Call for Competition procedure.

7.3 Ensuring a fair Competition

Under Section 1 GWB, agreements between companies, decisions by associations of companies and concerted practices which have as their object or effect the prevention, restriction or distortion of competition are prohibited. Pursuant to Section 124 para. 1 No. 4 GWB, this conduct may lead to exclusion from the tendering procedure.

In particular, applicants must ensure that sealed bidding is not influenced by inadmissible multiple participation. In case of doubt, the contracting entity shall require the candidates to prove that sealed bidding has been maintained.

7.4 Storing and Processing of Personal Data

Personal data requested in the course of the tendering procedure shall be stored and processed for the purpose of carrying out the tendering procedure.

For this reason, order-data processing contracts may have to be concluded between the parties.



8. COMPONENTS OF THE APPLICATION FOR PARTICIPATION

The complete application for participation consists of

- completed and signed letter of **application for participation (Application Form)**,
- completed and signed forms regarding qualification (**Forms A1 to A7** of this information memorandum) and, if appropriate, further documentation to demonstrate qualification in accordance with the requirements laid out in the EU announcement under sections III. 1.1) – III. 1.3) (e.g. financial reports, certificates of the chamber of commerce, etc.).
- all additional documents requested by the contracting entity within the tender documents and Negometrix within the “Questionnaire” “Call for Competition” (e.g. Confirmation of Certificates PSV, financial reports, technical documents (vessel datasheet, etc.).

8.1 Application for Participation

The attached **Application Form** shall be used to draw up the **letter of application for participation**. This form must be completed, stamped and signed.

In the letter of application for participation, the applicant shall nominate a **responsible contact person** the contracting entity may contact throughout the remainder of the tendering procedure about all relevant matters related to the participation.

When a bidding consortium applies, the letter must be signed by the representative authorized by the members of the bidding consortium.

8.2 Qualifications

To demonstrate its qualification, the applicant shall complete and submit the forms **A1 to A7** attached to this information memorandum and, where appropriate, other documents to demonstrate qualification as specified in this information memorandum.

For qualification requirements and further details, please refer to point 11 of this information memorandum.



9. GENERAL REQUIREMENTS FOR THE APPLICATION FOR PARTICIPATION

The application for participation must contain all the required information and statements and must be submitted in due time.

9.1 Form of Application for Participation

The application for participation must be submitted in electronic form by upload via the Negometrix e-Tendering Platform under section “Questionnaires”, together with all the required information and supporting documents. Submission of the application for participation in writing by post, email or fax is prohibited and leads to exclusion from the tender. **The Application for Participation may not contain any documents which are part of the offer phase (e. g. Price Sheet), otherwise the applicant may be excluded from the tender process.**

9.2 Deadline of Application for Participation

See Negometrix, section “Schedule”. The planning published in the EU notification and in Negometrix applies. In case of contradictions between the submission date specified in the EU notification and the date mentioned in Negometrix, the deadline indicated in the EU notification shall take precedence.

The application for participation must be received in due time via the e-Tendering Platform Negometrix under section “Questionnaires”. Individual extensions of deadlines will not be granted.

The Client reserves the right to modify this timetable in the course of the procedure, in particular to extend the deadlines, provided that this proves necessary for a proper handling of the tender process.

Applications for participation may not be submitted by postal service in writing or by fax. Violation of this requirement will result in the exclusion of the application for participation.

9.3 Dealing with Delayed Applications for Participation

Delayed submitted applications for participation will be excluded from the further procedure unless the delay is caused by circumstances beyond the control of the applicant (see above, point 4.3(c)(i)(1)). Such reasons must be substantiated by the applicant. In case of technical problems, the applicant can consult the Negometrix Helpdesk.



9.4 Amendments made by the Applicant to the Application for Participation

Amendments, modifications or corrections, if any, to the information provided by the applicant in the application for participation may be made by the deadline for submission of the application for participation and shall be marked as such in accordance with points 9.1 to 9.3 of this information memorandum.

Applications for participation may be withdrawn electronically until the deadline for applications for participation has expired.

9.5 Applicant's Entries and Changes Thereto

Entries of the applicant must be clear and unambiguous. The applicant bears the risk of unclear and ambiguous entries. The applicant is not entitled to have unclear or ambiguous entries cleared up by the contracting entity.

Amendments made by the applicant to his or her entries must be unequivocal.

9.6 Amendments of the Qualification-Related Tender Documents

Applicants are not permitted to amend the tender documents or make changes to them. Unauthorized amendments will result in the exclusion of the application for participation. In particular in the forms A1-A7 to this information memorandum, applicants may only make entries in the specified sections and these documents may not be modified.

10. BIDDING CONSORTIA

The application as a bidding consortium is admitted. A bidding consortium is treated like an individual applicant (Section 50 para. 2 SektVO). If applicants are addressed in the tender documents, this also refers to the joint form of participation of a bidding consortium. In this respect, regulations which specifically related to bidding consortia use exclusively the term "Bidding Consortium."

10.1 Nomination of an Authorized Representative

The bidding consortium shall nominate an authorized representative for the conclusion and implementation of the contract and who signs **Form A1** to this information memorandum. The authorized representative shall be available to the contracting entity as the contact person of the bidding consortium in this tendering procedure.



10.2 Conditions for Evidence of Qualification

Members of the bidding consortium shall jointly complete the form “Statement of Bidding Consortium” (**Form A2**), which also names the authorized representative. Form A2 must be completed and uploaded in any way – if the bidder is no bidding consortium, still the form must be completed by entering “N/A” or “Not Applicable”.

The ability and permit to professional practice must be individually proven for each member of a bidding consortium or subcontractors by means of form **Form A4** and non-existing grounds for exclusion from Section 123 and Section 24 GWB must be proven by means of form **Form A7**. The remaining qualification criteria (**Forms A5** and **A6**) depends on the bidding consortium or the set-up of the bidder as a whole. In this respect, each member fills in **Forms A5** and **A6** only to the extent it applies. Insofar as the qualification of a third party is used, **Form A3** (“Statement of Reference to Qualification of Third Parties”) must also be submitted. The third party subcontractor for example, has to submit all documents applying for his role as a subcontractor (depending on which qualification is borrowed by the bidder, the subcontractor must prove those qualifications by submitting all necessary documents in relation to this qualification).

The qualification test is carried out taking into account all documents submitted by the bidding consortium or bidder.

11. EVIDENCE OF QUALIFICATION

After the Call for Competition procedure and the subsequent negotiation and bidding phase, the contract will only be awarded to one competent and suitable tenderer. A tenderer is suitable if he fulfills the following criteria specified in detail by the contracting entity for the proper execution of the contract.

11.1 Ability and Permit to Professional Practice (point III.1.1) of the EU Notice)

The applicant must provide the following information and statements or submit the following documents as proof of ability and permit to professional practice (point III.1.1) of the EU Notice):



(a) Extract of professional or trade register

Proof of registration in a professional or trade register of the country in which the applicant is established, which may **not be older than three months** at the time of expiry of the deadline for submitting an application for participation.

Alternative evidence

If the applicant is not registered in a professional or trade register, proof of the permitted exercise of the profession by other means shall suffice (documents in languages other than English must be translated and verified by a respective authority).

For the member states of the European Union, the respective professional or trade registers and the certificates or statements concerning the exercise of the profession are listed in Annex XI to Directive 2014/24/EU of the European Parliament and of the Council of February 26, 2014 on public procurement and Repealing Directive 2014/18/EC, OJ L 94 of March 28, 2014, p. 65.

(b) Business organization – Company Presentation

The applicant and each member of a bidding consortium shall submit a comprehensive company presentation of their business organization as part of their application for participation, including information about company structure, organization, ownership, main customers and offered services including cargo supply runs to offshore assets.

(c) Organizational chart

The applicant and each member of a bidding consortium shall submit an organizational chart including all company locations and showing the total number of FTE (full-time employees).

The form **Form A4** shall be used for verification purposes.

11.2 Economic and Financial Standing (point III.1.2) of the EU Notice)

As proof of economic and financial performance (point III.1.2) of the notice), the applicant or the bidding consortium as well as the third party (in case of borrowing qualification, see point 11.5) must make the following statements:



- Statement of total revenues and revenue in the field of activity of the contract to be awarded here for each of the last three completed financial years before the expiry of the period of application for participation, **to be proven by submission of the respective financial reports in English or German language.**

The bidder shall provide evidence of an average annual revenue of at least EUR 9,000,000.00 for each of the last three financial years. Proof must be provided by submission (upload) of annual financial reports (at least the company balance sheet and profit & loss) of the last three years that show an average revenue of min. EUR 9,000,000.00 per year over the last 3 years.

- Proof of appropriate business liability insurance with a cover of at least EUR 2,500,000.00 per claim for property damage, personal injury and consequential loss (including duration of the insurance cover). If this is not already existing, an obligation must be given by written statement to conclude such insurance immediately before or upon contract award, to maintain it for the duration of the contract and to an unsolicited submission of a corresponding certificate.
- Confirmation that all vessels to be utilized in the course of the contract will be properly insured with Marine Hull insurance / Hull and Machinery insurance up to the full value of the vessel and will have a P&I-insurance, or equivalent, with a minimum cover of USD 10,000,000.00.
- Confirmation of having a workers' compensation and employer's liability insurance for employees in place to cover claims that are not covered by the insurance under P&I or similar, in accordance with legal requirements regarding the tenderer's employees and other persons for which the tenderer could be held liable. If not applicable according to your legislation, please confirm that there is no obligation to you, to have a worker's compensation and/or employer's liability insurance in place.

The form **Form A5** shall be used for verification purposes. To provide proof, the applicant must submit the respective documents by upload via Negometrix.

In the event that the tenderer uses the capacities of another company to obtain the necessary professional, financial and technical qualifications under Sections III.1.1 to III.1.3 (e.g. group companies), the "Form A3" must be completed and handed in together with the application for participation (the relevant documents can be downloaded via Negometrix) by the tenderer in order to prove that the other company/companies will be jointly and severally liable together with the applicant.



11.3 Technical and Professional Ability (point III.1.3) of the EU Notice)

TenneT regards the following conditions as prerequisites for applicants to fulfill:

- During the initial call for competition, bidders may nominate one or more vessels, fully suitable for the contract. Latest with the offer, the bidders must designate one firm vessel which was proposed during the call for competition and qualified by passing the Minimum requirements which would be used to carry out the contract. Replacing the vessel after the call for competition with a vessel previously not proposed, or after the offer, will not be accepted and would lead to exclusion from the tender.
- This nominated PSV must already be in direct possession of the bidder (either direct ownership or owned by the bidder's subcontractor/consortium partner) or operated by the bidder.
- Furthermore, the vessel should have served in the field of cargo runs for a minimum of 30 days throughout the last 12 months (to be proven by the vessel track record). The vessel should not come out of a lengthy cold layup to ensure smooth commencement of the job.
- The proposed PSV must be fully mobilized without any restrictions by the start of the service on 15.04.2020 (subject to postponement, if deemed necessary by the contracting entity).

As proof of technical and professional performance (point III.1.3) of the EU Notice), the applicant must submit the following statements.

(a) Proof of availability

Please provide proof of availability (written statement, reference to ownership) of one or more PSV(s) suitable for the tendered service, which meets at least the following minimum requirements (vessels not fully matching these requirements cannot be accepted):

- Vessel type: Platform Supply Vessel (PSV)
- Dynamic Positioning (DP): Class 2
- Clear deck area: min. 650 m² (free from obstructions, vertically reachable and useable for cargo handling and stowage. It may not include areas which are safety-relevant)



- Year of construction: not older than year 2008
- Average fuel consumption at 12 kn: max. 15 t per day
- Draught: max. 8 m
- Tank capacities (for client's usage only): drinking water: min. 250 m³, divided into at least two tanks with a min. capacity of 60 m³ waste water: min. 150 m³, bilge water: min. 70 m³ and marine gas oil (MGO): min. 200 m³ (to be proven by tank arrangement plan indicating the tanks for vessel's own usage and clients usage)

(b) References

At least three suitable references for previously executed contracts/jobs executed in 2018-2019, indicating the Client information, the main service contents, the contract and final invoice value (if not confidential) as well as the duration of the operations.

The relevant section 1 in **Form A6** must be completed and, where appropriate, supplemented with further appendices or supporting documents.

(c) Subcontracting

Details about which parts of the contract of the economic entities are intended to be subcontracted, if such a statement is already possible to be made.

The relevant section 2 in **Form A6** must be completed and, where appropriate, supplemented with further annexes.

Besides the information contained in **Form A6**, the contracting entity requires further proof of technical and professional ability of the applicant.

The following information needs to be provided as mandatory prerequisites to become eligible for the offer phase:

1. Please provide a written concept (including time schedule) which shows how you will enable a timely start of the scheduled tours of the client beginning on 15.04.2020 (short written concept is sufficient).
2. Please provide a detailed datasheet of the proposed PSV(s) with all required performance data in connection with the above mentioned technical minimum requirements



3. Please provide the tank arrangement plan of the proposed PSV(s) indicating the tanks for vessel's own usage and client's usage.
4. Please provide a written confirmation (written statement) of compliance with Industry Standards as per Annex 13 – Vessel Requirements for the proposed PSV(s).
5. Please provide the comprehensive track record of the proposed PSV(s) of the last two years 2018-2019 showing at least 30 days of service for cargo runs during the last 12 months.

In the event that the tenderer uses the capacities of another company to obtain the necessary professional, financial and technical qualifications under Sections III.1.1 to III.1.3 (e.g. group companies), the "Form A3" must be completed and handed in together with the application for participation (the relevant documents can be downloaded via Negometrix) by the tenderer in order to prove that the other company/companies will be jointly and severally liable together with the applicant.

11.4 Self-Certification of (Non-) Existing Grounds for Exclusion; Measures for Self-Cleaning

Also under section III. a.1) of the EU announcement: Economic entities interested in the contract must submit an explanation in case of the following grounds for exclusion. If grounds for exclusion, pursuant to Section 123 GWB and/or Section 124 GWB, exist, economic entities are allowed to provide proof of self-cleaning measures carried out. For providing evidence of exclusion and self-cleaning, the form **Form A7** must be used.

(a) Grounds for exclusion pursuant to Section 123 GWB and Section 124 GWB

The applicant or each member of the consortium of bidders and all third parties, on the resources/qualifications on which the bidder or consortium of bidders relies must state that grounds for exclusion, stated in Section 123 and Section 124 GWB, are non-existing.

(b) Self-cleaning pursuant to Section 125 GWB

If for an economic entity grounds for exclusion exist, pursuant to Section 123 GWB or Section 124 GWB, it shall not be excluded if it has proven that it

1. has paid compensation for any damage caused by a criminal offense or misconduct or has undertaken to pay compensation,



2. has fully clarified the facts and circumstances relating to the criminal offense or the misconduct and the resulting harm through active cooperation with the investigating authorities and the contracting authority, and
3. has taken concrete technical, organizational and personal measures that are suitable to avoid further criminal offenses or further misconduct.

The contracting entity shall assess the self-cleaning measures taken by the bidder and take into account the gravity and particular circumstances of the criminal offense or misconduct. If the contracting entity considers the self-cleaning measures to be insufficient, he will inform the bidder about the decision.

- (c) Exclusion and self-cleaning in the event of failure to comply with the obligation to pay taxes, levies and social security contributions

If the economic entity does not comply with its obligations to pay taxes, levies and social security contributions and if this is determined by a final court decision or final administrative decision (Section 123 para. 4 sent. 1 no. 1 GWB), an exclusion shall be waived if the economic entity proves that it has fulfilled its obligations by making the payment or undertaking to pay taxes, levies and social security contributions, including interest, arrears and penalties.

- (d) Exclusion from tender

If an economic entity, with existing grounds for exclusion, has not taken or has not taken sufficient self-cleaning measures in accordance with point 11.4 (b) of this information memorandum, it may

1. be excluded by the contracting entity from participating in the tendering procedure for a maximum of five years after the final conviction, if grounds for exclusion, pursuant to Section 123 GWB, exist,
2. be excluded by the contracting entity from participating in the tendering procedure for a maximum of three years after the relevant event, if grounds for exclusion, pursuant to Section 124 GWB, exist.

11.5 Reference to the Capacity and Expertise of Third Parties (Borrowing Qualification)

An applicant, also as a member of a bidding consortium, may use the abilities, qualifications, technical or financial capacities of third parties (such as affiliated companies



or subcontractors) to prove his or her qualification and expertise, regardless of the legal nature between him and these third parties.

(a) Conditions for evidence of qualification

Any third party whose qualifications are referred to and borrowed by the applicant to meet the minimum requirements set in the EU notice, is required to complete the form "Statement of Reference to Qualification of Third Parties" (**Form A3**), sign, stamp and submit it together with the bid of the applicant. In addition, that third party must demonstrate its economic and financial standing and its technical and professional ability in accordance with the requirements set out in the EU Notice and this information memorandum, using the forms provided by the contracting entity to the extent the applicant refers to.

Irrespectively, the third party, on whose qualification the applicant refers to, must also individually and completely prove his or her ability and permit to professional practice and the non-existing grounds for exclusion specified in Section 123 and Section 124 GWB according to this information memorandum.

(b) Evidence of professional performance

An applicant may only use the capacities of other economic entities to provide the required professional performance if they provide the service for which those capacities are needed.

(c) Review by the contracting entity

Within the scope of the qualification test, the contracting entity reviews whether the third-party company, whose capacity the applicant wishes to use for the fulfillment of qualification criteria, fulfills the corresponding qualification criteria and whether grounds for exclusion exist.

If the third party company does not fully meet the appropriate qualification criteria or if mandatory grounds for exclusion exist, the applicant must replace the third party company. The contracting entity reserves the right to demand the replacement of the third party company if optional grounds for exclusion exist, pursuant to Section 124 GWB. For that purpose, the applicant has a reasonable deadline.



(d) Joint liability

The contracting entity requires that the applicant and the third party company/ companies are jointly liable for execution of the order in accordance with the scope of borrowing qualification(s), Section 47 para. 3 SektVO.

11.6 Documentation of Qualification, Statement of Grounds for Exclusion and Measures of Self-Cleaning and Reliability Restoration

To apply for participation in the procedure, the **Forms A1 to A7** are to be used, which are enclosed to this information memorandum about Call for Competition.

Additionally to the required documents, if necessary, further annexes created by the applicant may be enclosed. The applicant's own appendices must be marked with the 'prefix' "B" (e.g. **Appendix B1**).

12. SUITABLE APPLICANTS

The contracting entity evaluates and assesses the qualification of the applicants regarding the provision of the PSVs, on the basis of the aforementioned requirements. Applicants considered suitable in this process are invited to submit a bid. Further details on the intended procedure of the negotiation and bidding phase can be found in the "Procedural Guide PSV".

13. CONFIDENTIALITY

By submitting an application to participate, the applicants are obliged to ensure the confidential treatment of all information and documents provided as part of the award procedure. This also applies after the conclusion of the award procedure. The tender documents remain the Client's property. They may only be used to prepare the tender. Applicants may not disclose the award documents to third parties.

Only consultants and the applicants' subcontractors are excluded from this non-disclosure requirements, provided that they are verifiably committed to non-disclosure in the same manner and within the same scope. The tender documents remain the property of the contracting entity.



Applicants may only make publications on the project or parts of it, as well as other information that they become aware of in the course of the tendering procedure, with the written consent of the contracting entity.

These documents and associated information may only be used for the purposes of this tender procedure. If a participant does not submit a tender, they must immediately destroy or delete the tender documents received, passing on the information to other parties is strictly prohibited.

The non-disclosure agreement (NDA) signed by the supplier remains unaffected.

13.1 Client's non-disclosure obligation

The Client shall ensure that the bidders are treated equally as part of the procedure. The Client shall not forward tenders or confidential information of a negotiation partner to the other negotiation partners and shall only use this information as part of the award procedure. This shall only not apply, if the relevant bidder has granted their consent to disclose or otherwise use tenders or confidential information in advance.

13.2 Copyright and marking of secrets

The bidders' copyright to the submitted documents will be respected. The submitted tenders will be retained by the Client. If the bidder intends to use information from their tender for the registration of a commercial copyright, they must point this out in the tender. The same applies if property rights exist in the tender or third-party property rights were used in the preparation or use of the tender. The Client is not entitled to publish tenders in whole or in part or to pass on information about their contents to third parties not involved in the audit and selection without the consent of the bidder.

Bidders are requested to clearly mark all parts of their tenders containing manufacturing, trade or business secrets as confidential on each page concerned.

13.3 Storage and processing of personal data

Personal information requested as part of the award procedure will be stored and processed for the purposes of executing the award procedure. The contact data will also be stored and processed for the purposes of initiating future business transactions, unless an express objection is received.



14. OBLIGATION TO GIVE NOTICE OF DEFECTS AND VERIFICATION PROCEDURE

14.1 Obligation to Give Notice of Defects and Deadline for Filing a Verification Procedure

Complaints regarding infringements of public procurement rules must be submitted to the point of contact named in point 2 within a period of ten calendar days (cf. Section 160 para. 3 sent. 1 no. 1 GWB).

Violations of public procurement rules, which are recognizable on the basis of the notice, must be notified to the contracting entity via the point of contact named in point 2 until the deadline specified in the notice expires, Section 160 para. 3 sent. 1 no. 2 GWB.

Additionally, reference is made to Section 160 para. 3 sent. 1 no. 4 GWB. Accordingly, a petition for review is inadmissible, if more than 15 calendar days have elapsed after receipt of the notification by the contracting entity, in order not to remedy a violation.

14.2 Competent Body for Verification Procedures

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