



EUROPEAN MEDICINES AGENCY  
SCIENCE MEDICINES HEALTH

18 November 2019  
EMA/583396/2019  
European Medicines Agency  
Legal Department

## Ex ante publicity of a negotiated procedure

EMA/2019/40/LD – Legal advice in relation to procurement matters and contracts under EU procurement and Dutch law

The European Medicines Agency (hereinafter referred to as “the Agency” or “EMA”) intends to procure services pertaining to legal advice in relation to procurement and contracts under EU procurement and Dutch law.

The scope of this contract shall be:

- Annual review of the Agency’s contract templates, with suggestions for streamlining, improvement, and alignment with changes to the European Commission’s templates as far as possible.
- Occasional review of draft technical specifications where such specifications are particularly complex or high-value.
- Occasional review of Agency contract annexes such as the exit plan or service level agreement.
- Assistance with responses to queries on contract terms, in particular liability and intellectual property rights, the application of Transfer of Undertakings (Wet overgang ondernemingen) and drafting of clarifications.
- Assistance with contract finalisation for negotiated procedures including possible attendance at negotiation meetings.
- Assistance with review of contract annexes not belonging to the Agency (e.g. software licensing agreements).
- Advice on any aspect of EU public procurement legislation and research and/or comment on relevant case law.
- Assistance with review of the Guidebook for Tenderers or any guidance notes prepared.
- No assistance is expected to be required in drafting technical specifications for tenders. However the Agency may require assistance in dealing with particular issues arising during the tender evaluation phase, such as how to determine if a particular tender is abnormally low or how best to respond to challenges from unsuccessful tenderers.
- Assistance with any disputes which may arise with regard to concluded contracts.
- Delivery of best practice sessions to small groups of persons involved in procurement on different topics.

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- Provision of regular updates in the form of briefing emails or newsletters about developments in public procurement.

In light of the foregoing, the Agency seeks to establish a framework contract in order to facilitate recourse to legal advice from a law firm, which holds particular knowledge in procurements and contracts under the Dutch law. The Agency wishes to appoint up to a maximum of two service providers in priority order for an initial period of one year, with three possible renewals, each of twelve months.

A negotiated tender with a maximum indicative budget of €142,000 is planned to be launched in November 2019, and the contract awarded will be for an initial duration of one year, and is renewable 3 times with a period of 1 year each time (1+1+1+1).

Interested economic operators meeting the minimum technical requirements and the criteria below may express their interest by sending an e-mail indicating the reference number and subject of the procurement to [AF-LD-TENDERS@ema.europa.eu](mailto:AF-LD-TENDERS@ema.europa.eu) together with the name, address and business details before **3 December 2019, 12:00 (noon) CET**.

The following minimum technical requirements shall apply to this framework contract:

- Compliance with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.
- The proposed attorneys at law, and his/her alternates, should not have any conflict of interest, (please refer to Article II.7 – Conflicts of interest and professional conflicting interests in the draft framework contract).
- The working language of the Agency is English and the contractor must confirm that it will be able to communicate with the Agency in English for seamless implementation and execution of all the services covered within the scope of the contract, including responsibilities resulting from regulatory requirements such as fire safety, occupational Health & Safety and Data Protection, as well as for the efficient and timely response in respect to contract management.
- Processing of personal data in connection with this service must comply with EU data protection legislation, in particular, Regulation (EU) 2016/679 (General Data Protection Regulation).

Interested economic operators should comply, at least, with the following criteria:

- All tenderers must have authorisation to perform the contract under national law;
- The average annual turnover of the tenderer must be a minimum value of €71,000 for each of the last two financial years;
- The attorneys at law as well as his/her alternates to be assigned to EMA should each have (i) relevant qualifications as attorneys at law, and (ii) at least 5 years' relevant experience in providing legal services in relation to public procurement procedures and contracts under EU and Dutch law, in particular in preparation and negotiation of public procurement contracts. This experience shall be demonstrated by citing at least 3 reference assignments with 3 different clients;
- The attorneys at law as well as his/her alternates to be assigned to EMA shall not have a conflict of interest, which could affect the performance of the services of the contract. It follows that the tenderer shall not be in any situation that could compromise the impartial and objective performance of the contract with regard to the rendition of legal advice. Compliance

with the specific rules of conflict of interest regulating the legal profession, including professional ethics rules shall be observed.

Tenderers must meet all of the above requirements.

This publication does not constitute any obligation on the part of the Agency to invite any economic operator having expressed its interest to tender. Only the candidates invited to tender by the Agency will be admissible. Registering interest to receive an invitation to tender in a negotiated procedure of this type does not create any legal right or legitimate expectation on the part of any economic operator.