



GENERAL PROVISIONS FOR CNES CALLS FOR TENDER

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PREAMBLE

CNES (*Centre National d'Etudes Spatiales* or French Space Agency) is a national scientific and technical public establishment of an industrial and commercial nature with a public accountant, as stipulated in Article L331-2 of the French Research Code and Decree No. 2012-1246 of 7 November 2012.

For information on the activities, missions, programmes and centres operated by CNES, Candidates may consult the CNES website at: www.cnes.fr/en

Important: as part of electronic government procurement and in compliance with applicable texts, submissions on paper are no longer authorised for tenders exceeding a value of €40,000 exclusive of VAT. Only electronic submissions shall be accepted, and shall be sent in all cases through the CNES buyer profile: <https://marches.cnes.fr>.

Any communication and discussions taking place during the contract adjudication process shall also be conducted electronically via the buyer profile, with the exception of the cases listed in Article R.2132-13 of the Public Procurement Code.

In addition, CNES is committed to simplifying access to public procurement for all companies. In this call-for-tender file, Candidates have the option of responding through the “DUME (ESPD) Service”: <https://dume.chorus-pro.gouv.fr/>.

This procedure allows companies to dispense with the information and documents usually required by the procurement notice, namely:

- - administrative and identity data,
- - declarations of compliance generating automated requests to administrations (in France: INSEE, DRFIP, ACROSS, Infogreffe, etc.), regulatory sworn statements,
- - information relating to financial capacity and staffing.

Through the company's SIRET identification number, CNES is able to directly and securely retrieve the information required for taking part in this tender.

Further information on this scheme is available via the following link:

<https://www.economie.gouv.fr/daj/dematerialisation-commande-publique>

1 SUBMISSION OF TENDERS

1.1 ELECTRONIC SUBMISSIONS

Candidates shall submit their proposals using the electronic bidding system (buyer profile) set up by CNES and accessible via the link <https://marches.cnes.fr>.

The leader of a consortium shall assume sole responsibility for the security and authenticity of the information provided by the tendering consortium.

Candidates who have submitted a proposal via the CNES platform and who wish to modify, clarify or supplement the content of their proposal before the deadline for the reception of bids shall submit a new, complete proposal including all the required documents. The tender thus submitted will cancel and replace the initial tender.

In order to facilitate and ensure the efficiency of the electronic procedure, Candidates are asked to comply with the following requirements:

- **Do not use “.exe” type formats.**
- **Do not use “macro” application tools.**
- **Comply with the maximum transmission capacity of the platform (500 MB).**
- **Return the documents in the same digital formats and in the same software versions as those downloaded, without changing the names.**

Candidates may request assistance from the platform hotline for any technical difficulties encountered when submitting their proposal. Practical guidelines for using this assistance are provided via the following link:

<https://marches.cnes.fr/?page=entreprise.EntrepriseAide>

The Candidate must have a system for detecting and eliminating malicious code or programs and ensure that the files submitted are free of any known malicious code or programs. If CNES detects any such code or program in the electronic documents sent by a Candidate, then CNES will not read the documents concerned, which will be deemed never to have been received. In this case, the Candidate will be informed.

1.2 BACK-UP COPY

Candidates may provide a back-up copy **on a physical electronic medium (USB stick) or on paper** at the same time as they submit their proposal electronically via the CNES buyer profile. This back-up copy will be taken into account by CNES if a virus is detected in an electronic document. In order to be valid for use, this copy must be received within the deadline set for the reception of proposals. It is hereby specified that there is no obligation to send a back-up copy and that it is up to the Candidate to decide whether or not to opt for this possibility.

The envelope containing the hard copy shall be marked as follows:

- The intended-recipient's address (see Call-for-tender rules - specific provisions);
- The reference of this call for tender;
- The words “Back-up copy”.

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2 FORM AND NATURE OF THE PRICES

The form and nature of the prices are governed by the provisions of the draft contract attached to this call-for-tender file.

The Contractor shall perform all the services stipulated in the contract at the agreed fixed price. The fixed price is applicable irrespective of the actual quantities used for performance of the services.

Prices shall be quoted exclusive of VAT and shall indicate the economic conditions on which they are based. On this economic basis, the Candidate shall prepare a financial proposal within the framework specified in the Special Provisions of this call-for-tender.

3 GENERAL CONDITIONS FOR CALLS FOR TENDER

3.1 LEGAL FRAMEWORK

This tender is governed by the provisions below, and by the French Public Procurement Code (CCP).

3.2 COMMITMENTS AND OBLIGATIONS OF THE CANDIDATES

3.2.1 RESPECT FOR FREE COMPETITION

By submitting a response, the Candidate implicitly certifies that:

- it has not or will not attempt to encourage another economic operator to submit or to refrain from submitting a tender in order to restrict or distort competition,
- the prices in the proposal have been established independently, without consultation, communication or agreement with any other economic operator on matters relating to these prices, in order to restrict or distort competition,
- unless otherwise required by law, the prices in the proposal have not been and will not be knowingly communicated by the Candidate, either directly or indirectly, to any other economic operator in order to restrict or distort competition.

3.2.2 ADVERTISING

Until such a time as the Candidate has been informed of the outcome of this tender, it is not authorised to mention the actual or planned submission of a proposal in its advertising, nor that it has been invited to tender.

3.2.3 CONFIDENTIALITY

The Candidate formally undertakes not to divulge the information it has obtained through the call-for-tender documents.

The Candidate may transmit some or all of the tender documents to companies that it wishes to consult for the subcontracting of work or tasks relating to this procedure, providing that these companies have signed a confidentiality agreement prior to distribution of the documents.

This agreement shall be made and signed by the Candidate and the subcontractor, if relevant.

A copy of this confidentiality agreement (signed by the subcontractor) shall be sent to CNES when the tender is submitted.

This commitment is binding for a period of ten years.

In the event of disclosure and/or use of the information made available to the Candidate and/or the Contractor, CNES reserves the right to terminate any agreements (contractual and/or other), without prior conditions and without compensation.

The Candidate shall not keep any copies of documents relating to the call for tender and provided by CNES. The Candidate and its prospective subcontractors, having been notified of this requirement, shall refrain from registering any intellectual property rights in connection with the technical specifications communicated by CNES.

3.2.4 PROHIBITION ON SOLICITING INFORMATION

Until the contract has been awarded, the Candidate shall refrain from contacting members of CNES staff, other than by using the electronic means (buyer profile) set up by CNES and accessible via the link: <https://marches.cnes.fr>.

3.2.5 COMPLIANCE WITH THE STIPULATIONS OF THE CALL-FOR-TENDER FILE

The Candidate expressly declares that it has read the contractual provisions set out in the call-for-tender documents and that it accepts them in full knowledge of the conditions, thereby waiving the application of its own terms and conditions of sale, in particular.

3.2.6 CONTENT OF PRICES

The Candidate is deemed to be aware of all information relating to the performance of services and to have made sure that the technical components of its proposal are consistent with this call for tender. It is required to report any errors, omissions or inconsistencies found. The successful Candidate shall not advance any such errors, omissions or inconsistencies as the basis for having provided a service that is incomplete or non-compliant with the state of the art.

3.3 OTHER CONDITIONS

3.3.1 NON-REIMBURSEMENT OF THE COSTS OF PREPARING THE PROPOSAL

The costs of preparing the proposal shall be borne by the Candidate and are not refundable.

3.3.2 CONSERVATION OF DOCUMENTS

All documents submitted in response to this call for tender will be kept and archived by CNES and considered as confidential.

Where applicable, the Candidate authorises CNES to transmit all or part of these documents to third parties identified in the Special Provisions of the call for tender, which third parties must treat them as confidential.

3.3.3 FRENCH LANGUAGE

All constituent, accompanying or cited documents supporting the tender shall be written in French or accompanied by a certified translation. All correspondence shall be in French.

3.3.4 SUB-CONTRACTING

The performance of certain parts of the contract may be subcontracted.

The application for acceptance of a subcontractor and of its terms of payment, shall be submitted to CNES for approval

- either by the Candidate when submitting its tender;
- or by the Contractor during the performance of the contract.

Subcontractors will be paid directly by CNES.

3.3.4.1 Obligations of Candidates

If the Candidate plans to use subcontractors, this means implicitly that it accepts full responsibility for the entire proposal and for managing the project if it is awarded the contract.

If the Candidate declares one or more subcontractors in its tender, it shall include a letter of commitment from each subcontractor concerning the services to be provided by it.

In cases where choices have not been made, the names of the companies consulted will be included, together with the names of the main prospects and the provisional dates of selection.

3.3.4.2 Subcontracting contracts

The Candidate shall indicate the proposed subcontractor contracts, the nationality of the subcontractors, the name, business name and address of the subcontractors, the precise nature and content of the subcontracted work, the place of execution of this work and the amount that this work accounts for in the price requested for the whole contract.

In addition, the Candidate shall explain why and how it made its choice, and indicate the current state of negotiations with subcontractors.

3.3.5 CO-CONTRACTING (CONSORTIUM)

In the event that the Candidate forms a consortium to submit its tender:

- The consortium shall comply with competition rules.
- The proposed consortium shall be formally set up in a written agreement signed by all its parties. All proposals received without the formal agreement of all parties will be rejected.
- The co-contractors shall be identified in the contract and shall sign it. Except in the cases provided for in Articles L.2141-13 and R.2142-26 of the Public Procurement Code, no new co-contractor may be added following the selection of a Candidate or during the performance of the contract.

The leader of a consortium may not present, in this capacity, more than one consortium for the same contract. Similarly, a Candidate may not submit several tenders while acting at the same time as:

- an individual Candidate and member of one or more consortia, Or
- as a member of several consortia.

Note that if the successful Candidate is a consortium of economic operators, the latter must take the form of either a joint-and-several liability consortium, or a joint-liability consortium with a jointly liable leader. The form of consortium selected will be specified in the offer.

If a tender is submitted by a consortium, this consortium is considered to be a single Candidate. The consortium shall be represented by a duly authorised leader. The proposal shall specify the legal form of the consortium and name its leader.

The leader makes a direct commitment to CNES. It represents all the co-contractors in all dealings with CNES for the performance of the contract.

In this capacity, it is responsible for coordinating the co-contractors in the performance of their contractual obligations, and for scheduling and managing the work.

This representation does not include single invoicing or a single bank account for the payment of services due from CNES.

3.3.6 COMPLIANCE WITH THE GENERAL DATA PROTECTION REGULATION (GDPR)

The Candidate shall declare that it complies with the provisions of the General Data Protection Regulation (Regulation 2016/679). By taking part in this call for tender, the Candidate agrees:

- to be contractually bound by a number of requirements as regards the protection of the personal data to be processed as part of the service concerned by this call for tender;
- to guarantee the compliance of its subcontractors with these obligations and to include them in the commitment signed with CNES in this respect.

3.3.7 EXPORT CONTROLS

The Candidate shall check whether any of the items (e.g., components, equipment, instruments, software, data, etc.) included in its tender are subject to regulations (in France or other countries) concerning their manufacture, use, integration, sale and/or export/re-export. It also undertakes to:

- conduct a risk analysis,
- identify each of the items concerned in its bid,
- take all measures deemed useful to obtain from the relevant authorities all the authorisations necessary for manufacturing, using, integrating, selling and/or exporting/re-exporting any item covered by applicable regulations,
- describe in its bid the alternative solutions that it plans to put in place if it fails to obtain the necessary authorisations, specifying the possible technical, financial and time-related impacts on the performance of the contract. These alternative solutions may be technical (replacement of some or all of the items concerned, use of alternative technologies, etc.) or contractual (no-fault/no-compensation termination).

If this is not the case, the Candidate shall certify in its tender that none of the items included are subject to regulations (in France or other countries) concerning their manufacture, use, integration, sale and/or export/re-export.

3.4 TENDER COMPLIANCE CONDITIONS

In compliance with Articles R.2152-1 and 2 of the Public Procurement Code, the non-conformances that may lead CNES to reject a Candidate's tender are as follows:

- Inappropriate tender: a proposal that has no relevance to the contract because, without substantial changes, it is clearly unable to meet the needs and requirements specified by CNES in the call-for-tender documents. This shall be deemed as a failure to submit a proposal.

After negotiation, if applicable:

- Inconsistent tender: a proposal that does not comply with the requirements set out in the call-for-tender documents, notably because it is incomplete or because it does not take into account the applicable legislation, particularly from a social and environmental standpoint;
- Unacceptable tender: a proposal whose price exceeds the budget amounts allocated to the contract (maximum amount for each phase).

3.5 COMMUNICATION AND DISCUSSIONS

3.5.1 REFUSAL TO SUBMIT A PROPOSAL

If a Candidate considers that it is unable to respond to the call for tender, it should inform CNES of this by setting out the reasons for its refusal through the buyer profile, at the address indicated in Section 2.3.3, as soon as possible, and at the latest by the deadline set for the reception of tenders.

3.5.2 CHANGES TO CALL-FOR-TENDER DOCUMENTS

CNES reserves the right to make changes to the call-for-tender documents before the deadline for the reception of proposals and within a reasonable time-frame allowing Candidates to take account of such changes.

Candidates will be notified of these changes via the buyer profile, and CNES may then grant an extension.

In this case, Candidates shall respond on the basis of the amended call-for-tender documents, and will not be entitled to submit any complaints in this respect.

3.5.3 QUESTIONS ON CALL-FOR-TENDER DOCUMENTS

Any requests for additional information relating to the understanding of call-for-tender documents shall be submitted electronically through the buyer profile on <https://marches.cnes.fr> before the deadline for the receipt of tenders.

The Candidate shall ensure that a distinction is made between technical and administrative/financial aspects and shall specify for each question the document referred to, the section number or the reference of the technical clause, where applicable.

CNES will communicate its response, along with the question, to all Candidates, through the buyer profile.

3.5.4 CONTACTS FOR THE CANDIDATE

The tender shall include the name, address, e-mail address and telephone number(s) of the contact persons identified by the Candidate for any communication concerning this call for tender. This personal information will not be kept by CNES once the call-for-tender process has been completed.

3.5.5 DEADLINE FOR SUBMISSION OF TENDERS

The deadline for submission of tenders is set out in the call-for-tender rules.

Any request for an extension of this deadline shall be submitted through the CNES buyer profile (<https://marches.cnes.fr>), stating the reasons, before the deadline for the reception of tenders.

If CNES believes that this request is admissible, it will inform all Candidates via the buyer profile.

Requests for extensions (which are to be made through the CNES buyer profile) will only be considered by CNES insofar as the requirements of its programme and general interest permit, and providing such an extension would not restrict or distort competition.

3.6 CONTRACT:

The requirements of the contract to be signed by CNES and the successful Contractor(s) are set out in the draft contract provided in the context of this call for tender.

As part of its environmental policy, CNES uses and recommends that its partners sign contracts electronically. To be acknowledged as valid, the electronic signature must have an EIDAS-qualified electronic signature certificate. (The European Commission website lists French suppliers that issue EIDAS-qualified electronic signature certificates [bearing the term "QCert for ESig"] on the following page: <https://esignature.ec.europa.eu/efda/tl-/#/// TLS/ FR.>)