

Ref.: EDAC201912008Brussels, 09/12/2019

**Subject: Ex-ante publicity notice for the negotiated procedure 19.CSD.NP3.443 – Legal Support and Provision of specialised advice on matters concerning VAT exemption**

To whom it may concern

The European Defence Agency (EDA) will shortly launch a call for tenders for the award of the above mentioned middle value contract.

Should you be interested in being invited in the above mentioned call for tenders, please follow the instructions below.

In order to help you assess whether the envisaged contract is of your interest, the following information is hereby communicated.

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| **Outline description of the envisaged contract** | |
| **Type of contract** | * Framework Service Contract |
| **Maximum estimated budget available for the contract** | EUR 144 000 (*one hundred fourty-four thousand euro*) |
| **Duration of the contract** | 48 months |
| **Subject matter of the contract** | **Background**  The VAT exemption privilege provided for in Art. 27.3 of [Council Decision (CFSP) 2015/1835 of 12 October 2015](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D1835) is a significant financial incentive to boost cooperation between participating Member States in defence matters through Ad Hoc Projects and Programmes (PAs) concluded under the EDA umbrella.  The enjoyment of this privilege by EDA is subject to the fulfilment of some cumulative conditions inferable from diverse sources of EU public law which need to be interpreted and coordinated taking into consideration the specific features of each PA, including the underlying business model (i.e. the financial interaction between contributing Member States, EDA and private contractors).  The application of the VAT exemption privilege is not automatic but requires the setup of a working environment within EDA geared to pursue legal compliance ‘by design’. This entails that relevant actors of the decision –making process, from both the Corporate Service Directorate and the Operational Directorates, timelty receive the necessary technical advice to develop a harmonised and robust approach to topics and issues relating to VAT exemption. Hence the present request for legal advisory services.  **Main objective of the procurement**  EDA is launching a negotiated procedure for the provision of services concerning legal support and provision of specialised advice on matters concerning VAT exemption.  EDA wishes to conclude a framework contract. The purpose of the framework contract is to provide EDA with highly qualified external expertise at short notice.  EDA is looking for a law firm staffed by at least one senior lawyer, with specialisation in EU VAT law, to deliver tasks, on demand, such as (non-exhaustive list):   1. Training and Coaching covering the EU sources of law which are relevant to the application of the VAT exemption privilege to EDA. In particular, the below topics need to be covered:  * Relationship between EDA Council Decision, VAT Directive, Protocol on Privileges and Immunities of the EU, case-law, national legislation; * Subjective (ratione personae) and objective (ratione materiae) requirements for the eligibility to VAT exemption by EDA in the frame of PAs; * Exclusions; * Business models (including chain of transactions) and implications in terms of identification of the applicable VAT regime.  1. Preparing and sharing on a quarterly basis a tailored digest of relevant case-law and VAT Committee’s opinions which may affect EDA’s activities. 2. Support in refining and streamlining the contents of the compliance tools developed by EDA, and in particular the VAT Exemption Verification Check-list/Business case. 3. Advice EDA on complex cases concerning the possible entitlement to VAT exemption under envisaged PAs. This may include advice on how to frame the business model to ensure compliance with the applicable rules. 4. Liaising with the relevant EU institutions in VAT-related matters. 5. Liaise, on EDA’s request, with the European Commission, including the VAT Committee. 6. Support EDA to provide, if so requested, inputs to proactively feed the process for the legislative reform of the VAT Directive, in particular concerning the desirable broadening of the scope of application of Art. 151 to EU common defence efforts. 7. Written analysis of any document related to VAT matter involving EDA and provide legal advice thereon, including recommendations on lessons to be learnt and follow up actions.   NB None of the above tasks will include legal services in the pre-litigation and litigation phases.  **Work modalities**  Modalities of interaction between the consultant and EDA will include: exchange of emails, telephone calls, videoconferencing, face-to-face meetings, including focus groups and coaching and training sessions at the EDA premises. |
| **Participation in the negotiated procedure** | Participation in EDA’s public procurement procedures is open on equal terms to all natural and legal persons coming within the scope of the EU Treaties. When applying the rules of access to the market, it is the country where the tenderer is established which is to be considered. As regards a natural person, it is the State in which the person has his domicile.  EDA procurement procedures are not covered by the WTO Multilateral Government Procurement Agreement (GPA). Tenderers established in third countries (non-EU countries) do not have the right to participate in procurement procedures unless international agreements in the field of public procurement grant them the right to do so. In case there is no such agreement, or the agreement does not apply to the kind of contracts put out to tender, tenderers of third countries are not entitled to participate.  The relevant international agreements in the field of public procurement are the Stabilization and Association Agreements (SAA) and the European Economic Area Agreement (EEA). Currently, the following countries have signed and ratified the above Agreements and therefore economic operators established in Iceland, Liechtenstein, Norway, FYROM, Albania, Montenegro, Serbia, Kosovo, Bosnia and Herzegovina also have the right to participate in EDA’s public procurement procedures.  Important notice for British tenderers:  Please be aware that after the UK's withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to candidates or tenderers from the UK depending on the outcome of the negotiations. In case such access is not provided by legal provisions in force candidates or tenderers from the UK could be rejected from the procurement procedure. |
| **Selection criteria: necessary capacity to implement the contract** | Potentially interested economic operators are hereby informed that the following selection criteria will be assessed in the scope of the envisaged negotiated procedure:  **Economic and financial criteria**   |  |  |  | | --- | --- | --- | | **Criterion** | **Minimum capacity** | **Evidence/supporting documents** | | Economic and Financial capacity. | The tender must have a minimum annual turnover of EUR 50 000 for each of the last three financial years for which accounts have been closed. | The duly completed and signed Financial and Economic Capacity Overview Form that will be annexed to the tender specifications. |   **Technical and professional criteria**   |  |  |  | | --- | --- | --- | | **Criterion** | **Minimum capacity** | **Evidence/supporting documents** | | The tenderer shall demonstrate its capacity to provide a qualified team with experience in EU VAT law. | At least one senior lawyer/tax adviser, with specialisation in **EU** VAT law, to deliver tasks, on demand (with at least 6/10 years of post-qualification experience in the field).  At least one junior lawyer/tax adviser with specialisation in EU VAT law, to deliver tasks, on demand (with at least 3/5 years of post-qualification experience in the field). | At least, the CV of the senior lawyer/tax adviser detailing the educational and professional and taking into account the minimum expertise requirements qualifications and experience. | | The tenderer shall demonstrate its experience in the field. | The tenderer shall demonstrate its extensive and demonstrable experience in the provision of legal support in the field of EU VAT law. | A list of at least 4 cases (legal support in the field of EU VAT law)  carried out in the past 2 years. |   **NB** Whilst no documents need to be submitted at this stage to prove that the above criteria are met, potentially interested economic operators are strongly advised to verify that they fully comply with the announced criteria. |
| **Indicative date for launching the negotiated procedure** | Invitation to submit tenders will be electronically sent to economic operators indicatively by **31/01/2020.** |
| **Indicative time schedule for signing the contract** | The envisaged contract will be signed indicatively by **end of Q1 2020.** |

If you are interested in being invited in the above mentioned call for tenders, please reply to this ex-ante publicity notice by sending via email the filled-in **Reply Form**. Such Reply Form shall be sent to no later than **21/01/2020 – at 17h00** (Brussels time) to the following EDA functional mail box:

procurement[@eda.europa.eu](mailto:procurement@eda.europa.eu)

No evaluation is performed at this stage. All the economic operators who have expressed their interest to participate in this procurement procedure within the above-mentioned deadline will be subsequently invited to submit a tender. The contracting authority reserves the right to also invite economic operators not included in the list of interested economic operators who responded to this ex-ante publicity.

Only the candidates invited by the contracting authority to participate in this procurement procedure will be admissible.

This publicity is in no way binding for the EDA. The EDA's contractual obligation commences only upon signature of the contract with the successful tenderer.

Submission of an expression of interest implies acceptance of receiving the invitation to tender by electronic means. **It is the tenderer’s responsibility to provide a valid e-mail address together with their contact details in the Reply Form and to check their e-mail regularly.**

We look forward to receiving your expression of interest.

**Annex**: Reply Form (Expression of interest)

**REPLY FORM (Expression of interest)**

Please return the present page duly filled in to the following e-mail:

[procurement@eda.europa.eu](mailto:procurement@eda.europa.eu)

Please indicate in the subject line of the e-mail the title and number of the procedure:

**19.CSD.NP3.443 - Provision of specialised advice on matters concerning VAT exemption**

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| --- | --- |
| Name of the Company |  |
| Title, first name and last name of contact person, and Function within the Company |  |
| Address of the Company (including post code, town, country) |  |
| Telephone: (with international prefix) |  |
| E‑mail of the contact person[[1]](#footnote-1) |  |

Upon reception of your expression of interest, your personal data will be recorded and further processed by EDA for the sole purpose of drawing up list of interested economic operators that will be invited to take part in the present negotiated procedure. Such data will be processed by EDA in accordance with Regulation (EU) No 2018/1725[[2]](#footnote-2), pursuant to Article 31 of Council Decision (CSFP) 2015/1835.

Details concerning processing of your personal data are available in the privacy statement at the page:

<http://www.eda.europa.eu/docs/default-source/procurement/privacy-statement.pdf>

1. Where the invitation to tender will be sent. [↑](#footnote-ref-1)
2. Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p.39) . [↑](#footnote-ref-2)