



## ANNEX 1

### "SPECIAL CONDITIONS GOVERNING THE CALL FOR TENDERS"

CFT/ESO/09/27821/YWE

Procurement of the EVALSO Optical infrastructure

## INTRODUCTION

These Special Conditions are prepared in complement of the "General Conditions Governing Invitations to Tender and Tenders, Munich, May 2007" (Annex 4) and are structured as follows:

### **SECTION I: GENERAL / ADMINISTRATIVE INSTRUCTIONS AND INFORMATION**

This section:

- Sets the rules of communication between the Tenderer and ESO in relation to the Call for Tenders;
- Provides some general information about the ESO evaluation process; and
- Summarizes the milestones and associated schedule for this Call for Tenders.

### **SECTION II: INSTRUCTIONS FOR THE PREPARATION OF THE TENDER**

This section provides detailed instructions for the preparation of the Tender.

### **CONTRACTUAL CONDITIONS**

The contractual conditions which shall apply to the Contract which may be awarded as a result of this Call for Tenders are reflected in the Contractual Conditions, attached as Annex 3 to this Call for Tenders. This document has to be read in connection with the "General Conditions of ESO Contracts, Munich, May 2007" (Annex 5).



## Section I.

### GENERAL / ADMINISTRATIVE INSTRUCTIONS AND INFORMATION

#### I.1. LANGUAGE

All Tender documents must be drawn up in English. Any communication and correspondence between ESO and the Tenderer shall be in English.

This shall also apply to the subsequent Contract Documents and associated communication and correspondence.

#### I.2. AMENDMENTS TO THE CALL FOR TENDERS

ESO reserves the right to issue amendments to the present Call for Tenders at any time prior to the closing date for the submission of Tenders.

#### I.3. ACKNOWLEDGEMENT OF RECEIPT

Invitees to Tender are requested to send by e-mail or telefax to ESO (e-mail: [ywesse@eso.org](mailto:ywesse@eso.org) with copy to [jvraux@eso.org](mailto:jvraux@eso.org), telefax +49.89.3200.6456), **at the latest by 17 Avril 2009**, the form "Acknowledgement of Receipt", attached as Annex 9 to this Call for Tenders, stating whether or not they intend to submit a Tender.

Failure by a Tenderer to return the form shall have the consequence that he will not be included in the mailing list for replies to Tenderers' queries or other correspondence related to the Call for Tenders.

#### I.4. QUESTIONS RELATING TO THE CALL FOR TENDERS

For any questions by invitees to Tender concerning the present Call for Tenders, including any request for documentation referred to in this document, the Tenderer shall fill in the "Tenderer's Query Form", attached as Annex 10 to this Call for Tenders, and return it to ESO (e-mail: [ywesse@eso.org](mailto:ywesse@eso.org) with copy to [jvraux@eso.org](mailto:jvraux@eso.org), telefax. +49.89.3200.6456) **at the latest by 30 April 2009**.



Questions shall, where possible, make specific reference to the appropriate section(s) of the Call for Tenders' documents. When answering, ESO will forward the reply (ies) together with the question(s) received to all invitees to Tender who have returned the Acknowledgement of Receipt (cf. section I.3 above).

#### I.5. CLOSING DATE

The closing date, as defined in Article 2.8 of the "General Conditions Governing Invitations to Tender and Tenders" is set at:

**15 May 2009**

The accepted date of dispatch will be as per postmark or, in case of special delivery, as per Courier Consignment Note. Tenders mailed after the closing date may be rejected, at ESO's sole discretion.

#### I.6. REQUEST TO POSTPONE THE CLOSING DATE

Requests to postpone the closing date shall be considered only if they reach ESO **no later than 30 April 2009**. Extensions of the closing date, requested by e-mail ([ywesse@eso.org](mailto:ywesse@eso.org) with copy to [jvraux@eso.org](mailto:jvraux@eso.org)), will only be considered by ESO if operational requirements so permit and if fair competition is not impaired thereby. If ESO elects to postpone the closing date, all the firms consulted shall be informed of the new closing date.

#### I.7. VALIDITY OF TENDERS

An offer submitted in response to this Call for Tenders shall commit the Tenderer until **30 November 2009**. (supersedes article 2.2 of the "General Conditions Governing Invitations to Tender and Tenders")

#### I.8. PACKING AND DISPATCH OF TENDERS

Two inner envelopes, sealed and marked with the reference number of the Call for Tenders, the title of the content and identification of the Tenderer, shall be dispatched in an envelope. The inner envelopes shall contain:

- Three hard copies plus one electronic copy on CD-ROM of the Tender Form and the Supplementary Offer, if applicable;
- Three hard copies plus one electronic copy on CD-ROM of the Schedule and Management Proposal and of the Technical Proposal.

*page 3/12*



Both sides of the inner envelopes shall be marked as follows:

**CONFIDENTIAL - TO BE OPENED BY THE AWARD COMMITTEE ONLY  
(CFT/ESO/09/27821/YWE)**

The outer envelope, carrying the Tenderer's name and address, shall be sent to the following addresses:

ESO  
Contracts & Procurement  
Karl-Schwarzschild-Str. 2  
85748 Garching  
Germany

**I.9. INFORMATION ON DISPATCH OF TENDERS**

At the time of the dispatch of his Tender, the Tenderer shall send by e-mail or telefax (e-mail: [ywesse@eso.org](mailto:ywesse@eso.org) with copy to [jvraux@eso.org](mailto:jvraux@eso.org), telefax +49.89.3200.6456) the following information to ESO, Contracts & Procurement:

- reference n° of the Call for Tenders
- date and place of mailing
- number of parcels
- airway bill number of courier consignment note
- name of carrier
- name of the person responsible for posting
- name of the Tenderer.

If, the above-mentioned formalities having been fulfilled, the Tender does not reach ESO within **3 working days after the closing date**, the Tenderer will be informed, and an extension may be granted in order to allow him to forward duplicates. Tenders arriving after the expiry of this extension will not be taken into consideration.

**I.10. CLARIFICATIONS OF TENDERS**

ESO reserves the right to ask Tenderers for clarifications of their Tenders during the evaluation period. Answers, addressed in writing to the nominated ESO officer of Contracts & Procurement (e-mail: [ywesse@eso.org](mailto:ywesse@eso.org) with copy to [jvraux@eso.org](mailto:jvraux@eso.org), telefax +49.89.3200.6456), must be received within three days of dispatch of the request, if no other period is stated.



#### I.11. NO INFORMATION ABOUT EVALUATION DURING EVALUATION PERIOD

Tenderers are not entitled to contact ESO staff during the evaluation and selection period to ask for information on the evaluation. ESO reserves the right to eliminate from the evaluation a Tenderer contravening this provision.

#### I.12. AMENDMENT, WITHDRAWAL OR RESUBMISSION OF THE TENDER

Amendment, withdrawal or resubmission of the Tender will be permitted if they reach ESO before the closing date, in accordance with the dispatch conditions (section I.9).

#### I.13. EVALUATION OF THE TENDERS

Prior to the detailed evaluation of the Tenders, ESO will determine the substantial responsiveness of each Tender to the requirements of the Call for Tenders. A substantially responsive Tender is one which conforms to all the terms, conditions and specifications of the documents of the Call for Tenders without material deviations or reservations.

A material deviation or reservation is one which affects in any substantial way the scope, the quality, the quantity or the performance of the Work, or which limits in any substantial way, inconsistent with the documents of the Call for Tenders, ESO's rights or the Tenderer's obligations under the Contract and the rectification of which would affect unfairly the competitive position of other Tenderers having presented substantially responsive Tenders.

If a Tender is not substantially responsive to the requirements of the documents of the Call for Tenders, it will be rejected by ESO and, subsequently, cannot be made responsive by the Tenderer by correction or withdrawal of the deviation(s) or reservation(s).

ESO's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.

ESO will only evaluate the Tenders having been previously determined to be substantially responsive, pursuant to the above.

#### I.14. INFORMATION ABOUT THE RESULT OF THE CALL FOR TENDERS/ NOTIFICATION OF AWARD OF CONTRACT

Tenderers will be informed in writing of the result of the Call for Tenders after a decision has been taken. The decision on the result of the Call for Tenders will be

*page 5/12*



without appeal, and ESO will not enter into correspondence on the reasons for the decision.

#### I.15. SUMMARY SCHEDULE

<b><i>Milestone</i></b>	<b><i>Date</i></b>	<b><i>Reference</i></b>
Release of Call for Tenders	1 April 2009	
Acknowledgement of Receipt	17 April 2009	Section I.3
Deadline for questions by Tenderers	30 April 2009	Section I.4
Deadline for request to postpone the closing date	30 April 2009	Section I.6
Closing Date	15 May 2009	Section I.5
Validity date of Tenders	30 November 2009	Section I.7



## Section II.

### INSTRUCTIONS FOR THE PREPARATION OF THE TENDER

#### II.1. STRUCTURE OF THE TENDER

This Call for Tender is subdivided in six Work Packages:

- 1a.** two or more dark fiber pairs between ESO Paranal and the connection point to Item 1b;
- 1b.** one dark fiber pairs between the connection point to Item 1a and the REUNA Antofagasta;
- 2+3.** fixed wavelength (one Lambda) between Antofagasta and TELCO PoP in Santiago + housing space for EVALSO equipment at TELCO PoP in Santiago;
- 4.** two dark fiber pairs between OCA and ESO Paranal;
- 5a.** one dark fiber pairs between TELCO PoP in Santiago and ESO Vitacura;
- 5b.** one dark fibers between TELCO Pop in Santiago and REUNA Providencia.

Bidders can submit a tender for any individual Work Packages.

The Tender shall be presented in such a way that it can be related, point by point, to the requirements of the Call for Tenders, and shall be in the form and in accordance with any specific provisions specified hereafter.

The Tender shall be subdivided into the following main elements:

- the TENDER FORM
- the SUPPLEMENTARY OFFER
- the SCHEDULE, MANAGEMENT and TECHNICAL PROPOSAL



## II.2. TENDER FORM

Tenders cannot be considered unless they are submitted on TENDER FORM CFT/ESO/09/27821/YWE, which is attached as Annex 2 (see Article 2 of the "General Conditions Governing Invitations to Tender and Tenders").

**The TENDER FORM must be completed accurately and fully without any erasures or omissions and must be signed by the Tenderer.**

### II.2.1. TENDERER'S LEGAL STATUS AND ORGANIZATION

Tenderers shall be legally identified. They shall indicate in the Tender Form whether and how they have associated themselves for the submission of the Tender and later will associate themselves for the execution of the Contract, e.g.: Consortium, Joint Venture, Main Contractor/Subcontractor etc. They shall define their responsibility and liability depending on the form of association selected, indicate their registered addresses and name the persons empowered to act as representatives.

Tenderers shall ensure that the same information relating to proposed subcontractors is submitted together with the Tender.

Upon request by ESO, Tenderers shall submit any additional information required in relation to this requirement.

### II.2.2. PRICES

Prices may be quoted in EUR, USD or CLP or a combination thereof at the bidders discretion.

Prices shall be deemed to be net, firm and not subject to revision for the entire period of the Contract. However, as far as maintenance costs are concerned, price revisions formulae are acceptable. (see article 2.7 of the Tender Form)

Prices shall be quoted free of taxes and customs duties (see Article 3.2 of the "General Conditions Governing Invitations to Tender and Tenders").

Prices shall include all supplies and services of whatever nature necessary for the execution of the Contract.





### **II.2.3. DELIVERY SCHEDULE AND TERMS OF PAYMENT**

The payment scheme is specified Contractual Conditions attached as Annex 3.

### **II.2.4. SUBCONTRACTORS**

II.2.4.a The Tenderer shall indicate in the Tender Form the proposed subcontracts, the country of origin of the subcontractor, the place of execution of the subcontracted work as well as the corresponding share in per cent of the total price of the Tender.

II.2.4.b Preference should be given to subcontractors from ESO Member States or Chile, unless competent firms from non-Member States offer a more advanced technology/quality, or if significant financial or time savings can be achieved. In any case the main Contractor has the full responsibility for the subcontractor's performance, including the proviso that the subcontractor or the deliverables with respect to their use by ESO are not subject to any export restrictions nor will be.

### **II.2.5. COUNTRY/IES OF ORIGIN OF THE SUPPLY**

The country/ies of origin of the Supplies has/have to be indicated in the Tender Form. Tenderers shall complete the Geographical Distribution Form, showing the countries in which activities are expected to be performed or from which significant purchases are made.

### **II.2.6. COMPLIANCE WITH CONTRACT CONDITIONS**

The Tenderer shall explicitly state, in the Tender Form, that the Contractual conditions, as established in (Annex 3), are read, understood and accepted and that any sales conditions of his own do not apply. In case, exceptionally, that he wishes to propose modifications or amendments, the full text of such modifications or amendments shall be given in the Supplementary Offer and the reasons for their being requested shall be clearly explained.

Any reservations, or proposed modifications or amendments to the Contract Conditions will be taken into account in the evaluation. Acceptance of a Tender containing reservations, or proposed modifications or amendments is not to be construed as acceptance of these, until such acceptance is stated in writing by ESO.



## II.2.7. THIRD PARTY COMMITMENTS

The Tenderer shall indicate, in the Tender Form, if he has entered into any arrangements or license agreements as to intellectual property rights concerning the subject of the Call for Tenders, either as part of a general arrangement or under an agreement specific to this Call for Tenders. A copy of the document recording the arrangement or agreement, or an appropriate part thereof, shall be submitted with the Tender. If such arrangement or agreement would result in costs to be borne by ESO, these must be separately identified.

## II.2.8. ACCESS TO DATA - RESERVATION AND RESTRICTIONS

(cf. Article 23 of the "General Conditions of ESO Contracts")

If as a result of:

- a commitment with a third party as to intellectual property rights, or
- an existing intellectual property right of the Tenderer, or a claim by the Tenderer that intellectual property rights will be generated under the Contract which are not paid for by ESO, or
- any other reason,

the Tenderer wishes to make any restriction on the rights of distribution and use, as foreseen and defined in the "General Conditions of ESO Contracts", of any data, including documentation, related to the Work under the Contract, such proposed restriction must be clearly defined and justified in the Tender Form.

Such restrictions will be taken into account in the evaluation and, if contrary to the stated objectives of the Call for Tenders, might render the Tender unacceptable. ESO will not accept reservations made subsequent to the closing date of the Call for Tenders.

## II.2.9. ROYALTIES AND LICENCE FEES

ESO will only accept to pay royalties or licence fees on condition that:

- they are clearly identified in the Tender Form, with the financial basis for their calculation, method of application and total amount; and
- they are demonstrated to be of direct and necessary benefit to the Work to be performed;
- they are not merely the consequence of a general agreement or commitment to a third party;



- they are applied only to that part of the effort to be performed by the Contractor or his subcontractor(s) that is directly related to the subject matter of the royalty or licence agreement.

A copy of the documents justifying the request for the payment of a royalty or license fee, or the appropriate part thereof, shall be included in the Tender.

## II.3. SUPPLEMENTARY OFFER

Any relevant contractual and financial information necessary for a clear understanding of the Tender must be submitted in a SUPPLEMENTARY OFFER together with the TENDER FORM.

## II.4. SCHEDULE, MANAGEMENT AND TECHNICAL PROPOSAL

**This document shall not contain any price and other financial or contractual information.**

The Tenderers are requested to submit a schedule, management and technical proposal structured as follows:

- Section 1.** Short description of the Company (max one page)
- Section 2.** Identification of the items in the offer scope
- Section 3.** Evidence of knowledge and experience that are relevant for the offer scope. Example of similar systems and or documentation of owned infrastructure are requested and must be provided as attachment
- Section 4.** (if offered) Item 1a :technical description, maintenance concept, SLA
- Section 5.** (if offered) Item 1b: technical description, maintenance concept, SLA
- Section 6.** (if offered) Item 2 and 3 technical description, maintenance concept, SLA
- Section 7.** (if offered) Item 4 technical description, maintenance concept, SLA
- Section 8.** (if offered) Item 5a and 5b technical description, maintenance concept, SLA
- Section 9.** Evidence of level of knowledge in project management, configuration control, quality assurance, etc.
- Section 10.** Delivery plan in weeks. Week 0 is the signature of the Contract

*page 11/12*



**Section 11.** Comments, statements, alternatives, any additional information on contractual (but not financial) aspects of the Tender and/or Contract terms.

## **II.6. ALTERNATIVE OFFERS**

II.6.1. In addition to a Baseline Tender, Tenderers may submit Alternative Offers which present technical and/or financial advantages, always fulfilling the requirements of the Statement of Work and of the Technical Specifications.

II.6.2. When proposing Alternative Offers, Tenderers must describe, and quantify where relevant, the advantages to be gained by adopting such Alternative Offers, and must make a complete and precise evaluation thereof. Such Alternative Offers shall be proposed in a separate set of documents.

II.6.3. ESO shall disregard Alternative Offers if the Tenderer has not submitted simultaneously a Baseline Tender which complies with the requirements of the Call for Tenders.

II.6.4. Should a Tenderer elect to submit Alternative Offer(s), he is requested to structure such offer(s) in a manner similar to that required for his Baseline Tender, including, as appropriate:

- A financial element (which may, where possible, use a form similar to the Tender Form applicable for the Baseline Tender) and in any case should provide clearly price and payment plan information;
- A schedule, management and technical proposal.

These elements shall be packaged as per the instructions of section I.8 of this Call for Tenders.

II.6.5. In particular, Tenderers may consider submitting an Alternative Offer where the proposed schedule of deliveries differs from that of the Statement of Work, if it is advantageous financially and / or entails a lesser amount of risk.