



GENERAL CONDITIONS OF TENDERS FOR PROSAFE CONTRACTS

The following General Conditions shall apply to all Calls for Tenders, Calls for Services, Invitations to Tender (ITT) and Requests for Quotation (RFQ) issued by PROSAFE, except for where they are modified or amended by the Special Conditions of the Tender issued as part of the ITT or RFQ.

In case of any differences between the Specific Conditions set out in the Tender Specifications and these General Conditions, the Specific Conditions are to be considered as correct.

A. Definitions

The following terms used in the tender documents shall have the meanings set forth below, unless otherwise defined/specified elsewhere in the published tender documents:

- a) “Agreement” or “Contract” means the contract that is to be signed between PROSAFE and the preferred tenderer(s) after the award of the contract(s) in the context of a published Call for Tenders/Call for Services or Request for Quotation issued by PROSAFE;
- b) “Call for Tenders/Services”, “Invitations to Tender”, “Request for Quotation” mean the launch of a tendering procedure with the issuing, the circulation and/or the publication by PROSAFE of all the associated documentation in connection with the supply and delivery of services by one or more external contractors, in the context of a Grant Agreement signed between the European Commission/ Executive Agency and PROSAFE;
- c) “Contractor” or “Contractors” means the preferred tenderer(s) selected by a designated evaluation committee following a pre-defined evaluation and selection procedure against the exclusion, selection and award criteria set out in the Call for Tenders/Services;
- d) “Documentation” means all materials, contracts (including future addenda), manuals, letters, emails, reports, written information, invoices, credit notes, tender proposals, or other shared between the Parties in relation to the Agreement, before and after signature;
- e) “Grant Agreement” means the grant contract signed between the European Commission/Agency and PROSAFE, related to the execution of the services under the published Call for Tenders/Services.
- f) “Joint tender” means a situation where a tender is submitted by a group of economic operators (natural or legal persons). In case of joint tender, all members of the group assume joint and several liability towards PROSAFE for the performance of the contract as a whole, i.e. both financial and operational liability.
- g) “Party” or “Parties” means the prospective signatories to the Agreement (PROSAFE and the preferred/selected tenderer(s));
- h) “Representative(s)” means employees, directors, consultants, contractors, and Work Package Facilitators/Coordinators, designated by each Party;
- i) “PROSAFE” refers to the Product Safety Enforcement Forum of Europe which is a non-profit organisation established by market surveillance officers from various countries throughout Europe and refers specifically to the foundation “Stichting PROSAFE” which is registered in the Netherlands (Kamer van Koophandel Haaglanden No. 27253826, dated 15 October 2002);



- j) “Service(s)” means the supply of the services set out in the Call for Tenders by the preferred tenderers to PROSAFE;
- k) “Tenderer” means any economic operator (a natural person or persons partnership or legal entity/company/firm or group of firms) that has submitted a tender. The definition also covers all staff under an employment contract, or a secondment agreement, or under other direct contract with equivalent benefits, or subcontractors to the tenderer who will be involved in the supply, performance and/or delivery of the services if allowed by the tender specifications;
- l) “Term” means the effective period/duration of the Agreement to be signed between the Parties;
- m) “Third Party” means any person/entity other than the prospective signatories of the Agreement, the beneficiaries of the associated Grant Agreement and their affiliates, the European Commission/ Executive Agency;
- n) “Writing” means any type of written communication including emails, letters, notes or similar means.

B. GENERAL STANDARDS OF PRESENTATION

1. Structure of the tender

The tender shall present the information required, in the form specified in the Special Conditions of Tender forming part of the ITT/RFQ.

2. Length of tender documents

The tender should be precise and concise. Unless expressly so stated in the Special Conditions of Tender, there is no limitation on the number of pages, but it should be borne in mind that the quality of the tender will not be increased by unnecessary length or by needlessly detailed descriptions. Mere repetitions of PROSAFE's requirements should be avoided.

3. Use of English language

The tender and all correspondence relating to it shall be in English, unless the Special Conditions of Tender state otherwise, or on request of a tenderer, permission is given in writing by PROSAFE for the use of another language for the tender or parts thereof.

C. FORMAL CONDITIONS, COMMITMENTS, UNDERTAKINGS

1. Certification of free competition and absence of conflict of interests

By submission of the tender, the tenderer implicitly declares and certifies that:

- The prices in the tender have been arrived at independently without consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices, with any other tenderer or competitor;
- Unless otherwise required by law, the prices quoted in the tender have not knowingly been disclosed by the tenderer and will not knowingly be disclosed, directly or indirectly, to any other tenderer or competitor until he has been informed of the result of the ITT/RFQ;



- No attempt has been made or will be made by the tenderer to induce any other tenderer or competitor to submit or abstain from submitting a tender for the purpose of restricting competition;
- The tenderer (in case of joint tenders all members of the group) is not in one of the situations giving rise to exclusion from the procedure as listed in the tender documents;
- To the best of the tenderer's knowledge and belief, there is absence of conflict of interests with PROSAFE and/or other linked beneficiaries associated with the scope and the objectives of the Call for Tenders/Call for Services. In case of potential conflict of interest which would breach the principles of equal treatment and transparency, the tenderer must inform without delay.

2. Restriction on publicity actions

Tenderers are not authorised to mention in their publicity that they have been invited to tender, are tendering or have tendered, until after notification of the result of the ITT/RFQ.

3. Validity period of tender

The tender shall specifically state a period of validity of 6 months from the closing date for the receipt of tenders, or such other period as may be provided for in the Special Conditions of Tender.

4. Period for tender preparation

The closing date for submission of tenders is stated in the cover letter to the ITT/RFQ. Extensions of this period, requested in writing, will only be considered by PROSAFE if operational requirements so permit, and if, in the case of competitive tendering, fair competition is not thereby impaired. Requests for extensions received less than two weeks before the closing date will, for competitive ITT/RFQ's, not be considered.

5. Right to audit

PROSAFE will be entitled, after receipt of the tender and during its validity period, to request the tenderer to provide evidence of any element of his quotation and may call for additional detailed information irrespective of the type of price proposed. PROSAFE reserves the right to audit the quoted prices.

6. Negotiation prior to contract award

PROSAFE reserves the right to negotiate with one or more tenderer before taking a decision on the placing of a contract. The offer shall remain valid until changes are agreed in writing. The original offer, as modified shall constitute a binding revised offer. In case of a contract for laboratory tests, PROSAFE reserves the right to visit the laboratory facilities of the preferred tenderer and discuss details with technical laboratory staff as part of the final stage of the assessment process before award of contract(s)

7. Retention of tenders

Any document submitted in reply to the ITT/RFQ shall become the property of the PROSAFE. It will use commercially confidential or proprietary information solely for the purpose of the evaluation of tenders



and the selection of a contractor. PROSAFE reserves the right to eliminate from considerations tenders which purport to restrict the use of documents or information beyond these provisions.

8. No reimbursement of tender expenses

Expenses incurred in the preparation and dispatch of the tender will not be reimbursed.

9. No commitment by PROSAFE

The ITT/RFQ does not bind PROSAFE in any way to place a contract, and PROSAFE reserves the right to place a contract for only part of the activity covered by the ITT/RFQ.

Although PROSAFE will ensure to abide with a level of fairness and transparency throughout the tendering process, it reserves the right to accept any tender which is deemed the most advantageous for the particular job, even if this is not the most economically advantageous.

10. Responsiveness of the tender

a) General compliance and presentation

The tender shall comply in all respects with the ITT/RFQ, and shall be so presented that it can be related, point by point, to the requirements.

b) Cover letter

The tender shall have a cover letter duly signed by a person authorised and explicitly stating compliance with both the specific and general conditions of the tender.

c) Compliance with technical and management requirements

The tenderer shall explicitly state that the requirements of the specification and/or work statement will be met. Any reservation must be clearly identified. The consequences of the reservation, the reasons therefore and the possibility of and conditions for it being withdrawn shall be described.

d) Compliance with contract conditions

The tenderer shall explicitly state that the contract conditions are read, understood and accepted and that any of his sales conditions 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 and the reasons for their being requested be clearly explained.

e) Reservations

Any reservations to the requirements, 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 PROSAFE.

f) Options

If the Special Conditions of Tender call for the submission of options or alternatives, or if the tenderer wishes of his own initiative to submit these, PROSAFE reserves the right to disregard such a submission if a tender compliant with the requirements is not also made.



D. CONDITIONS RELATING TO INTELLECTUAL PROPERTY RIGHTS

1. Third Party commitments

The tenderer shall indicate if he/she has entered into any arrangements or licence agreements as to intellectual property rights concerning the subject of the ITT/RFQ, either as part of a general arrangement or with specific reference to the ITT/RFQ. A copy of the document recording the commitment, or an appropriate part thereof, shall be submitted with the tender. If such arrangement or agreement would result in costs to be borne by PROSAFE these must be separately identified.

2. Reservation and restrictions

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 PROSAFE, or
- Any other reason,

the tenderer wishes to make any restriction on the rights of distribution and use, as foreseen and defined in the conditions of the contract, of any data, including documentation, related to the work under the contract/Agreement, such proposed restriction must be clearly defined and justified in the tender. It will be taken into account in the evaluation and if contrary to the stated objectives of the ITT/RFQ, might render the tender unacceptable. PROSAFE will not accept reservations made subsequent to the closing date of the ITT/RFQ.

E. CONDITIONS RELATING TO SUBCONTRACTS

1. Placing of subcontracts

If the tenderer intends to place subcontracts, he shall do so, unless otherwise provided for in the Special Conditions of Tender, on a competitive basis wherever possible and inform PROSAFE of this intention within the submitted tender documents.

2. Identification of subcontracts

The tenderer shall indicate proposed subcontracts, the country to which the subcontractors belong, the place of execution of the subcontracted work as well as the corresponding percentage of the total price of the tender.

3. Information concerning subcontractors' offers

In submitting tender containing proposed subcontractors, the tenderer shall indicate the reasons why, and means by which he has selected the proposed subcontractor, and the status of negotiation with him.

4. PROSAFE participation in subcontractor evaluation

If, in exceptional cases, PROSAFE wishes to participate in the evaluation and/or selection of subcontractors, the Special Conditions shall so specify, together with the procedures and conditions applicable to such activity.



F. AMENDMENTS TO TENDER DOCUMENTS AND COMMUNICATIONS

1. Amendment of the ITT/RFQ

PROSAFE reserves the right to issue amendments to the ITT/RFQ.

2. Questions relating to the ITT/RFQ or tender

Any questions by invitees to tender concerning the ITT/RFQ shall be submitted in writing not later than two weeks before the closing date or any other period specified within the Specific Conditions, to the nominated officer concerned as indicated within the Specific Conditions. Questions may be sent in writing to the nominated officer via email as long as a specific email address has been given within the Specific Conditions of the tender. Verbally addressed questions will not be answered, in fairness to all tenderers.

Anonymised question(s) and response(s) shall be published on PROSAFE's websites and or circulated to the tenderers who registered their interest or were invited to tender.

Any request for documentation referred to in the ITT/RFQ shall be sent to the nominated officer as indicated within the Specific Conditions. PROSAFE does not undertake to make any document available unless the ITT/RFQ documents specifically state that such document is available on request for the purpose of the ITT/RFQ.

PROSAFE reserves the right to ask tenderer for clarifications of their tenders during the evaluation period. Answers, addressed in writing to the nominated officer, must be received within three days of dispatch of the request if no other period is stated. Clarifications shall not be regarded as amendments or modifications of the tender, in the case of competitive tenders.

3. No information about evaluation during evaluation period

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

4. Amendment, withdrawal or resubmission of the tender

Amendment, withdrawal or resubmission of the tender will be permitted if they reach PROSAFE before the closing date and time identified within the Specific Conditions. Tenderers are not allowed to amend their bids when the time limit for receipt of tenders has expired.

5. Information about the result of the ITT/RFQ

Tenderers will be informed in writing via email of the result of the ITT/RFQ after a decision has been taken. Upon receiving notice that his tender has been unsuccessful, a tenderer may request the nominated officer to advise him of the reasons why the tender has not been retained. Any information will be limited to the tenderer's own tender.

6. Review proceedings

Tenderers will be granted 3 to 5 working days from the date they will be notified about the award decision to request clarifications or appeal against the award decision by email. In case of an appeal,



PROSAFE will analyse it together with the designated evaluation committee and provide a final decision as soon as possible but not later than 5 working days from the day the appeal was received.

G. ADDITIONAL OBLIGATIONS

Once the final award decision is made by the designated evaluation committee and the preferred tender has been selected to perform the required services or products to be supplied (referred within this section as the “contractor”), a contract/Agreement will enter into force signed by both parties, and the following conditions will apply:

1. Performance of work

The contractor shall assure that all the services as per contract are carried out according to the highest professional standards. Whilst carrying out all the services of the contract, the contractor is obliged to use only his own highly qualified, professional staff.

The contractor undertakes to provide PROSAFE with any information it may request for the management of the contract.

If the contractor is not a company (legal entity) but a natural person, under no circumstance will the contractor be considered to be an employee of PROSAFE during the execution of the services provided or products supplied by the contractor.

2. Assignment

The contractor is not permitted to assign or in any other way transfer the rights or obligations under the contract to a Third Party without prior written acceptance from PROSAFE.

3. Subcontracting

If any part of the work is to be subcontracted, PROSAFE must be informed before the subcontract is signed. If the need to subcontract becomes apparent only after the work has been commissioned, the permission/agreement of the person signing the contract on behalf of PROSAFE must be obtained before the subcontract is signed or takes effect.

The contractor is ultimately liable for any services provided by subcontractors engaged by the contractor in accordance with the contract.

4. Substantial non-fulfilment

If one of the parties (hereinafter referred to as the offender) causes a substantial non-fulfilment of the contract, then the other party (hereinafter referred to as the offended) is entitled to terminate the contract with immediate effect.

However, if a non-fulfilment is demonstrated the offended is obliged to protest to the offender in writing without delay.

The contractor is obliged to inform the nominated officer within PROSAFE as per Specific Conditions of the contract of any substantial non-fulfilment should it arise. PROSAFE will then decide if substantial non-fulfilment has occurred. Failure to inform about substantial non-fulfilment may lead to termination of the contract with immediate effect.



In case of a cancellation, none of the parties are obliged to supply services according to the contract. However services already supplied or products already supplied shall be settled.

Examples of substantial non-fulfilment are shown below (non-exhaustive list):

- Failure to inform or breach for a period of 90 calendar days after the offended delivers notice to the offender detailing the breach;
- Repeated unjustified non-fulfilments of payments;
- Repeated significant delays in deliverances that are not remedied when claimed;
- Repeated significant shortcomings that are not remedied when claimed;
- Errors in the performance and delivery of the services by the contractors;
- Share of confidential data to Third Parties;
- No response from the agency to questions/queries after the delivery of the Data;
- Sub-par quality, accuracy or integrity of outputs.

Specifically on delays

If it is clear that services provided or products supplied cannot be delivered within the agreed delivery time, the contractor is obliged to inform without delay the nominated officer of PROSAFE as per Specific Conditions of the contract, regardless of the cause of the delay.

PROSAFE considers repeated or significant delays as substantial non-fulfilment, which justifies PROSAFE to cancel the contract with immediate effect.

Specifically on shortcomings

If shortcomings are found in the provision of a specific service or product supplied by the contractor, then PROSAFE can demand that the contractor remedies the shortcomings without further payments. In such instances the parties shall agree on a new time limit that is reasonably in proportion to the time limits that would normally apply to such services.

If this cannot be remedied, PROSAFE is entitled to demand a proportionate discount.

5. Conflict of interests and substantial non-fulfilment, to be read together with Section C of this document

The contractor is allowed to work for other parties provided that it does not compromise the services or products being offered or the obligations towards PROSAFE since ultimately it may lead to substantial non-fulfilment.

6. Exclusiveness

The contractor does not have any exclusive rights related to the actual services being provided or products supplied to PROSAFE.

7. Proprietary Right and Copyright

Where applicable, PROSAFE has the proprietary right and copyright of any results, content material or outcome derived from the provision of services supplied by the contractor or through the utilisation of products supplied by the contractor, in accordance with the contract.



8. Termination

PROSAFE can denounce the contract at any time with 90 calendar days' notice. The contractor can denounce the contract at the end of a month with 90 calendar days' notice. Termination of the contract must be confirmed in writing without delay. If the contract is denounced, no matter who does it, the contractor shall produce an invoice for the service delivered to PROSAFE until termination. If either Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other Party may terminate this agreement with immediate effect.

9. Method of Payment and currency

All payments under the signed Agreement shall be made in Euros by wire transfer to a bank account designated by the contractor.

10. Confidentiality

Materials, results, confidential or sensitive information and documentation derived from the respective services or products supplied or in connection with the preparation/negotiations of the Agreement, should under no circumstance be made available to the public or any other Third Parties unless prior authorisation is given by PROSAFE. Neither PROSAFE nor the contractor shall disclose Confidential Information to Third Parties unless this is due to demands from governmental or regulatory bodies, other public authorities or under the conditions set out in points 11, 12 and 13 below under this Section.

If a Party is compelled by Law to disclose information, documentation or other materials attached to this Agreement, it shall provide the other Party with prompt written notice. The Parties continue to be bound by the terms of this non-disclosure clause during the continuance of the Agreement and after its termination.

11. Checks, reviews, audits and investigations by the European Commission

The Executive Agency or the European Commission will - during the implementation of the action or afterwards - check the proper implementation of the action and compliance with the obligation of the respective associated Grant Agreement and carry out reviews/audits that can start up to two years after the payment of the balance. They will be formally notified to PROSAFE, who will notify in their turn the contractor.

The reviews/audits may be carried out directly by the European Commission staff or by a Third Party appointed by the European Commission. PROSAFE and the agency must provide - within the deadline requested - any information and data that might be requested to carry out the audit. For any reviews/audits, after prior communication from the side of PROSAFE, providing a minimum of 5 days' notice. The contractor must allow access to their sites and premises, including to external persons or bodies, and must ensure that information requested is readily available. Information must be accurate, precise and complete and in the format requested, including electronic format.

On the basis of the review/audit findings, a draft report will be drawn up. The Executive Agency or the European Commission will formally notify the draft report to PROSAFE who will notify the agency, who has 30 days to formally notify observations. The final report will take into account the observations made by the agency. The report will be formally notified to the contractor.

The Parties cannot seek a protective order or other remedy and/or waive compliance with the provisions of this Article.



12. Investigations by the European anti-fraud office (OLAF)

Under Regulations No.883/2013 and No. 2185/96 (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may - at any moment during the implementation of the action or afterwards - carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interest of the EU.

The Parties cannot seek a protective order or other remedy and/or waive compliance with the provisions of this Article.

13. Check and audits by the European Court Of Auditors (ECA)

Under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No. 966/2012, the European Court of Auditors (ECA) may - at any moment during the implementation of the action or afterwards - carry out audits. The ECA has the right of access for the purpose of checks and audits.

The Parties cannot seek a protective order or other remedy and/or waive compliance with the provisions of this Article.

14. VAT

PROSAFE is VAT registered as taxable person established in Belgium with VAT number BE 0809.226.854. All invoices shall mention the BE VAT number and **be issued with zero VAT**, making reference to the reverse charge mechanism according to Articles 44 and 196 of the VAT Directive 112/2006.

15. Information on EU funding

In case of a contract signed in the context of an action funded by the European Union and unless agreed otherwise, any potential dissemination or public communication of results or outputs (including communications to Third Parties, and in any form, including electronic) that has been approved by PROSAFE during the term or after the termination of the contract must display the appropriate EU emblem and include the disclaimer provided by PROSAFE in accordance with the stipulations of the underlying Grant Agreement.

16. Obligation to keep records and other supporting documentation

The contractor must keep records and documentation supporting the services or products supplied and the costs declared and invoiced to PROSAFE for a period of at least 5 years after the termination of the contract.

17. Force Majeure

PROSAFE and the contractor are released from liability in the event that their performance of this contract or part thereof is prevented, rendered more difficult, or delayed as a consequence of circumstances beyond that Party's reasonable control (force majeure), including but not limited to war and military conscription, acts of terrorism, national or international health crisis, pandemics, natural disasters, fire, key personnel's death or serious illness, regulation of import and export.

PROSAFE or the contractor can only invoke force majeure if the Party concerned has informed the other Party in writing immediately after the circumstances causing force majeure has come into force.



18. Liability and Renouncement

The Agreement will be governed by the Dutch law.

PROSAFE shall not be in any way liable, regardless of the cause or duration, for any unauthorised disclosure or transfer of data provided by the contractor, including, but not limited to, cybercrime, malware, internet fraud, phishing, failure in IT systems/servers etc. Within three working days of PROSAFE becoming aware of any unauthorised use or disclosure of, or access to data, PROSAFE shall promptly report the event to the contractor and take all possible available remedy measures.

19. Disputes

All disputes shall be finally settled according to the Dutch law.

Before bringing a claim for indemnification, the indemnified Party will notify the indemnifying Party of the indemnifiable proceeding, and deliver to the indemnifying Party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

All disputes arising after the contract is signed by both PROSAFE and the contractor shall be finally settled at the “Nederlands Arbitrage Instituut” (The Dutch Arbitration Institute).

The court of arbitration shall comprise three members. Stichting PROSAFE and the contractor shall designate one arbitrator each while the chairman is appointed by the Dutch Arbitration Institute. If one of the party's fails to designate an arbitrator within 30 calendar days after presentation or receipt of a petition for arbitration, this arbitrator is also designated by the Dutch Arbitration Institute. All proceedings of the arbitration shall be conducted in the English language.