

GENERAL CONDITIONS OF TENDER FOR PROSAFE CONTRACTS

Definition

The word 'PROSAFE' within the tender documents 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 Oct. 2002)

The following General Conditions shall apply to all 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 and these General Conditions, the Specific Conditions are to be considered as correct.

A. 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.

B. FORMAL CONDITIONS, COMMITMENTS, UNDERTAKINGS

1. Certification of free competition

By submission of the tender, the tenderer implicitly 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.

2. Restriction on publicity actions

Tenderer 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.

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.

C. CONDITIONS RELATING TO INTELLECTUAL PROPERTY RIGHTS

1. Third party commitments

The tenderer shall indicate if he 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.

If 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, 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.

D. 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.

E. AMENDMENTS TO 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. Questions shall, where possible, make specific reference to the appropriate section(s) of the ITT/RFQ documents. When PROSAFE gives a reply it will normally forward the reply(ies) together with the question(s) to all invitees 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

Tenderer 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.

5. Information about the result of the ITT/RFQ

Tenderer 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. The decision on the result of the ITT/RFQ will be without appeal, and PROSAFE will not enter into correspondence on the reasons for the decision.

F. ADDITIONAL OBLIGATIONS

Once a tenderer is finally chosen by PROSAFE to perform the required services or products to be supplied (referred within this section as the "contractor"), and a contract is entered into between both parties, 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 but a registered 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):

- Not informing PROSAFE about possible substantial non-fulfilment.
- Repeated non-fulfilments of payments from PROSAFE's side.
- Repeated or significant delays in the services or products to be provided.
- Repeated significant shortcomings that are not remedied when claimed.

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. Conflicts of interest and substantial non-fulfilment

The contractor is allowed to work for other parties provided that it does not compromise the services or product 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

The contract can only be denounced due to substantial non-fulfilment. Termination of the contract must be confirmed in writing without delay.

If the contract is denounced by either party, the contractor shall produce an invoice for any services or products already supplied according to the contract until the date of termination. This invoice should be delivered to the nominated officer of PROSAFE as per specific conditions of the contract.

9. Liability and Renouncement

PROSAFE and the contractor are liable in accordance with the Dutch law.

10. Confidentiality

Any results, confidential or sensitive information derived from the respective services or products supplied, should under no circumstance be made available to the public or any other third parties unless prior authorisation is given by PROSAFE. This obligation continues after the contract ends, except in relation to specific material made public by PROSAFE. Such occurrence will be considered as substantial non-fulfilment and may lead to termination of the contract.

The content of this contract is confidential to any third parties except for any parties identified and approved by PROSAFE.

11. Force Majeure

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

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

12. Disputes

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 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.