

Rome, 16\11\2020

Ref. no.48243\2020

Sent by e-mail

FAO

Total Derivatives Ltd.

8 Bouverie Street

EC4Y 8AX - London

sunil.sharma@totalderivatives.com

Subject: Direct award pursuant to art. 1, paragraph 2, letter a) of Legislative Decree no. 76/2020 as converted by law 120/2020, aimed at stipulating a contract for Subscription to Total Derivatives for Italian Treasury Department

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Request for Proposal

By means of a determination to contract signed on 16th November 2020 Consip S.p.A. single-member joint stock company (hereinafter also Consip) on behalf of Sogei S.p.A. (hereinafter also Customer), has resolved to entrust the service of Subscription to Total Derivatives for Italian Treasury Department for 3 years from January 1th, 2021 to December 31, 2023.

By means of an Agreement concluded on 12 April 2013, Sogei S.p.A. has entrusted Consip S.p.A. to perform the activities related to the procurement process for the acquisition of goods and services, also including any ancillary and instrumental activities.

Consip S.p.A. is performing this procurement action by the assignment to Total Derivatives Ltd because is the manufacturer of the Total Derivatives and the economic operator with exclusive rights to sell product in the territory of the Member States of the European Union is the sole responsibility of the same company not being provided sales channels / indirect assistance.

In this Request of Proposals, Consip S.p.A. intends to award the Contract – the subject of which is the Subscription to Total Derivatives for Italian Treasury Department.

Consip S.p.A., single-member joint stock company

Registered Office: Via Isonzo 19/E – 00198 Rome

T +39 06 85449.1 – F +39 06 85449 281 – www.consip.it

Fully paid-in share capital of €5,200,000.00 Tax Code and VAT no. 05359681003

Listed on the Companies' Register at the Chamber of Commerce, Industry, Trades and Agriculture of Rome under no. 05359681003 - REA (Economic and Administrative Index) no. 878407

Document classification: Consip internal

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By signing the Contract, the successful company is undertaking to provide the good(s) and/or service(s) referred to above. The Contract will be entered into by Sogei S.p.A.

The Contract will not contain an arbitration clause.

In accordance with art. 31 of Italian Legislative Decree no. 50 of 18 April 2016, Mr Massimo Tosques is appointed as the person responsible for the procedure.

Sogei reserves the right to negotiate the payment terms of invoices up to 60 (sixty) days from receipt of invoice, with the successful bidder, pursuant to and in accordance with paragraph 4 of art. 4 of Italian Legislative Decree no. 231/02 as subsequently amended and supplemented. This must be taken into consideration when formulating the bid.

The Supplier may not claim any right to other compensations, adjustments or increases of the fees agreed upon in contract, except as provided for by art. 106 of Legislative Decree 50/2016 for recurring and continuous contracts.

* * * *

In light of the considerations above, the company is therefore required to send to Consip S.p.A., by **27th November 2020**, its Bid Declaration, complete with all the documentation indicated hereinafter to the e-mail address: floriana.milisenda@consip.it.

Please note that, in order to send the documentation indicated hereinafter, which is mandatory in order to participate in the procedure, a certified e-mail address attributable to the supplier has to be used.

In particular, the competing company must insert the following data into the subject line of the e-mail:

"Initiative no. 59/2018 - Purchase request no. 50137"

The e-mail containing the proposal must include the following:

- a) **mandatory declaration in accordance with the facsimile in Annex 1**, i.e. a document/declaration to be issued in accordance with Italian Presidential Decree no. 445/2000, containing the certification of possession of the requirements established by art. 80 of Italian Legislative Decree no. 50/2016, the absence of the grounds for prohibition laid down in paragraph 16-ter of art. 53 of Italian Legislative Decree no. 165/2001, as well as the further declarations included in the facsimile in Annex 1 to this Request of Proposal (to this end, the said facsimile must be used).



With reference to the cases referred to in art. 80, paragraph 4, of the Code, as amended by D.L. 76/2020, converted with amendments by law 120/2020, all provisions including those that are not definitive must be declared.

The aforementioned declaration must be submitted in electronic format, complete with the signature of the legal representative of the competing company, or, in any event, a party vested with proven signatory powers>.

- b) a **declaration** providing the identification details of the bank account (s) attached (s) to this contract, as well as the general (name and surname) and the Tax Code of the persons delegated to operate on said account (s) in compliance with the provisions of Article 3, paragraph 7 of Law No.136 / 2010 (**Supplier Data sheet and declaration on the traceability of financial flows**).

The declarations concerning the absence of grounds for exclusion referred to paragraph 1, 2 and 5, letter l) of art. 80 of Italian Legislative Decree no. 50/2016 must be made by the legal representative of the supplier or by a representative with power of attorney vis-à-vis the persons responsible for the duties referred to par. 3 of art. 80 of Italian Legislative Decree no. 50/2016 (i.e. the owner or technical director, if a single-member company. The partners or technical director, if a partnership; a partner and the technical director if it is a company in collective name; of the partners and the technical director, if it is a simple partnership; members of the board of directors who have been assigned legal representation, including general secretaries and prosecutors, members of the bodies with managerial or supervisory powers (i.e. members of the board of statutory auditors in companies with a traditional management system, members of the management control committee in companies with a single management system, members of the board of directors and members of the supervisory board, in companies with a dualistic management system), of subjects with powers of representation, direction or control (such as auditors and the supervisory body referred to in Article 6 of Legislative Decree 231/2001), the technical director and the sole shareholder a natural person, a majority shareholder in the case of companies with fewer than four members, in the case of another type of company or consortium; of persons ceased in the year prior to the date of sending the letter of invitation and in any case until the submission of the bid, if the firm does not demonstrate the complete and effective dissociation from the penalized sanction. The offenses referred to art 80 par. 1 do not apply when they have been depenalized, when rehabilitation has taken place, when offenses have been declared extinguished after the conviction or in case of revocation of the sentence.

Concerning sole shareholders and majority shareholders in case of companies with less than four partners, please note that both the physical and legal persons are relevant, and the



company (together with the auxiliary or subcontractor if any) must thus make the declarations concerning the absence of the exclusion cases referred to in art. 80, paragraphs 1 and 2, of the Legislative Decree no. 50/2016. Concerning legal administrators, the relevant positions are those of the Directors that have representative powers (eg Managing Director, Delegate, Councilor with Representative powers, etc.). It should also be noted that in the case of companies with only two members (whether legal or physical), holding each of fifty percent (50%) of the shareholding, the statements provided for in art. 80 (paragraphs 1 and 2), Legislative Decree no. 50/2016 must be made for both.

It should also be noted that in case of transfer or lease of a business or branch of a business, incorporation or merger in the year before the date of the sending of the letter of invitation and until the date of submission of the bid, the declaration on the absence of the exclusion criteria referred to art. 80, paragraphs 1, 2 and 5 letter l) of Legislative Decree no. 50/2016, must be made in respect of all the aforementioned subjects who have operated with the transferor / leasing company, incorporated or incorporated companies in the year prior to the date of sending the letter of invitation and until the date of submission of the offer and those who have ceased to be in charge in the same period, which must be considered as "ceased parties" for the supplier.

With reference to the cases referred to in art. 80, paragraph 4, of the Code, as amended by D.L. 76/2020, converted with amendments by law 120/2020, all provisions including those that are not definitive must be declared.

All the facts referred to art. 80, paragraph 5, of Legislative Decree no. 50/2016 must be declared. In particular, it should be noted that:

- Infringements of the rules on health and safety at work and the obligations under Article 30 (3) (referred to in Article 80 (5) (a)), fall within the scope of derive definitive measures of condemnation against the subjects referred to in art. 80, co. 3, of Legislative Decree no. 50/2016 and so on, for conducts referred to the performance of the functions conferred by the proper economic operator. The assessment of the severity of the conduct carried out by the economic operator is remitted to the contracting station;
- the cases referred to in art. 80, paragraph 5, lett. c), of Legislative Decree no. 50/2016 are those indicated in the Guidelines no. 6/2016 and subsequent amendments of the A.N.A.C., without prejudice to subsequent amendments made to art. 80, paragraph 5 of Legislative Decree 50/2020. It should be noted that economic operators are required to declare all the executive measures of the AGCM (the national antitrust authority) for antitrust offenses. In accordance with what clarified by the AGCM (see, among others, opinion S3726 / 2019),



the declaration relating to any executive measures of conviction for unfair commercial practices must not be made, as the choice to include these convictions in the the area of professional offenses cannot be identified as a cause for exclusion from participation in contracts. The contracting authority will assess the executive measures of the AGCM for convictions for antitrust offenses affecting public contracts and put in place in the same market covered by the contract to be awarded. In the event of significant cases and if self-cleaning measures have been adopted, all relevant documents must be produced (including, by way of example, any convictions) in order to allow the Consip contracting authority to make any appropriate assessment.

* * *

C the **Bid declaration**, which, in accordance with the facsimile attached to this Request for Proposal, must specify the maximum overall contractual amount and all fixed and variable payments, which must not exceed the maximum amount of GBP 12.240. This must be submitted in electronic format, complete with the signature of the legal representative of the company, or, in any event, a party vested with proven power of attorney.

* * *

In compliance with the provisions of art. 8, paragraph 1, lett. a) of Law 120/2020, without prejudice to the right to proceed with early execution pursuant to art. 32, paragraph 8 of Legislative Decree. 50/2016.

Failure to sign the contract within the deadline referred to in art. 32, paragraph 8, as amended by D.L. 76/2020, if attributable to the economic operator, constitutes cause for exclusion of the operator from the procedure.

Please note that the services covered by the contract will be subject to payment of stamp duty, which the Supplier will be required to pay to Sogei when signing the contractual documentation.

The provisions of art. 35 of Italian Legislative Decree no. 90 of 24 June 2014, as converted by Law no. 114 of 11 August 2014, shall apply.

* * *

DATA PROCESSING

Pursuant to art. 13 of Legislative Decree no. 196/2003 "Code regarding the protection of personal data" (hereinafter also the "Privacy Code") and pursuant to art. 13 of the EU Regulation n. 2016/679 on the protection of individuals with regard to the processing of personal data, as well as the free circulation of Direct award pursuant to art. 1, paragraph 2, letter a) of Legislative Decree no. 76/2020 as converted by law 120/2020, aimed at stipulating a contract for Subscription to Total Derivatives for Italian Treasury Department



such data (hereinafter also "EU Regulation" or "GDPR"), Consip S.p.A. provides the following information on the processing of personal data.

Purpose of the treatment

In relation to the activities carried out by Consip of respective competence carried out by Consip and the Client, it should be noted that:

- the data provided by the competitors are collected and processed by Consip S.p.A. to verify the existence of the requisites required by law for the purposes of participation in the tender and, in particular, for the purpose of verifying the administrative and technical-economic capacities of these parties, as well as for the purpose of awarding, in fulfillment of specific legal obligations deriving from the legislation on public procurement and contracts;
- the data provided by the winning bidder are acquired by Consip for the purposes of drafting and signing the Contract, for the fulfillment of the legal obligations connected to it, as well as for the management and economic and administrative execution of the contract itself.

All the data acquired by Consip S.p.A. may also be processed for study and statistical purposes in compliance with and the rules laid down in the EU Regulation>.

Nature of the conferment

The Competitor is obliged to provide the data to Consip S.p.A., due to the legal obligations deriving from the legislation on public procurement and contracts. The refusal to provide the data requested by Consip S.p.A. could determine, depending on the case, the impossibility to admit the competitor to the participation in the competition or its exclusion from this or the expiry of the award, as well as the impossibility to stipulate the contract. The competitor is aware that the data supplied to Consip will be communicated, in the event of an award, to the Customer for the purposes related to the signing and execution of the contract and for the related legal obligations.

Sensitive and judicial data

As a rule, the data provided by the competitors and by the contractor are not classified as "sensitive" according to article 4, paragraph 1, letter d) of the Privacy Code, nor in the "particular categories of personal data" of which art. 9 EU regulation. The processing of "judicial" data referred to in Article 4, paragraph 1, letter e) of the Privacy Code and "personal data relating to criminal convictions and offenses" pursuant to art. 10 EU Regulation, on the other hand, is limited to the sole purpose of evaluating the possession of the requisites and qualities required by the current applicable regulations for the purposes of participation in the tender and award.

Methods of data processing

Data processing will be carried out by Consip S.p.A. in order to guarantee the necessary security and confidentiality and can be implemented using manual, paper, IT and telematic means suitable to process the data in compliance with the security measures set out in the Privacy Code and from the EU Regulation.

Direct award pursuant to art. 1, paragraph 2, letter a) of Legislative Decree no. 76/2020 as converted by law 120/2020, aimed at stipulating a contract for Subscription to Total Derivatives for Italian Treasury Department



Scope of communication and dissemination of data

The data may be:

- treated by the personnel of Consip S.p.A. that takes care of the bidding process, from the staff of other offices of the same company that carry out activities related to it, as well as from the offices of the same company that deal with activities for study and statistical purposes;
- communicated to independent collaborators, professionals, consultants, who provide advice or assistance to Consip S.p.A. with regard to the bidding process, also for possible legal protection, or for sector studies or statistical purposes;
- communicated to any external parties, who are part of the awarding and testing commissions that will be established from time to time;
- communicated, subject to the conditions, to the Ministry of Economy and Finance or to another Public Administration for which Consip S.p.A. and the Client perform activities pursuant to the by-laws, with regard to the data provided by the winning bidder;
- communicated to other competitors who request access to the tender documents within the limits allowed under the law of 7 August 1990, n. 241;
- communicated to the National Anti-corruption Authority, in compliance with the provisions of the AVCP Determination n. 1 of 10/01/2008.

The name of the competitor awarded the tender and the contract award price may be disseminated via the websites **www.consip.it**, **www.acquistinretepa.it** and **www.mef.gov.it**. In addition, the information and data concerning the participation of the Competitor in the tender, within the limits and in application of the principles and provisions on public data and the re-use of public sector information (Legislative Decree 36/2006 and art. 52 and 68, paragraph 3, of Legislative Decree 82/2005 and subsequent amendments), may be used by the MEF and by Consip, each for its own responsibility, also in aggregate form, to be made available to other public administrations, natural and legal persons, including open data. In addition to the above, in compliance with the legal obligations that impose administrative transparency (Article 1, paragraph 16, letter b, and paragraph 32 of Law 190/2012, article 35 of Legislative Decree No. 33/2012; as well as Article 29 of Legislative Decree No. 50/2016), the competitor / contracting party acknowledges and agrees that the data and documentation required by law to publish, be published and disseminated, using the conditions, via the website **www.consip.it**, section "Transparent Company" and the website of the Client **www.sogei.it** for the activities of their respective competences.

In fulfillment of legal obligations, the data could be transferred to an international organization.

Data retention period

The data retention period is 10 years from the definitive awarding to the contracting authority. Furthermore, the data may be kept, even in aggregate form, for study or statistical purposes in compliance with articles 89 of the EU Regulation and 110 bis of the Privacy Code.

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Automated decision-making process

There is no automated decision making process.

Rights of the interested party

"Interested" means any natural person whose data are transferred from the competitor to the contracting authority .

The interested party is granted the rights referred to in Article 7 of the Privacy Code and referred to in articles. from 15 to 22 of the EU Regulation. In particular, the interested party has: i) the right to obtain, at any time, confirmation that personal data concerning him is being processed; ii) the right of access to personal data to know: the purpose of the processing, the category of data processed, the recipients or categories of recipients to whom the data are or will be communicated, the retention period of the same or the criteria used to determine this period; iii) the right to request, and in the case to obtain, the correction and, where possible, the cancellation or, again, the limitation of the treatment and, finally, can oppose, for legitimate reasons, to their treatment; iv) the right to data portability that will be applicable within the limits of art. 20 of the EU regulation.

If in the event of exercise of the right of access and related rights provided for by art. 7 of the Privacy Code or by the articles from 15 to 22 of the EU Regulation, the response to the request does not arrive within the indicated time and / or is not satisfactory, the interested party can assert his rights before the judicial authority or by contacting the Guarantor for the protection of personal data through specific complaint, appeal or report.

Data controller and Data Protection Officer

Data controllers are, for the activities of their respective competences, Consip S.p.A. and Sogei S.p.a., with registered office respectively

- in Rome, Via Isonzo n. 19 / D-E e
- in Rome, Via Mario Carucci, 99 - 00143

For the exercise of the rights referred to in art. 7 of the Privacy Code and referred to in Articles from 15 to 23 of the EU Regulation and to request an updated list of data processors, companies can be contacted at the following addresses:

- Consip S.p.A.: esercizio.diritti.privacy@consip.it
- and Sogei S.p.a.: SOGEI S.p.a. - "Director of Security, Safety and Industrial Relations" - Via Mario Carucci, 99 - 00143 Rome

Consent to the processing of personal data

Once the above information has been acquired, with the submission of the offer and / or the signing of the Contract, the legal representative pro tempore of the Competitor / bidder acknowledges and consents expressly to the treatment as defined above of the personal data concerning him.



The competitor undertakes to comply with the obligations of disclosure and consent, where necessary, to natural persons (Interested parties) for whom personal data are provided in the custody procedure, with regard to the processing of their personal data by of Consip SpA for the purposes described above

Yours sincerely,

Divisione Pianificazione e Supporto Operativo

Division Manager

(Eng. Mario Laurenti)

Digital signature

Annexes:

Annex 1-Facsimile of declaration

Contract Scheme

Bid declaration facsimile

Supplier Data sheet and declaration on the traceability of financial flows

Integrity Agreement