

Prot. 15697-23
Sent by e-mail

Roma, 03/04/2023

FAO
INTEX SOLUTIONS INC
110 A Street
Needham
MA 02494-2807

**Subject: Negotiated procedure pursuant to art. 63, co. 2 lett. b), point n. 3 of Legislative Decree no. 50/2016, aimed at stipulating a contract for "Troll licenses"
CIG 9753812C48
Request for Proposal**

By means of a determination to contract signed on 31 march 2023, 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 provision of Troll licenses.

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.

The supplier has declared that it possesses exclusive rights for the Troll licenses, that are relevant to the Contract in question.

The person in charge of the procedure is Floriana Milisenda without prejudice to the application of art. 31, paragraph 10, of the Code. The person in charge identified pursuant to art. 1, paragraph 1 of the law decree n. 76/2020, converted with amendments by law no. 120/2020, for the purposes of the provisions of the law itself, is the "Sourcing operation" Division Manager, who in compliance with the powers currently assigned to him, validates and approves the various procedural steps.

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 public

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In this Request of Proposals, Consip S.p.A. intends to award the Contract – the subject of which is Troll licenses.

The software products must be accompanied by the following documentation:

- Relevant technical documentation and user manuals, drafted primarily in Italian;
- Exclusive non-transferable and perpetual licences granted to the Contracting Authority.

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 S.p.A.

The Contract will not contain an arbitration clause.

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.

Please note that Art. 106 co. 11 of Legislative Decree no. 50/2016 will be applied, so that the duration of the contract may be extended for the time strictly necessary to complete the procedures necessary for the identification of a new supplier. In such a case, the supplier will be required to carry out the performance of the contract at the same prices, terms and conditions stipulated in the contract. Amendments are only possible if they favour the contracting authority.

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In light of the considerations above, the company is therefore required to send to Consip S.p.A., by 11 april 2023, 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.

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

Negotiated procedure pursuant to art. 63, co. 2 lett. b), point n. 3 of Legislative Decree no. 50/2016, aimed at stipulating a contract for "Troll licenses"



- a) **The Participation Document** to be made pursuant to the D.P. n. 445/2000, containing the attestation of possession of the requirements prescribed by art. 80 of Legislative Decree no. 50/2016 and of any further statements in the facsimile listed in **Annex 1** to this Request for goods/services (the facsimile mentioned may be used for this purpose). This declaration must be submitted as digital document, complete with the signature of the legal representative of the supplier, or in any case by a representative with power of attorney.

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 de-penalized, 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.

With reference to the cases referred to in Article 80, paragraph 4, of the Code, it should be noted that, pursuant to the provisions of art. 10, paragraph 1, lett. c of the L. 17 January 2022, n. 238, economic operators, limited to violations not definitively ascertained in tax matters, will be required to declare within Annex 1, only violations not definitively ascertained for an amount exceeding 35,000 euros.

With reference to the cases referred to in **art. 80, paragraph 5** of the Code, it is specified that the assessment of the seriousness of the conduct carried out by the economic operator is left to the contracting authority. Therefore, all the cases falling within the scope of application of the aforementioned paragraph 5 must be declared in the Single Procedure Document.

In this regard, it should be noted that:

- in relation to the cases referred to in art. 80, paragraph 5, lett. a) of the Code (infringements of the rules on health and safety at work as well as of the obligations referred to in Article 30, paragraph 3 of the Code), the economic operators are required to declare all the infringements duly ascertained, including those which gave rise to convictions (even if not definitive), against the subjects referred to in art. 80, co. 3, of the Code, for conduct carried out in the exercise of the functions conferred by the competing economic operator;
- without prejudice to the provisions of the Guidelines no. 6/2016 and subsequent amendments of the ANAC, economic operators are required to declare all the executive measures of the Antitrust Authority. 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



bed of professional offenses cannot be identified as a cause for exclusion from participation in tenders. The contracting authority will assess the executive measures of the Competition and Market Authority for convictions for antitrust offenses affecting public contracts and put in place in the same market as the subject of the contract to be awarded.

- in relation to the cases referred to in art. 80, paragraph 5, letters c and c-bis, economic operators are required to declare, for all subjects referred to in art. 80 paragraph 3:

- all convictions that have become final, issued in the three years prior to the date of sending the Offer Request Letter, for crimes other than those contemplated by art. 80, paragraph 1 of the Code,

- non-definitive sentences for the crimes referred to in art. 80, paragraph 1, of the Code and for those indicated in par. 2.2 of the Anac Guidelines n. 6;

- committal for trial or restrictive measures ordered in the context of pending criminal proceedings, for the types of offenses referred to in art. 80, paragraph 1, of the Code;

- any other fact that is the subject of a pending criminal proceeding that has relevance to the subject of the contract and that has a concrete impact, in a negative way, on the integrity and reliability of the economic operator.

The declarations relating to the pending proceedings referred to above (non-definitive sentences, indictments or precautionary measures) must be made with reference to all the proceedings in place at the time of submission of the offer, in this case the time limit of the three-year period is not applied. prior to the date of dispatch of the Offer Request Letter:

- in relation to the cases referred to in art. 80, paragraph 5, lett. c-ter), indicated in the aforementioned Anac Guidelines no. 6:

- for disputes of inaccuracies in the execution, the obligation to declare exists only if these have been reversed in sanctioning measures (e.g. termination of previous procurement contracts, provisions for the application of penalties) as long as they refer to the three years prior to the publication of the notice, starting from the date of adoption of the administrative measure or in case of contestation in court, from the date of the judgment becoming final;

- in the case of measures for the application of penalties, also on the basis of the same Guidelines for which the contracting authorities are required to communicate to the Authority for the purposes of registration in the IT register the measures for the application of higher penalties, individually or cumulatively with reference to the same contract, at 1 percent of the amount of the contract itself, there is an obligation to declare only for penalties of an amount exceeding 1% of the value of the contract to which they refer (in the case of framework contracts or agreements 1% of the total value of the same, in the case of several lots of the contract relating to each lot).



It is specified that Consip will not take into consideration and assess any disputes not reversed in sanctions and / or penalties of an amount lower than the aforementioned value, where communicated.

In the case of relevant cases, in order to allow the contracting authority to make any appropriate assessment, all relevant documents must be produced, including, by way of example, any conviction, indictment, application of precautionary measures, resolution, withdrawal, application of penalties, as well as any related self-cleaning measures adopted.

- b) a copy of the power of attorney in the case of a statement made by a person with power of attorney whose name and powers are not reported at the Chamber of Commerce
- 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 USD 83000.
- d) 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**).

A specific communication will be sent to the Supplier with the winning offer, which will require the successful tenderer to send to Consip S.p.A.:

- **within ten (10) solar days after the receipt of this communication**, the following documentation:
 - an appropriate document proving the provision of a **definitive guarantee**, in order to ensure the fulfillment of all the obligations agreed upon in the contract, the amount of which is in accordance with the discipline provided by art. 103 of Legislative Decree no. 50/2016.

For the purposes of entering into the Contract, the successful tenderer must therefore pay, pursuant to art. 103 of Legislative Decree no. 50/2016, a definitive guarantee, in the form of a security or surety, equal to 10% of the contractual amount in favor of Sogei S.p.A./MEF. In the event of an award with discounts of more than ten per cent, the guarantee to be set up is increased by as many percentage points as those exceeding 10 per cent. Where the fall is greater than twenty percent, the increase is two percentage points for each bearish point greater than twenty percent.

The guarantee covers the fulfillment of all the obligations of the contract and the compensation for damages deriving from the possible breach of the obligations themselves, as well as the reimbursement of the sums paid more to the executor than the results of the final settlement, without prejudice, however, to the compensation of the



greater damage to the contractor, any higher expenses incurred for the completion of the services in the event of termination of the contract ordered to the detriment of the executor, the payment of the amount due by the executor for the defaults deriving from the non-compliance with the rules and prescriptions of the contracts collective, laws and regulations on the protection, protection, insurance, assistance and physical safety of workers.

The definitive guarantee must be issued in compliance with the standard guarantee guarantee contract schemes set out in Annexes "A" and "B" to the Decree of the Ministry of Productive Activities of 19 January 2018, no. 31, and in particular of the Scheme type 1.2 "Definitive guarantee" and the corresponding Technical Sheet.

However, a **specific appendix** with which the Guarantor clarifies that:

- "Contracting authority" means "la Sogei S.p.a. e il Ministero Economico e Finanze;
- art. 1 of the type 1.2 scheme. the lett. c) will be replaced as follows: "of any higher expenses incurred by the Customer for the completion of the works, services and supplies in the event of termination of the contract ordered to the detriment of the contractor".

Consip has prepared a model that integrates the clarifications described above (Annex – Definitive guarantee facsimile) which it is suggested to use for the purposes of entering into the contract.

The guarantee, consisting of the two schemes referred to in Annexes A and B referred to in the aforementioned decree and the appendix, must also have a **notarized signature** and be irrevocable.

The guarantee must expressly provide for the waiver of the benefit of the prior enforcement of the principal debtor, the waiver of the exception referred to in art. 1957, second paragraph, of the Italian Civil Code, as well as the operation of the guarantee itself within fifteen days, upon simple written request from the Customer. The rules on reductions provided for by art. 93, paragraph 7, of Legislative Decree no. 50/2016. The successful tenderer will have to produce, if they have not been submitted in the tender, the documents / certificates certifying that they meet the requirements for the reduction. Failure to establish the aforementioned guarantee determines the forfeiture of the award and enforcement of the provisional guarantee and Consip S.p.A. may award the contract to the following competitor in the ranking. The guarantee ceases to have effect upon complete and exact execution of the obligations arising from the contract itself with the issue of the certificate of verification of conformity. If the amount of the guarantees



decreases due to the application of penalties, or for any other reason, the successful tenderer will have to reinstate, as expressly provided for in the Contract, in the event of non-compliance, reinstatement takes place based on accrued income of price to be paid to the executor.

The guarantee is progressively released on the basis and according to the progress of the execution, up to a maximum of 80 percent of the initial guaranteed amount, according to the provisions of art. 103, paragraph 5, Legislative Decree no. 50/2016. In particular, the release will be carried out at quarterly periodicity, subject to the prior delivery, by the supplier to the Guarantor and the Principal, of a document, in original or authentic copy, certifying the regular execution of the contractual services, periodically issued by the Principal due to the conformity checks carried out. The Guarantor must communicate the value of the release to the Principal who can verify the correctness of the released amounts and ask the Supplier and the Guarantor in case of error for integration.

* * *

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.

With the successful bidder, a contract will be drawn up by Sogei and sent to the successful supplier, based on the contractual conditions attached to this initiative and the technical and economic characteristics of the contractual object.

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.

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

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Purpose of the treatment

In relation to the activities 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 and transferred to the Client 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. and by the Client 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. and by the Client 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.

Scope of communication and dissemination of data

The data may be:

Negotiated procedure pursuant to art. 63, co. 2 lett. b), point n. 3 of Legislative Decree no. 50/2016, aimed at stipulating a contract for "Troll licenses"



- 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 and from the conclusion of the contract execution for the Customer>. 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.

Automated decision-making process

Negotiated procedure pursuant to art. 63, co. 2 lett. b), point n. 3 of Legislative Decree no. 50/2016, aimed at stipulating a contract for "Troll licenses"



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 and through it to the Customer.

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 or of the Customer> for the purposes described above.

* * *

Yours sincerely,

Divisione Sourcing Operation
Division Manager
(Gianandrea Greco)

Annexes:

Annex 1 – Participation Document

Integrity Agreement

Contractual Addendum Sogei

Bid declaration facsimile

Privacy Annex

Supplier Data sheet and declaration on the traceability of financial flows

Definitive Guarantee Facsimile