



PROVINCIA AUTONOMA DI TRENTO



Agenzia Provinciale  
per gli Appalti e Contratti

**Servizio appalti  
Ufficio Gare**

Via Dogana, 8 – 38122 Trento  
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**TENDER FOR PRE-COMMERCIAL PROCUREMENT TO ASSIGN RESEARCH AND DEVELOPMENT SERVICES IN THE CONTEXT OF THE PROJECT CALLED NYMPHA – MD, RELATED TO THE “SEARCH FOR MOBILE TECHNOLOGICAL SOLUTIONS TO SUPPORT HEALTH WORKERS AND PATIENTS WITH THE CARE AND MANAGEMENT OF BIPOLAR DISORDER”.**

Trento, **2 SET. 2015**

Ref. no. S171/2015/~~447636~~ /3.5-1251/15

Date of publication of the tender notice in the OJEC: September 2<sup>th</sup> 2015

**Deadline for the presentation of bids – PHASE 1: October 30<sup>th</sup> 2015 - 12.00 PM**

**PRELIMINARY REMARKS: MAIN DATA FOR THE TENDER AND REGULATIONS APPLICABLE**

**This tender procedure is based on experimentation of procedures to allocate pre-commercial procurement contracts**, as recognised by the communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM (2007) 799 *"Pre-commercial Procurement: Driving innovation to ensure sustainable high quality public services in Europe"* and by the Commission staff working document SEC(2007)1668 *"Example of a possible approach for procuring R&D services applying risk-benefit sharing at market conditions"*, and in the light of the subsequent documents of the European Union (Opinion of the Committee of the Regions 2008/C 325/06 as regards COM(2007)799, Opinion of the European Economic and Social Committee 2009/C 100/02 and the Resolution of the European Parliament of 3 February 2009 A6-0018/2009).

Pre-commercial procurement represents an approach to tenders for research and development services presuming the sharing of risks and benefits between the public contracting authority and the successful bidders at market conditions, through which different enterprises are called on to develop innovative solutions not already available on the market, suitable for facing the needs and challenges posed by the public sector, in a parallel and competitive manner. Pre-commercial procurement is characterised by a process divided into phases, in which a certain number of businesses develop new solutions for public services in competition with each other. The phases involved in the process concern the search for solutions (phase 1), the preparation of prototypes (phase 2) and initial development of limited quantities of initial products or services in the form of experimental series (phase 3).

**According to the Procurement Agreement of 6 January 2015, the Provincia Autonoma di Trento (PAT) (Italy) shall act as the contracting authority, in its own name and on behalf of the following contractors: Region Hovedstaden Psychiatric Center Copenhagen (Region H) and the Corporacio Sanitaria Parc Tauli de Sabadell in Barcelona (CSPT).**

The NYMPHA-MD project is co-funded by the European Commission in the context of the Seventh Framework Programme for research and innovation (FP7/2007-2013), according to the "CP-CSA for PCP" funding scheme.

The following regulatory references shall apply to this procedure, in so far as they are compatible:

- article 19, paragraph 1, section f) of D.Lgs. no. 163/2006;
- article 27 of D.Lgs. no. 163/2006 as regards respect of the principles of cost-effectiveness, efficacy, impartiality, equal opportunities, transparency and proportionality;
- further articles of D.Lgs. no. 163/2006 specifically referred to in this tender notice;
- law no. 241/1990;
- provincial law no. 23/1992;
- law no.633/1941 and subsequent amendments for matters specifically concerning copyright and the regulation of patents;
- D.Lgs. no. 30/2005 for matters regarding industrial property.

**The prior information notice has been published: 2014/S 117-207151 of 20/06/2014.**

## **OBJECT OF THE TENDER**

**The NYMPHA-MD pre-commercial procurement project, divided into the phases subsequently described, has as its object industrial research and development services designed to look for mobile technological solutions to support health workers and patients in the care and management of bipolar disorder.**

The participants in the tender procedure must present bids referring only to elements indispensable for the research and development activities of this tender and inseparable from these. The participants will be invited to propose innovative solutions for objective and subjective monitoring of the patient's behaviour, lifestyle and mood, aimed at quantitative evaluation and initial identification of the symptoms of the pathology. The solutions proposed will promote interaction between patients, doctors and health workers and will facilitate the active participation of the patient in treatment processes.

It is specified that this procedure does not have the object of acquiring innovative solutions resulting from the research and development activities and the selected businesses will therefore not be entitled to claim any rights or make any claims on the contracting authority, and/or rely on

the purchasing of the appliances, systems, products and/or services representing the object of the innovative solution proposed to the authority.

According to the regulatory sources cited in the introductory remarks, the contracting authority shall not be entitled to make exclusive use of the results and benefits resulting from the research and development activities; any intellectual property rights resulting from the procedure shall be regulated in accordance with the draft contract for the management of intellectual property rights enclosed with this tender notice.

This procedure shall be divided into three phases:

- **"Phase one"** (solution design), regulated by this tender notice, has the object of planning innovative technological solutions and producing the related feasibility study. The bids must be prepared with the content provided for and as specified in subsequent sections. The tender procedure will take place in accordance with the provisions of section 5. Phase 1 provides for a maximum of **4 (four)** successful bidders, with each of which the Administration will proceed to stipulate a Framework Agreement, the draft of which is enclosed with this tender notice, which will regulate the methods and conditions that are the object of each phase. The successful bidders shall be required to carry out the activities detailed in article 6 of the Framework Agreement. By the contractual deadline for phase 1, successful bidders must deliver all the documents provided for by article 6 of the Framework Agreement. The contracting authority will see to verifying the results, in accordance with the provisions of article 10 of the Framework Agreement and by the term established therein.
- Successful bidders in phase 1 who have passed the checks on the results of their phase 1 activities will be invited to participate in phase 2. **"Phase two"** (prototype development) has the scope of developing and integrating the prototype for the innovative solution proposed. The phase 2 bid will involve presenting a development programme for the prototype, including the design and technical specifications for this, and a financial-business plan. The tender procedure shall be regulated by the relative letter of invitation. Phase 2 provides for a maximum of **3 (three)** successful bidders, with whom the relative implementation documents for the phase will be signed. By the contractual deadline for phase 2, successful bidders must deliver the prototype for the innovative solution proposed, accompanied by technical information sheets and the results of the preliminary tests carried out, as in article 6 of the Framework Agreement. The contracting authority will see to verifying the results, in accordance with the provisions of article 10 of the Framework Agreement and by the term established therein.
- Successful bidders in phase 2 who have passed the checks on the results of their phase 2 activities will be invited to participate in phase 3. **"Phase three"** (original development of a limited volume of first products or services in the form of a test series) has the scope of carrying out initial development of a limited quantity of prototype products/services in the form of a test series. The phase 3 bid will involve presenting a programme of experimentation in a real environment for a limited number of prototypes. Phase 3 provides for **2 (two)** successful bidders, with whom the relative implementation documents for the phase will be signed and who will be requested to try out their innovative solution with the three health service providers involved (Trento, Copenhagen and Barcelona) on a selected sample of patients, according to the provisions of article 6 of the Framework Agreement. Once the experimentation has terminated, the two successful bidders must hand in a final report on the results of the pre-commercial procurement. This report will be checked, together with the successful bidders, in accordance with the provisions of article 10 of the Framework Agreement and by the term established therein.

**As PCP assumes – in every phase – competition between at least two economic operators, the contracting authority will not continue with the procedure if this condition is not met.**

**The contracting authority reserves the right not to proceed with the award if no bids should prove to be appropriate in relation to the object of the contract or coherent with the scope of the project.**

**The contracting authority reserves the right to revoke the procedure for reasons of public interest.**

**Should an participant have received or be receiving public funding – in relation to the activities which are the object of this tender – subject to the regulations on state aid, the contracting authority will exclude the relative bid in the event that the award would result in double public funding or the accumulation of different types of public funding, infringing community regulations on the question of state aid.**

#### Schedule for PHASE 1

End of August 2015	Publication of the tender notice
October 31 <sup>st</sup> 2015	Deadline for the presentation of bids
November 20 <sup>th</sup> 2015	Nomination of the tender committee, checking of administrative documentation and nomination of the technical committee
December 15 <sup>th</sup> 2015	Evaluation of the technical bids
January 15 <sup>th</sup> 2016	Award and signing of the Framework Agreement and the Intellectual Property Rights Management Agreement
January 15 <sup>th</sup> 2016 - March 15 <sup>th</sup> 2016	Development of a feasibility study for the innovative solution proposed
March 31 <sup>st</sup> 2016	Evaluation of the report on the feasibility study

#### Schedule for PHASE 2

April 2016	Sending of the letter of invitation
Middle of May 2016	Deadline for the presentation of bids
End of May 2016	Nomination of the tender committee, checking of administrative documentation and nomination of the technical committee
June 2016	Evaluation of the technical bids
June 2016	Award and signing of the implementation document for the phase
July - November 2016	Development of the prototype for the innovative solution proposed and preliminary tests
Middle of December 2016	Evaluation of the prototype and the tests carried out

### Schedule for PHASE 3

December 2016	Sending of the letter of invitation
Third week of January 2017	Deadline for the presentation of bids
End of January 2017	Nomination of the tender committee, checking of administrative documentation and nomination of the technical committee
Beginning of February 2017	Evaluation of the technical bids
End of February 2017	Award and signing of the implementation document for the phase
March - June 2017	Experimentation of a limited number of prototypes in the three health structures
July 2017	Evaluation of the final report

**The timescales shown in the tables are purely indicative.**

**This tender notice shall regulate the way in which PHASE 1 is carried out.**

The way in which subsequent phases 2 and 3 are carried out shall be regulated by the respective letters of invitation, with which the successful bidders in phase 1 and phase 2 respectively may be invited to present their technical and financial bids.

**The administrative documentation, technical bid and financial bid that the participants present in response to this tender notice will comply with "phase 1" (solution design).**

### VALUE OF THE TENDER

The overall amount allocated by the contracting authority for carrying out the project is **€ 1.600.000,00 (one million, six hundred thousand/00)** excluding VAT, and is divided up as follows:

<b>PCP phase</b>	<b>Overall amounts</b>
Phase 1 <i>Solution design</i>	€ 200.000,00
Phase 2 <i>Prototype development</i>	€ 600.000,00
Phase 3 <i>Original development of a limited volume of first product or services in the form of a test series</i>	€ 800.000,00

*Table 1 "Expendable amount for the tender"*

Specifically, this overall amount will be divided up as follows:

- **for phase 1 the tender value will be € 50.000,00** (fifty thousand/00), excluding VAT;
- **for phase 2 the tender value will be € 200.000,00** (two hundred thousand/00), excluding VAT;

- **for phase 3 the tender value will be € 400.000,00** (four hundred thousand/00), excluding VAT;

Any residual amounts as compared to those indicated in the table above with reference to phases 1 and 2 may be used to increase the tender value in the subsequent phase.

VAT will be entirely the responsibility of the commissioning bodies.

### **PLACE OF PERFORMANCE OF THE RESEARCH AND DEVELOPMENT SERVICES**

For all phases, the research and development services must be carried out within the member states of the European Union or countries belonging to the FP7/2007-2013.

It is already specified that the activities in phase 3 (original development of a limited volume of first products or services in the form of a test series) must in any case be carried out in Trento, Copenhagen and Barcelona.

For phases 1 and 2 it is expected that performance of the services will take place away from the contractors' headquarters and therefore outside their legal jurisdiction. Thus as there is no risk of interference, the security costs stated in article 26 of D.Lgs no. 81/2008 are not expected and it is not necessary to prepare a DUVRI (interference risk evaluation document). In contrast, in phase 3, as there is a risk of interference, the DUVRI will be prepared and enclosed with the letter of invitation.

### **DURATION**

For activities related to solution design (Phase 1), the successful bidders will have a maximum period of 2 (two) months available from the signing of the Framework Agreement.

For activities related to prototype development (Phase 2), the successful bidders will have a maximum period of 5 (five) months available from the signing of the implementation document for the phase.

For activities related to original development of a limited volume of first products or services in the form of a test series (Phase 3) the successful bidders will have a maximum period of 4 (four) months available from the signing of the implementation document for the phase.

### **METHOD OF PAYMENT**

See article 13 of the Framework Agreement. All payments will be made in Euro.

### **CRITERIA FOR MAKING THE AWARD**

This PCP will be awarded following the criterion of the most economically advantageous bid in accordance with article 83 of Legislative Decree no. 163 of April 12, 2006 and subsequent amendments in accordance with the rules contained in this notice and in accordance with the criteria and weighting factors specified in the document called "Parameters and criteria for evaluating bids"

As for the identification of the elements / sub-elements for validation assessment, the respective weights / sub-weights assigned and the procedure for assigning the scores, see the document called "**Parameters and criteria for evaluating bids.**"

### **DOCUMENTATION AVAILABLE FOR PARTICIPANTS**

This tender notice, the notice sent to OJEC, the "Draft Framework Agreement" and the "Draft Implementation Document", the "draft contract for the management of intellectual property rights", the "Technical Specifications", the "Parameters and criteria for evaluating bids" and the

facsimiles prepared by the Administration: facsimile of the declaration for participation in the tender (Annexes **A** and **B**) and the form for presentation of the financial bid (Annex **C**), are published in **English**. The aforementioned documentation is available at the web site **www.appalti.provincia.tn.it** and a copy can be picked up at the **Agenzia Provinciale per gli Appalti e Contratti – Servizi appalti- Ufficio gare, Via Dogana, 8 – 3122 TRENTO (TEL. 0461/496444)** (open on Monday, Tuesday, Wednesday and Friday from 9.00 to 12.45 and on Thursday from 9.00 to 12.45 and from 14.30 to 15.30).

In the event of any conflict between the provisions contained in the aforementioned documents, the provisions contained in this tender notice shall prevail.

**Clarification and information of a procedural and technical nature** can be requested - in accordance with the Province's Anti-Corruption Plan 2014-2016 - EXCLUSIVELY in writing, via certified e-mail or fax, from the Agenzia Provinciale per gli Appalti e Contratti – Servizio appalti - Ufficio gare, via Dogana, n. 8 – 38122 TRENTO (certified e-mail **address: serv.appalti@pec.provincia.tn.it** - fax: 0461/496422).

The answers will be provided at least **6** days before the expiry of the term established by the tender notice for presentation of the bid, on condition that the request is presented in time.

The answers to questions presented will be published at the web site (**www.appalti.provincia.tn.it**), at least **6 days** before the expiry of the term established for presentation of the bid.

**Any additions/corrections to the documentation for the tender notice, and communications and answers to questions of general interest will be published at the same web site. Bidders are therefore invited to check the site constantly.**

**The communications from the Administration provided for in article 79, paragraph 5 bis of D.Lgs. 163/2006, and convocation for subsequent meetings relating to the tender will take place using any certified electronic media existing according to the regulations of the nations in which the participants have their headquarters and indicated in the declaration stated in section 4.1. Alternatively, the Administration may send the aforementioned communications via mail or fax, specifying that the communications stated in article 79, paragraph 5 bis of D.Lgs. 163/2006 will only be sent via fax in the case of bidders who have specifically authorised the use of this method together with the declaration stated in section 4.1.**

In order to avoid presenting incorrect or incomplete declarations, **bidders are invited to make use of the facsimiles prepared by the Administration and enclosed with this tender notice**. Careful completion of the forms will help bidders to provide all the declarations necessary to certify the existence of the participation requirements.

## **1. FORWARDING OF THE ENVELOPE CONTAINING THE BID**

**In order to be admitted to phase 1 of this procedure**, the bidder must send the relevant information as illustrated below, addressing it **specifically to**:

**Provincia Autonoma di Trento – Agenzia per gli Appalti e Contratti - Servizio appalti  
Ufficio gare  
Via Dogana n. 8 – 1° piano – stanza 101  
38122 – TRENTO**

**by and no later than 12.00 PM on October 30<sup>th</sup> 2015**

**in a closed and sealed envelope as detailed below:**

**the seal must be closed using a suitable method guaranteeing that the envelope is intact and the content has not been tampered with**, with the details or stamp of the company making the bid (in the event of a temporary association of companies the details or stamp can also be provided by only one of companies making up the temporary association).

**In the event of failure to respect the conditions described above, the Chairperson of the awarding committee will admit the bidder so long as s/he believes that the principle of confidentiality of the bid has not been violated as a result of the envelope not being intact, according to the concrete circumstances.**

In the event that sealing wax is used, it is recommended to cover these seals with sticky tape, in order to avoid them becoming detached, meaning that the envelope is no longer intact and leading to exclusion from the tender.

In the case of envelopes simply sealed with glue, albeit countersigned, it is recommended to cover the seal with sticky tape, in order to avoid the envelope opening, meaning that it is no longer intact and leading to exclusion from the tender procedure.

It is recommended not to use envelopes with adhesive strips, or if this is not possible, in order to avoid risking exclusion because the envelope is not intact, to seal the envelope with a suitable method guaranteeing that the envelope is intact and the content has not been tampered with.

The outside of the envelope must carry the company name/bidder's name and the following phrase: **"PRE-COMMERCIAL PROCUREMENT FOR THE ASSIGNMENT OF RESEARCH AND DEVELOPMENT SERVICES IN THE CONTEXT OF THE PROJECT CALLED NYMPHA – MD REGARDING "THE SEARCH FOR MOBILE TECHNOLOGICAL SOLUTIONS TO SUPPORT HEALTH WORKERS AND PATIENTS IN THE CARE AND MANAGEMENT OF BIPOLAR DISORDER"**.

It is specified that failure to make reference to the tender in question on the outside of the envelope, or the providing of totally erroneous indications or indications that are so general that they make it impossible to identify the envelope as containing a bid for the tender in question, represents a **reason for exclusion** from the tender.



**This envelope must contain:**

- 1) a sealed envelope, giving the company name of the bidder and the following phrase "ENVELOPE A: ADMINISTRATIVE DOCUMENTATION", containing:**
  - A. the DECLARATION/DOCUMENTATION stated in section 4.1;**
  - B. the BANK REFERENCES stated in section 4.1 bis;**
  - C. any documentation/declarations stated in sections 4.2, 4.3, 4.4, 4.5 and 4.6;**
- 2) an envelope sealed in the same way as indicated above with reference to the external envelope, giving the company name of the bidder and the following phrase "ENVELOPE B: TECHNICAL BID", containing the technical bid drawn up according to the indications in the following point 3 as stated in the document "Parameters and criteria for evaluating bids", to be presented UNDER PENALTY OF EXCLUSION;**
- 3) a sealed envelope with the same procedures outlined above with reference to the outer envelope, bearing the name of the bidder and the following phrase "ENVELOPE C: FINANCIAL BID", containing the financial bid prepared in accordance with the instructions set forth in subsequent section 3 and the document "Parameters and criteria for evaluating bids", to be presented UNDER PENALTY OF EXCLUSION;**

The envelope may be sent in one of the following ways:

- by registered post using the national postal services;
- using services similar to registered mail provided by specialist couriers, exclusively during the public opening hours indicated below, to the Ufficio gare – Via Dogana, 8 – 1<sup>st</sup> floor, room 101, which will issue a special receipt, certifying the date and time of receipt (opening hours: Monday, Tuesday, Wednesday and Friday from 9.00 to 12.45 and Thursday from 9.00 to 12.45 and from 14.30 to 15.30);
- by direct delivery, exclusively during the public opening hours indicated below to the Ufficio gare – Via Dogana, 8 – 1<sup>st</sup> floor, room 101, which will issue a special receipt, certifying the date and time of receipt (opening hours: Monday, Tuesday, Wednesday and Friday from 9.00 to 12.45 and Thursday from 9.00 to 12.45 and from 14.30 to 15.30). In this case the person delivering the envelope is required to produce a photocopy of an identity document.

In order to avoid problems in relation to the receipt of envelopes in time for participation in the tender procedure, the Administration specifically invites companies making bids to send the envelopes exclusively to the address given above, avoiding delivery or forwarding of these envelopes to offices or departments other than the office specified above.

Delivery of the envelope is at the exclusive risk of the sender: companies whose envelopes reach the Administration after the expiry of the deadline established for reception and indicated above will not be admitted to the tender, even if their failure to arrive or late delivery is due to force majeure, unforeseeable circumstances or the actions of third parties.

Bids reaching the Administration after the deadline indicated above will not be taken into consideration, even if substituting or supplementing bids previously sent.

**TENDERERS MUST PRESENT THE BID IN ENGLISH. If the bid is presented in a language other than English, it must be accompanied by a sworn translation into English complying with the text presented and issued by the competent consular or diplomatic**

authorities or an official translator. It is also specified that only the English documentation shall be held valid.

**THE FIRST TENDERING MEETING FOR PHASE 1 WILL BE HELD ON NOVEMBER 2<sup>ND</sup> 2015 AT 9.00 AM, AT THE SALA ASTE, VIA DOGANA, 8 - TRENTO**

The relevant parties (legal representatives of companies or persons equipped with proxy) are entitled to be present at tendering meetings.

## **2. ENTITIES ELIGIBLE TO PARTICIPATE AND QUALIFICATION REQUIREMENTS**

### **2.1 ENTITIES ELIGIBLE TO PARTICIPATE**

**The parties listed in article 34, paragraph 1 of D.Lgs. 163/2006, including bodies and associations with or without legal personality, also located in other European Union member states, according to article 47, paragraphs 1 and 2 and article 38, paragraphs 4 and 5 of D. Lgs. 163/2006, possessing the requisites provided for in point 2.2. are admitted to the tender procedure.**

Temporary associations of companies and consortia as in article 34, paragraph 1, e) of D.Lgs. 163/2006 may participate even if not yet established, in accordance with the provisions of article 37, paragraph 8 of D. Lgs. 163/2006.

Associations of companies participating in the network contract under the terms of article 34, paragraph 1, and bis) of D.Lgs. 163/2006 can take part in the tender procedure in accordance with the provisions of the decision of the Supervisory Authority for Public Contracts no. 3 of 23 April 2013.

A company in composition with creditors which is regarded as a going concern may participate in this procedure on condition that it submits the proposal with the documentation required under article 186-bis, paragraph 4 of the decree RD no. 267/1942, indicated in paragraph 4.5 below. In accordance with the provisions of paragraph 3 of the aforesaid article, after the filing of the appeal and up to the time of the judicial approval of the composition with creditors, it must have been so authorised by the court after hearing the opinion of the judicial commissioner, if appointed; or if there has been no such appointment, by the court.

**Under the provisions of article 37, paragraph 7 of D. Lgs. 163/2006, it is not permitted for participants to take part in the tender procedure in more than one temporary association of companies or ordinary consortium of bidders, that is to say, to simultaneously take part as an individual company and associate of a group, nor may different companies participate with the same legal representative. Failure to comply with this prohibition will result in EXCLUSION of all the persons and bodies mentioned above from the tender procedure (individual company, association and consortium).**

Under the terms of articles 36, paragraph 5, and 37, paragraph 7 of the D.Lgs. 163/2006, consortia covered by article 34, paragraphs 1b) and c) of D Lgs. 163/2006 and companies on behalf of which the consortium intends to compete are not permitted to submit bids to the same tender procedure.

In the event of any infringement, both the consortium and the consortium members will be excluded from the tender procedure. In the event of failure to comply, article 353 of the Italian penal code shall apply. Permanent consortia may also participate on their own account. In such case none of the consortium member companies may take part in the procedure. In the event of any infringement, both the consortium and the consortium members will be excluded from the tender procedure.

Taking into account the unity of the procedure, albeit in three stages, it is permitted to change the composition of the bidders between a phase and the other, provided that such modification does not entail:

- the loss of the participation requirements;
- the loss or reduction of resources and the means made available;
- violation of the principle of equal treatment of the participants;
- prejudice to the intellectual property rights of those involved.

**If the consortia in question come within the provisions of article 34, paragraph 1, sections b) and c) of D.Lgs. 163/2006 as amended, the consortium member companies on behalf of which the consortium competes must submit a statement pursuant to the provisions of paragraph 4.1. points 2, 3 and 4 only, certifying possession of the general requisites of article 38 of D.Lgs. 163/2006 as amended.**

In the case of EEIGs the member companies must be named.

Any economic operators whose head office, residence or domicile is in the so-called "black list" countries as listed in the Finance Ministry decree of 4 May 1999 and the decree of the Minister of Economy and Finance of 21 November 2001, as well as in the Economy and Finance decree of 12 February 2014, will be excluded from the tender procedure, if not in possession of authorisation issued in accordance with the provisions of the Ministerial Decree of 14 December 2010 of the Ministry of Economy and Finance pursuant to article 37 of the D.L. of 3 May 2010, no. 78.

**Under the provisions of article. 38 c. 1 m quater) of D.Lgs. 163/2006 as amended, participation is not permitted if, between them, the companies are in one of the control situations that come within the provisions of article 2359 of the Italian civil code, irrespective of the legal personality of the participating company or if they are in any relationship, even de facto, where the situation or relationship of control means that the proposals may be attributed to a single decision-making centre. The contracting authority shall proceed with checks on such situations and it will be verified whether the participants have issued any bid attributable to a single decision-making centre, on the basis of unequivocal evidence, after the opening of the letters containing the financial bids.**

Under the provisions of article 53, paragraph 16 ter of the legislative decree of 30 March 2001, no. 165/2006 as amended, for a period of three years the following are not permitted to conclude contracts with the public administration: private parties who have concluded contracts or awarded assignments to former employees of the adjudicating administration or the other contracting authorities of NYMPHA - MD (Region Hovedstaden Psychiatric Center Copenhagen and Corporacio Sanitaria Parc Tauli de Sabadell of Barcelona) who have exercised authority or negotiating powers on their behalf and who have ceased to be in public employment less than three years earlier.

In the event of any infringement of this provision, the contracts of employment and delegated powers will be deemed null and void with a consequent obligation on the part of private persons, to return any remuneration received and ascertained in relation to these.

Under the provisions of article 5, paragraph 2 of the 2015-2017 Anti-Corruption Plan of the Provincia Autonoma di Trento, the bidders undertake not to seek any confidential contact with the competent persons, namely the employee identified by the tender procedure as the person responsible for the procedure pursuant to the law LP 23/92, to whom the preparatory activities are assigned, the manager of the office to which the aforesaid employee is assigned, the head of the Office responsible for implementing the tender procedure, the Chairman of the tendering meeting, the members of the technical committee and also the director and the appointed technical expert for the commissioning bodies on behalf of which the procedure is put into effect.

Under the provisions of article 16, paragraph 2 of the 2015-2017 Anti-Corruption Plan of the Provincia Autonoma di Trento, in the execution of the contract the successful bidders will be required to respect the conduct prescribed by the Code of Conduct of the employees of the Provincia Autonoma di Trento and operating entities of the Province, approved with provincial government resolution no. 1217/2014, in so far as compatible. The Framework Agreement will provide for a termination clause in the event that these obligations are infringed.

## **2.2 PARTICIPATION REQUIREMENTS – PHASE 1**

**To participate in PHASE 1, all the participants must have the following requirements:**

### **A) GENERAL REQUIREMENTS**

- 1. The general requirements stated in article 38, paragraph 1 of D.Lgs. no. 163/2006** indicated in subsequent section 4.

### **B) PROFESSIONAL REQUIREMENTS:**

- 1. Inclusion in the Companies Register or equivalent professional or commercial register in the country of operation, for an appropriate activity in relation to the object of this procedure.** If registration is not required it is necessary to specify the reasons, indicating any other documentation legitimising the participant to provide the services related to the tender;

### **C) TECHNICAL REQUIREMENTS AND EXPERIENCE :**

- 1. In the five years preceding the date of publication of the tender notice, the participant must have carried out research and development projects in the ICT for health field for an overall amount of not less than Euro 200,000,00.- (two hundred thousand/00), net of taxes, for the public or private sector, of which at least one project regarding the creation of mobile health applications, indicating the following elements: object, date, amount and public or private sector commissioning bodies.**

### **C) BUSINESS AND FINANCIAL REQUIREMENTS:**

- 1. Positive references from at least two banks or intermediaries authorised according to D.Lgs. no. 385/1993 and subsequent amendments, certifying the business and financial standing of the company.**

**The participant must have the participation requirements stated in this section 2.2 on the date of expiry for the presentation of bids, UNDER PENALTY OF EXCLUSION.**

### **3. METHOD FOR PRESENTING BIDS – PHASE 1**

Under penalty of exclusion, the technical bid must be inserted into a special envelope called **ENVELOPE B: TECHNICAL BID** sealed as stated in the previous section 1 and then inserted into the external envelope together with ENVELOPE A, containing the administrative documentation and ENVELOPE C containing the financial bid.

The **financial bid** (prepared in accordance with existing legislation on stamp duty), together with any statement of subcontracting described below in paragraph 6, shall be inserted, under penalty of exclusion, in a specific envelope called "ENVELOPE C: FINANCIAL BID ", sealed in the manner referred to in paragraph 1, and then inserted into the outer envelope together with ENVELOPE A containing the administrative documentation and ENVELOPE B containing the technical bid.

As regards the content, the method for formulating and making the financial bid and the technical bid, and identification of the elements/sub-elements for evaluation, the relative weighting/sub-weighting attributed to them and the method for attributing scores, see the "**Parameters and criteria for evaluating bids**" document.

It is specified that the assessment elements and sub-elements given in the document "Parameters and criteria for evaluating bids" refer to the evaluation of bids in Phase 1. The same elements will also be applied to subsequent phases, in so far as they are compatible.

### **4. ADMINISTRATIVE DOCUMENTATION – PHASE 1**

The declaration/documentation required for participation in PHASE 1 as provided for in sections 4.1 and 4.1 bis, and if applicable, subsequent sections 4.2, 4.3, 4.4, 4.5 and 4.6, must be inserted into a special envelope called **ENVELOPE A: ADMINISTRATIVE DOCUMENTATION**, sealed as stated in the previous section 1 and then inserted into the external envelope together with ENVELOPE B, containing the technical bid, and envelope C containing the financial bid.

#### **4.1 DECLARATION**

Inside ENVELOPE A the following **declaration** made by the legal representative of the economic operator must be included, pursuant to and in accordance with the procedures set forth in decree DPR 445/2000 **preferably using Facsimile of the declaration for participation in the tender notice (Annexes A) annexed to this tender notice**, together with a simple photocopy of an ID Document, certifying the following:

- 1.a** that the economic operator is **registered in the Companies register or equivalent professional or commercial register in the place where it operates, for activities appropriate to the object of this tender procedure,**

*(or if registration is not required)*

that the economic operator is not **registered in the Companies register or equivalent professional or commercial register in the place where it operates** , *specifying the reasons and providing any other documentation that qualifies the participant to provide the services that are the object of the tender;*

- 1.b** that in the last five years up to the date of publication of the tender notice, the economic operator has carried out **research and development projects in the ICT for health field amounting to a total of not less than 200.000,00 Euros (two hundred thousand/00)** net of tax, on behalf of public or private commissioning bodies, **of which at least one project relating to health mobile applications**, indicating in particular the following: subject, date, amount and public or private sector recipients of the service;
- 1.c.** that the economic operator has a positive declaration from at least two banks or authorised intermediaries under the terms of D. Lgs. n. 385/1993 and subsequent amendments (FOR THE PURPOSES OF PARTICIPATING IN THE TENDER PROCEDURE THESE DECLARATIONS MUST BE ENCLOSED);
- 2. Possession of the general requirements under article 38, paragraph 1 of D.Lgs. 163/2006 with an obligation to indicate - specifying the details of the order and the type of offence charged - all final convictions, criminal convictions that have become irrevocable and sentences in application of the penalty on demand procedure pursuant to the provisions of article 444 of the code of criminal procedure reported by all persons, under article 38, par. 1, section c) of D.Lgs. 163/2006 as amended, that are currently in office as well as, to the best of the person's knowledge, by all those persons who ceased to hold office in the year preceding the date of publication of the tender notice (including directors and technical managers that have worked at any company taken over by or merged with the company in the last year or those that have ceased to hold the relevant office in the aforesaid period), including offences that have been expunged, while indicating that there have been complete and effective dissociation measures taken by the company in relation to those holding such office in the year preceding the date of publication of the tender notice, when these have been convicted as indicated above:**

Should the legal representative **not be aware:**

- that there are no pending proceedings for the application of one of the preventive measures under the terms of article 3 of Law 27 December 1956, n. 1423 or one of the disqualifying causes provided for under article 10 of the Law of 31 May 1965, n. 575, in relation to the persons identified in article 38.c. 1 b) of D.Lgs. 163/2006;
- that there is no reason for exclusion under the terms of article 38.c. 1 m-ter), against the persons identified in article 38.c. 1 b) of D.Lgs. 163/2006;
- that any convictions have been handed down and become final or a conviction has been made that has become irrevocable or a penalty has been handed down on demand pursuant

to article 444 of the code of criminal procedure, including any expunged, in relation to the persons identified in article 38.c. 1 c) of D.Lgs. 163/2006;

**the declarations certifying possession of the above requirements and any convictions received must be made individually by each of the persons identified above, using the annexed declaration form B).**

**3. With regard to the requisites under article 38.c. 1 m quater) of D.Lgs. 163/2006:**

that there are none of the situations of control as provided for in article 2359 of the civil code in relation to any person and that they have formulated the bid independently,

(or one of the following alternatives),

a) that he is not aware of participation in the procedure by persons that are, with respect to the participant, in one of the control situations provided for in article 2359 of the civil code, and that they have made the bid independently;

b) that he is aware of the participation in the same procedure of persons that are, with respect to the participant, in one of the control situations provided for in article 2359 of the civil code, and that they have made the bid independently.

**4. *if applicable, only in the case of composition with creditors with the company on a going concern basis,***

*(in the event of admission to composition with creditors with the company on a going concern basis)*

that the company is in a situation of composition with creditors with the company on a going concern basis under the terms of article 186 bis of the Royal Decree of 16 March 1942, no. 267, as in the order of the Court (indicating the details), declaring that the company is not participating in this tender procedure as an agent company for an association of companies, while indicating the auxiliary company which it is intended to use.

THE DOCUMENTATION PROVIDED FOR IN PARAGRAPH 4 OF THE AFORESAID ARTICLE 186 BIS AND AS INDICATED IN PARAGRAPH 4.7 MUST ALSO BE ANNEXED FOR THE PURPOSES OF PARTICIPATION IN THE PROCEDURE.

OR

*in the event of the lodging of an appeal for admission to a composition with creditors on the basis of the company being a going concern)*

that the company is authorised to participate in accordance with the order of the Court (indicating the details of the order).

**5. that the company is fully aware of all the clauses contained in the full tender procedure, the "Parameters and criteria for evaluating bids" document, the "Draft Framework Agreement" and the relative implementing document, the draft contract for the management of intellectual property rights and the "Technical Specifications" document, accepting these without any reservation;**

6. that the company has not received and is not receiving public funding - in relation to the activities which are the object of this tender – subject to the regulations on state aid,  
(or)  
that the company has received and is not now receiving public funding - in relation to the activities which are the object of this tender – subject to the regulations on state aid, indicating the type and context;
7. that when drawing up the bid, the company has taken into consideration the associated obligations related to the health and safety of workers and workplace conditions, and the cost of labour established by national contracts and insurance and welfare laws;
8. that in the event of a successful bid the company undertakes to carry out the activities that are the object of the project, according to the conditions, methods and terms established in the draft Framework Agreement, the draft contract for the management of intellectual property rights and in the implementing documents for the different phases;
9. (*if applicable* in the case of groups of companies): the list of companies making up the group, indication of the lead agent (group leader) and the principal/s, the parts of the services that will be provided by each company and the undertaking, in the event of the award, to set up the group in compliance with the regulations provided for by article 37 of D.Lgs. no. 163/2006;
10. (*if a consortium as stated in article 34, par. 1 section b) of D.Lgs. 163/06*) the list of consortium members on behalf of which the consortium is participating, in relation to the prohibition made by article 37, paragraph 7 of D.Lgs. 163/06;  
*IN THIS CASE THE CONSORTIUM MEMBER MUST MAKE THE DECLARATION STATED IN SECTION 4.1, LIMITED TO POINTS 2, 3 and 4, CERTIFYING POSSESSION OF THE GENERAL REQUIREMENTS STATED IN ARTICLE 38 OF D.LGS. NO. 163/2006.*
- (*if a consortium as stated in article 34, par. 1 section c) of D.Lgs. 163/06*) the list of consortium members on behalf of which the consortium is participating, in relation to the prohibition made by article 36, paragraph 5 of D.Lgs. 163/06 if the consortium does not intend to participate on its own behalf;  
*IN THIS CASE THE CONSORTIUM MEMBER MUST MAKE THE DECLARATION STATED IN SECTION 4.1, LIMITED TO POINTS 2, 3 and 4, CERTIFYING POSSESSION OF THE GENERAL REQUIREMENTS STATED IN ARTICLE 38 OF D.LGS. NO. 163/2006.*
- (*if a consortium as stated in article 34, par. 1 section e) of D.Lgs. 163/06*): the list of companies making up the consortium;
- (*if a consortium not yet set up as stated in article 34, par. 1 section e) of D.Lgs. 163/06*): the list of companies that will make up the consortium, along with the undertaking, in the event of the award, to set up the consortium in compliance with the regulations in force in relation to public tenders;
11. (*if applicable* in the case of an EEIG): the companies belonging to the EEIG must be indicated;
12. (*if applicable*) that it authorises communications relative to this procedure identified in article 79, paragraph 5 of D.Lgs. 163/2006 to take place via fax.

<p>- For the purposes of article 38, paragraph 1 c) of the legislative decree D.Lgs. 163/2006 as amended. <b>it is mandatory for the bidder to declare - specifying the details of</b></p>
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**the order and the type of offence charged - all final convictions, irrevocable criminal convictions and sentences in application of a penalty on demand pursuant to the provisions of article 444 of the code of criminal procedure received by the persons under article 38, par. 1, section c) , including those expunged.**

The participant is not required to indicate convictions when the crime has been decriminalised or where there has been supervening rehabilitation or when the offence has been declared extinguished after the conviction or in the event of revocation of the conviction itself.

In the case of a conviction against persons who previously held office in the year before the date of publication of the tender notice, it is necessary to show that there has been complete and actual dissociation from the company of these, by which is meant for example the bringing of an action for liability against the person or his resignation from office at the request of the governing body of the company

In the event of **takeover** or **merger**, the participant (whether making the acquisition or the company resulting from the merger) must submit a declaration regarding the requisites pursuant to article 38, paragraph 1 c, of D.lgs. no. 163/2006 also with reference to directors and technical managers who have worked at the company that has been taken over or the merged companies in the last year or that have ceased to hold the corresponding office in the aforesaid period. There also remains the possibility of demonstrating the dissociation as set forth above.

It is underlined that in the event of a company with two shareholders each with 50% of equity, the participant must submit the declaration regarding the requisites pursuant to article 38, paragraph 1 b) and m ter) of D. Lgs. n. 163/2006 with reference to both shareholders. In the case of a company with three shareholders, the participant must submit the declaration regarding the requisites pursuant to article 38, paragraph 1 b) and m ter) of D. Lgs. no. 163/2006 as regards a shareholder holding at least 50%.

The Administration shall proceed with automatic exclusion if there is a final conviction found or if there is a conviction that has become irrevocable or there has been the application of a penalty on demand under article 444 of the code of criminal procedure, in the case of any offence provided for in the national legislation, namely for the following crimes:

- participation in a criminal organisation (criminal conspiracy – article 416 c.p. (criminal code) mafia type membership – article 416-bis criminal code.);
- corruption (article 319 c.p.)
- fraud against the interest of the European Community (embezzlement 316-bis criminal code, misappropriation of public payments, article 316-ter of the criminal code, aggravated fraud designed to obtain public funds under article 640-bis of the criminal code, unlawful appropriation of Community contributions under article 2 Law of 23-12-1986 no. 898)
- money laundering (article 648-bis of the criminal code).

If the Administration finds any final conviction, conviction that has become irrevocable or a judgement in application of a penalty on demand procedure under article 444 of the code of criminal procedure (cpp) including those expunged where the offence is different from those indicated above, it will proceed to check the relevance of the crime to the moral or

professional reliability of the successful bidder.

**If, at the time of the checks being carried out on the general requirements there is ascertained to be any failure to declare at the time of the bid even only one final conviction or a conviction that has become irrevocable or a judgement in application of the penalty on demand procedure under the provisions of article 444 of the c.p.p., including those that have been expunged and that has been meted out to any of the persons indicated in article 38, par. 1, sec. c) as identified by the Administration on a Chamber of commerce registration search, then the participant will be excluded for false declaration pursuant to and in accordance with the provisions of decree DPR 445/2000 and with the further consequences provided for in article 38, paragraph 1 ter of D.Lgs. 163/2006.**

**If the participant, in support of his declaration relating to the cause of exclusion under article 38, paragraph 1, section e) of D.Lgs. 163/2006, decides to acquire information from the criminal records office of the Public Prosecutor's dept, it is recommended that a "SEARCH" (visura) is obtained under article 33 of PRESIDENTIAL DECREE of September 14, 2002, number 313 (Consolidated act on legislative provisions and regulations on the criminal records office and administrative penalties register for offences and corresponding pending charges). The aforesaid search, without actual effectiveness as certification, provides, unlike the general certificate under article 24 or the criminal certificate under article 25 of the TU (consolidated Act), all records referring to the participant, including convictions for which expunging has been granted, convictions for offences punishable only with a fine and plea bargained sentences and convictions on decree.**

For the purposes of article 38, paragraph 1 g) of D.Lgs. 163/2006 the finally ascertained offences are those which relate to obligations to payment of certain, due and enforceable tax debts; such offences are deemed to be serious when they relate to non payment of duties and taxes for an amount higher than that provided for in article 48 bis, paragraphs 1 and 2-bis of the Presidential Decree of 29 September 1973, n 602 (currently standing at € 10,000.00).

For the purposes of article 38, paragraph 1, section i) of D.Lgs. 163/2006, serious infringements are considered to be those preventing the issue of the single document certifying regularity of contribution payments (DURC) as in article 2, paragraph 2, of the decree-law of 25 September 2002, no. 210, converted with amendments into law as the Law of 22 November 2002 no. 266. In the event that during checks on the successful bidder an irregular DURC should arrive from the social security authority, the administration will evaluate at its discretion the definitive nature of the infringement according to circumstantial evidence (indicative and to be weighed up) identified in provincial government resolution no. 561/2015, and specifically:

- whether the participant regularised its social security position before the contracting authority started up the relative procedure to exclude the participant from the tender procedure or cancel the award;
- whether the participant paid the sum due within 15 days of becoming aware of the negative DURC;
- whether the participant paid the sum due before communication of the result of the

tender procedure;

- whether the participant has habitually or repeatedly failed to pay social security contributions;
- whether the failure to pay depended on the actions of others (for example failure to pay or late payment by the delegated bank, despite the presence of funds in the current account of the participant/successful bidder).

For the purposes of article 38, paragraph 1 m-quater) of D.Lgs. 163/2006, the contracting authority will exclude participants when it is found that the bids are attributable to a sole decision-making centre on the basis of unequivocal evidence. Checks and any exclusions will be made after the opening of the financial bid.

Here below are the provisions of article 38 paragraphs 1, 1-bis, 1-ter, 2 and 2-bis of D.Lgs. 163/2006:

#### *"Article 38*

##### *General requisites*

*1. The following persons are excluded from participation in competitive calls for tenders and the procurement of works, supplies and services, and may not sign the corresponding contracts:*

*a) those in bankruptcy proceedings, involuntary winding up and compositions with creditors, save those cases coming within the provisions of article 186-bis of 16 March 1942, no. 267, or those for whom there is in progress one of the proceedings for declaration of the existence of one of these situations;*

*b) those against whom there are pending proceedings for the application of one of the preventive orders within article 3 of the Law of 27 December 1956, no. 1423 or one of the disqualifying causes provided for in article 10 of the Law of 31 May 1965, no. 575; the exclusion and prohibitions apply if the pending proceedings regard the owner or the technical director, if it is a one man business; the shareholders or technical director in the case of a partnership, the acting partners or the technical director in the case of a "Società in accomandita semplice" ("special partnership"), the directors with the powers to represent the company or technical director or the sole shareholder who is an individual, or the majority shareholder in the case of companies with less than four shareholders if it is a different type of company;*

*c) those against whom there has been a final conviction or a conviction that has become irrevocable, or a judgement in application of a penalty on demand pursuant to of Article 444 of the code of criminal procedure for the harm done to the country or to the Community in ways reflecting badly on the person's professional ethics; exclusion applying in any case where there has been a final conviction for one or more offences regarding participation in a criminal organisation, corruption, fraud or money laundering as defined in EU records cited in article 45, paragraph 1, directive EC 2004/18. The exclusions and prohibitions apply if the conviction is against any of the following: the owner or the technical director in the case of a one man business; the shareholders or the technical director, in the case of a partnership; the acting partners or the technical director if it is an "sas" - special partnership; those directors with the power of representation or the technical director or the sole shareholder if an individual person*

*or the majority shareholder in the case of a company with less than four shareholders if it is another type of company or consortium. The exclusions and prohibitions in any case apply to persons who held office in the year up to the date of publication of the tender notice, if the company fails to show there has been complete and effective dissociation from the criminally penalised conduct; while the exclusions and prohibitions do not apply if the crime has been decriminalised or there has been intervening rehabilitation or where the crime has been declared extinguished after the sentence or in the event of revocation of the conviction itself;*

*d) those who have infringed the prohibition on trust registration under article 17 of the Law of 19 March 1990, no. 55; the exclusion lasts for one year from final ascertaining of the infringement and should in any case be ordered if the infringement has not been removed;*

*e) those that have committed serious and duly ascertained infringements of safety laws and regulations and any other duties regarding employment, as shown in the records in possession of the monitoring unit;*

*f) those who, according to a motivated assessment of the contracting authority, have committed gross negligence or have been fraudulent in the performance of a contract given to them by the contracting authority that calls for proposals; or that have committed grave error in the performance of their work, as proven by any evidence revealed by the contracting authority;*

*g) those who have committed serious and proven breaches of their obligations regarding the payment of duties and taxes under Italian law or that of the country in which they are established;*

*h) those against whom, under the provisions of paragraph 1-ter, there is a criminal record in the digital register in relation to article 7, paragraph 10, for false declaration or false documentation in relation to the requirements and terms for participation in tender procedures and for the assigning of sub-contracts;*

*i) those who have committed serious and proven breaches of their obligations regarding social security and welfare contributions under Italian law or that of the country in which they are established;*

*l) those who have not submitted the certification pursuant to article 17 of the Law of 12 March 1999, no. 68, save the provisions of paragraph 2;*

*m) those who have been banned under the provisions of article 9, paragraph 2 c) of the legislative decree of 8 June 2001 no. 231 or have been subject to any other sanctions that result in a prohibition against contracting with the Public Administration including bans under article 36-bis, paragraph 1, of the decree-law of 4 July 2006, no. 223 converted, with amendments, by the law of 4 August 2006 no. 248;*

*m-bis) those against whom, pursuant to article 40, paragraph 9-quater, there is a record in the criminal records register under article 7, paragraph 10, for false declaration or false documentation for the purposes of the issue of SOA certification.*

*m-ter) as in b) above, who though having been victims of the offences provided for and punished by the terms of articles 317 and 629 of the criminal code pursuant to article 7 of the decree-law of 13 May 1991, no. 152 converted, with amendments, by the law of 12 July 1991 no. 203 did not report the facts to the judicial authority, except in the cases provided for in article 4,*

paragraph one, of the law of 24 November 1981, no. 689. The circumstances considered in the previous sentence must emerge from the evidence forming the basis of the trial committal proceedings against the accused in the year preceding the publication of the tender notice and must be notified, together with the details of the person who omitted the aforesaid report, by the public prosecutor to the Authority as provided for in article 6, which ensures the publication of the notification on the website of the monitoring unit;

*m-quater*) those that are, with respect to another candidate in the same tender procedure, in the situation of control provided for in article 2359 of the civil code or in any relationship of control, include *de facto* control, or where the relationship means that in reality the bids originate from a single decision-making centre.

*1-bis.* The exclusion causes under the provisions of this article do not apply to companies subject to sequestration or confiscation orders pursuant to article 12 of the decree-law of 8 June 1992, no. 306 converted, with amendments, by the law of 7 August 1992 no. 356, or of the law of 31 May 1965, no. 575, and assigned to a custodian or judicial administrator as regards only those referable to the period preceding the aforesaid assignment or financial administration.

*1-ter.* In the case of submission of false declarations or false documentation to the tender procedure or in the granting of sub-contracts, the contracting authority will report the fact to the Authority, which if it considers that the submissions have been made with intentional wrongdoing or with gross negligence and considering the extent or the gravity of the false declaration or presentation of false documentation, will order registration of the matter in the digitalised criminal records registry in order to obtain an exclusion order from tender procedures and for the granting of subcontracts, in accordance with the provisions of paragraph 1, section h), for up to one year, on the lapsing of which term the registration is cancelled and thus ceases to have effect.

2. The candidate or participant shall certify possession of the requisites by means of self-certification, in accordance with the provisions of the Consolidated Act and regulations on administrative documentation, as provided for in the Presidential Decree of 28 December 2000, no. 445, which indicates all criminal sentences handed down, including those that have been expunged. For the purposes of paragraph 1 c) the participant is not required to indicate in the declaration any sentences for offences that have been decriminalised or have been discharged after the sentence itself, nor any revoked sentences nor those for which there have been intervening rehabilitation. For the purposes of paragraph 1, g) offences are deemed to be serious where they relate to non payment of duties and taxes for an amount higher than that provided for in article 48 bis, paragraphs 1 and 2-bis of the Presidential Decree of 29 September 1973, no. 602; finally ascertained offences are those which relate to the obligations to payment of certain, due and enforceable tax debts. For the purposes of paragraph 1 i), serious infringements are intended as those that prevent the issue of the single document certifying regularity of contribution payments as in article 2, paragraph 2, of the decree-law of 25 September 2002, no. 210, converted with amendments into law as the Law of 22 November 2002 no. 266 ; the persons considered in article 47, paragraph 1, must show, pursuant to article 47, paragraph 2, the possession of the same requirements as for the issue of the single document certifying regularity of contribution payments. For the purposes of paragraph 1, *m-quater*, the participant shall annex one of the following: a) a declaration certifying they are not in any of the control situations provided for in article 2359 of the civil code in relation to any person and have formulated the bid independently; b) a declaration that they are not aware of the participation in

*the same procedure of persons that are, with respect to the participant, in one of the control situations provided for in article 2359 of the civil code, and that they have made the bid independently; c) a declaration that they are aware of the participation in the same procedure of persons that are, with respect to the participant, in one of the control situations provided for in article 2359 of the civil code, and that they have made the bid independently. In the situations provided for in a), b) and c), the contracting authority will exclude participants in relation to which the bids in question are attributable, on the basis on unequivocal evidence, to a single decision-making centre. Checks and possible exclusion will be ordered after the opening of the envelopes containing the financial bid.*

Here below are the provisions of article 186-bis paragraphs 3, 4 and 5 of R.D. 267/1942:

*"After the lodging of the appeal, participation in the procedure for the assignment of public contracts must be authorised by the court, having heard the opinion of the judicial commissioner, if appointed; in the absence of such appointment, the court decides.*

*The admission to composition with creditors does not prevent participation in the procedures for the awarding of public contracts when the company presents the following during the tender procedure:*

*a) the report of an expert in possession of the requisites provided for in article 67, paragraph three, section d, certifying conformity with the plan and the reasonable ability of the company to perform the contract;*

*b) the declaration of another operator in possession of the general requirements, the financial, economic and technical capacity as well as the certification required to award the contract which in relation to the participant and the contracting authority, undertakes, to make available the resources needed to fulfil the tender for the duration of the contract, to take over from the assisted company if it should fail during the tender procedure or after the stipulation of the contract or should for whatever reason be unable to duly perform the contract as required. Article 49 of the legislative decree of 12 April 2006 163 shall apply.*

*Save the provisions of the paragraph above, a company in composition with creditors may participate in the tender procedure even when a member of a temporary association of companies, provided it does not act as an agent company and also provided that the other companies in the group are not in any insolvency procedures. In such case the declaration provided for in paragraph four b), may also come from a company that is a member of the association of companies."*

In the case of a single company (or consortium) the declaration stated in section 4.1 must be signed by the legal representative (or his proxy).

In the case of a temporary group the same declaration must be made by each company making up the association and signed by the legal representative of the same (or his proxy).

In the case of an ordinary consortium of participants according to article 2602 CC (article 34, par. 1, section e) of D.Lgs. 163/06) the same declaration must be made by each company making up the consortium and signed by the legal representative of the same (or his proxy).

**If the information or documentation that the participants must present is incomplete, irregular or incorrect, or if specific documents are missing, the authority supervising the tender procedure will suspend the meeting and establish that the economic operators concerned will be requested to present, supplement, clarify or complete the information or documentation in question, in the way and by the deadline established in the request note.**

The declarations of companies participating in the temporary group must contain indications making it possible to ascertain the minimum requirements requested from each member, with reference to the technical requirements and skills and experience and financial standing.

In the case of European Economic Interest Group (EEIG) not yet set up, the declarations must contain similar information to that provided for in the case of temporary groups.

Each participant is entitled to present documentation designed to prove the facts declared to substitute one or more parts of the declaration indicated above.

According to article 40 of DPR 445/2000, certification issued by the public administration regarding status, personal details and facts is only valid and usable in relations between private citizens. In relations with the organs of the public administration and managers of public services, certificates and self-certification statements are always substituted by the declarations stated in articles 46 and 47 of DPR 445/2000.

According to article 3 of DPR 445/2000 the possibility of presenting self-certification or personal statements is extended to physical or legal persons residing or having their legal headquarters in one of the countries belonging to the European Union, as well as physical or legal persons residing or having their legal headquarters in Italy.

For the purposes of checks relating to causes for exclusion according to article 38 of D.Lgs. no. 163/2006, in relation to candidates or participants not established in Italy, if necessary the contracting authorities will ask the candidates or participants to provide all the necessary documents providing proof, and they may also ask for the cooperation of the competent authorities. If no documents or certificates are issued by another state in the European Union, it is sufficient to have a sworn declaration, or in member states where such a declaration does not exist, a declaration made by the party concerned before the judicial authorities or competent administration, a notary or a professional organisation qualified to receive it in the country of origin or from which it comes.

## **TEMPORARY GROUPS AND CONSORTIA**

In the case of **temporary groups of companies** each **associated company** must make the declaration (signed by the legal representative of the same or by a person with the power to legally commit the company) certifying the facts stated in section 4.1, **points 1.a), 1.b), 2, 3, 4, 5, 6, 7, 8, 9,** and (if applicable) **12.**

In the case of a **consortium as per article 2602 c.c. and of an EEIG**, the consortium as per article 2602 c.c. and the business consortia indicated at the time of the bid, the EEIG and businesses making up the EEIG indicated at the time of the bid must make the declaration (signed by the legal representative of the same or by a person with the power to legally commit the company) certifying the facts stated in section 4.1, **points 1.a), 1.b), 2, 3, 4, 5, 6, 7, 8, 10, 11** and (if applicable) **12.**

**In the case of temporary groups of companies, of a consortium as per article 2602 c.c. and of an EEIG, the professional requirements stated in point 1.a must be satisfied by each company in the group or consortium, or making up the EEIG, UNDER PENALTY OF EXCLUSION.**

**In the case of temporary groups of companies, of a consortium as per article 2602 c.c. and of an EEIG, the technical requirements stated in point 1.b) may be pooled within the group, consortium and EEIG.**

**The key service – namely the project relating to the creation of health mobile applications - must be entirely covered by the group leader, by a company in the consortium or by a company belonging to the EEIG, UNDER PENALTY OF EXCLUSION.**

In the case of a consortium as per article 2602 c.c. not yet set up, the declaration above must be made individually by each company that will make up the consortium (signed by the legal representative of the same or by a person with the power to legally commit the company) and must also contain **their commitment to comply with the regulations stated in article 37 of D.Lgs. 163/2006.**

**In the case of consortia as per article 34, paragraph 1, section b) and c) of D.Lgs. 163/2006 and subsequent amendments, they must make the declaration stated in this section 4.1. Furthermore the consortium companies on behalf of which the consortium is participating must make the declaration stated in this section 4.1, limited to points 2, 3 and 4, certifying that they have the general requirements according to article 38 of D.Lgs. 163/2006 and subsequent amendments.**

EEIGs must indicate the companies making up the EEIG. In the case of European Economic Interest Groups (EEIG) not yet set up, the declarations will have similar information to that provided for in the case of temporary groups.

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According to article 37, paragraph 8 of D.Lgs. 163/2006, in order to present a bid, groups are **not** required to have a specific legal form. In the event of a successful bid, the Administration will request the documentation proving the setting up of the temporary group and the granting of a **special collective mandate with representation and corresponding power of attorney** by the principals to the group leader

**For the content of the mandate, see the specific indications in the subsequent section 4.2.**

**In the event that the special collective mandate with representation and corresponding power of attorney are presented together with the documentation for participation, the technical bid and financial bid may be signed only by the group leader, in the name of and on behalf of all the principals.**

**Should the group's deed of incorporation not contain the clauses given above or contain indications that do not comply, the group may be admitted to the tender procedure, on condition that all the member companies making it up have made the declaration stating the commitment to comply with the regulations in force on the matter of tenders for services with regard to temporary associations.**



#### **4.1 bis BANK REFERENCES**

ENVELOPE A must also contain the **original** positive declarations of at least **two banks** or intermediaries authorised pursuant to D.Lgs. no. 385/1993 and subsequent amendments, certifying the business and financial standing of the company (business and financial standing requirements stated in section 2.2 of this tender notice).

It is specified that if the participant is not able to present the references required, for justified reasons, including the setting up or beginning of activities less than three years earlier, he may prove his business and financial standing using any other documentation considered suitable by the contracting authority; in this case the participant unable to present the two references requested by the tender notice must:

- a) indicate the «**justified reasons**» for the impediment and
- b) enclose «**any other document**» able to demonstrate his financial standing.

**The contracting authority will only admit the participant if it believes that the alternative documentation presented is able to demonstrate the participant's standing.**

In the case of a temporary group, consortium as per article 2602 cc or an European Economic Interest Group (EEIG), the same references must be produced by each company making up the association, consortium or EEIG.

**If the information or documentation that the participants must present is incomplete, irregular or incorrect, or if specific documents are missing, the authority supervising the tender procedure will suspend the meeting and establish that the economic operators concerned will be requested to present, supplement, clarify or complete the information or documentation in question, in the way and by the deadline established in the request note. The participant will be EXCLUDED in the event that it is ascertained that he did not have the business and financial requirements on the deadline for presentation of the bids.**

#### **4.2 FURTHER DOCUMENTATION TO BE PRESENTED IN THE CASE OF TEMPORARY GROUPS OF COMPANIES ALREADY ESTABLISHED.**

In addition to the documentation required in previous sections of this tender notice, companies intending to participate in the tender procedure coming together in a temporary group **already established**, must produce and include in ENVELOPE A, through the lead company:

**A) SPECIAL COLLECTIVE MANDATE WITH REPRESENTATION** granted to the lead company by the principals, with authenticated private contract, the text of which states specifically:

- that the companies participating in the tender procedure have set up a temporary group between them;
- that this temporary group of companies shall pursue the scope of participating in one or more determined tender procedures, specifically indicating the tender procedure that is the object of this notice;
- that the bid leads to joint responsibility of all the companies making up the group in relation to the Administration;

- that the mandate is free and irrevocable and that its revocation for due cause will have no effect in relation to the Administration;
- that the lead company shall be the exclusive representative of the principals with the Administration, also in procedural terms, in relation to the tender, also after the verification of compliance and until the termination of all relations;
- the share of each participating company in the group, should this not be shown in other documentation presented;
- clauses respecting the obligations provided for by the regulations on the traceability of payments.

**B) POWER OF ATTORNEY** relative to the aforementioned mandate and with the same form. It is permitted to present the special collective mandate with representation and the power of attorney relative to the same mandate in a single document.

**If the information or documentation that the participants must present is incomplete, irregular or incorrect, or if specific documents are missing, the authority supervising the tender procedure will suspend the meeting and establish that the economic operators concerned will be requested to present, supplement, clarify or complete the information or documentation in question, in the way and by the deadline established in the request note.**

#### **4.3 DOCUMENTATION TO BE PRESENTED BY COMPANIES UNDERGOING TRANSFORMATION**

A participating company which is undergoing transformation of the company or merger procedures, must present a self-certification declaration inside ENVELOPE A, subsequently verifiable by the Administration, issued by the legal representative according to D.P.R. 445/2000, or his proxy, accompanied by a simple photocopy of his identity document, certifying in detail the subjective and objective modifications taking place.

#### **4.4 POOLING**

**Pooling may be used under the provisions of article 49 of D.Lgs. 163/2006, when applicable, in relation to the technical skills and experience requirements stated in item 2.2 section C), point 1 and/or the financial standing stated in item 2.2 section D), point 1 of this tender notice.**

**In this case, in addition to the material provided for in section 4, the participant must present, inside ENVELOPE A:**

- 1) a declaration made by the participant, according to and as provided for by D.P.R. 445/2000, certifying the pooling of the technical skills and experience requirements stated in section 2.2, part C), point 1 and/or the financial standing requirement stated in section 2.2 part D), point 1 provided for by this tender notice, with specific indication of the requirement/s and of the auxiliary company;
- 2) a declaration made by the auxiliary company, according to and as provided for by D.P.R. 445/2000, certifying that there is no cause for exclusion according to article 38, paragraph 1 of D.Lgs. 163/2006, indicated in previous section 4.1 point 2, and that it has the technical requirements and resources that are the object of pooling;
- 3) a declaration made by the auxiliary company according to and as provided for by D.P.R.

445/2000, with which it undertakes to make the necessary resources which the participant is lacking available to the participant and the Administration for the whole duration of the tender;

- 4) a declaration signed by the auxiliary company, according to and as provided for by D.P.R. 445/2000, certifying that it is not participating in the tender procedure in its own right or as part of an association or consortium;
- 5) the original or authenticated copy of the contract according to which the auxiliary company undertakes to meet the requirements and make the necessary resources available to the participant for the whole duration of the tender. According to article 88, paragraph 1 of D.P.R. 207/2010 the pooling contract must specify in a complete, precise and exhaustive manner:
  - a) object: the resources and means loaned in a determined and specific manner;
  - b) duration;
  - c) any other element useful for the purposes of pooling;
- 6) in the case of pooling in relation to a company that belongs to the same group, in place of the contract stated in the previous point 5) the participating company may present a substitute declaration certifying the legal and economic link existing within the group.

For matters not provided for in this section, the regulations referred to in article 49 of D.Lgs. 163/2006 shall apply.

**If the information or documentation that the participants must present is incomplete, irregular or incorrect, or if specific documents are missing, the authority supervising the tender procedure will suspend the meeting and establish that the economic operators concerned will be requested to present, supplement, clarify or complete the information or documentation in question, in the way and by the deadline established in the request note. The participant will be EXCLUDED in the event that it is ascertained, in the light of the documentation produced, that it did not meet the pooling requirements on the deadline for the presentation of bids.**

#### **4.5 FURTHER DOCUMENTATION TO BE PRESENTED BY COMPANIES IN COMPOSITION WITH CREDITORS ON A GOING CONCERN BASIS OR WHICH HAVE FILED AN APPEAL FOR COMPOSITION WITH CREDITORS AS A GOING CONCERN.**

##### **1) COMPANIES IN COMPOSITION WITH CREDITORS ON A GOING CONCERN BASIS**

According to article 186-bis, paragraph 4, R.D. 16.03.1942 no. 267 (bankruptcy law), a company **in composition with creditors** on a going concern basis may participate in the tender procedure on condition that it presents the following documentation inside ENVELOPE A, accompanying the statements made in point 4 of the declaration stated in section 4.1:

- a) A report by a professional with the necessary requirements according to article 67, third paragraph, section d), R.D. 16.03.1942 no. 267, certifying the compliance of the plan and the reasonable likelihood of fulfilling the contract;

- b) The declaration made by the legal representative (or his proxy) of another operator certifying, according to and with the methods established by D.P.R. 445/2000:
- that it has the general requirements and financial standing, technical and business requirements and the certification requested for assignment of the tender;
  - the undertaking to the participant and the Administration to make available, for the duration of the contract, the necessary resources for implementation of the tender and to take over from the assisted company in the event that this should go bankrupt during the course of the call procedure or after stipulation of the contract or should for any reason be no longer able to implement the tender in a regular manner;
  - that the auxiliary company is not participating in the tender notice in its own right or as part of an association or consortium;
- c) The original or authenticated copy of the contract according to which the auxiliary company undertakes to provide the necessary resources for implementation and to take over from the assisted company in the event that this should go bankrupt during the course of the call procedure or after stipulation of the contract or should for any reason be no longer able to implement the tender in a regular manner.

According to article 88, paragraph 1 of D.P.R. 207/2010 the pooling contract must specify in a complete, precise and exhaustive manner

- object: the resources and means loaned in a determined and specific manner;
- duration;
- any other element useful for the purposes of pooling.

In the case of an auxiliary company belonging to the same group, in place of the pooling contract the participant may present a substitute declaration certifying the legal and economic link existing within the group, giving rise to the same obligations provided for in the previous section c).

## **2) COMPANIES THAT HAVE MADE JUDICIAL APPLICATION FOR COMPOSITION WITH CREDITORS ON AN ONGOING CONCERN BASIS.**

Under the provisions of article 186-bis, paragraph 3 of royal decree R.D. 16.03.1942 no. 267 (the bankruptcy law), a company that has **filed a judicial application for** composition with creditors of the company on an ongoing concern basis and up to the time of the judicial order for admission to the procedure, for the purposes of participating in the procedure to award public procurement contracts must first obtain authorisation from the court, which shall first hear the opinion of the official receiver, if appointed; in the absence of such appointment, the court decides.

A company that has filed an application for composition with creditors of the company on an ongoing concern basis can participate in the procedure on condition that it submits in ENVELOPE A for the call for tenders, a special **declaration** that it has obtained court authorisation to participate in the procedure, following the filing of the application for admission to the procedure of composition with creditors of the company on an ongoing concern basis.

If the judicial approval for composition with creditors of the company on an ongoing concern basis is given during the awarding procedure and up to the time of the stipulation of the contract, the company is required to promptly notify the contracting authority and to produce both the documentation stated in point 4 of the declaration provided for in paragraph 4.1, and all the documentation provided for in a), b) and c) above.

Any breach of the duty to produce this documentation shall be penalised by the lapsing of the award of the contract.

**If the information or documentation that the participants must present is incomplete, irregular or incorrect, or if specific documents are missing, the authority supervising the tender procedure will suspend the meeting and establish that the economic operators concerned will be requested to present, supplement, clarify or complete the information or documentation in question, in the way and by the deadline established in the request note. The participant will be EXCLUDED in the event that it is ascertained that it did not meet the requirements for participation stated in point 1, sections a), b) and c) on the deadline for the presentation of bids.**

#### **4.6 FURTHER DOCUMENTATION TO BE PRESENTED IN THE CASE OF THE CONSORTIA STATED IN ARTICLE 34, PARAGRAPH 1, SECTIONS B) AND C) OF D.LGS. 163/2006 AND SUBSEQUENT AMENDMENTS**

In the case of the consortia stated in article 34, paragraph 1, section b) and c) of D.Lgs. 163/2006 and subsequent amendments, the companies in the consortia on behalf of which the consortium is participating must issue the self-certification declaration stated in section 4.1, limited to points 2, 3 and 4, certifying that they have the general requirements stated in article 38 of D.Lgs. 163/2006 and subsequent amendments. This declaration must be included in ENVELOPE A.

**If the information or documentation that the participants must present is incomplete, irregular or incorrect, or if specific documents are missing, the authority supervising the tender procedure will suspend the meeting and establish that the economic operators concerned will be requested to present, supplement, clarify or complete the information or documentation in question, in the way and by the deadline established in the request note.**

### **5. TENDER PROCEDURE**

At the first public meeting indicated in the tender notice the Chairman of the tender committee, on the basis of the documentation contained in the envelopes presented, will proceed to:

- a) open the envelopes presented by the deadline and check the completeness and conformity of the administrative documentation, marking and authenticating it and in the event of a negative evaluation, providing for documentary investigation adjournment according to the provisions of previous sections, suspending the meeting for this purpose.
- b) (on the same day or, should documentary investigation adjournment have been provided

for, on the day established for the second public meeting, of which the participants admitted will be advised) open the envelopes containing the technical bids, marking the documentation contained therein and checking the formal conformity. It will suspend the tender meeting and transfer the technical bids to the specially nominated Technical Committee in a special envelope sealed at the tender meeting, for evaluation for the purposes of attributing scores related to factors other than the price. At a confidential meeting and with careful observance of the requirements of this tender notice and the "Parameters and criteria for evaluating bids" document, this committee will proceed to attribute the relative scores, documenting the operations carried out in specific reports.

On termination of this analysis, the Chairman of the Technical Committee will transmit the report containing the technical score given to the participants to the person supervising the tender procedure.

The Chairman of the Tender Committee, in a special session open to the public, convened by notice to all tenderers whose bids have been admitted, after having read the reports prepared by the Technical Committee and therefore the scores attributed to factors other than price, will proceed:

- a. to exclude bidders whose technical bids have not reached the minimum score provided for in the document "Parameters and criteria for evaluating bids";
- b. to provide for the opening of the sealed envelopes containing the financial bids related to technical bids deemed appropriate by the Technical Committee;
- c. to mark the financial bids on each sheet and any corrections made;
- d. to read out the price offered by each tenderer;
- e. to attribute the relative score to the financial bids in the manner specified in the document "Parameters and criteria for evaluating bids";
- f. to add up the scores of the technical and financial bids, thus establishing the **classification** for valid bids;
- g. to identify the maximum number of **4 (four) successful bidders**.

The Contracting Authority may evaluate the appropriateness of bids that appear to be abnormally low, on the basis of specific elements.

Stipulation of the Framework Agreement with each successful bidder is subject to the successful outcome of checks on the participation requirements and the positive result of procedures provided for by existing related anti-Mafia regulations.

## 6. SUBCONTRACTING

According to article 118 of D.Lgs. 163/2006 and subsequent amendments, should the company intend, in the event of a successful bid, to subcontract part of the services that are the object of this tender notice, it must provide a special declaration on revenue stamped paper or plain paper with the appropriate revenue stamps, to be inserted into ENVELOPE C: FINANCIAL BID, with specific indication of the parts of the service that it is intended to subcontract, bearing in mind that the total proportion that can be subcontracted cannot exceed a limit of 30% of the amount of the contract.

The subcontracting declaration must be signed by the legal representative or his proxy. In the case of companies in a temporary group not yet established there must be a single declaration, signed by the legal representative of each company making up the group, whereas in the case of companies in

a temporary group already established, the single declaration may be signed by the legal representative of the lead company alone, or his proxy, in the name of and on behalf of all the principals. Alternatively, in the case of companies coming together in a temporary group not yet established, each company may make a separate subcontracting declaration, so long as all the declarations have the same content.

**Authorisation for subcontracting cannot be issued in the event that the declaration is found to be irregular.**

## **7. VERIFICATION OF REQUIREMENTS**

According to article 48, paragraph 2 of D.Lgs. 163/2006 the Administration will proceed to check that the **successful bidders in phase 1** have the **business-financial standing and technical-organisational requirements** declared during the award procedure.

According to article 13, paragraph 4 of the law of 11.11.2011 no. 180, it is specified that in the case of micro, small and medium-sized enterprises, the Administration will only ask the successful company bidders for documentation proving the suitability requirements provided for in the code stated in the legislative decree of 12 April 2006, no. 163. In the event that the company is unable to prove that it has the necessary requirements, the penalties provided for in the Law of 28 November 2005, no. 246 shall apply, along with suspension of participation in tender procedures for up to one year.

According to article 48, paragraph 2 of D. Lgs. 163/2006, if companies do not provide proof, or do not confirm their declarations, the Administration will proceed with their **EXCLUSION** from the tender procedure and **REPORT the fact to the Authorities** for action according to article 6, par. 11 of D.Lgs. 163/2006. The Authority will also suspend participation in tender procedures for a period of between one and twelve months. Following the exclusion, the Administration will proceed to make the award to the next participant in the classification list, if there is one present.

The Administration will also proceed to check that the **successful bidders have the general requirements** declared during the award procedure, according to article 71 of DPR 445/2000. Should the bidder fail to meet these requirements, the Administration will proceed with the **annulment of the award** and will proceed to **report any facts representing a possible crime to the judicial authorities and report the fact to the authority responsible for supervising public contracts (A.N.A.C.)** for inclusion in the digital register. Following the annulment, the Administration will proceed to make the award to the next participant in the classification list, if there is one present.

The same checks may be carried out randomly for any further participating companies, according to and as provided for by D.P.R. 445/2000.

According to article 43, paragraph 1 of D.P.R. 445/2000 the Administration will **automatically acquire** the information that is the object of the self-certification declarations stated in articles 46 and 47 of D.P.R. 445/2000 made by the successful bidders during the tender procedure, and all the data and documents in the possession of other public administrations, subject to indication of the necessary elements to obtain the information or data requested by the party concerned.

Within 10 days of receipt of the communication of the award, successful bidders must produce the following documentation:

- **CERTIFICATION ISSUED BY CLIENTS showing that** in the last five years preceding the date of publication of the tender notice **the participant has carried out research and development projects in the ICT for health field for an overall amount of not less than Euro 200.000,00.- (two hundred thousand/00)**, net of taxes, for the public or private sector, **of which at least one project regarding the creation of mobile health applications**, with indication of the following elements: object, date, amount and public or private sector clients;

In the case of temporary groups of companies, consortia and EEIGs, demonstration that they have the participation requirements will take place respecting the provisions stated in section 4.1 of this tender notice and in accordance with the declarations of the participants during the tender procedure.

**Original or true copies of the original** documentation must be provided, without prejudice to the provisions of article 43 and following of D.P.R. 445/200. In particular it is specified that with relation to information, data and documents **already in the possession of the public administration**, the participant is responsible for indicating the relevant administration and the elements necessary to obtain the data required. Copies of the documentation provided must be accompanied, when admissible, by a self-certification declaration by the participant certifying that the copy is a true copy of the original in his possession and/or with third parties, according to articles 19 and 47 of DPR 445/2000.

To prove possession of the further general participation requirements, the Administration will automatically carry out checks in the manner indicated below:

- Article 38, paragraph 1, section a), and m quarter): acquisition of the Chamber of Commerce certificate and Bankruptcy Court certificate regarding any insolvency procedures underway;
- Article 38, paragraph 1, section b): certificate of the Courts in the place of residence/domicile of the parties stated in the same paragraph, regarding any preventive measures pending;
- Article 38, paragraph 1, section c): acquisition of a certificate from the criminal records office for the parties resulting from the Chamber of Commerce certificate;
- Article 38, paragraph 1, section d): see section 9;
- Article 38, paragraph 1, section e), h), m), m bis) and m ter): checking of notes contained in the computer register of the AVCP;
- Article 38, paragraph 1 section f): discretionary evaluation of the Administration;
- Article 38, paragraph 1, section g): acquisition of the tax clearance certificate from the Tax Office;
- Article 38 paragraph 1 section i): acquisition of the computerised DURC certificate through the social security information point, subject to acquisition of the list of the insurance and pension rights matured in relation to the company, with reference to INPS, INAIL and CASSA EDILE, if not declared during the tender procedure;
- Article 38 paragraph 1 section l): acquisition of the certificate issued by the AGENZIA LAVORO or EMPLOYMENT CENTRES.

**In order to ensure that the procedure proceeds rapidly, if the successful company bidder has documentation demonstrating possession of the requirements declared, it is invited to produce a true copy.**



Participants are entitled not to transmit **documents already in the possession of the public administration**. In this case it is the participant's responsibility to indicate the competent administration and the elements necessary to obtain the data required.

In the case of **foreign companies within the European Union**, for the purpose of checks regarding causes for exclusion according to article 38 of D.Lgs. 163/2006, if no document or certificate has been issued by the country of origin, it is sufficient to have a sworn declaration, or in member states where such a declaration does not exist, a declaration made by the party concerned before the judicial authorities or competent administration, a notary or a professional organisation qualified to receive it in the country of origin or in which it is based.

According to article 38, paragraph 1-ter of D.Lgs. 163/2006, in the case of presentation of a **false declaration or false documentation**, the contracting authority will report this to the **Authority** responsible for supervising public contracts (A.N.A.C.), which if it considers that the submissions have been made with **intentional wrongdoing or with gross negligence** and considering the extent or the gravity of the false declaration or presentation of false documentation, will **order registration of the matter in the digitalised criminal records registry in order to obtain an exclusion order from the tender procedure and for the granting of subcontracts** in accordance with the provisions of paragraph 1, letter h), for up to one year, on the lapsing of which term the registration is cancelled and thus ceases to have effect. **THIS PROVISION SHALL ALSO APPLY IN THE EVENT OF FAILURE TO INDICATE IN THE BID EVEN A SINGLE FINAL CONVICTION OR CONVICTION THAT HAS BECOME IRREVOCABLE OR THERE HAS BEEN THE APPLICATION OF A PENALTY ON DEMAND UNDER ARTICLE 444 OF THE CRIMINAL CODE PROCEDURE, INCLUDING OFFENCES THAT HAVE BEEN EXPUNGED.**

Finally, it is specified that the Administration will report any false declarations to the competent judicial authorities, for the purpose of establishing the possible existence of offences.

## **8. FURTHER DOCUMENTATION TO BE PRESENTED FOR THE PURPOSES OF STIPULATING THE FRAMEWORK AGREEMENT**

For the purposes of stipulating the Framework Agreement, on the request of the Administration, the successful bidders in phase 1 must transmit the following documentation, **by the deadline established in the request**:

- a) for joint-stock companies, partnerships limited by shares, limited companies, cooperatives that issue shares or with limited liability, consortia that issue shares or with limited liability and for consortia:  
**SELF-CERTIFICATION DECLARATION** made by the legal representative of the company or by each company in the case of a temporary association according to article 47 of D.P.R. no. 445/2000 and, in line with article 38, paragraph 3, of the same D.P.R. no. 445/2000, accompanied by a copy of the identity document of the signatory, containing the communications required by article 1 of the D.P.C.M. of 11 May 1991, no. 187, "Rules for checking the share participations of successful bidders for public works and for the ban on trust registrations, provided for by article 17, third paragraph of the Law of 19 March 1990 no. 55 on the prevention of Mafia-type delinquency". This declaration must therefore

contain:

- the company composition, both in terms of names and percentage shares, the existence of secured rights to dividends or warranty on shares with voting rights on the basis of the register of shareholders, communications received and any other data available, along with indication of any parties with irrevocable power of attorney who have exercised voting rights at company assemblies in the last year preceding the declaration or who are in any case entitled to do so, according to article 1 of the D.P.C.M. of 11 May 1991 n. 187;

**b) any further DECLARATIONS** that may be requested by the relevant department for the purposes of stipulating the contract;

**c) (IF THE SUCCESSFUL BIDDER IS A GROUP AND HAS NOT ALREADY PRESENTED THE MANDATE DURING THE CALL PROCEDURE)**

**SPECIAL COLLECTIVE MANDATE** given to the lead company by the principals and the relative **POWER OF ATTORNEY**, resulting from an authenticated private agreement, with the content indicated in point 4.4 of this tender notice;

**d) the DEFINITIVE DEPOSIT** covering costs linked to failure to fulfil the contractual requirements, for an amount of Euro 1,000.00 (one thousand/00 Euro).

The provisions of article 113 of D.Lgs. 163/2006, in so far as they are compatible, shall apply to the guarantee stated above. In the case of temporary associations of companies or a consortium of participants according to article 2602 of the Civil Code, any reduction shall function according to the provisions in Resolution no. 44 of 27.09.2000 by the authority responsible for supervising public works.

The lodging of the security deposit must take place through bank guarantee or surety policy issued by operators authorised according to D.Lgs. 1/9/1993, no. 385 or D.Lgs. 17/3/1995, no. 175: in this case it must be lodged according to the instructions of the contracting Administration, and specifically must respect the following requirements:

- presentation in an annex of a declaration by the person signing the bank surety, made according to D.P.R. 445/2000, in which he declares his name, role or office covered and stating that he has the power to effectively commit the guarantor;
- express indication of the following clauses:
  1. eventual failure to pay the premium, premium supplements or commission may not in any case be charged to the contracting administration; taxes, expenditure and other costs related to and as a consequence of the guarantee may not be charged to the Province;
  2. the guarantee offered shall be effective until the main debtor shows the guarantor the certificate confirming compliance according to article 322 of D.P.R. 207/201, showing the date that the service was concluded, unless there is a statement from the contracting Administration to the guarantor declaring that failure to approve the certificate confirming compliance or satisfactory execution depends on facts attributable to the main debtor;
  3. the guarantor is obliged to pay the debt guaranteed jointly with the main debtor and waives the right to benefit from prior excussion of the main debtor according to article 1944 of the Italian Civil Code. He also undertakes to pay the amount requested by the contracting Administration, without the need for prior consent from the guaranteed debtor, who cannot object to payment within the limits of the sum guaranteed, on a simple request of the administration, sent by registered mail with notification of delivery, and waives the right to exercise the exception according to article 1957, second paragraph of the Civil Code. The payment must be made within fifteen days of receipt of the request for payment, it being understood that for each day that the payment is

delayed beyond this term, interest will also be due, calculated at the legal rate, in addition to the capital guaranteed;

4. the competent courts for resolving any disputes in relation to the contracting administration shall be those where the administration has its headquarters;
5. *only in the event that the bank guarantee or surety policy establishes the obligation for the main debtor to grant a pledge in cash or bonds, or other guarantee enabling the company to carry out recourse action, as provided for by article 1953 of the Civil Code, the following clause must be included: "failure to grant the aforementioned pledge may not in any case lead to the contracting administration being held responsible".*

Surety policies or bank guarantees containing clauses attributing charges of any kind to the contracting administration will not be accepted. **Presentation of the deposit using the standard models** that will be sent by the Administration following the award guarantees the correctness and completeness of the procedure.

Bank guarantees and surety policies not complying with the provisions of this tender notice must be rectified. In the event that the company does not meet the stated requirements, it will be considered that the failure to stipulate the Framework Agreement is attributable to the company.

The provisions of article 128 of D.P.R. no. 207/2010, on the subject of combined participants shall apply to the guarantees in this section.

Stipulation of the Framework Agreement is also subject to **the requirements provided by current anti-mafia legislation (D. Lgs.no. 159/2011 and subsequent amendments)**

## 9. FURTHER INFORMATION

**Participants must have the participation requirements stated in section 2.2 on the deadline for the presentation of bids indicated in previous section 1, UNDER PENALTY OF EXCLUSION.**

**Period of validity of the bid:** the bidders will be entitled to withdraw their bid once **180 days** have passed from the date of presentation of the bid, without the Framework Agreement having been stipulated, so long as that the delay cannot be attributed, partially or totally, to the bidder. The aforementioned term shall be suspended in the periods between the date the Administration sends any note requesting documentation and the date in which the documentation requested is received by the same Administration (the date of sending and receipt shall be proved by the Administration's protocol).

According to article 11, paragraph 6 of D.Lgs. 163/2006, the Administration may ask the bidder to defer this term.

Should a successful bidder not provide the documentation stated in previous points 7 and 8 by the aforementioned terms, except in the case of force majeure, or not respond to the invitation to stipulate the Framework Agreement by the deadline subsequently communicated, or should it refuse or prevent this stipulation, or should any causes preventing the stipulation of the

Framework Agreement according to D.lgs. 159/2011 be ascertained, the Administration reserves the right to take appropriate action in order to obtain compensation for any damage resulting from the failure of the successful bidder to stipulate the contract.

The Framework Agreement shall be stipulated within 60 days from the award becoming effective, following the positive results of the checks stated in the aforementioned section 7. Article 11, paragraph 9 of D.Lgs. 163/2006 shall apply.

This term, and the term provided for in sections 8 and 9, for the transmission of documentation for the stipulation of the contract may be suspended in the case of legal appeals until the definitive result of these.

**Participants are invited to obtain in advance the documentation and guarantees** stated above (acquiring, purely as an example: tax returns, budget, insurance policy etc)

The self-certification stated in D.P.R. 445/2000 provided for in this tender notice, to be issued by a single party, may be provided in cumulative form and accompanied by a single copy of the relevant identity document.

In the case of bankruptcy of the contractor or cancellation of the Framework Agreement due to serious breach by the contractor, for the purposes of the assignment procedure article 140, paragraph 1 of D.Lgs. 163/2006 shall apply.

According to articles 119 and 120 of D.Lgs. 104/2010, actions related to procedures for assigning public works, services or supply contracts can only be contested by appealing to the competent Regional Administrative Courts within thirty days from receipt of the communication stated in article 79 of the legislative decree of 12 April 2006, no. 163 for the main appeal and for additional reasons, or from the publication of the same decree, as stated in article 66, paragraph 8, for independently damaging calls and notifications for competition; or in any other case, from becoming aware of the fact.

Economic operators are required to respect the regulations on safety, ethics and the safeguarding of health in effect in the countries where the experimentation that is the object of Phase 3 takes place. With regards to this, see the "Technical Specifications" document. As regards the necessary approval of ethical committees, see section 3.5 of the "Technical Specifications" document.

Bidders have the right to publish – having obtained the consent of the other participants – extracts or summaries of the results of the PCP project, including information about key R&D results attained and the knowledge acquired by the Commissioning Bodies during the PCP (e.g. on the ability of the innovative solutions presented to meet the Commissioning Bodies' requirements and the possibility of their commercial exploitation on termination of the procedure). In any case the aforementioned information may not be published should its disclosure hinder application of the law, be contrary to the public interest, harm the legitimate business interests of the companies involved in the PCP (with reference to intellectual property rights for example) or prejudice fair competition between the participating companies or others on the market.

The person responsible for the procedure according to L.P. 23/92 is dott.ssa Roberta Giacomozzi.

## 10. SAFEGUARDING OF PRIVACY – ACCESS TO DOCUMENTATION

The D.Lgs. of 30 June 2003, no. 196 guarantees that the handling of data will take place respecting fundamental rights and freedom, and the dignity of the party concerned, with particular reference to confidentiality, personal identity and the right to data protection.

The Agenzia per gli Appalti e Contratti – Ufficio gare intends to handle data lawfully and correctly, with full safeguarding of your rights and confidentiality according to article 13 of legislative decree 196/2003.

According to article 13 of legislative decree 196/2003, participants in the tender procedure are informed that:

1. the data provided by participants in the tender procedure will be handled exclusively with reference to the procedure for which the documentation was presented;
2. data will be handled using paper and/or computerised media;
3. the provision of data is compulsory in order to carry out the procedure concerning the participants in the tender notice;
4. the data controller shall be the Provincia Autonoma di Trento;
5. the person responsible for the handling of the data shall be the Manager of the Tenders Department;
6. at any time, the participant may exercise his rights in relation to the data controller, according to article 7 of legislative decree 196/2003.

Any bidder may inform the Administration, in an annex to the technical bid explaining the reasons, that it does NOT authorise access to parts of documents **related to the technical bid, which in this case must be indicated in a detailed manner exclusively in the bid**, as they are covered by technical and commercial secrecy.

In the event that this declaration is presented, the Administration will only allow access in the cases established by article 13, paragraph 6, of the Code of Contracts.

If the declaration stated above is not provided, the Administration will allow access to the technical bid and financial bid to participants who so request, allowing viewing or providing an official copy, subject to payment of the relative copying costs, according to L.P. no. 23/1992 and the relative implementation regulations, approved with D.P.P. no. 17-97/Leg. of 5 July 2007.,

In any case, access to the documents containing the participants' bids will only be allowed after the award.

THE MANAGER  
- dott. Leonardo Caronna -

PF/RC

Annexes:

- Facsimile of the declaration for participation in the tender notice (Annexes A, B)
- Form for presentation of the financial bid (Annex C)
- "Parameters and criteria for evaluating bids" document
- Draft Framework Agreement
- Draft Implementation Document
- Draft contract for the management of intellectual property rights
- "Technical Specifications" document