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**DYNAMIC PURCHASING SYSTEM (DPS)  
FOR  
CLOUD SERVICES**

REFERENCE  
**DIGIT/A3/PR/2018/035  
CLOUD II DPS 1**

—

**DPS SPECIFICATIONS**

## INTRODUCTION

This document presents CLOUD II – DPS 1, the procedure chosen by the European Commission for the procurement of **Cloud Services**<sup>1</sup>. CLOUD II DPS 1 is a Dynamic Purchasing System (DPS), a completely electronic process. The characteristics of this DPS are described in section 1 (*Presentation of the DPS*) while the rules governing the DPS are detailed in section 4 (*Governance*).

The CLOUD II DPS 1 is a form of restricted procurement procedure, and it occurs in two stages:

### **Stage 1: Participation in the DPS**

Any economic operator (i.e. legal person) can request to participate in the DPS by filling in an Application on the Negometrix platform. The number of Candidates is not limited. Economic operators can request to participate at any time throughout the duration of the DPS.

The Contracting Authority will assess the submitted Applications. The Contracting Authority admits all Candidates that satisfy the selection criteria and that are not in an exclusion situation, to become Participants in the DPS.

The conditions for Candidates to request participation in the DPS are detailed in section 2 (*Stage one - Participation in the DPS*).

### **Stage 2: Tendering in Mini-Competitions**

When the Contracting Authority wishes to use the DPS, it sets up a Mini-Competition in which Participants can submit tenders for specific Products and/or Services. Only Participants previously admitted in the DPS are invited to join a Mini-Competition and submit a tender. The Contracting Authority subsequently evaluates the submitted tenders. The present DPS Specifications describe the general set-up for Mini-Competitions in the DPS. The specific scope and conditions applicable to each Mini-Competition are specified in the Tender Specifications of the respective Mini-Competition.

At the conclusion of a Mini-Competition, the Contracting Authority may award a Contract to the most economically advantageous tender on the basis of the award criteria set out in the Tender Specifications of the Mini-Competition.

The general conditions for Participants to join and submit tenders in Mini-Competitions inside the DPS are detailed in section 3 (*Stage two - Tendering in Mini-Competitions*).

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<sup>1</sup> When a term is capitalised in the text, it indicates that such expression is defined in the Definitions section of one of the procurement documents: DPS Specifications, Contract Main Conditions, Cloud Terms and Conditions, etc.

## TABLE OF CONTENT

1	PRESENTATION OF THE DPS .....	5
1.1	Legal basis.....	5
1.2	Contracting Authority .....	5
1.3	Scope.....	8
1.3.1	Background.....	8
1.3.2	Nature of the purchase .....	8
1.3.3	Scope of the Mini-Competitions.....	8
1.4	Timeline .....	9
1.4.1	Timeline of the DPS .....	9
1.4.2	Duration of the DPS .....	10
1.4.3	Duration of the Contracts .....	10
1.4.4	Termination of the DPS.....	10
1.5	Volume – How much do we plan to buy?.....	10
1.6	Electronic Exchange system: can exchanges under the contract be automated? .....	10
1.7	Product names and trademarks .....	11
2	STAGE ONE - PARTICIPATION IN THE DPS .....	11
2.1	Content of the Application.....	12
2.1.1	Access to procurement: who may apply to the DPS?.....	12
2.1.2	Identification of the Candidate .....	12
2.1.3	Combined efforts of economic operators: how can economic operators organise themselves?.....	13
2.1.4	Exclusion criteria: who is eligible to participate? .....	18
2.1.5	Selection criteria: who is capable to participate? .....	19
2.2	Format of Application.....	25
2.2.1	Timeline for Application .....	25
2.2.2	Submission of Application .....	26
2.2.3	Confidentiality of Application.....	26
2.3	Selection of Participants.....	26
2.4	Rules for Participation .....	27
2.4.1	Acceptance in the DPS .....	27

2.4.2	Rejection of request to participate .....	28
2.4.3	Withdrawal from the DPS .....	28
2.5	Professional conflicting interests .....	28
3	STAGE TWO - TENDERING IN MINI-COMPETITIONS .....	29
3.1	Content of Tender .....	29
3.1.1	Technical offer.....	29
3.1.2	Financial offer.....	29
3.2	Format of Tender .....	30
3.2.1	Timeline of Mini-Competitions.....	30
3.2.2	Submission of a tender .....	30
3.3	Questions about Mini-Competitions .....	30
3.4	Confidentiality of tender .....	31
3.5	Award of tender .....	32
3.5.1	Compliance with Specifications .....	32
3.5.2	Award criteria .....	33
3.5.3	Award of Contract .....	34
3.5.4	Validity of tenders submitted in Mini-Competitions.....	34
4	GOVERNANCE.....	35
4.1	Information in the DPS .....	35
4.2	Electronic access .....	35
4.3	Modifications of documents.....	36
4.4	Electronic submission .....	36
4.5	Electronic Signatures (QES) .....	37
4.6	Signatories.....	38
4.7	Questions about the DPS.....	39
4.8	Optional debriefing meetings.....	39
5	DEFINITIONS .....	39
6	LIST OF ANNEXES .....	40

## 1 PRESENTATION OF THE DPS

### 1.1 Legal basis

This procedure is governed by the provisions of [Regulation \(EU, Euratom\) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union](#) (the Financial Regulation, “FR”)<sup>2</sup>.

The dynamic purchasing system shall be open throughout its duration to any economic operator who satisfies the selection criteria. The Contracting Authority follows the rules of the restricted procedure for procurement through a dynamic purchasing system, pursuant to Article 164(1)(b) of the Financial Regulation.

### 1.2 Contracting Authority

This procurement procedure is launched and managed by the European Commission (the “Commission”), referred to as the Lead Contracting Authority for the purpose of this procedure, and represented by its Directorate-General for Informatics (DG DIGIT).

This procedure is inter-institutional, meaning that other EU institutions, agencies and bodies (the “Participating Entities” listed in Table 1 below) can participate as contracting authorities to the Contracts resulting from this DPS. The European Commission acts on behalf of the following Participating Entities for the purposes of this DPS and the resulting Contracts.

#	Participating Entities	Seat Location
1.	<b>ACER</b> European Union Agency for the Cooperation of Energy Regulators	(SI) Ljubljana
2.	<b>BEREC Office</b> Agency for Support for BEREC	(LV) Riga
3.	<b>CA JU</b> Clean Aviation Joint Undertaking	(BE) Brussels
4.	<b>CBE JU</b> Circular Bio-based Europe Joint Undertaking	(BE) Brussels
5.	<b>CdT</b> Translation Centre for the Bodies of the European Union	(LU) Luxembourg
6.	<b>Cedefop</b> European Centre for the Development of Vocational Training	(GR) Thessaloniki
7.	<b>CEPOL</b> European Union Agency for Law Enforcement Training	(HU) Budapest

<sup>2</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193 of 30.07.2018, p.1).

8.	<b>CFSP Entities</b>	Common Foreign and Security Policy Entities <sup>3</sup>	(BE) Brussels
9.	<b>CH JU</b>	Clean Hydrogen Joint Undertaking	(BE) Brussels
10.	<b>CINEA</b>	European Climate, Infrastructure and Environment Executive Agency	(BE) Brussels
11.	<b>CJEU</b>	Court of Justice of the European Union	(LU) Luxembourg
12.	<b>CoR</b>	European Committee of the Regions	(BE) Brussels
13.	<b>Council</b>	General Secretariat of the Council (Council of the European Union and European Council)	(BE) Brussels
14.	<b>CPVO</b>	Community Plant Variety Office	(FR) Angers
15.	<b>EACEA</b>	European Education and Culture Executive Agency	(BE) Brussels
16.	<b>EASA</b>	European Union Aviation Safety Agency	(DE) Köln
17.	<b>EBA</b>	European Banking Authority	(FR) Paris
18.	<b>ECA</b>	European Court of Auditors	(LU) Luxembourg
19.	<b>ECB</b>	European Central Bank	(DE) Frankfurt am Main
20.	<b>ECDC</b>	European Centre for Disease Prevention and Control	(SE) Stockholm
21.	<b>ECHA</b>	European Chemicals Agency	(FI) Helsinki
22.	<b>EDA</b>	European Defence Agency	(BE) Brussels
23.	<b>EDPS</b>	European Data Protection Supervisor	(BE) Brussels
24.	<b>EEA</b>	European Environment Agency	(DK) Copenhagen
25.	<b>EEAS</b>	European External Action Service	(BE) Brussels
26.	<b>EESC</b>	European Economic and Social Committee	(BE) Brussels
27.	<b>EFCA</b>	European Fisheries Control Agency	(ES) Vigo
28.	<b>EFSA</b>	European Food Safety Authority	(IT) Parma
29.	<b>EIB</b>	European Investment Bank	(LU) Luxembourg
30.	<b>EIF</b>	European Investment Fund	(LU) Luxembourg
31.	<b>EIGE</b>	European Institute for Gender Equality	(LT) Vilnius
32.	<b>EIOPA</b>	European Insurance and Occupational Pensions Authority	(DE) Frankfurt am Main
33.	<b>Eisma</b>	European Innovation Council and SMEs Executive Agency	(BE) Brussels
34.	<b>EIT</b>	European Institute of Innovation and Technology	(HU) Budapest
35.	<b>ELA</b>	European Labour Authority	(SK) Bratislava
36.	<b>EMA</b>	European Medicines Agency	Amsterdam (NL)
37.	<b>EMCDDA</b>	European Monitoring Centre for Drugs and Drug Addiction	(PT) Lisbon

<sup>3</sup> Entities entrusted with the implementation of specific actions in the Common Foreign and Security Policy (CFSP) pursuant to Title V of the Treaty of the European Union (including in particular civilian Common and Security Defence Policy (CDSP) Missions, EU Special Representatives and other CFSP operational actions).

38.	<b>EMSA</b>	European Maritime Safety Agency	(PT) Lisbon
39.	<b>ENISA</b>	European Union Agency for Cybersecurity	(GR) Heraklion
40.	<b>EO</b>	European Ombudsman	(FR) Strasbourg
41.	<b>EP</b>	European Parliament	(FR) Strasbourg
42.	<b>EPPO</b>	European Public Prosecutor's Office	(LU) Luxembourg
43.	<b>ERA</b>	European Union Agency for Railways	(FR) Lille-Valenciennes
44.	<b>ERCEA</b>	European Research Council Executive Agency	(BE) Brussels
45.	<b>ER JU</b>	Europe's Rail Joint Undertaking	(BE) Brussels
46.	<b>ESM</b>	European Stability Mechanism	(LU) Luxembourg
47.	<b>ESMA</b>	European Securities and Markets Authority	(FR) Paris
48.	<b>ETF</b>	European Training Foundation	(IT) Turin
49.	<b>EUAA</b>	European Union Agency for Asylum	(MT) Valletta
50.	<b>EUI</b>	European University Institute	(IT) Florence
51.	<b>EUIPO</b>	European Union Intellectual Property Office	(ES) Alicante
52.	<b>eu-LISA</b>	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice	(EE) Tallinn
53.	<b>EU-OSHA</b>	European Agency for Safety and Health at Work	(ES) Bilbao
54.	<b>Eurofound</b>	European Foundation for the Improvement of Living and Working Conditions	(EI) Dublin
55.	<b>EuroHPC</b>	European High-Performance Computing Joint Undertaking	(LU) Luxembourg
56.	<b>Eurojust</b>	European Union Agency for Criminal Justice Cooperation	(NL) The Hague
57.	<b>Europol</b>	European Union Agency for Law Enforcement Cooperation	(NL) The Hague
58.	<b>EURSC</b>	Office of the Secretariat-General of the European Schools	(BE) Brussels
59.	<b>EUSPA</b>	European Union Agency for the Space Programme	(CZ) Prague
60.	<b>F4E</b>	Fusion for Energy Joint Undertaking	(ES) Barcelona
61.	<b>FRA</b>	European Union Agency for Fundamental Rights	(AT) Vienna
62.	<b>Frontex</b>	European Border and Coast Guard Agency	(PL) Warsaw
63.	<b>HADEA</b>	European Health and Digital Executive Agency	(BE) Brussels
64.	<b>IHI</b>	Innovative Health Joint Undertaking	(BE) Brussels
65.	<b>KGT JU</b>	Key Digital Technologies Joint Undertaking	(BE) Brussels
66.	<b>REA</b>	European Research Executive Agency	(BE) Brussels
67.	<b>Satcen</b>	European Union Satellite Centre	(ES) Torrejón de Ardoz
68.	<b>SESAR</b>	SESAR Joint Undertaking	(BE) Brussels
69.	<b>SRB</b>	Single Resolution Board	(BE) Brussels

*Table 1- List of Participating Entities*

The list of Participating Entities may be extended to include any other EU institution, agency or body created on the basis of the [Treaties](#) or secondary Union law after the launch of this procedure.

References to the Contracting Authority in these Tender Specifications and their annexes shall be understood, depending on the context, as referring to one of the following:

- The European Commission acting in its capacity as Lead Contracting Authority
- all the Participating Entities, in relation to their collective rights and obligations;
- any of the Participating Entities acting in its own capacity.

### **1.3 Scope**

This section establishes what the Contracting Authority intends to buy through Mini-Competitions launched throughout the duration of the DPS.

#### *1.3.1 Background*

The provision of Cloud Services was previously carried out under Framework Contracts (DI/07420 through DI/07429) which resulted from the call for tenders DIGIT/R2/PO/2014/043, known as CLOUD I. Its object was initially to better understand the market, evaluate cloud capabilities, identify the use cases where Cloud Services could bring most benefits and define the organisational elements and model for the transition to hybrid services (combination of internal data centre and Cloud).

#### *1.3.2 Nature of the purchase*

The general scope for this DPS is the sourcing of Cloud Services in the field of multi-tenant IaaS/PaaS to allow the Contracting Authority continuity of current operations and the further implementation of its Cloud strategy.

The Contracting Authority is seeking the capability to deploy applications onto the Cloud infrastructure of the Contractor, using programming languages, libraries, services, and tools supported by the Contractor.

Cloud Services will be acquired centrally by the Broker and may be used by all Participating Entities / Customers.

This DPS is not divided into categories.

#### *1.3.3 Scope of the Mini-Competitions*

The scope of the Contracts resulting from the Mini-Competitions under this DPS are Cloud Services in the fields of:

- Analytics and Big Data

- Artificial Intelligence
- Mobile and IoT devices
- Media services
- Emerging technologies
- Managed Middleware Services
- Integration Services
- Infrastructure Business services
- Platform Management support
- Development Life-cycle support
- Hybrid and Portability Support
- Compute
- Network
- Storage
- Datacentre services
- Platform Orchestration and Automation
- Monitoring and Management
- Identity and Access Management
- Security and Data Protection
- Cyber Defence
- Marketplace
- Billing and Cost Management
- Service Level Agreements

Each Mini-Competition determines the exact scope of its resulting Contract. The scope of one Contract may combine different fields, e.g. Compute and Identity Access Management.

## **1.4 Timeline**

This section defines how long the Contracting Authority plans to use this procedure.

### *1.4.1 Timeline of the DPS*

The DPS is launched on the date the contract notice is published in the Tenders Electronic Daily (TED) at <https://ted.europa.eu>.

Once the DPS is launched, economic operators can apply to participate in the DPS at any time during the duration of the DPS, in order to be able to tender in the Mini-Competitions. The Contracting Authority completes its assessment of the requests to participate within the timeline established in section 2.2.1 (Timeline for Application). The Contracting Authority informs the Candidates as soon as possible whether or not they have been admitted to become Participants in the DPS.

When the Contracting Authority wishes to use the DPS, it launches a Mini-Competition for the award of a Contract and invites all Participants admitted to the system to submit a tender for this Mini-Competition within a reasonable amount of time. The time limit for receipt of tenders to be fixed by the Contracting Authority is at least 10 days following the date on which the invitation to tender is dispatched.

In order to allow interested economic operators a sufficient amount of time to apply for participation in the DPS, the first Mini-Competition is to be published at least 32 days after the launch of the DPS.

#### *1.4.2 Duration of the DPS*

The DPS has a planned duration of four (4) years which starts at the date of its publication.

#### *1.4.3 Duration of the Contracts*

Contracts have a duration appropriate with the matter at hand and may last up to seven (7) years.

Each Mini-Competition determines the duration of its resulting Contract.

#### *1.4.4 Termination of the DPS*

The Contracting Authority may terminate the DPS at any time and for any reason. The termination of the DPS does not affect the implementation or duration of Contracts previously awarded through the DPS, unless the DPS itself or the procedure in the DPS through which these Contracts were awarded is invalidated.

### **1.5 Volume – How much do we plan to buy?**

The volume of the DPS is established by combining the estimated value of the Contracts to be awarded in the DPS. The estimated combined value of the Contracts in this DPS is approximately 417.723.287 €.

This volume is only provided as an indicative estimate, despite best efforts. It constitutes neither a commitment from the Contracting Authority nor a ceiling for the procedure.

The maximum amount for each Contract shall be determined either by the Contracting Authority or by the total amount of the successful Participant's financial offer for the overall estimated volume of purchases in the Mini-Competition.

### **1.6 Electronic Exchange System: can exchanges under the Contract be automated?**

For all exchanges with the Contractor during the implementation of the Contract, the Contracting Authority may use an electronic exchange system meeting the requirements of Article 148 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union.

At the request of the Contracting Authority, the use of such a system shall become mandatory for the Contractor at no additional cost for the Contracting Authority. Details on specifications, access, terms and conditions of use will be provided in advance.

The Contracting authority draws the tenderers' attention to the contractual provisions on the use of electronic exchange system included in the draft Contract.

## **1.7 Product names and trademarks**

Whenever the procurement documents mention a specific product name or trademark and a sufficiently precise and fully intelligible description is not possible, such mention should be understood as referring to that product or its equivalent.

## **2 STAGE ONE - PARTICIPATION IN THE DPS**

Any economic operator with access to procurement as explained in section 2.1.1 can become a Candidate by submitting a request to participate (the "Application") in the DPS, after having registered in the Negometrix platform as detailed in section 4.2 (Electronic access to documents). Registration is simple and free of charge.

Economic operators can combine their efforts and organise themselves as foreseen in section 2.1.3 (Combined efforts of economic operators: how can economic operators organise themselves?) to apply for participation in the DPS.

A Candidate requesting participation in the DPS needs to declare that it is not in one of the situations of exclusion detailed in section 2.1.4 and that it satisfies the selection criteria described in section 2.1.5. The Contracting Authority assesses the submitted Applications and admits all Candidates that have access to procurement, that satisfy the selection criteria, that are not found to be in an exclusion situation and whose Applications are administratively compliant. If admitted, the Candidate becomes a Participant in the DPS and has the possibility to tender in Mini-Competitions.

As evidence of non-exclusion and of compliance with selection criteria, each Involved Entity needs to submit with its Application a Declaration on Honour based on the model available in Annex 3. The Contracting Authority may decide that a Candidate's acceptance to participate in the DPS will be based in Stage 1 solely on the Candidate's Declaration on Honour and on the Candidate's declaration and answers provided in Negometrix. The documents in support of the Declaration on Honour (regarding exclusion and selection criteria) may be checked by the Contracting Authority at any time during the procedure. If the supporting documents do not confirm the statements made by the Participant in the Declaration on Honour, this may lead to the rejection of the Application, the tender and the participation of the Candidate/Participant in the DPS.

## 2.1 Content of the Application

### 2.1.1 *Access to procurement: who may apply to the DPS?*

Application to the DPS is open throughout the duration of the DPS on equal terms to all natural and legal persons coming within the geographical scope of the [Treaties](#), as well as to international organisations<sup>4</sup>.

It is also open to all natural and legal persons established in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement.

Where the [Agreement on Government Procurement](#)<sup>5</sup> (the “GPA”) concluded within the World Trade Organisation applies, the participation to this DPS is open to all natural and legal persons established in the countries that have ratified the GPA, on the conditions laid down therein.

The rules on access to procurement do not apply to subcontractors. Subcontracting may not be used with the intent to circumvent the rules on access to procurement.

To enable the Contracting Authority to verify the access, each Candidate must indicate its country of establishment (and in case of joint Application – the country of establishment of each group member) and must present the supporting evidence normally acceptable under the law of that country. The same documents could be used to prove country of establishment and the delegation of the authorisation to sign as described in section 4.6 (Signatories).

Candidates/Participants must ensure that no involved entities are subject to [EU restrictive measures](#) adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU)<sup>6</sup> consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze. The prohibition applies throughout the whole performance of the Contract.

### 2.1.2 *Identification of the Candidate*

The Candidate to this DPS must be registered in the [Participant Register](#) - an online register of organisations and natural persons participating in European Commission's calls for tenders or proposals. In the case of a joint Application, all Group Members must be registered and fulfil the below obligations.

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<sup>4</sup> If this involves the transfer of personal data outside the European Economic Area (EEA), such transfer needs to comply with the requirement of Regulation 2016/679 (“GDPR”) and with Regulation (EU) 2018/1725.

<sup>5</sup> [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

<sup>6</sup> Please note that the EU Official Journal contains the official list and, in case of conflict, its content prevails over that of the [EU Sanctions Map](#).

Upon registering, each Candidate obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the Participant Register. This registration is required only once – the information provided can be further updated or re-used in other European Commission's calls for tenders or calls for proposals.

Each Candidate needs to ensure that its SME status in the Participant Register is registered and kept up to date.

At any moment during the procurement procedure, the Research Executive Agency Validation Services (the “EU Validation Services”) may contact the Candidate and ask for supporting documents on legal existence and status. The requests will be made through the register's messaging system to the e-mail address of the Candidate indicated in the register. It is the responsibility of the Candidate to provide a valid e-mail address and to check it regularly.

The documents that may be requested by the EU Validation Services are listed in the [EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment](#)<sup>7</sup>

Please note that a request for supporting documents by the EU Validation Services in no way implies that the Application has been successful.

### 2.1.3 *Combined efforts of economic operators: how can economic operators organise themselves?*

Economic operators can submit an Application in the DPS either as a sole economic operator (Sole Candidate) or as a Group of economic operators, combining their efforts in a joint Application. In either case, subcontracting is permitted.

Whether applying solely or within a group, an economic operator is allowed to be present only once in the DPS. If an economic operator already admitted in the DPS submits another Application either on its own or within a group, the latter Application will be rejected.

Economic operators can also choose to rely on the capacity of other entities (other than Group Members or subcontractors) for the purpose of fulfilling the selection criteria set out in section 2.1.5.

The role of each entity involved in an Application (“Involved Entity”) must be clearly specified in Negometrix: Sole Candidate, Group Member or Group Leader, subcontractor or entity on whose capacities the Candidate relies to fulfil the selection criteria.

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<sup>7</sup> [https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/rules-lev-lear-fca\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/rules-lev-lear-fca_en.pdf)

### 2.1.3.1 Joint Application

A joint Application is the situation where an Application is submitted by a group (with or without legal form) of economic operators regardless of the link they have between them. The group as a whole is considered a Candidate.

All Group Members assume joint and several liability towards the Contracting Authority for the performance of the Contract as a whole<sup>8</sup>.

#### Application

The joint Application must clearly indicate the role and tasks of each Group Member and designate one of them as a Group Leader acting as the Contracting Authority's contact point for the tender's and Contract's administrative or financial aspects and operational management. A cover letter to the joint Application should be drawn up in the model attached in the Negometrix platform (document reference: "Application cover letter - group", see Annex 2) and signed by the authorised representatives of each Group Member. The Group Leader will have full authority to legally bind the group and each of its Group Members during Contract execution.

#### Note

*In case a joint Application takes a separate legal status (i.e. a separate company number, for example as a European Economic Interest Group), the Group should be registered in Negometrix as a different company than any of the companies participating in the Group. It is strongly recommended that you contact Negometrix support for more information on how to properly create an account to submit a joint Application on the Negometrix platform.*

In a joint Application, each Group Member must obtain a Participant Identification Code as described in section 2.1.2. The list of Group Members and their PIC is requested in the Negometrix platform.

In a joint Application, the exclusion criteria apply to each member of the group, the selection criteria apply to the group as a whole (i.e. the combined capacity of all members will be taken into account). As evidence of non-exclusion each member needs to submit a completed Declaration on Honour as provided in the Negometrix platform (see section 2.1.4).

If the joint Application is successful, and if the Group wins a Mini-Competition within the DPS, the Contracting Authority will sign the resulting Contract with the Group Leader. The Group Leader must be authorised by the other Group Members to sign the Contract on their behalf via a power of attorney drawn up in the model Application cover letter referenced above.

#### Changes

Changes in the composition of the Group during the procurement procedure (after the Application and before the potential signature of a Contract) will lead to the rejection of the

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<sup>8</sup> In the case of subcontracting, subcontractors are not assuming joint and several liability for performance of the Contract as a whole.

tender except in case of a merger or takeover of a Group Member (universal succession), provided that the new entity has access to procurement and is not in an exclusion situation.

As a general rule, if a Candidate/Participant wants to participate in the DPS in a different composition, the Candidate/Participant needs to withdraw itself from the DPS and submit a new Application with the new composition of the Group or as a sole Candidate. As specified in section 2.4.3, the Candidate/Participant will not have access to any Mini-Competitions which are published prior to the Candidate/Participant being admitted to the DPS. In order not to miss the publication of any new Mini-Competitions, it is in the interest of the Candidate/Participant to ensure that there is no gap between the two Applications and therefore to withdraw the first Application only once the second Application is approved by the Contracting Authority.

After the signature of a Contract, changes in the composition of the Group are governed by the terms of the Contract.

#### 2.1.3.2 Subcontractors

Subcontracting is the situation where the Candidate/Participant enters into legal commitments with other economic operators who will perform part of the Contract on its behalf. For the purpose of this DPS, a subcontractor is an economic operator which **actively** delivers to the Contracting Authority a part of the Cloud Services ordered by the Contracting Authority.

All contractual tasks may be subcontracted unless the Tender Specifications of the Mini-Competition expressly reserve the execution of certain critical tasks to the sole Candidate itself, or in case of a joint Application, to a Group Member.

Candidates/Participants are requested to identify only subcontractors as defined above and subcontractors on whose capacities the Candidate relies to fulfil the selection criteria described in section 2.1.5, hereafter referred to as “Identified Subcontractors”.

In case a Contract is subsequently awarded to the Participant, the Participant/Contractor retains full liability towards the Contracting Authority for performance of the Contract as a whole.

The following shall not be considered subcontracting:

- a) Use of workers posted to the Candidate by another company owned by the same corporate group and established in a Member State.<sup>9</sup>
- b) Use of workers hired out to the Candidate by a temporary employment undertaking or placement agency established in a Member State.<sup>10</sup>
- c) Use of workers temporarily transferred to the Candidate from an undertaking established outside the territory of a Member State and that belongs to the same corporate group.<sup>11</sup>

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<sup>9</sup> “Intra-group posting” as defined by Article 1, 3, (b) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#).

<sup>10</sup> “Hiring out of workers” as defined by Article 1, 3, (c) of [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#).

- d) Use of staff without employment contract<sup>12</sup>, where the tasks of the self-employed persons are not particularly well-defined parts of a regular employee contract.
- e) Use of suppliers and/or transporters by the Candidate, in order to perform the Contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of this call for tender.
- f) Performance of part of the Contract by members of a European Economic Interest Grouping (EEIG), when the EEIG is itself a Candidate or a group member.

The persons mentioned in points a), b), c) and d) above will be considered as “Personnel” of the Contractor as defined in the Contract.

### Application

Candidates are requested to list the Identified Subcontractors in their Application in the Negometrix platform.

Identified Subcontractors must provide the Candidate with a commitment letter drawn up in the model attached in the Negometrix platform (document reference: “Commitment letter by identified subcontractor”, see Annex 4) and signed by an authorised representative. The signed commitment letter must be uploaded in the Negometrix platform and submitted with the Candidate’s Application. As evidence of non-exclusion and selection each Identified Subcontractor also needs to submit a completed Declaration on Honour as provided in the Negometrix platform (see section 2.1.4).

Subcontracting to subcontractors identified in an Application that was accepted by the Contracting Authority is considered authorised. These subcontractors will be listed in the List of Identified Subcontractors, as annexed to the Contract.

In stage 2 of the DPS, in its tender, the Participant must confirm the list of Identified Subcontractors originally established in its Application.

### Changes

Changes such as withdrawal, replacement, or addition of an Identified Subcontractor during the procurement procedure (after the Application and before the signature of a Contract) must be notified by the Participant to the Contracting Authority as soon as possible. Upon notification, the Contracting Authority will review the request within a reasonable amount of time. The request will be approved if after the change, all Involved Entities are still not in an exclusion situation, the Candidate still fulfils the selection criteria, and the terms of the Application/tender are not altered substantially. Otherwise, the Contracting Authority will reject the request, which in turn may lead to the removal of the Participant from the DPS.

Changes regarding Identified Subcontractors after the signature of a Contract are dealt with at the level of the Contract.

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<sup>11</sup> “Intra-corporate transfer” as defined by Article 3, (b) of [Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer](#).

<sup>12</sup> “Self-employed persons working for the contractor”.

### 2.1.3.3 Reliance on third-party entities to fulfil the selection criteria

In order to fulfil the selection criteria, a Candidate may rely on the capacities of other entities regardless of the legal nature of the links it has with them.

In this case, the Candidate must prove that it will have at its disposal the resources necessary for the performance of the Contract by producing a commitment letter in the model attached in the Negometrix platform (document reference: “Commitment letter by entity for reliance”, see Annex 4), signed by the authorised representative of such an entity, and the supporting evidence that those other entities have the respective resources. The signed commitment letter and its supporting evidence must be uploaded in the Negometrix platform and submitted with the Candidate’s Application. As evidence of non-exclusion the entity also needs to submit a completed Declaration on Honour as provided in the Negometrix platform (see section 2.1.4).

If a Mini-Competition is awarded to a Participant intending to rely on another entity to meet the minimum levels of economic and financial capacity, the Contracting Authority may require the entity to sign the Contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the Contract.

With regard to technical and professional selection criteria, a Candidate may only rely on the capacities of other entities where the latter will perform the services for which these capacities are required (i.e. the latter will assume the role of subcontractor or falls within the exceptions listed in section 2.1.3.2).

Relying on the capacity of other entities is only necessary when the capacity of the Candidate is not sufficient to fulfil the required minimum levels of capacity. Abstract commitments that other entities will put resources at the disposal of the Candidate will be disregarded.

### 2.1.3.4 Subprocessing

#### Application

Where the Candidate relies on subprocessors to process personal data from the Controller listed in the Contract, it must identify in its tender, in Stage 2 of the DPS, the list of these subprocessors and their role(s). It must also ensure that it has performed a due diligence in order to establish that the subprocessor provides sufficient assurance to act on its behalf and to implement the necessary technical and organisational data protection measures.

If in the course of the DPS a Mini-Competition is awarded by the Contracting Authority to the Participant, the list of these subprocessors will be appended to the Contract. The Contract will constitute a general written authorisation to use the subprocessors identified in this list.

For the avoidance of doubt, subprocessors are not considered as Involved Entities and do not need to present the documentation that is required of Involved Entities.

## Changes

After signature of the Contract, changes to subprocessors are dealt with at the level of the Contract.

### 2.1.4 *Exclusion criteria: who is eligible to participate?*

The objective of the exclusion criteria is to assess whether the Candidate or any of the Involved Entities is in any of the exclusion situations listed in article 136 (1) of the Financial Regulation.

As evidence of non-exclusion, each Involved Entity needs to submit with their Application a completed Declaration on Honour as provided in the Negometrix platform (see section 4.2 - Electronic access to documents).<sup>13</sup> The Declaration must be signed by an authorised representative of the entity providing the Declaration.

The initial verification of non-exclusion of Candidates will be done on the basis of the submitted declarations and consultation of the [European Union's Early Detection and Exclusion System](#). The documents mentioned as supporting evidence in the Declaration on Honour need to be provided whenever requested and where this is necessary to ensure the proper conduct of the procedure within a deadline given by the Contracting Authority.<sup>14</sup>

*In case of tenderer's failure to provide valid documentary evidence within the deadlines set by the Contracting Authority, the Contracting Authority reserves the right to reject the tender. In any event, in case the tenderer proposed for the award of the Contract fails to comply with the above evidence requirement, its tender shall be rejected, unless the tenderer can justify the failure on the grounds of material impossibility.*

The checklist detailed in Annex 1 specifies which of the Involved Entities need to provide the Declaration on Honour and, when requested by the Contracting Authority, the supporting evidence.

Please note that a request for evidence in no way implies that the Participant has been successful.

Involved Entities established to be in an exclusion situation in accordance with Article 136 or any other situation referred to in Article 141 of the Financial Regulation, will be rejected.

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<sup>13</sup> Unless the same declaration has already been submitted for the purposes of another award procedure of DIGIT, the situation has not changed, and the time elapsed since the issuing date of the declaration does not exceed one year.

<sup>14</sup> The obligation to provide the supporting evidence will be waived in the following situations:

- if the same documents have already been provided in a previous award procedure of the European Commission, have been issued no more than one year before the date of their request by the Contracting Authority and are still valid at that date;
- if such evidence can be accessed by the Contracting Authority on a national database free of charge, in which case the economic operator shall provide the Contracting Authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document;
- if there is a material impossibility to provide such evidence.

2.1.5 *Selection criteria: who is capable to participate?*

The objective of the selection criteria is to assess whether the Candidate has the legal, regulatory, economic, financial, technical and professional capacity to perform the Contracts resulting from the Mini-Competitions.

The selection criteria for this DPS are specified below. For each criterion, the minimum level of capacity, the basis for assessment and the requested evidence is specified.

Applications submitted by Candidates not meeting the minimum levels of capacity will be rejected. A Candidate’s Application must pass all selection criteria in order to be admitted in the DPS. Selection criteria are neither scored nor weighed. For the avoidance of doubt, the Candidate must fulfil all minimum requirements on the date of submission of its Application, and must continue to fulfil them throughout the duration of the DPS and resulting Contract(s).

When applying, each Candidate shall declare on honour that it fulfils the selection criteria for this DPS. The model Declaration on Honour to be completed is available in the Negometrix platform (see Annex 3).

The subsections below specify which selection criteria evidence must be provided with the Application or may be requested later, at any time during the procurement procedure. In any case, to the extent that there is no ground for a waiver, the evidence must be provided, upon request and within a deadline given by the Contracting Authority.

The evidence must be provided in accordance with the applicable basis for assessment of each criterion: in case of a consolidated assessment – only by the entities who contribute to the fulfilment of the criterion, and in case of individual assessment – by each entity to whom the criterion applies individually.

2.1.5.1 *Economic and financial capacity criteria and evidence*

Candidates must comply with the following selection criterion in order to prove that they have the necessary economic and financial capacity to perform the Contract.

Criterion F1	
<b>Minimum level of capacity</b>	Average yearly turnover of the last two (2) financial years above EUR 5.000.000 (five million euro).
<b>Basis for assessment</b>	This criterion applies to the Candidate as a whole, i.e. a consolidated assessment of the combined capacities of all Involved Entities will be carried out.
<b>Evidence</b>	Copy of the profit and loss accounts for the last two (2) years for which accounts have been closed from each concerned Involved Entity. The most recent year must have been closed within the last eighteen (18) months.

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide this evidence, it may prove its economic and financial capacity by any other document which the Contracting Authority considers appropriate.

For example, a legal entity created less than two years prior, may only provide profit and loss accounts for one year, along with a business plan for the current year. In any case, tenderers must include the exceptional reasons and their justification in their reply to this question. The Contracting Authority reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity, such as a professional risk indemnity insurance.

The evidence must be provided at the moment of submission of the Application to the DPS.

2.1.5.2 Technical and professional capacity criteria and evidence

Candidates must comply with the following selection criteria in order to prove that they have the necessary technical and professional capacity to perform the Contract.

Criterion T1	
<p>The Candidate must prove its technical capacity to provide fully automated Cloud Services, that can be <b>created, configured, monitored</b> and <b>operated</b> through the following technical modalities (all technical capacities shall be demonstrated):</p> <ul style="list-style-type: none"> <li>- A single and consistent secured web-based administrative portal(s)</li> <li>- A single and consistent set of secured Application Programming Interfaces (APIs);</li> <li>- A single and consistent set of secured command-line interfaces.</li> </ul>	
<p><b>Minimum level of capacity</b></p>	<p>To enable the customer to, at least, <b>create, configure, monitor</b> and <b>operate</b> cloud services by providing:</p> <ul style="list-style-type: none"> <li>- A single and consistent web-based administrative portal, secured, which provides access to <b>most of</b> service primitives of the cloud services (e.g. provisioning, configuration, monitoring of the Cloud Services), and on which authentication can use Multi-Factor Authentication (MFA), the second factor of which is not an email;</li> <li>- A single and consistent set of Application Programming Interfaces (APIs), secured, compatible with the HTTPs protocol and supporting HTTPs proxies which provide access to service primitives of the Cloud Services;</li> <li>- A single and consistent set of command-line interfaces, secured, compatible with the HTTPs protocol and supporting HTTPs proxies, which provides access to service primitives of the Cloud Services.</li> </ul>
<p><b>Basis for assessment</b></p>	<p>This criterion applies to the Candidate as a whole, i.e. a consolidated assessment of the combined capacities of all Involved Entities will be carried out.</p>

<b>Evidence</b>	<p><input type="checkbox"/> A web link to a self-service portal where a cloud test account can be created, allowing the Contracting Authority to check the technical and professional capacity of the economic operator to provide a web-based administrative portal, the APIs and the command-line interfaces, and a self-service documentation.</p> <p>OR</p> <p><input type="checkbox"/> A web link to the documentation of the self-service portal, which describe MFA methods available; AND</p> <p><input type="checkbox"/> A web link to the documentation of the APIS; AND</p> <p><input type="checkbox"/> A web link to the documentation of the command-line interface.</p>
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The evidence must be provided at the moment of submission of the Application to the DPS.

Criterion T2	
<p>The Candidate must prove its technical capacity to <b>allow customers to deploy geographically resilient services</b>. The Candidate shall allow customers to deploy its services in separate locations geographically sufficiently isolated from one-another in order to resist catastrophic events such as earthquakes, catastrophic climate events, etc. The physical locations where the Cloud Services of the provider are deployed must be at least 200km apart (linear distance) and powered by different power grids, which are independent from one another.</p>	
<b>Minimum level of capacity</b>	<p>Cloud providers shall propose at least 2 physical locations within the European Economic Area (EEA). The Candidate must provide from these locations a single and consistent web-based administrative portal, a single and consistent set of Application Programming Interfaces (APIs), and a single and consistent set of command-line interfaces to its customers.</p>
<b>Basis for assessment</b>	<p>This criterion applies to the Candidate as a whole, i.e. a consolidated assessment of the combined capacities of all Involved Entities will be carried out.</p>
<b>Evidence</b>	<p><input type="checkbox"/> Documentation of separate locations made available by the Cloud provider, with the number of datacentres available in each location.</p>

The evidence must be provided at the moment of submission of the Application to the DPS.

Criterion T3	
<p>The Candidate must prove its technical capacity to <b>allow customers to manage users, groups and policies</b> towards Cloud Services in a consistent way (i.e. concepts of users, groups or policies proposed in the various Cloud Services of a Cloud provider shall be common to all Cloud Services of a Cloud provider). Users and groups refer to authenticated users of the Cloud Services (Cloud providers may use a different, but equivalent, terminology). Policies refer to the capacity of applying access rights of users or groups towards Cloud Services (Cloud providers may use a different, but equivalent, terminology).</p>	
<b>Minimum level of capacity</b>	Only one notion of user, groups and policies among the Cloud Services of a Cloud provider.
<b>Basis for assessment</b>	This criterion applies to the Candidate as a whole, i.e. a consolidated assessment of the combined capacities of all Involved Entities will be carried out.
<b>Evidence</b>	<p><input type="checkbox"/> A document which describes the mapping between the concepts of users, groups and policies and the provider’s notion; AND</p> <p><input type="checkbox"/> A web link to the documentation of users and groups management; AND</p> <p><input type="checkbox"/> A web link to the documentation of policy management.</p>

The evidence must be provided at the moment of submission of the Application to the DPS.

Criterion T4	
<p>The Candidate must prove its technical capacity to <b>respect the pay-per-use principle</b>, i.e. that the services provided by the Candidate are paid based on their usage and do not require upfront investment, unless decided by customers.</p>	
<b>Minimum level of capacity</b>	<p><b>All services proposed are paid according to their usage</b>, with a charging unit (e.g. per second, per GB...), which shall <b>not exceed a month</b> (in case the charging unit refers to a period). Charging units referring to periods shall be composed of one consistent unit (e.g. charging unit of an asset such as 0,50€ per second and 20,00€ per month are not allowed).</p>
<b>Basis for assessment</b>	<p>This criterion applies to the Candidate as a whole, i.e. a consolidated assessment of the combined capacities of all Involved Entities will be carried out.</p>
<b>Evidence</b>	<p><input type="checkbox"/> A link to a portal describing public pricing of the cloud services at the time, where charging units are explicit.</p> <p>OR</p> <p><input type="checkbox"/> A document describing the pricing policies of the cloud services, with a short and understandable description of the cloud services listed, and mentioning charging units.</p>

The evidence must be provided at the moment of submission of the Application to the DPS.

Criterion T5	
The Candidate must prove its technical capacity to allow customers to retrieve <b>cloud consumption reports</b> and <b>invoices</b> through <b>electronic means</b> .	
<b>Minimum level of capacity</b>	<p><b>Cloud consumption reports</b> shall be available at least as structured electronic parse-able formats (e.g. CSV, JSON, XML...) through an Application Programmable Interface (API), at the latest the day after the resources are used. For the avoidance of doubt, PDF is not an authorised format for Cloud consumptions,</p> <p><b>Invoices</b> shall be available in electronic format through a portal or an API. One of those formats should be human readable (e.g. PDF or equivalent).</p>
<b>Basis for assessment</b>	This criterion applies to the Candidate as a whole, i.e. a consolidated assessment of the combined capacities of all Involved Entities will be carried out.
<b>Evidence</b>	<p><input type="checkbox"/> A web link to a self-service portal where a cloud test account can be created, allowing the Contracting Authority to check the technical and professional capacity of the economic operator to provide a consumption information, invoices, and a self-service documentation.</p> <p>OR</p> <p><input type="checkbox"/> Documentation describing how cloud consumptions are available to customers; AND</p> <p><input type="checkbox"/> Documentation describing how invoices are available to customers.</p>

The evidence must be provided at the moment of submission of the Application to the DPS.

## 2.2 Format of Application

### 2.2.1 *Timeline for Application*

Any economic operator, throughout the period of validity of the DPS, has the possibility to apply to participate in the system.

The Contracting Authority shall complete its assessment of valid and complete Applications which include all requested evidence within ten (10) working days of their receipt. The deadline may be prolonged to fifteen (15) working days where justified.

However, the Contracting Authority may extend the assessment period further, provided that no invitation to tender is issued in the meantime.

Candidates that submit a request to participate less than ten (10) working days preceding the launch of a Mini-Competition may not be allowed to participate in this Mini-Competition.

The Contracting Authority informs the Candidate as soon as possible of whether or not it has been admitted to the DPS.

### *2.2.2 Submission of Application*

Candidates must submit their Application electronically via the Negometrix platform.

The information contained in the Application must be accurate and honest. Incorrect information may lead to the exclusion of the Candidate.

### *2.2.3 Confidentiality of Application*

Once a Candidate applies to the DPS, its Application becomes the property of the Contracting Authority and shall be treated confidentially, subject to the following points.

For the purposes of evaluating the Application and, if applicable, implementing a subsequent Contract awarded following a Mini-Competition, performing audits, benchmarking, etc., the Contracting Authority is entitled to make available (any part of) the Application to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the Contracting Authority or cooperating with it, including contractors or subcontractors and their staff provided that they are bound by an obligation of confidentiality.

The Contracting Authority may disclose the submitted Application in the context of a request for public access to documents, or in other cases where the applicable law requires its disclosure. Unless there is an overriding public interest in disclosure, the Contracting Authority may refuse to provide full access to the submitted Application, redacting where applicable parts that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the Candidate, including intellectual property.

The Contracting Authority will disregard general statements that the whole Application or substantial parts of it contain confidential information. Candidates need to mark clearly the information they consider confidential and explain why it may not be disclosed. The Contracting Authority reserves the right to make its own assessment of the confidential nature of any information contained in the Application.

## **2.3 Selection of Participants**

The assessment of the Application will consist of the following elements:

- Check if the Candidate and all entities on whose economic and financial capacity the tenderer relies have access to procurement and are not already present in DPS 1;
- Verify administrative compliance: check if the Application is drawn up in one of the official EU languages and the appropriate documents signed by duly authorised representatives of the Candidate with a qualified electronic signature (QES);
- Initial verification of non-exclusion of the Candidate on the basis of the Declaration on Honour and EDES;
- Selection of the Candidate on the basis of the selection criteria.

The Contracting Authority assesses the abovementioned criteria in the order that it considers to be the most appropriate. If the assessment of one or more elements demonstrates that there are grounds for rejection, the Application will be rejected and may not be subjected to further full assessment. The unsuccessful Candidate will be informed of the ground for rejection without being given feedback on the non-assessed content of its Application.

The assessment will be based on the information and evidence contained in the Application and, if applicable, on additional information and evidence provided at the request of the Contracting Authority during the procedure. If any of the declarations or information provided proves to be false, the Contracting Authority may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

For the purposes of the assessment related to exclusion and selection criteria, the Contracting Authority may also refer to publicly available information, in particular evidence that it can access on a national database free of charge.

Upon assessment of their Applications, the Contracting Authority admits all Candidates who satisfy the abovementioned criteria, to participate in the DPS.

## **2.4 Rules for Participation**

### *2.4.1 Acceptance in the DPS*

The Contracting Authority sends an electronic notification to the Candidates whose Application in the DPS has been accepted.

Once admitted, a successful Candidate becomes a Participant to the DPS. The Participant has access to the Mini-Competitions which are organised in the DPS after its admission. Past and on-going Mini-Competitions are not available to a new Participant.

It is the Participant's responsibility to maintain the information provided in its Application up-to-date in the Negometrix platform and notify the Contracting Authority of any changes in a reasonable amount of time. All information must be up to date before the Participant submits a tender in a Mini-Competition.

The Contracting Authority may request the Participant to provide updated information regarding their Application on a regular basis.

#### 2.4.2 *Rejection of Application*

The Contracting Authority sends an electronic notification to the Candidates whose Application in the DPS has been rejected.

Candidates whose Application was rejected have the right to submit a new or revised Application at any time, within the DPS duration.

#### 2.4.3 *Withdrawal from the DPS*

The Participant in the DPS can request from the Contracting Authority to be withdrawn from the DPS at any time by sending a Notification.

Withdrawal from the DPS does not impact existing Contracts between the Participant and the Contracting Authority.

If an economic operator who withdrew from the DPS applies again as a sole Candidate or as a Group Member, the subsequent Application will be considered a new Application and all conditions for admission will be reviewed. If the new subsequent Application is successful, the economic operator may once again become a Participant in the DPS.

It is however important to note that if a new Application is successful, and in accordance with section 2.4.1 above, a new Participant will only be invited to Mini-Competitions which are published in the DPS after its admission. Past and on-going Mini-Competitions are not available to a new Participant. In practice, an economic operator cannot leave the DPS and return with a subsequent Application for the purpose of an on-going Mini-Competition.

The Contracting Authority reserves the right to withdraw the Participant from the DPS via Notification in the following cases:

- if the Participant has supplied incorrect information when applying to the DPS or in the scope of a Mini-Competition (such as the absence of certificates or the experience of the service provider offered), or
- If the Participant does not provide updated information or updated documents supporting its Application; or
- If the Participant fails to comply with its obligations in a procurement procedure of the Contracting Authority.

If a Participant previously admitted into the DPS is subsequently withdrawn from the DPS under this section, this rejection is effective immediately and applicable to the DPS and any on-going Mini-Competitions. Further, the Contracting Authority can use the withdrawal as a basis for rejection of the Participant's subsequent Application to the DPS, or rejection of its tenders in future Mini-Competitions.

## 2.5 **Professional conflicting interests**

Involved Entities must not be subject to conflicting interests which may negatively affect the Contract performance.

At the level of the award of the Contract, the risk that professional conflicting interests will in fact arise can be considered only where there are material circumstances placing the tenderer in a position where it is unable to avoid the risk of bias in the performance of the majority of the tasks under the Contract.

Each Involved Entity shall declare on its honour (see Annex 3) that it is not subject to conflicting interests which may negatively affect the Contract performance.

Further details and obligations concerning professional conflicting interests are set out in the Contract.

### **3 STAGE TWO - TENDERING IN MINI-COMPETITIONS**

When the Contracting Authority identifies a need, it will organise through the DPS a Mini-Competition with specific Tender Specifications. Only economic operators who were admitted to participate in the DPS (the Participants) are invited to tender in this Mini-Competition. The Participants may choose to respond to this invitation by submitting a specific tender in the Negometrix platform. Tenders must be submitted electronically.

The Contracting Authority will evaluate the specific tenders and select the most economically advantageous tender on the basis of the award criteria set out in the Tender Specifications of the Mini-Competition. The Contracting Authority awards the Contract to the most economically advantageous tender.

#### **3.1 Content of Tender**

The following requirements apply to the technical and financial offer.

##### *3.1.1 Technical offer*

The technical offer must provide all the information needed to assess the compliance with the Mini-Competition Specifications and the award criteria. Tenders deviating from the minimum requirements or not covering all the requirements may be rejected on the basis of non-compliance and not evaluated further.

##### *3.1.2 Financial offer*

A complete financial offer, including the breakdown of the price needs to be submitted.

It is the responsibility of each Participant to ensure that the total amount of the tender inserted in the relevant field in Negometrix corresponds to the amount indicated in the uploaded financial offer. In case of discrepancies, only the amount indicated in the financial offer will be taken into account.

The financial offer shall be:

1. Expressed in euros. All Participants (including those from countries outside the euro zone) have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the Participant to bear the risks or the benefits deriving from any variation.
2. Quoted free of all duties, taxes and other charges, i.e. also free of VAT.<sup>15</sup>

Beyond the technical and financial offers, other documents to be submitted are listed in the details of the respective Mini-Competitions in the Negometrix platform.

### **3.2 Format of Tender**

#### *3.2.1 Timeline of Mini-Competitions*

The Contracting Authority will invite all Participants to submit a tender within a reasonable time.

The time limit for receipt of tenders to be fixed by the Contracting Authority is at least ten (10) days following the date on which the invitation to tender is dispatched.

After the time limit for receipt of the tenders, the Contracting Authority opens the tenders and records if they comply with the submission rules.

#### *3.2.2 Submission of a tender*

Participants must submit their tender electronically via the Negometrix platform and within the deadline specified by the Mini-Competition. A tender received after a deadline is automatically rejected.

The information contained in the tender must be complete, accurate and honest. Incorrect information may lead to the rejection of the tender from the Mini-Competition and to the exclusion of the Participant from the DPS.

Tenders must be drawn and submitted in complete independence and autonomously from the other tenders.

### **3.3 Questions about Mini-Competitions**

Participants must always keep themselves informed on the status of the procedure on the section of the Negometrix platform dedicated to the Mini-Competition.

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<sup>15</sup> The European Union Institutions are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 annexed to the Treaty on the Functioning of the European Union. Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

Questions from Participants on such topics such as extensions, updates or modifications must be formulated within the Negometrix platform where their answers will also be published.

The purpose of the answers to the questions posed by Participants is to provide clarifications on the procurement documents. In order to maintain equal treatment of all current and future Participants in the DPS, answers provided by the Contracting Authority in a Mini-Competition are only applicable in the context of that specific Mini-Competition. However, the Contracting Authority reserves the right to publish answers which may also be relevant for future Mini-Competitions in the ‘Questions and Answers’ section at the level of the DPS. In particular, additional information provided on the legal sections of the procurement documents may be published at the DPS level with the appropriate versioning reference.

### **3.4 Confidentiality of tender**

Once the Contracting Authority has opened a tender, it becomes its property and shall be treated confidentially, subject to the following points.

For the purposes of evaluating the tender and, if applicable, implementing the Contract, performing audits, benchmarking, etc., the Contracting Authority is entitled to make available (any part of) the tender to its staff and the staff of other Union institutions, agencies and bodies, as well as to other persons and entities working for the Contracting authority or cooperating with it, including contractors or subcontractors and their staff provided that they are bound by an obligation of confidentiality.

After the signature of the award decision the unsuccessful tenderers who are so entitled pursuant to Article 170 (3) of the Financial Regulation may be provided with the name of the tenderer(s) to whom the Contract(s) is/are awarded, as well as with the characteristics and relative advantages of its/their tender(s). The Contracting Authority may decide to withhold certain information that it assesses as being confidential, in particular where its release would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them. Such information may include, without being limited to, confidential aspects of tenders such as unit prices included in the financial offer, technical or trade secrets<sup>16</sup>.

The Contracting Authority may disclose the submitted tender in the context of a request for public access to documents, or in other cases where the applicable law requires its disclosure. Unless there is an overriding public interest in disclosure<sup>17</sup>, the Contracting Authority may refuse to provide full access to the submitted tender, redacting where applicable parts that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the Participant, including intellectual property.

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<sup>16</sup> For the definition of trade secrets, please see Article 2 (1) of DIRECTIVE (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

<sup>17</sup> See Article 4 (2) of the REGULATION (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

The Contracting Authority will disregard general statements that the whole tender or substantial parts of it contain confidential information. Participants need to mark clearly the information they consider confidential and explain why it may not be disclosed. In practice, when Participants consider that an answer to a specific question in Negometrix is confidential, they need to add the mention “Confidential” to their answer and provide a brief explanation on why this specific answer may not be disclosed. This indication must be made for each answer deemed confidential. The Contracting Authority reserves the right to make its own assessment of the confidential nature of any information contained in the tender.

### 3.5 Award of tender

#### 3.5.1 *Compliance with specifications*

By submitting an offer in the form of a tender in a Mini-Competition, a Participant commits to perform the Contract in full compliance with the terms and conditions of the procurement documents for this DPS and of the Tender Specifications of the Mini-Competition.

Tenders must comply with the minimum requirements. Tenders may be considered non-compliant with the minimum requirements of the Tender Specifications if they:

- propose a solution different from the one prescribed in the Tender Specifications (if variants are not allowed);
- do not comply with the applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>18</sup> and compliance with data protection obligations resulting from Regulation (EU) 2016/679 (“GDPR”)<sup>19</sup> and Regulation (EU) 2018/1725<sup>20</sup>;
- contain an incomplete, conditional or non-compliant offer;
- do not cover all, or deviate from other minimum requirements provided for in the Tender Specifications of the Mini-Competition.

Tenders in Mini-Competitions that are not compliant with the applicable minimum requirements shall be rejected.

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<sup>18</sup> OJ L 94 of 28.03.2014, p. 65

<sup>19</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.119.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG)

<sup>20</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

The minimum requirements shall be observed throughout the entire duration of the Contract(s). Compliance with these requirements is mandatory and cannot be subject to any assumptions, limitations, conditions, or reservations on the part of a Participant.

### 3.5.2 *Award criteria*

Award criteria are used to assess the tender only (not the Participant). The objective of the award criteria is to evaluate the tenders with a view to choosing the most economically advantageous tender.

Tenders are evaluated on the basis of award criteria defined in the Tender Specifications of the Mini-Competition. The award of a Mini-Competition will either be based on the lowest price principle or on the best price/quality ratio.

#### 3.5.2.1 Price

The price considered for evaluation is the total price of a tender, covering all the requirements set out in the Tender Specifications of the Mini-Competition.

#### 3.5.2.2 Quality

Quality evaluation is only applicable to a Mini-Competition in case its award is based on the best price/quality ratio.

In such a case, the quality of a tender is evaluated based on a list of criteria pertaining to the categories detailed below. The list of criteria retained will be tailored for the purpose of each Mini-Competition and the criteria will be formulated more precisely in the Tender Specifications of the Mini-Competitions.

Categories of quality criteria:

- Big Data and Internet of Things (IoT)
  - Analytics and Big Data
  - Artificial Intelligence
  - Mobile and IoT devices
- Media services
- Emerging technologies
- Development
  - Managed Middleware Services
  - Integration Services
  - Infrastructure Business services
  - Platform Management support
  - Development Life-cycle support
- Infrastructure
  - Hybrid and Portability Support
  - Compute
  - Network
  - Storage
  - Datacentre services
  - Platform Orchestration and Automation
  - Monitoring and Management
- Security

- Identity and Access Management
- Security and Data Protection
- Cyber Defense
- Administrative
  - Marketplace
  - Billing and Cost Management
  - SLA
  - Support Process
- Consultancies

### 3.5.2.3 Weighting

The Contracting Authority announces the relative importance of each of the quality award criteria and of the price in the details of each Mini-Competition.

### 3.5.3 *Award of Contract*

Mini-Competitions are awarded according to the lowest price principle or the best price-quality ratio in accordance with the formula detailed in the Tender Specifications for each Mini-Competition.

The tenderers will be ranked in accordance with the Tender Specifications of each Mini-Competition. The Contracting Authority may specify in the Tender Specifications of a Mini-Competition whether it intends to award one or several Contracts. The Contract is/are awarded to the tender(s) ranked first, which complies with the Tender Specifications and is submitted by a Participant having access to procurement, not in an exclusion situation and fulfilling the selection criteria. A Participant who is awarded a Contract is referred to as a Contractor.

In the resulting Contracts, all the terms governing the provision of the services or supplies can be defined at the outset. Once signed, they can be implemented directly without any further contractual procedures (e.g. order forms or specific contracts).

Participants need to take full account of the provisions of the full set of procurement documents, including the draft Contract, as the procurement documents will define and govern the contractual relationship to be established between the Contracting authority and the successful Participant. Once this contractual relationship is established, the Participant becomes a Contractor. Special attention is to be paid to the provisions specifying the rights and obligations of the Contractor, in particular those on payments, performance of the Contract, data protection, confidentiality, and checks and audits.

### 3.5.4 *Validity of tenders submitted in Mini-Competitions*

The period of validity of the tender during which Participants may not modify the terms of their tenders in any respect, will be defined in the Tender Specifications of the Mini-Competition, and will be at least six (6) months from the deadline for submission of tenders.

## 4 GOVERNANCE

This section details how the DPS functions.

### 4.1 Information in the DPS

All the information related to this procedure is available on the Negometrix platform at <https://platform.negometrix.com/PublishedTenders.aspx?tenderid=113812>.

In case of conflict between the various sources of information available through the platform, the following order of priority prevails:

- 1) Statements from the Contracting Authority published on the platform or sent via the platform (e.g. answer to a question clarifying information in the procurement documents, or message sent by the Contracting Authority to a Candidate/Participant).
- 2) Procurement documents published by the Contracting Authority on the platform (e.g. PDF file published by the Contracting Authority and available for download on the platform).
- 3) Other information displayed in the platform by the Contracting Authority (e.g. instructions from the Contracting Authority on how to complete a step).
- 4) Other information displayed or sent automatically by the platform (e.g. content published by Negometrix or automatic reminders sent by the platform).

### 4.2 Electronic access

From the date of publication, all information and documents related to the procedure are freely available on the platform hosted by Negometrix B.V., a software company established in Utrecht, Netherlands. Negometrix is independent from the Contracting Authority. The Contracting Authority cannot be held responsible for any information independently provided by Negometrix.

The platform is accessible at <https://platform.negometrix.com>. Technical connection to the platform is established via Hypertext Transfer Protocol Secure (HTTPS), a network **protocol** relying on Secure Sockets Layer (SSL) and Transport Layer Security (TLS) to encrypt communication between clients and servers.

Access to the platform requires the creation of a free account secured by username and password.

The Candidate/Participant is responsible for their electronic access to the Negometrix platform.

Specifically, the Candidate/Participant is sole responsible to ensure that they are able to submit an Application or a tender on time and according to the conditions detailed in the

procurement documents. Technical issues with the platform must be resolved by the Candidate/Participant, with the support of Negometrix as needed.

Additionally, the Candidate/Participant is responsible for retrieving and receiving all information related to the procedure from the Negometrix platform. Failure by the Candidate/Participant to receive or retrieve information from the Negometrix platform cannot be used as the basis for challenging decisions made by the Contracting Authority on the validity of the Candidate/Participant's Application or tender.

It is the responsibility of the signatories designated to act on behalf of the economic operator to ensure that the Negometrix accounts established for the purpose of this DPS are only accessed by the person(s) properly authorised to do so.

#### **4.3 Modifications of documents**

General information and documents for this procedure such as these DPS Specifications, the draft Contract template and the Tender Specifications of a Mini-Competition are subject to modifications for the purposes of corrections, clarifications, improvements or in order to conform with new regulations and other obligations.

Each version of a document is clearly labelled (e.g. "v1", "v2", etc.) and changes are detailed in accompanying release notes and/or in the Question and Answer module of the DPS or of the Mini-Competition.

Economic operators are responsible for keeping themselves informed in the Negometrix platform on the status of the documents and the version applicable to their Application or to the Mini-Competition of their interest. Consequently, tenderers must always use the most up-to-date versions of the procurement documents as the basis for the submission of their Application to the DPS or of their tender in a Mini-Competition

#### **4.4 Electronic submission**

The DPS is a wholly electronic procedure. Only authorised representatives of an economic operator may submit information in the Negometrix platform.

Data sent or received through such a system shall have the legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed original and shall enjoy legal presumption of its authenticity and integrity, provided that the document does not contain any dynamic features capable of automatically changing it.

## 4.5 Electronic signatures

Where a document needs to be signed, the signature must be a Qualified Electronic Signature (QES) as defined in [Regulation \(EU\) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market \(eIDAS Regulation\)](#). Documents signed with a QES benefit from the highest level of security and legal certainty under the eIDAS Regulation. You can find more information on how to apply a QES here: <https://audiovisual.ec.europa.eu/en/video/I-222708>.

QES is the only type of electronic signature recognised to have equivalent legal effect to a handwritten signature in all EU Member States, under the eIDAS Regulation. It is therefore used by the Commission in its contractual relationships.

The Contracting Authority will recognise QES in at least the formats or using methods defined in Commission Implementing Decision (EU) 2015/1506<sup>21</sup>. While signatures in any of these formats will be accepted<sup>22</sup>, submissions of electronically signed documents are preferred in PDF format, electronically signed in the 'PADES' format. Widely available electronic signature tools (including Adobe Reader) are capable of producing QES in this format.

The qualified certificate used for the creation of a QES must be obtained from a qualified trust service provider as defined in the eIDAS Regulation. The national lists of qualified trust service providers can be consulted using the European Commission's [Trusted List Browser tool](#)<sup>23</sup>. The providers tagged with the mention “QCert for ESig” offer services which allow to sign documents with QES. It is important that you request the specific service which will allow a natural person to sign a document with a QES.

The Contracting Authority will check the validity of the QES on the submitted documents and, if documents are not found to be validly signed with a QES, the Application will be rejected. It is the responsibility of each Candidate to ensure that a valid QES is used.

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<sup>21</sup> [Commission Implementing Decision \(EU\) 2015/1506 of 8 September 2015 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies pursuant to Articles 27\(5\) and 37\(5\) of Regulation \(EU\) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market.](#)

<sup>22</sup> The Contracting Authority will accept formats of electronic signatures other than those referred to here only if the requirements set in Article 2 of Commission Implementing Decision (EU) 2015/1506 are satisfied and signature validation possibilities are offered that allow to validate the electronic signatures online, free of charge and in a way that is understandable for non-native speakers.

<sup>23</sup> Tool maintained by the European Commission to browse the national Trusted Lists and the European List of Trusted Lists. The information in the tool is based on the national lists with qualified trust service providers, maintained by the Member States pursuant to Article 22 of the eIDAS Regulation.

🔔 Important

It is strongly recommended that you **check the validity of the QES** with which you electronically signed your documents **before submitting them**.

The validation tool of the European Commission's DSS Demonstration WebApp<sup>24</sup> available at <https://ec.europa.eu/cefdigital/DSS/webapp-demo/validation> can help you check the validity of a certificate by indicating the number and type of valid signatures in a document. The expected results of the DSS Demonstration WebApp are the following:

- ✓ The field "Qualification" indicates "QESig"
- ✓ The field "Indication" indicates "TOTAL\_PASSED"
- ✓ The field "Certificate Chain" indicates the full name(s) of the person(s) who signed the document
- ✓ The field "Signatures status: 1 valid signatures, out of 1" (or plural, depending on the amount of signatories)

**If the name of the signatory/ies and the indication QESig do not appear in the test result, then the document was not signed with a valid QES.**

#### 4.6 Signatories

Only the signature of the duly authorised representatives of the legal entities shall be accepted as valid signatures of the requested documents.

In order to prove the representatives' legal capacity and status, Sole Candidates and all the Group Members in case of a joint Application must provide copies of official supporting documents which demonstrate the person's authority to represent the legal entity in signing contracts (together or alone) on behalf of the legal entity (e.g. register(s) of companies, official gazette, VAT registration, copy of publication of appointment if legislation applicable to the legal entity so requires, etc.).

In case any document provided by Sole Candidate and all the Group Members in case of a joint Application is signed by (a) representative(s) whose representative power is not evidenced by the documents described in the preceding paragraph, the delegation of the authorisation to this/these representative(s) must be evidenced by appropriate written evidence (i.e. copy of the notice of appointment of the persons authorised to represent the legal entity in signing contracts (together or alone) on behalf of the legal entity, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication or a power of attorney). A document that the Contracting Authority can access on a national database free of charge does not need to be submitted if the Contracting Authority is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

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<sup>24</sup> Please note that the Contracting Authority is not responsible for the functioning of this tool. It remains the Candidate's responsibility to check compliance with the eIDAS Regulation.

#### 4.7 Questions about the DPS

Requests for further information regarding an Application to this DPS or other substantive and procedural aspects of this DPS must be made in a timely manner via the “Question & Answer” module in the Negometrix platform. Questions made in Tenders Electronic Daily (TED) and questions by telephone or email will not be processed.

The Contracting Authority’s answers to new questions are published in Negometrix. You may elect to receive notifications from Negometrix when answers are published.

For questions regarding the technical aspects of the Negometrix platform itself, you must contact the Negometrix help-desk via its e-mail ([servicedesk@negometrix.com](mailto:servicedesk@negometrix.com)) or via the telephone number listed on the Negometrix website.

#### 4.8 Optional debriefing meetings

Throughout the duration of the DPS and in order to improve the quality of tenders and the quality of our procedures, the Directorate-General for Informatics may organise, as a best practice, optional debriefing meetings of its representatives with Candidates and Participants of the DPS, aimed at exchanging feedback and suggestions for improvement in view of future procurement procedures. Candidates and Participants may submit a request for a debriefing meeting; however, the Directorate-General for Informatics reserves the right to accept or refuse such requests and schedule the meeting date on the basis of the particular circumstances of each individual procurement procedure or of the existing workload.

However, the Directorate-General for Informatics would like to stress that it is not free to disclose any information where such disclosure would hinder application of the law, be contrary to public interest, harm the legitimate business interests of public or private undertakings or distort fair competition.

### 5 DEFINITIONS

For the purpose of this procedure, the following definitions (capitalized in in the text) apply:

TERM	DEFINITION
<b>Broker</b>	The organisational entity within DG DIGIT that may be setup in the Tender Specifications of a Mini-Competition as the paying entity on behalf of all Contracting Authorities / Participating Entities / Customers
<b>Candidate</b>	An economic operator that has applied to take part in a DPS. This could also refer to several economic operators who are applying to take part with a joint Application.

<b>Contract</b>	Contract signed between the Contracting Authority and the Contractor, following the award of a Mini-Competition, which contains all the details and annexes necessary to implement it. A Contract awarded in the DPS can take the form of either a direct contract or a framework contract.
<b>Contractor</b>	A Participant who is awarded a Contract at the conclusion of a Mini-Competition.
<b>Customer</b>	The entity that is the end-user of the Cloud Services provided by the Contractor.
<b>DPS Specifications</b>	Set of documents describing the general set-up for the Dynamic Purchasing System.
<b>Group</b>	A combination of economic operators that submits a joint Application or tender, regardless of the link they have between them and irrespective of whether they have legal form.
<b>Group Member</b>	An economic operator pertaining to a Group.
<b>Involved Entity</b>	Each economic operator involved in an Application, tender, or in the execution of a Contract. This includes Group Members, subcontractors and entities on whose capacity is being relied, but excludes subprocessors.
<b>Mini-Competition</b>	Call for tender launched by the Contracting Authority open to all the Participants in a DPS.
<b>Notification</b>	A form of communication between the parties made in writing.
<b>Participant</b>	A successful Candidate who was admitted by the Contracting Authority to access Mini-Competitions in a DPS.
<b>Tender Specifications of the Mini-Competition</b>	Set of documents giving full details of the subject matter, conditions and organisation of a Mini-Competition including the technical specifications and criteria.

## 6 LIST OF ANNEXES

<b>Document</b>	<b>Scope</b>
<b>Annex 1</b>	Checklist of documents to be submitted with the Application or during the procedure

<b>Annex 2</b>	Application cover letter  <ol style="list-style-type: none"><li>1. Application letter with appointment of contact person for sole Candidate [<i>template</i>]</li><li>2. Application letter with power of attorney and appointment of contact person for a group [<i>template</i>]</li></ol>
<b>Annex 3</b>	Declaration on honour for exclusion and selection [ <i>form</i> ]
<b>Annex 4</b>	Commitment letter  <ol style="list-style-type: none"><li>1. Commitment letter by an identified Subcontractor [<i>template</i>]</li><li>2. Commitment letter by an entity for reliance [<i>template</i>]</li></ol>
<b>Annex 5</b>	Negometrix export