

Rome, 17 July, 2018

Ref. no. 23069/2018

Sent by e-mail

FAO

**ICAP Information Services Limited**

2 Broadgate, London

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United Kingdom

E-mail: lisa.ward@icapinformation.com

**Subject: Negotiated procedure pursuant to art. 63, co. 2 lett. b), n. 3 of Legislative Decree no. 50/2016, aimed at stipulating a contract for "ICAP Interest Rate Derivatives Real Time for Italian Treasury Department"**

**CIG 7573231BEA**

**Request for Proposal.**

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

The supplier has declared, with notice dated 7/9/2017 that it possesses exclusive rights for the following services "ICAP Interest Rate Derivatives Real Time for Italian Treasury Department" that are relevant to the Contract in question.

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In this Request of Proposals, Consip S.p.A. intends to award the Contract – the subject of which is "ICAP Interest Rate Derivatives Real Time for Italian Treasury Department".

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

The Contract will not contain an arbitration clause.

For the purpose of the acquisition, **Annex 5 - Contractual Addendum** is enclosed.

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

Registered Office: Via Isonzo 19/E – 00198 Rome

T +39 06 85449.1 – F +39 06 85449 281 – [www.consip.it](http://www.consip.it)

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

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



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

**Registration on the AVCpass System and use of the National Public Contracts Database (*Banca Dati Nazionale Contratti Pubblici*)**

By virtue of the provisions of par. 13 of art. 216 of Italian Legislative Decree no. 50/2016, until the entry into force of the decree referred to in par. 2 of art. 81 of the aforementioned Italian Legislative Decree no. 50/2016, the contracting authorities and suppliers shall use the AVCpass database kept by the Italian National Anti-Corruption Authority (ANAC).

In view of the above, pending the entry into force of the aforementioned decree, the previous regulations are still applicable: the documentation proving possession of the general, technical/organisational and economic/financial requirements for participating in public calls for tenders must be acquired exclusively through the National Public Works Database (*Banca Dati Nazionale Contratti Pubblici*) (hereinafter, in short, the BDNCP) kept by the National Anti-Corruption Authority (art. 6-bis of Italian Legislative Decree no. 163/2006 as subsequently amended and supplemented, as introduced by paragraph 1a) of art. 20 of Law no. 35 of 04 April 2012). In accordance with the provisions of art. 6-bis of Italian Legislative Decree no. 163/2006 as subsequently amended and supplemented, the AVCP (now ANAC) issued Deliberation no. 111, dated 20 December 2012, which identified, inter alia, *“data concerning participation in tender procedures and the assessment of bids to be inserted into the BDNCP to enable contracting authorities/contracting entities to verify possession of the requirements applicable to suppliers for the awarding of public contracts”*.

Art. 9 of the aforementioned Deliberation, as modified during the formal meetings held on 08 May and 05 June 2013, states that the obligation to perform verifications exclusively through use of the AVCPASS system runs from *“01 January 2014 for contracts with an initial value equal to or greater than EUR 40,000.00”*.

For the purpose of this procurement action, prospective suppliers must register on the AVCpass System according to the operating instructions as well as the terms and technical regulations for the acquisition, updating and consultation of data present on the [www.avcp.it](http://www.avcp.it) website.

Once the economic operator has registered for the AVCPASS service and identified the procedure in which it wishes to participate, **it will obtain a “PassOE” code** which must be inserted into the e-mail containing the documentation requested for participation in the procedure, according to the procedures described below.

In accordance with the provisions of art. 6-bis of Italian Legislative Decree no. 163/2006 as subsequently amended and supplemented, of AVCP (now ANAC) Deliberation no. 111 of 20 December 2012 and of law no. 15 of 27 February 2014, as well as with the provisions of the aforementioned art. 216 (par. 13) of Italian Legislative Decree no. 50/2016, Consip shall conduct a compliance check of the requirements relating to this initiative exclusively through the BDNCP.



Lastly, it should be noted that failure to register with the AVCpass service, or to send the PassOE code, will not entail, by itself (unless otherwise stipulated), exclusion from this procedure. By means of a suitable notification, Consip provide suitable deadline for conducting the activities indicated above.

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

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

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In light of the considerations above, the company is therefore required to send to Consip S.p.A., by **28 JULY 2018** its Bid Declaration, complete with all the documentation indicated hereinafter to the e-mail address: [floriana.milisenda@consip.it](mailto:floriana.milisenda@consip.it).

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

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

***"Initiative no.135/2017 - Purchase request no. 48621 – attn. Floriana Milisenda***

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

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

The declarations concerning the absence of grounds for exclusion referred to paragraph 1 of art. 80 of Italian Legislative Decree no. 50/2016 must be made by the legal representative of the supplier or by a representative with power of attorney vis-à-vis the persons responsible for the duties referred to par. 3 of art. 80 of Italian Legislative Decree no. 50/2016 (i.e. the owner or technical director, if a single-member company. The partners or technical director, if a partnership; a partner and the technical director if it is a company in collective name; of the



partners and the technical director, if it is a simple partnership; members of the board of directors who have been assigned legal representation, including general secretaries and prosecutors, members of the bodies with managerial or supervisory powers (i.e. members of the board of statutory auditors in companies with a traditional management system, members of the management control committee in companies with a single management system, members of the board of directors and members of the supervisory board, in companies with a dualistic management system), of subjects with powers of representation, direction or control (such as auditors and the supervisory body referred to in Article 6 of Legislative Decree 231/2001), the technical director and the sole shareholder a natural person, a majority shareholder in the case of companies with fewer than four members, in the case of another type of company or consortium; of persons ceased in the year prior to the date of sending the letter of invitation and in any case until the submission of the bid, if the firm does not demonstrate the complete and effective dissociation from the penalized sanction. The offenses referred to art 80 par. 1 do not apply when they have been de-penalized, when rehabilitation has taken place, when offenses have been declared extinguished after the conviction or in case of revocation of the sentence.

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

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



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

- Infringements of the rules on health and safety at work and the obligations under Article 30 (3) (referred to in Article 80 (5) (a)), fall within the scope of derive definitive measures of condemnation against the subjects referred to in art. 80, co. 3, of Legislative Decree no. 50/2016 and so on, for conducts referred to the performance of the functions conferred by the proper economic operator. The assessment of the severity of the conduct carried out by the economic operator is remitted to the contracting station;
- Among the cases referred to in art. 80, paragraph 5, lett. c) of Legislative Decree no. 50/2016 (relevant for the time period referred to in Article 80, paragraph 10, of Legislative Decree 50/2016 and §5), are the those relating to antitrust or other circumstances that may affect the integrity or the competitor's reliability. The supplier, in the indication of the relevant facts shall take into account the indications given in Guidelines no. 6 of the AGCN. "Indication of the appropriate means of proof and of the deficiencies in the execution of a previous contract of employment which may be considered significant for the demonstration of the exclusion circumstances referred to art. 80, paragraph 5, lett. c) of the Legislative Decree ".

The operator must declare all the executive measures of the AGCM (the national antitrust authority) condemning unfair commercial practices or unlawful antitrust effects having effects on public contracts and implemented in the same market subject of this procedure. The contracting authority will proceed, in the course of the procedure, to the assessment of the aforesaid provisions of the AGCM if they are unenforceable or if confirmed with the definitive ruling of the administrative judge.

In this case, and in the case of self-cleaning measures, all relevant documents (including any convictions) must be produced in order to allow the Consip to make every reasonable assessment.

- b) a copy of the power of attorney in the case of a statement made by a person with power of attorney whose name and powers are not reported at the Chamber of Commerce
- c) the **Annex 3 - Bid declaration**, which, in accordance with the facsimile attached to this Request for Proposal, must specify the maximum overall contractual amount and all fixed and variable payments, which must not exceed the maximum amount of \$ 165.816 (one hundred sixty five thousand, eight hundred and sixteen).

The competitor must also indicate in the economic offer (or it will be excluded from the offer):

- the "corporate costs of meeting the health and safety provisions" in the workplace



referred to the art. 95, paragraph 10, of Legislative Decree no. 50/2016.

The documentation that constitutes the economic offer must be submitted in accordance with the provisions of Presidential Decree 672/1972 **on the payment of “stamp duty”**. The payment of the above mentioned duty has a value of Euro 16.00 and must be made by **Bank Transfer**, using the IBAN (International Bank Account Number) n° IT07Y0100003245348008120501 by specifying in Bank purpose of Transfer the following information:

“ICAP Information Services Ltd. - VAT n. GB762511935 – Consip SpA P. IVA 05359681003-cod. trib. 456T – anno 2018 – RdA Consip n 48621”.

As confirmation of the payment, the tenderer must send to Consip S.p.A. **a copy of the Bank Transfer receipt in PDF format**, within the deadline for submitting the offer.

- d) In the same mail, this company, if previously registered, will have to produce the document attesting the attribution of the **"PASSOE"** by the AVCPASS service. For this purpose, the supplier will be able to produce the Passoe in the form of a PDF document signed by the legal representative or subject with power of attorney.
- e) a **declaration** providing the identification details of the bank account (s) attached (s) to this contract, as well as the general (name and surname) and the Tax Code of the persons delegated to operate on said account (s) in compliance with the provisions of Article 3, paragraph 7 of Law No.136 / 2010 (**Annex 4 - Supplier Data sheet and declaration concerning the traceability of financial flows**).

According to art. 83, paragraph 9 of Legislative Decree no. 50/2016, any formal deficiencies in the submission can be remedied through the *“soccorso istruttorio”* procedure.

In particular, in case of incompleteness and any other irregularities in the statements made, regarding the non-essential participation requirements (with the exception of those relating to the economic offer and the technical offer), Consip will give the operator a term not exceeding ten days, for the necessary declarations to be made, integrated or regularized, indicating the content and subjects that have to make the declaration.

If there are unjustified delays of the documents than the competitor will be excluded. Deficiencies that do not allow the identification of the content or the person responsible for it, constitute irremediable irregularities. Consip S.p.A., however, may require competitors to clarify the content of the documentation and statements submitted, that differ from the ones submitted that differ from those subject to a possible sanction within the meaning of the preceding paragraph, with the power to assign a peremptory term within which suppliers must submit the documentation required, **or they will be excluded** from the procedure.



A specific communication will be sent to the Supplier with the winning offer.

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

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### **DATA PROCESSING**

Pursuant to art. 13 of Legislative Decree no. 196/2003 "Code regarding the protection of personal data" (hereinafter also the "Privacy Code") and pursuant to art. 13 of the EU Regulation n. 2016/679 on the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data (hereinafter also "EU Regulation" or "GDPR"), Consip S.p.A. provides the following information on the processing of personal data.

#### **Purpose of the treatment**

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

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

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

#### **Nature of the conferment**

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

#### **Sensitive and judicial data**



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

#### **Methods of data processing**

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

#### **Scope of communication and dissemination of data**

The data may be:

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

The name of the competitor awarded the tender and the contract award price may be disseminated via the websites **[www.consip.it](http://www.consip.it)**, **[www.acquistinretepa.it](http://www.acquistinretepa.it)** and **[www.mef.gov.it](http://www.mef.gov.it)**. In addition, the information and data concerning the participation of the Competitor in the tender, within the limits and in application of the principles and provisions on public data and the re-use of public sector information (Legislative Decree 36/2006 and art. 52 and 68, paragraph 3, of Legislative Decree 82/2005 and subsequent amendments), may be used by the MEF and by Consip, each for its own responsibility, also in aggregate form, to be made available to other public administrations, natural and legal persons,





including open data. In addition to the above, in compliance with the legal obligations that impose administrative transparency (Article 1, paragraph 16, letter b, and paragraph 32 of Law 190/2012, article 35 of Legislative Decree No. 33/2012; as well as Article 29 of Legislative Decree No. 50/2016), the competitor / contracting party acknowledges and agrees that the data and documentation required by law to publish, be published and disseminated, using the conditions, via the website **www.consip.it**, section "Transparent Company" and the website of the Client **www.sogei.it** for the activities of their respective competences.

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

#### **Data retention period**

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

#### **Automated decision-making process**

There is no automated decision making process.

#### **Rights of the interested party**

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

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

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

#### **Data controller and Data Protection Officer**

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

- in Rome, Via Isonzo n. 19 / D-E e



- in Rome, Via Mario Carucci, 99 - 00143

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

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

**Consent to the processing of personal data**

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

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

\* \* \*

Yours sincerely,

Mr Stefano Tremolanti  
Goods and Services Sourcing Department  
(the Head of Department)  
Digital signature

**Annexes:**

Annex 1 – Participation Document

Annex 2 - Integrity Agreement

Annex 3 – Bid declaration

Annex 4 – Supplier Data sheet and declaration concerning the traceability of financial flows

Annex 5 - Contractual Addendum