

REQUEST FOR PROPOSAL

ECMWF/RFP/2019/297

Provision of Legal Consultancy relating to the
Establishment of a Cloud Computing Infrastructure at
ECMWF

Clarifications issued on 23 May 2019

We are pleased to provide the following clarification responses to questions received:

1 Ref: C8_RFP297

Question:

Will ECMWF be engaging a third party to build the orchestration layer (or any other element of the system) or will this be built in-house?

Response:

The orchestration layer will be based on the third party software (Morpheus Data Multi-Cloud Management Platform), which will be configured to meet our needs.

2 Ref: C9_RFP297

Question:

Will ECMWF be building its own cloud infrastructure or using a third party (e.g. AWS, Microsoft Azure)?

Response:

For the pilot, ECMWF is building its own infrastructure, by purchasing hardware and installing and managing software designed for cloud computing (e.g.: OpenStack, Morpheus). The operational cloud infrastructure will be an on-premise private cloud. The management of the cloud will be split between the operator and ECMWF, although at this stage it is not completely clear at which level the split will be done and this will be part of the investigation during the pilot. For instance, at the moment ECMWF envisages that the creation of Virtual Machine images will be done by ECMWF.

3 Ref: C10_RFP297

Question:

The terms and conditions in annex 3 appear to be generic consultancy terms. Would the successful bidder be able to propose amendments/additional terms to tailor them to the provision of legal services?

Response:

According to section 3.9 of the RFP document, bidders can submit proposals for changes to the Terms and Conditions of Contract, set out at Annex 3 of the said RFP document.

4 Ref: C11_RFP297

Question:

In section 6 of the terms and conditions, is the term "Consultant" intended to apply to just the key contact or to all personnel working on this matter?

Response:

According to Clause 6.1 of the Terms and Conditions of Contract (Annex 3 of the RFP document), the term "Consultant" means a member of the Contractor's personnel who is nominated by the Contractor and accepted by ECMWF, to work directly with ECMWF for provision of the Services.

5 Ref: C12_RFP297

Question:

We note a reference to working from ECMWF's premises in section 6.6 of the terms and conditions. Does ECMWF anticipate much on-site working (other than attendance at meetings)?

Response:

ECMWF does not anticipate the Contractor or its personnel to be working on-site, other than attend meetings as and when required.

6 Ref: C13_RFP297

Question:

Please could ECMWF provide further details about its proposed relationship with EUMETSAT, including:

- a. What is the proposed division of responsibility between ECMWF and EUMETSAT in relation to procurement of the orchestration layer and, once completed, engaging with end users (for example, will end users contract separately or jointly with ECMWF and EUMETSAT, or via an intermediary)?
- b. If the answer to (a) is still to be determined, will this (and any accompanying contractual, MOU or collaboration arrangements between ECMWF and EUMETSAT) form part of the scope of legal instructions?
- c. Will the successful respondent be required to act for both ECMWF and EUMETSAT or will EUMETSAT be obtaining its own legal counsel?

Response:

- a. The orchestration layer during the pilot phase is based on the third party software Morpheus Data Multi-Cloud Management Platform, used by both organisations, which will be configured in concertation between the two organisations. The operational cloud may offer in the future other solutions, but these have not been investigated yet.
- b. This is not envisaged at present.
- c. No, the successful respondent will act exclusively for ECMWF, we expect at some stage coordination with the provider of legal advice for EUMETSAT in formulating legal assessments and advice.

7 Ref: C14_RFP297

Question:

In relation to data provided by ECMWF and EUMETSAT:

- a. To what extent are these data potentially substitutable for each other from the perspective of their user base?
- b. Are there any other organisations that offer data products that might be substitutable for those offered by ECMWF and EUMETSAT? (Or are ECMWF and EUMETSAT the only providers of these data respectively?)

Response:

- a. They are not substitutable. EUMETSAT provides mainly satellite observations, while ECMWF's activity concerns mainly weather forecasts, which are the output of models. Users however are increasingly developing and testing applications where data from the two organisations are combined to provide innovative products (for instance in nowcasting). The National Meteorological Services of ECMWF and

EUMETSAT's Member States can also licence ECMWF and EUMETSAT data respectively, effectively acting as licensing agents. The relationship between ECMWF and these "licensing agents" will be reviewed during the course of the pilot project.

- b. There are many organisations, both public and private, that provide weather forecasts. However, only few run global forecast models and they are almost all public. These can be considered as providing data that are substitutable for those provided by ECMWF. Some of these organisations provide their own data under an open data policy (for instance, the American National Oceanic and Atmospheric Administration), others apply charges. ECMWF is regarded as a world leader in global weather predictions and hence large commercial service providers consider it financially beneficial to acquire ECMWF data at a charge, even if free alternatives would be available. SMEs, start-ups and research organisations often use alternatives, unless they have special agreements with ECMWF.

The situation for EUMETSAT is different, as there are only few providers of satellite weather observations and they are mainly national or international space agencies. Commercial companies are now entering this area. EUMETSAT's data policy is not open, but there are a lot less commercial companies acquiring EUMETSAT's data compared to ECMWF.

8 Ref: C15_RFP297

Question:

Has ECMWF commenced market engagement with third party technology suppliers and potential partners in relation to the European Weather Cloud Pilot? If so, how far through market engagement is ECMWF (e.g. has it shortlisted providers, selected a preferred provider, etc)? If not, does the scope of legal instructions include advice on (a) the procurement of third party suppliers (including development and negotiation of contract terms) and (b) sourcing options and related risk assessments?

Response:

ECMWF has already started engaging with third party suppliers. Indeed, other cloud projects at ECMWF started well before the European Weather Cloud, under the umbrella of the EU Copernicus Programme and providers have been already procured in that context. The European Weather Cloud project will engage also with other commercial providers and will conduct dialogues with a few that have been already identified during the pilot phase. It is expected that the legal counsel will advise on contract terms.

9 Ref: C16_RFP297

Question:

We note from ECMWF's 2017 financial statements that ECMWF earned approximately £7.8 million from sales of forecasts and data. Was this based on marginal cost only or is ECMWF already offering certain services on a commercial basis?

Response:

ECMWF does not undertake commercial activities but acts solely within the confines of its Convention. The charges applied by ECMWF to the data comprise:

- a handling charge that covers for the cost of customizing and delivering data to users, support, administration etc.
- an information charge that is a contribution to the running costs of ECMWF's infrastructure.

10 Ref: C17_RFP297

Question:

Section 3.6 of the RFP requires that hourly rates and other pricing information is expressed as net of all taxes including VAT. We understand that ECMWF is VAT-exempt and so seek clarification as to whether ECMWF would prefer to see rates and other pricing information expressed as exclusive of VAT (which is also our normal practice for communicating hourly rates).

Response:

All rates and other pricing information must be exclusive of VAT and any other taxes.

11 Ref: C18_RFP297

Question:

Has ECMWF, or have ECMWF and EUMETSAT jointly, considered which law should govern agreements that will have to be drafted in the course of the project, including (1) agreements between the parties; and (2) model agreements with commercial customers of the cloud service?

Response:

Contracts relating to ECMWF HQ are traditionally governed by the laws of England and Wales. Supply contracts relating to ECMWF Italy are currently also governed by the law of England and Wales on a trial basis. All contracts are subject to special provisions reflecting ECMWF's privileges and immunities.

At this stage, we envisage that terms and conditions for access and use of ECMWF resources by commercial customers will be as close as possible to EUMETSAT's. We cannot confirm any agreement on the choice of laws yet. However, data, computing, software resources from the two organisations will be clearly separated and identifiable and, if needed, terms and conditions for access to different resources may in fact differ.

12 Ref: C19_RFP297

Question:

Will legal advice in this project be provided only to ECMWF or to ECMWF and EUMETSAT jointly? If the former, is there the expectation that there should be coordination with the provider of legal advice for EUMETSAT in formulating legal assessments and advice?

Response:

Legal advice will be provided to ECMWF only, but we expect at some stage coordination with the provider of legal advice for EUMETSAT in formulating legal assessments and advice.

13 Ref: C20_RFP297

Question:

As to the scope of the project, are we right in thinking that the legal component relates to the actual operation of the cloud infrastructure of both organisations rather than its prior development and roll-out?

Response:

Yes, the legal component relates to the operational phase of the European Weather Cloud. We use the pilot phase for technical developments and to investigate business models, policy and legal aspects.