

Request for proposals

**Legal Support: Fee, Warrant, Corporation, Joint Venture
Agreements, Company Builder**

Years 2022 – 2024

EIT InnoEnergy



Co-funded by the
European Union

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2. Overview of EIT InnoEnergy

EIT InnoEnergy is a European company fostering the integration of education, technology, business and entrepreneurship and strengthening the culture of innovation. The challenge is big, but our goal is simple: to achieve a sustainable energy future for Europe. Innovation is the solution. New ideas, products and services that make a real difference, new businesses and new people to deliver them to market. At EIT InnoEnergy we support and invest in innovation at every stage of the journey – from classroom to end-customer. With our network of partners we build connections across Europe, bringing together inventors and industry, graduates and employers, researchers and entrepreneurs, businesses and markets.

We work in three essential areas of the innovation mix:

- Education to help create an informed and ambitious workforce that understands the demands of sustainability and the needs of industry.
- Innovation Projects to bring together ideas, inventors and industry to create commercially attractive technologies that deliver real results to customers.
- Business Creation Services to support entrepreneurs and start-ups who are expanding Europe's energy ecosystem with their innovative offerings.

Bringing these disciplines together maximises the impact of each, accelerates the development of market-ready solutions, and creates a fertile environment in which we can sell the innovative results of our work.

For more information about our company please visit the following website:

<http://www.innoenergy.com/about-innoenergy/>

3. Scope of work

Important Notice:

This tender covers contract duration from January 2022 to December 2024 (3 years), with the possibility to prolongate the contract for another one year.

We intend to appoint two (2) legal advisory firms and sign a framework contract with each party. This is to ensure that there will be a consultant available anytime needed.

Background and General Objective

The scope and nature of EIT InnoEnergy's different activities calls for various types of contracts and agreements which we conclude with our partners.

These may include

- bi- as well as multi-lateral agreements with project partners (corporates / industry / research etc.) to establish new companies / joint ventures (« company builder »)
- bi- as well as multi-lateral agreements with project partners and commercializing parties, with ventures we have invested, in such as:
 - fee agreements that secure an ROI for EIT InnoEnergy
 - joint venture agreements as a basis for regulations and cooperation of several project partners in innovation projects
 - exit agreements in case of early termination of contracted activities
 - any other type of contracts

Fee agreements: To secure a return on our investments in case of the commercially successful go-to-market of a product or service developed through one of our Projects or Activities, we need to have specific agreements with the respective commercializing party of the project consortium. Usually InnoEnergy participates in the success relative to our investment provided to the project consortium – via a share in revenues generated by the product and/or via equity warrants of the commercializing company.

However, as mentioned above, other types of contracts across our different business lines may be needed as well.

Detailed scope of work

The appointed legal expert will design agreements and contracts based on existing templates, project agreements and other sort of documents. Support EIT InnoEnergy in negotiating the exact conditions for the individual project at hand. The "targets" in the contracts are usually companies registered in Germany and acting under German law, but European project partners may also be involved, especially in the case of new joint ventures / company building.

Based on a first draft/template provided by EIT InnoEnergy, the experts will

- detail the agreements according to the terms negotiated with the target,
- review and mark-up of terms and conditions and corporate documentation,
- support in the process to negotiate the detailed terms with the target where necessary,
- finalize contracts / agreements.

Assignment, Timing & Planning, Invoicing

- The work will be carried out as a consultancy service via remote and telephone and/or online video conference calls on an ad-hoc basis.
- We intend to appoint two legal firms and sign a framework contract with each parties. This is to ensure that there will be a consultant available anytime when needed.
- Per assignment we will choose the legal expert who is best positioned to complete the task at hand, i.e. focus of expertise and/or availability.
- The total number of assignments will depend on the number of new projects EIT InnoEnergy will acquire, which cannot be foreseen at this point.
- Invoices shall be issued on a monthly base with detailed timesheets included, separated by specific project.
- Contract period: the agreement automatically terminates on 31.12.2024. Services requested before the termination date may still be accepted, delivered and paid.
- The contract may be extended for another year until 31.12.2025 (to be discussed in time before the end of the initial 3 years).

4. Proposal Process

4.1. Participation

- a) Participation in this proposal procedure is open to all tenderers.
- b) All participants must sign the Tenderers' declaration form attached and submit it with the proposal. Please note that the tenderer may not modify the text, it has to be submitted signed as provided by EIT InnoEnergy attached to the request for proposal document.

4.2. Submission of proposal

	DATE
Publishment of the RFP on EIT InnoEnergy website	19.11.2021
Deadline for requesting clarification from EIT InnoEnergy	08.12.2021 CET
Deadline for submitting proposals	14.12.2021 CET
Intended date of notification of award	22.12.2021
Intended date of contract signature	07.01.2022

Proposals must be emailed in **English language** to the following address to:

Contact name: for the attention of Mrs. Renata Hofmeister

E-mail: Renata.hofmeister@innoenergy.com

The proposal shall contain:

- **the technical response to the service requested (point 3).**
- **the financial offer (the price for the services.)** The Financial offer must be presented in Euro. Prices must be indicated as net amount + VAT.
- **an indication of supplier's insurance coverage.** The proposal must specify whether the supplier has taken out a company liability insurance and/or professional liability insurance including the maximum amount of coverage in Euro per event per insurance.

Responses should be concise and clear. The tenderer's proposal will be incorporated into any contract that results from this procedure. Tenderers are, therefore, cautioned not to make claims or statements that they are not prepared to commit to contractually. Subsequent modifications and counter-proposals, if applicable, shall also become an integral part of any resulting contract.

The tenderer represents that the individual submitting the natural or legal entity's proposal is duly authorized to bind its entity to the proposal as submitted. The tenderer also affirms that it has read the instructions to tenderers and has the experience, skills and resources to perform, according to conditions set forth in this proposal and the tenderers' proposal.

Tenderers are requested to submit with their proposal together with the filled-out Tenderers' declaration form (see point 4.1).

4.3. *Validity of the proposals*

Tenderers are bound by their proposals for **90 days** after the deadline for submitting proposals or until they have been notified of non-award.

The selected winner must maintain its proposal for a further **60 days** to close the contract.

Proposals not following the instructions of this Request for Proposal can be rejected by EIT InnoEnergy.

4.4. *Requests for additional information or clarification*

The request for proposal should be clear enough to avoid tenderers having to request additional information during the procedure. In case the tenderers are in need of additional information or clarification, please address it to the address below. **All information requested or answered may only be done through written communication – email only. Answers will be provided via the EIT InnoEnergy call for proposal section on the website.** All questions should be sent prior to deadline for requesting clarification as specified in 4.2. In case of complex or high value procurements, EIT InnoEnergy could arrange a clarification session which will be communicated to the tenderers.

Contact name: for the attention of Mrs. Renata Hofmeister

E-mail: Renata.hofmeister@innoenergy.com

EIT InnoEnergy has no obligation to provide clarification.

4.5. *Costs for preparing proposals*

No costs incurred by the tenderer in preparing and submitting the proposal are reimbursable. All such costs must be borne by the tenderer.

4.6. *Ownership of the proposals*

EIT InnoEnergy retains ownership of all proposals received under this tendering procedure. Proprietary information identified as such, which is submitted by tenderer in connection with this procurement, will be kept confidential.

The potential or actual supplier should accept that during the implementation of the contract and for four years after the completion of the contract, for the purposes of safeguarding the EU's financial interests, EIT InnoEnergy may transfer the proposal and the contract of the supplier to internal audit services, to the EIT, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.

4.7. *Clarification related to the submitted proposals*

After submission of the proposals, they shall be checked if they satisfy all the formal requirements set out in the proposal dossier. Where information or documentation submitted by the tenderers are or appears to be incomplete or erroneous or where specific documents are missing, EIT InnoEnergy may request the tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit. **All information requested or answered may only be done through written communication – email only.**

4.8. *Negotiation about the submitted proposal*

After checking the administrative compliance of the tenderers, EIT InnoEnergy may negotiate the contract terms with the tenderers. In this negotiation EIT InnoEnergy will ask all tenderers to adjust the proposal or specific sections of the proposal within an appropriate time limit. In case of negotiation, EIT InnoEnergy shall provide further information about the proceedings and timing.

4.9. Evaluation of proposals

The quality of each proposal will be evaluated in accordance with the below mentioned award criteria. The award criteria will be examined in accordance with the requested service indicated in Section 3 of the document.

Evaluation criteria (weight in %)

1. Relevant experience and competence in corporate law and private equity matters, in particular within German law. Evaluation based on CV and references. Lead/senior consultant should have at least 10 years of experience. **(30%)**
2. Track record for different types of contracts, M&A and respective negotiations between parties – please give examples that prove your experience and competence. **(20 %)**
3. Track record and competencies in drawing up complex fee agreements in the context of private-public partnership projects – please give examples that prove your experience and competence. **(20%)**

Total technical score (weight in %): 70%

4. Price/total cost - lowest offered expert unit price per hour shall receive the highest score, other shall be calculated in relation to that in linear equation. **(30%)**
Please base your offer on blended fixed hourly rates.

Total financial score (weight in %): 30%

Total maximum score: 100.

4.10. Signature of contract(s)

The successful and unsuccessful tenderers will be informed in writing (via email) about the result of the award procedure.

For the contract the Service Agreement in Annex 2 shall apply. Any change desired by the tenderer in the provisions contained in the body of this Service Agreement needs to be communicated to EIT InnoEnergy as part of the proposal of such tenderer. Background for this is that such desired changes need to be taken into account in the evaluation of the proposal of each tenderer under Liability Exposure above. Significant changes are likely to lengthen the negotiation process, making it less likely that the Service Agreement can be signed in time.

Within 5 days (after the expiry of the appeal period of 10 days) of receipt of the contract from EIT InnoEnergy, the selected tenderer shall sign and date the contract and return it to EIT InnoEnergy. Upon receipt, EIT InnoEnergy shall also sign and send back to the winner one signed copy. In case the winning tenderer is unable to enter into the contract within the above mentioned time period, EIT InnoEnergy may decide to contract the second best.

4.11. Cancellation of the proposal procedure

In the event of cancellation of the proposal procedure, EIT InnoEnergy will notify tenderers of the cancellation. In no event shall EIT InnoEnergy be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a proposal procedure, even if EIT InnoEnergy has been advised of the possibility of damages.

4.12. Appeals/complaints

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. Appeals should be addressed to EIT InnoEnergy. The tenderers have **10** days to file their complaints from the receipt of the letter of notification of award.

4.13. Ethics clauses / Corruptive practices

EIT InnoEnergy reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. If substantial errors, irregularities or fraud are discovered after the award of the Contract, EIT InnoEnergy may refrain from concluding the Contract.

The supplier shall take all measures to prevent any situation where the impartial and objective implementation of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests'). He should inform EIT InnoEnergy immediately if there is any change in the above circumstances at any stage during the implementation of the tasks.

4.14. Annexes

Annex 1: Tenderers' Declaration form.

Annex 2: Draft Contract Template.