



## Annex A1

# Due Diligence Information Requirements

The ETI requires due diligence information during two stages of the Project Commissioning Process:

1. Submission of the Proposal. Certain information is required with the Proposal as part of the first stage of the Project Commissioning Process; and
2. Project Shaping and Contract Negotiation. Further information will be required if any Proposal is selected to proceed to the Project Shaping and Contract Negotiation Stage.

Please note that successful completion of all elements of the ETI's required due diligence is a pre-requisite to any contract award: failure to meet any due diligence requirements may result in the exclusion of the Respondent(s) and/or the Proposal from the Project Commissioning Process.

### 1. Submission of the Proposal

#### 1.1 State Aid

All Respondents shall confirm that there are no potential, threatened, pending or outstanding recovery orders by the European Commission in respect of any funding received by any Respondent (all proposed Participants).

#### 1.2 General Due Diligence

All Respondents (except ETI Members, universities / higher education institutions and UK/EU government laboratories / agencies) which provide more than 20% of the resources for the Project or which provide an input which is critical to the Project's success, shall provide due diligence information to the ETI according to the table in **Annex A2**.

#### 1.3 Insurance

Respondents should confirm that insurance cover for the following risks is held by all proposed Project Participants, and should confirm levels of cover and expiry for each. The ETI will require evidence of these during the Project Shaping and Contract Negotiation Stage (see **Section 2(d)** of this **Annex A1**).

- Property damage (both any property occupied by the Participants and any third party properties)
- Business interruption
- Employer's liability
- Public liability
- Product liability (or justify its exclusion if not appropriate)
- Professional Indemnity

Additionally, each Respondent should identify:

- if it or any other proposed Participant(s) self-insures or intends to self-insure for any of these risks;
- if it or any other proposed Participant(s) is intending to take out any project-specific insurance for the Project and the scope and intended beneficiaries of such insurance; and

- how (to the extent not already identified) each proposed Participant intends to insure against risks in the Project.
- In relation to professional indemnity insurance, Respondents should note that the ETI has the following requirements.
  - Each Participant is required to have in place at the start of the Project a professional indemnity insurance policy (with at least a 6 month unexpired term).
  - Each policy should have a limit of indemnity of not less than £1,000,000 each and every loss (although this should be noted as the minimum for ANY ETI project and a higher requirement may be required).
  - Each policy should provide an indemnity at least as extensive as the ETI's policy (the ETI will make this assessment). For example, the cover needs to include cover for negligent acts or omissions, and dishonest or fraudulent acts or omissions by the insured).
  - Each Participant will need to agree to maintain a professional indemnity insurance policy in force for 6 years from the date of completion of the Project.
  - The ETI will require sight of the insurance policy provided by the Participant or a copy of a letter of confirmation from the Participant's insurance company or broker summarising the policy.
- In the event it is appropriate for the Project to hold project insurance, the ETI will expect to approve the policy and be a named insured or beneficiary.

## 1.4 Intellectual Property

### All projects

The RfP will set out specific questions to identify what Background IP or Third Party IP is proposed to be used in the Project and/or needed for use or exploitation of the Arising IP (in accordance with the Arising IP requirements in the RfP). This can be found in the Proposal Format section. This will be used to identify risk and next steps if a Proposal is down-selected. Please see the **Commercial and Legal Requirements** document for ETI's expectations around Background IP and Third Party IP.

### Technology Development/System Demonstration Projects

If specifically requested in the RfP, Respondents should, where possible, provide a copy of any patent study/searches previously obtained that may be relevant to the Project (for example, in relation to the Background IP and/or any relevant technology).

If specifically requested in the RfP and/or the Intellectual Property section of the **Commercial and Legal Requirements** document, Respondents should identify a Chartered Patent Attorney or European Patent Attorney that the Respondents propose to use (if selected to proceed to the Project Shaping, Due Diligence and Contract Negotiation Stage) to carry out the required Patent Study or Studies (see **also Section 2 (b) of this Annex A1**).

## 2. Project Shaping and Contract Negotiation Stage – further Due Diligence Requirements

These are only required if a Proposal is selected to proceed to the Project Shaping and Contract Negotiation Stage, and may include (depending on the nature of the Project):

- a) a full health and safety competency assessment, which will be required by the ETI, except to the extent that a Respondent's proposed scope of work under the Project is entirely desk-based, to assess each Participant organisation's health & safety management systems and specific technical competence to manage the risks in this project. The ETI competency assessment process requires Respondents to complete a detailed questionnaire, the contents of which follow closely the competency assessment guidance set out in the Health and Safety Executive's Approved Code of Practice – managing health and safety in construction – construction (Design and Management)

Regulations 2007. Please see the Health, Safety and Environment section of the Proposal Format and Content document for the ETI's HSE requirements in relation to the Proposal;

- b) further intellectual property due diligence. This will include a detailed Background IP questionnaire which will be issued by the ETI for completion to identify Background IP and third party IP relevant to the Project and (where appropriate) the Programme. Participants and Subcontractors (if any) may be asked to provide evidence of ownership or rights to use the relevant intellectual property for the Project / Programme and/or for exploitation of the results of the Project / Programme.

If identified in the main body of the RfP, such due diligence may include a Patent Study, which the Respondent will be required to submit to the ETI (please refer to the Intellectual Property section of the Commercial and Legal Requirements document).

This shall be carried out, **at the expense of the Respondent(s)**, by a Chartered European Patent Attorney to assist in determining whether the proposed Project can be carried out without infringing valid intellectual property rights of others. Full instructions will be provided during the Project Shaping and Contract Negotiation Stage. The scope of the study and the patent attorney proposed will be subject to the prior approval of the ETI;

- c) financial due diligence on the breakdown of costs for the Project to (i) enable the ETI to assess value for money, (ii) assess financial risks associated with the project (although the ETI will not be liable for any cost overrun, we recognise that any overrun would put financial pressure on other funders which may jeopardise successful completion of the Project) and (iii) ensure that it meets state aid requirements;
- d) due diligence on the sources and detailed terms and conditions for all other funding, to provide all the necessary funds to complete the Project (including reasonable contingencies) are secure;
- e) if appropriate, due diligence relating to the any test or development site(s), for example site HSE requirements, agreements on how costs are shared, control of the test site, authorisation procedures, technical support arrangements, technical standards required, permitting;
- f) in the case of any equity proposal, separate standard financial and corporate due diligence activities;
- g) copies of insurance policies as set out above;
- h) detailed due diligence on the robustness of modelling and assumptions on any exploitation plan (including the financial return to the ETI); and
- i) any other information that the ETI reasonably requires in order to invest in the proposed Project including any information necessary to meet state aid requirements.