

**SENSITIVE AND CONFIDENTIAL**

Mrs. Sandra Gallina
Deputy Director-General

European Commission
Directorate-General
for health and food safety
Rue Breydel 4,
1000 Bruxelles, Belgium

10 August 2020

By email to SANTE-PROCUREMENT@ec.europa.eu

Subject: Call for tenders SANTE/2020/C3/042 – for the development, production, priority- purchasing options and supply of COVID-19 vaccines for EU Member States

Joint tender - Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A.

Dear Madam Deputy Director-General,

We refer to the letter dated July 31, 2020, in which you invited Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. to submit a tender for the development, production, priority-purchasing options and supply of COVID-19 vaccines for EU State Members (procedure SANTE/2020/C3/042).

We can assure the European Commission that Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A are highly mobilized to contribute to this ongoing major health challenge through the development and production of an adjuvanted pandemic vaccine against COVID-19.

Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A intend to support the European Union in its fight against COVID-19 and applaud the constructive negotiations conducted so far with the European Commission, which have led to a pre agreement on the main terms and conditions of this cooperation through the Term Sheet #.5 dated July 29th, 2020. In this context it was encouraging to see that the Commission issued a press release last Friday confirming the conclusion of final discussions based on this Termsheet.

This letter presents the joint tender of Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. In accordance with your above-mentioned requirements, our tender includes in particular the following documents:

- The present cover letter,



- A revised version of the Advance Purchase Agreement “APA”, marked with the most critical revisions that reflect our current agreement in principle, and that will require further refining,
- Our offer, (Annex II of the APA) consisting in
 - ✓ the Term-Sheet #.5 dated July 29th, 2020. This Term Sheet reflects the terms and conditions on which the European Commission and the candidates agreed regarding the reservation of production capacity and supply to European Member States of a vaccine against the Covid-19. *This Term-Sheet (also referred to as the “Protocol”) is the essential part of the Contractors’ tender and it shall take precedence over all other contractual provisions, (including the provisions of the APA and the Tender Specifications);*
 - ✓ legally annexed to this Protocol but physically directly attached here for a clearer presentation:
 - The technical offer;
 - The financial offer;
 - Additional administrative documents as required by Annex 1 of the Tender Specifications.

This tender is a joint tender of Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. Consistent with the agreed Term Sheet #.5 dated July 29th, 2020, both Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. would enter into direct, tri-partite contractual relations with the Commission pursuant to the to-be-agreed upon terms of the APA. Accordingly, we have not enclosed the Power of Attorney with our submission. Instead, Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. would incorporate certain terms set out in the template Power of Attorney directly into the APA. In particular, the APA would:

- acknowledge that both Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. would comply with the terms and conditions of the APA and ensure the proper delivery of their respective share of the services/supplies subject to the APA;
- identify one bank account of Sanofi Pasteur S.A. to which the European Commission must make payment for the services/supplies subject to the APA, with an acknowledgement that payment to such account discharges the European Commission from its payment obligation to GlaxoSmithKline Biologicals S.A. Sanofi Pasteur S.A. would be responsible for issuing all invoices under the APA;
- subject to the below, acknowledge that Sanofi Pasteur S.A. would act as the primary point of contact for receipt of communications from the European Commission in connection with the APA on behalf of GlaxoSmithKline Biologicals S.A.

The comments on the attached APA from Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. are marked with the most critical revisions herewith to reflect terms agreed in the Protocol and to provide an indication of further key areas of negotiation with the European Commission. Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. hereby reserve the



right to further comment on and refine the model APA and, if awarded the tender, will provide a refined mark-up of the APA to fully incorporate the prior agreed-upon terms from the Protocol as well as any additional comments to be negotiated in the definitive APA.

Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. would agree to be jointly liable towards the European Commission for financial obligations under the APA. However, because of their respective expertise and complementarity, and considering the competition rules, notably in the EU and in the USA, Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. cannot bear a joint and several liability for the performance of the APA and subsequent purchase agreements with Member States to be entered into.

For the same reason, Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. place great importance on the confidential treatment of their tender and in particular of the documents expressly referred to as confidential, in particular due to the highly sensitive nature of procured service. Both companies should be able – for certain documents which present a competition issue or a technological secret – to communicate individually and directly to the European Commission during the tender procedure and then during the performance of the APA. The same requirement would apply to specific contracts with the Member States: neither Sanofi Pasteur S.A. nor GlaxoSmithKline Biologicals S.A. would take the risk of violating applicable anti-trust requirements.

Sanofi Pasteur S.A. and GlaxoSmithKline Biologicals S.A. are fully available for discussions with the Commission on this tender and more generally on this promising cooperative project against Covid-19 in the pandemic context.

For Sanofi Pasteur

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