

Clarification Note #3

EUSPA internal reference: 302262

Procurement procedure: EUSPA/OP/37/23 (EUSPA/PRG/2024/OP/0001)

Title: 'Provision of support services to the European Union Agency for the Space Programme and the European Commission'

Question #33: Can a subcontractor bid for the same lot with more than one (1) consortium?

Answer #33: It is confirmed that a natural or legal person may act as subcontractor for several tenderers, including in different lots.

Please also refer to the responses given to questions #2, #4, #6 and #8 in Clarification Note #1; as well as to questions #12, #22, #23, #25 and #26 in Clarification Note #2, and question #9, #11, #15, #16, #27, #29, #43, # 44, #45 in the Industry Day Note. You may also consult Corrigendum No 1 in this respect, further clarifying the provision.

Question #34: If an entity has already obtained a waiver that is less than 1 year from the date of submission of the proposal, can we assume that the waiver is still valid for this bid?

Answer #34:

The waivers are granted for each individual procurement by the Contracting Authority.

Regarding the documents supporting the request for waiver, according to section 2.2.1.3 of the Tender Specifications (reflecting the provisions of Art. 24(3) of the EU Space Regulation), the entity applying for a waiver shall present an assessment form the competent authority of the Member State in which it is established, guarantee that (among others) "(a) control over the entity is not exercised in a manner that restrains or restricts its ability to: (i) carry out the **procurement**; ..." .

Question #35: Can you clarify for which lots / tasks the Security clearance (EU Secret) is mandatory?

Answer #35:

The simulation exercise tables of each Lot clarify task by task which level of EUCI (PSC) is to be handled within the respective task.

Question #36: With reference to specifications 2.2.1.3 could you clarify in the tender the difference between a subcontractor being in a core team and a subcontractor being in a non-core team in terms of scope and waiver?

Answer #36: As explained in section 2.2.10 of the Tender Specifications "the definition of "Core Team" comprises (a) prime contractors, (b) any possible economic operator submitting the tender jointly with the prime tenderer (e.g., consortium members) and (c) any subcontractors whose capacity is used by the tenderer to comply with selection criteria as per Section 3.2".

A core team subcontractor is a subcontractor which is essential in order for the Tenderer to meet the selection criteria under section 3.2 of the Tender Specifications. All other subcontractors are considered as non-core team subcontractors.

Question #37: Can there be more than 1 layer of subcontracting (L1, L2, L3) ?

Answer #37: It is confirmed that there can be more than 1 layer of subcontracting. The requirements specified for subcontractors in the Tender Specifications apply to any tier of subcontracting.

Question #38: In case of an entity subcontracting the activity to an entity of its group, where sister entity employs the consultants (whether on EUSPA premises or not) does that sister entity needs its own FSC ?

Answer #38: FSC is needed if the entity foresees to handle or store EUCI at level Confidential or above in their premises. As the FSC is issued for a specific building, an entity without FSC may handle EUCI in the premises of an economic operator holding a FSC.

Question #39: Is a secondment from one entity holding the FSC to another entity (without an FSC) within the same group of companies allowed?

Answer #39: FSC is needed if the entity foresees to handle or store EUCI at level Confidential or above in their premises. As the FSC is issued for a specific building, an entity without FSC may handle EUCI in the premises of an economic operator holding a FSC.

Question #40: In the TS (section 1.5.3) it is said "the same economic operator cannot submit a bid for a given lot as member of a consortium and a bid for the same lot as sole tenderer".

- (1) **Does this imply that a single economic entity can be a subco in more bids OF THE SAME LOT?**
- (2) **Does this imply that a single economic entity can be a partner in a consortium and in parallel a subco in 1/ more bids OF THE SAME LOT?**
- (3) **Given the criticality of the reply to this question we also ask for an extension of 3 weeks.**

Answer #40: It is confirmed that a natural or legal person may act as subcontractor for several tenderers, including in different lots, as long as the tenders are drawn and submitted in complete independence and autonomously from each other, and this does not assume illegal collusive behaviour.

In the examples that you provide, it is therefore confirmed that a single economic entity:

- (1) can be a subcontractor in more bids of the same lot;
- (2) can be partner in a consortium and in parallel a subcontractor in one or more bids of the same lot.
- (3) Please see Corrigendum #2 providing for extension of the tender submission deadline until 16 May 2024.

Please also refer to the responses given to questions #2, #4, #6 and #8 in Clarification Note #1; as well as to questions #12, #22, #23, #25 and #26 in Clarification Note #2, question #9, #11, #15, #16, #27, #29, #43, #44, #45 in the Industry Day Note, and to question #33 herewith. You may also consult Corrigendum No 1 in this respect, further clarifying the provision.

See also Corrigendum #2.

Question #41: In the TS (section 1.5.3) it is said "the same economic operator cannot be member of more than one consortium." Does this imply that the consortia cannot change from lot to lot (i.e. same partners for all the 5 lots)? What if 5 lots are submitted (and awarded) by consortia formed by the following companies:

Lot 1.A,B;

Lot 2.A,B;

Lot 3.A,B,C,D;

Lot 4.C,D;

Lot 5.C,D.

Will the 4 companies be disqualified in all lots? Or in lot 3 only? Or in which other lots (and under which rule)? Or will only some entities (which one(s)) be disqualified in lot 3 only? Given the criticality of the reply to this question we also ask for an extension of 3 weeks.

Answer #41:

All the examples referred in the question reveal a breach of the rule whereby the same economic operator cannot be member of more than one consortium.

As set out in the tender specifications, non-compliance to this requirement will lead to rejection of all the tenders for all the lots referred in the question

You may also consult Corrigendum No 1 in this respect, further clarifying the provision.

Question #42: In Table 6, pg 20, Lot 1 Statement of Work, SE Task 25 refers to FWC Task 2, while, among related deliverables, D.3.1, D.3.2, D3.3 and D.3.4 are mentioned. However, these deliverables seem to refer to FWC Task 3. Could you please confirm/ clarify which are the correct deliverables we should take into consideration for the Simulation Exercise_Deliverable Mode for this task?:

Answer #42:

The Lot 1 Statement of Work Table 6 SE Task 25 refers to the wrong related deliverables. The deliverables related to this task should correctly be referred to as D2.1, D2.2, D2.3, ..., D2.10 with each of these deliverables requested once per quarter that is 4 times over the duration of the simulation exercise. The table will be updated in the upcoming *Corrigendum #3*.

Question #43: In the TS (section 1.5.3) it is said "the same economic operator cannot be member of more than one consortium." Does this imply that the consortia cannot change from lot to lot (i.e. same partners for all the 5 lots)? What if 5 lots are submitted (and awarded) by consortia formed by the following companies:

1.A,B;

2.A,B;

3.A,B,C,D;

4.C,D;

5.C,D.

Will the 4 companies be disqualified in all lots? Or in lot 3 only? Or in which other lots (and under which rule)? Or will only some entities (which one(s)) be disqualified in lot 3 only? Given the criticality of the reply to this question we also ask for an extension of 3 weeks.

Answer #43: Please refer to the answer given to question #41 herein.

Question #44: We plan to submit the tender on electronic media only. In case an administrative document is signed with wet ink, what do we have to do: 1. provide all the admin docs also in paper; 2. provide only that document also in paper; 3. provide the scanned copy of the document only (with no need to include also the original)?

Answer #44:

- The Declaration of Honour and the NDU must be signed either electronically with a qualified electronic signature (QES) or signed with wet ink, with the original provided to EUSPA by post mail or courier;
- All other documents which are to be signed according to the Tender Specifications may be provided as scans of the originals.

Question #45: In the document "Annex I to Invitation to Tender "Tender Specifications" there is a chapter 2.2.7.6 Personal Security Clearance...The minimum number of the Tenderer's team members (at least 5 (five) persons) in possession of a PSC at the moment of submission of their request to participate (Phase I) will be assessed under selection criterion L.8., table 3 – Legal Capacity Selection Criteria. The overall suitability of the team to perform the tasks under the different lots, including in relation to personal security clearances, will be assessed under award criterion Q.2.3. table 7 – Award Criteria.... Question: Would EUSPA accept an offer where there will be more than 5 persons holding PSC, while other team members will be in a process of acquiring PSC at national security bureau (that can be proved in written by national security bureau)?

Answer #45: At least 5 persons (i.e., from the Prime / Consortia Members or subcontractors, expected to handle classified information above CONFIDENTIEL UE/EU CONFIDENTIAL or above under the Contract must have – at the moment of submission of tender a Personal Security Clearance ('PSC') of SECRET UE / EUSECRET level to be maintained throughout the duration of the FWC as provided in

section 2.2.7.6 of the Tender Specifications in order to demonstrate the compliance to selection criterion L8.

Hence, the answer would be affirmative in the example you provide.

The number of the consultants with PSC in the proposed team (more than 5) will be assessed at the award criteria evaluation stage accordingly.

Question #46: Annex I - Tender Specifications, section 4.6.2: Regarding the content of Envelope 2 (Technical Proposal), we understand that 'C. FWC Proposal' and 'D. Simulation Exercise (SE) Proposal' correspond respectively to Qualitative award criteria Q1 and Q2 presented in section 3.4.1. Q3 'Competitive Subcontracting implementation' seems therefore to be missing. Can you please clarify in which envelope the answer to criteria Q3 must be included?

Answer #46:

The Competitive subcontracting proposal shall be included in “Envelope/Folder 1 – Administrative documents and documents relating to exclusion and legal and financial/economic selection criteria” (see page 57 of the Tender Specifications).

Question #47: Annex I - Tender Specifications, section 4.6.2: Regarding the content of Envelope 2 (Technical Proposal), we understand that 'C. FWC Proposal' corresponds to Qualitative award criteria Q3 presented in section 3.4.1. However, elements related to Q1.3 (costing and pricing) seem to be missing here. Can you confirm that the answer to Criteria Q1.3 must be submitted within Envelope 2?

Answer #47:

The FWC Proposal (Section 4.6.2. 'C. FWC Proposal' of the Tender Specifications), is expected to provide bidders' feedback that is to be assessed under Qualitative award criterion Q1. The adequacy of the price methodology is expected to be assessed based on the “Pricing methodology in a separate price structure document attached to the Financial Table of Answers (see section 4.6.3, Table 10), line (2).

Question #48: Annex I - Tender Specifications, section 4.6.2: Regarding the content of Envelope 2 (Technical Proposal), we understand that 'D. Simulation Exercise (SE) Proposal' corresponds to Qualitative award criterion Q2 presented in section 3.4.1. However, elements related to Q2.2 (costing and pricing) seem to be missing here. Can you confirm that the answer to Criteria Q2.2 must be submitted within Envelope 2?

Answer #48:

The Technical Simulation Exercise Proposal ('Technical Proposal, part D. Simulation Exercise' of section 4.6.2 of the Tender Specifications), is to be submitted in Envelope 2 and is expected to provide bidders' feedback that is to be assessed under Qualitative award criterion Q2. The Technical Simulation Exercise Proposal is to include sufficient level of details, and information to allow to assess the Q.2.2–

the consistency, justification and traceability of the proposed costs/prices with respect to the **Tenderer's technical** and **financial proposal**.

For the avoidance of doubt the Technical Proposal shall not include costing information, it shall be part only of the Financial Proposal.

Question #49: Annex I - Tender Specifications, section 4.6.3: Regarding the content of Envelope 3 (Financial Proposal), is the pricing methodology requested within this envelope the same as the elements requested for Qualitative award Criteria Q1.3 and Q2.2? Can you please clarify?

Answer #49:

The pricing methodology in the Envelope 3 (Financial Offer) is not the only element that will support the Qualitative award Criteria Q1.3 and Q2.2 assessment, apart from it, the price justification and the completeness of the information provided, such as (but not limited to) rates, overheads and profit margins or travel costs, will be considered, as well as the compliance of the technical to the financial proposal.

Question #50: We understand that proofs for Selection criteria - Legal and regulatory capacity and Selection criteria - Economic and financial capacity must be submitted within Envelope 1. Proofs for Selection criteria - Technical and professional capacity must be submitted within Envelope 2. Please confirm or clarify our understanding.

Answer #50:

Your understanding is confirmed.

The Administrative file (ENVELOPE/FOLDER 1) must include all evidence relating to the selection criteria in section 3.2.1 (i.e. relating to legal and regulatory capacity criteria), and the selection criteria of a respective lot relating to economic and financial capacity in section 3.2.2

The Technical proposal (ENVELOPE/FOLDER 2) must include all evidence relating to the selection criteria in section 3.2.3 (i.e. relating to technical and professional capacity (T1), in accordance with section 4.6.2 par. 1.B of Annex I to Invitation to Tender - Tender Specifications.

The reference to technical and professional capacity in the second bullet of line 9 of Table 8 in section 4.6.1 of the Tender Specifications is wrong, the text should read:

*"- the selection criteria of a respective lot relating to the **economic and financial capacity** in section 3.2.2 - Economic and financial capacity"*

See corrigendum #3 where this has been corrected.

Question #51: In regard to Legal and Regulatory Capacity Criteria L4, we understand that the proof to be provided for this requirement is only the name of the Tenderer's Local Security Officer. Can you confirm our understanding?

Answer #51: Yes, your understanding is correct.

Question #52: In regard to Selection Criteria - Legal and Regulatory Capacity - L5 Absence of conflicting professional interests, section 2.2.7.2 of the Technical Specifications requires in the Executive Summary to either (i) confirm absence thereof or (ii) present the measures to resolve any conflict. Section 4.6.2 indicates that the Executive Summary shall be submitted within Envelope 2 (Technical Proposal). However, section 4.6.1 indicates that all evidence related to Legal and Regulatory capacity criteria shall be submitted within Envelope 1 (Administrative file). Can you please clarify?

Answer #52:

See Corrigendum #2, the reference to Executive Summary was replaced by a reference to Cover Letter in section 2.2.7.2.

Question #53: Annex II.VI seems to be missing from the RFP documentation. Can you please clarify?

Answer #53:

Annex II.VI to the FWC is the Security Aspect Letter. For the Security Aspect Letter – please refer to the published documents titled:

- Annex I.G_Part 1_Security Aspects Letter
- Annex I.G_Part 2 – Statement of Applicability of the SAL

The SAL provisions (Annex I.G part 1) shall apply subject to the provisions of Annex I.G_Part 2 – Statement of Applicability of the SAL.

Question #54: In regard to the COMSEC clearance requested in the Tender Specifications (Selection Criteria L9), our understanding is that having submitted a request for clearance with the relevant national authorities would be sufficient to be awarded a contract. Can you confirm our understanding?

Answer #54:

The evidence required is proof of (i) existence of the necessary EU COMSEC account (when COMSEC Items shall be handled under the security custody of the Economic operator) and an ad hoc security organisation, and (ii) the holding of a COMSEC authorisation (for every personnel supposed to handling COMSEC Items – including for personnel planned to be deployed in the Contracting Authority premises - i.e. official documentation issued by the relevant Competent Authority submitted to EUSPA with the tender.

Further “in case the abovementioned documentation (evidence) cannot be provided, detailed explanation provided by the Local Security Officer accompanied by relevant proof, justifying the reasons why these documents cannot be provided (e.g., due to security applicable rules)”.

See also the answer to question #33 of the Industry Day Note.

Question #55: Annex I - Tender Specifications, Section 4.6.2, 'D.', mentions CV for the proposed team to be provided within Envelope 2 Technical Offer. However, there is no mention of these CVs in Table 7 'Qualitative Award criteria for all lots'. Can you please clarify if these CVs are to be provided?

Answer #55:

It is confirmed that CVs of personnel proposed by Tenderers shall be submitted according to section 4.6.2.D of the Tender Specifications (see also note 11, page 14 of the Tender Specifications).

See also the answer to question#4 of the Industry day Note.

Question #56: In regard to Technical and professional capacity criteria T1, we understand that there is no minimum financial volume requirement for the project references to be provided. Can you please confirm our understanding?

Answer #56:

That is correct.

Question #57: The Excel template provided for Declaration of Ownership and Control (Annex I.H_Part 2_V), requires adding several proof documents as attachments within the Excel file. Given the proposal will be submitted in paper, our understanding is that these attachments will be provided in paper as annexes to the printout of the Excel file within Envelope 1. Please confirm or clarify our understanding.

Answer #57:

That is correct.

Question #58: The "Delivery Provision scenario" in the Financial Table provides a pre-filled number of man-days per profile per deliverable. Are the Tenderers allowed to modify the number of man-days estimated by EUSPA with their own estimates?

Answer #58:

The Pre-filled values were just example data for helping the bidder. Yes, the tenderers have to modify those unit values according to their proposal. To avoid any misunderstanding, new version of the tables, completely empty was reissued for bidders' clarity.

See Corrigendum #3

Question #59: Could you please confirm that it is not necessary to submit a hard copy of the offer? The tender documentation mentions the printed version of the offer many times, but chapter 4.7 mentions the possibility of submitting only electronic versions on CD-ROM or USB. Thank you.

Answer #59:

Tenderers may submit the tender on paper or on electronic media.

If submitted on electronic media, the tender shall contain 3 (three) CD-ROM, DVD, or USB sticks with the full set of documents.

Question #60: Please specify if SUP R&D is the right one required under L7 in section 3.2 Selection criteria?

Answer #60: Yes, PRS SUP for “R&D” is acceptable for the Lots in question.

Question #61: Task 5 of Lot1 requires PRS-SM and PRS-RCV (I.I.1, p.5), while looking at the task 5 description (section 3.2.5. of I.I.1, points 2, 5, 6) they seem to be manageable with PRS-SUP only. Can you confirm that PRS-SM and PRS-RCV are prerequisites for Lot 1 or are they simply nice to have?

Answer #61: It is confirmed that for the activities under Task 5 of Lot 1 all the SAB authorisations cited in Table 5 of the Statement of Work (SOW) are required.

Question #62: "The Contractor shall have to achieve, in the course of the execution of the contract, minimum 10% share of subcontracting to be awarded in competitive tendering outside the Group" Could you please confirm that in case subcontractors have been pre-qualified during the preparation of a response to this EUSPA/OP/37/23 call, and if we succeed during the implementation of the Framework Contract to allocate in total more than 10% cumulatively of the Specific Contracts budget to them, further competitive tendering process will not be needed?

Answer #62:

The contractors will have to achieve during the contract implementation a share of subcontracting that they committed to in the tender. The minimum is indeed set to 10%, however if the tenderer commits to its tender to achieve higher share – e.g. 15%, it will be obliged to achieve 15% during the contract implementation (not merely above 10%).

See the answer to question #34 of the Industry Day note



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