

## Clarification Note #4

EUSPA internal reference: 302464

**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 #63: Regarding Lot 3, in some activities you are mentioning that the location of service implementation will be either the contractor's premises, or Prague or Brussels. Does this mean that is up to the contractor to decide which location to use? Thank you in advance.**

**Answer #63:** The Agency decides where the place of performance of the particular service is to be. This is clearly indicated for each task in the simulation exercise overview tables (Table 5 and 6 for Lot 3 SOW). Kindly see also answers to questions #12 and #13 of the Industry Day Clarification Note.

**Question #64: Please could you clarify whether or not a UK company ultimately owned by a non-EU, Party to the GPA parent Group is eligible to take part in this tender?**

**Answer #64:** As reiterated in the response provided to question #26 of the Industry Day Clarification Note, the tenderers shall comply with the participation conditions set out in Section 2.2.1 of the Tender Specifications, constituting Annex I to ITT, imposing requirements on the prime contractors, core team members and subcontractors, whereby for the latter the requirements defer depending on where they are part of the core team / whether they will be engaged in security sensitive activities.

Taking into account the above, as far as your concrete example of a UK company ultimately owned by a non-EU, Party to the GPA parent Group is concerned, considering that the procurement procedure in question is, indeed, covered by the Plurilateral Agreement on Government Procurement concluded within the World Trade Organisation (GPA), as stated in the General Information part of Contract Notice 118779-2024, given the European Commission's involvement as co-contracting authority, as well as the value of the to-be-concluded Contract and the nature of the services procured, the said company could be acting as subcontractor not involved in security sensitive activities and not part of the Core Team (see section 2.2.10 of the Tender Specifications) since the participation conditions would not apply to this context – please consult in this respect Section 2.2.1.4 of the Tender Specifications.

**Question #65: Please could you clarify whether or not an EU registered company ultimately owned by a non-EU, Party to the GPA parent Group is eligible to take part in this tender? And if yes, then can said EU registered company subcontract the work to consultants from non-EU, Party to the GPA countries and or the UK?**

**Answer #65:** As reiterated in the response provided to question #26 of the Industry Day Clarification Note, the tenderers shall comply with the participation conditions set out in Section 2.2.1 of the Tender Specifications, constituting Annex I to ITT, imposing requirements on the prime contractors,

core team members and subcontractors, whereby for the latter the requirements defer depending on where they are part of the core team / whether they will be engaged in security sensitive activities.

Taking into account the above, as far as your concrete example of an EU registered company ultimately owned by a non-EU, Party to the GPA parent Group is concerned, the said company could be acting either:

- as a subcontractor not involved in security sensitive activities and not part of the Core Team (see section 2.2.10 of the Tender Specifications), since the participation conditions would not apply to this context (please consult in this respect Section 2.2.1.4 of the Tender Specifications) or,
- as a subcontractor involved in security sensitive activities but not part of the Core Team, provided that and solely if it duly complies with what it is explicitly envisaged in Section 2.2.1.3 of the Tender Specifications pertaining to request for waiver (and in particular its last paragraph according to which the granting of the waiver is not automatic).

With regards to subcontractors from non-EU, Parties to the GPA countries and the UK, kindly refer to answer #64 of Clarification Note #4.

**Question #66: In several questions it has been specified that a corrigendum has been published. However, we can't not find it in the tender documents. Could you please upload it? Thank you in advance.**

**Answer #66:** Corrigenda #1, #2 and #3 have been duly and timely published in the 'Documents' section of the dedicated to this procurement procedure Funding and Tenders Portal webpage (<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/tender-details/a0afc6f2-a024-4ae3-8393-5dfde22f0001-CN?#anchorDocuments>), as per also the relevant announcements made therein.

**Question #67: I have been trying to see the LOTS positions at EUSPA ITT „ Provision of support services to the European Union Agency for the Space Programme and the European Commission“ . However, I was unable to find it, could you please provide me with the information of the positions or tell me where I could find it?**

**Answer #67:** Should by 'positions' you mean to say functions and profiles of the prospective consultants, kindly consult Section 2.1.2 of the Tender Specifications, constituting Annex I to ITT, applicable to all lots. If your consideration of 'positions' is different, please clarify accordingly by reformulating and resubmitting your question.

**Question #68: Is there any rule regarding the overhead or management fees that a partner can take over a subcontractor share?**

**Answer #68:** There are not fixed rules but best practices which will be considered during the evaluation. Overhead for administrative and management are fully understood and they should be addressed as "General & Administration Expenses" input in the A1 Form. An Overhead on the

subcontractor share shall not exist or being zero, especially when the bidder is using the “General & Administration Expenses” overhead.

**Question #69:** “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 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 #69:** The contractors will have to achieve during the contract implementation the share of subcontracting that they committed to in the tender. The minimum is, indeed, set at 10%, however if the tenderer commits to its tender to achieve a higher share – e.g. 15%, it will be obliged to achieve 15% during the contract implementation (not merely above 10%).

In this respect, please see also the answer to question #62 in Clarification Note #3, as well as the answer to question #34 of the Industry Day Note.

**Question #70:** a) Can you please clarify if is it possible to propose the same profile for different Tasks in the same LOT? b) Can you please clarify if is it possible to propose the same profile for different Tasks in different LOTs? c) Would it be acceptable to have the same subcontracting company present in different bids for the same LOT?

**Answer #70:** For queries a) and b) kindly refer to the comprehensive answer given in question #27 in Clarification Note #2. As regards point c), as it has been explicitly stated inter alia in answer #2 of Clarification Note #1 “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. The Contracting Authority may request the bidders to provide evidence of the autonomous/non-collusive character of the tenders.”.

**Question #71:** Can one consultant (the same individual) be offered a) at multiple LOTs or b) by multiple organizations?

**Answer #71:** With regards to point a), kindly refer to the comprehensive answer given in question #27 in Clarification Note #2, while for point b) you may consult accordingly the response to question #36 included in the Industry Day Clarification Note.

**Question #72:** Can you precise "economic operator", "core team members" and "subcontractor" terms? Our understanding is that: 1-Economic Operator terms identify a Company (Legal Entity) 2- Consortium is a group of Economic operators jointly liable vs EUSPA (co-Contracting) 3- Core team is the industrial organization for the Tender. Is a Core Team definition equivalent to Consortium, or it is possible to have a core team composed by a Prime Legal Entity and one or several subcontractors (including non-core subcontractors for external subcontracting)?

**Answer #72:** Economic operator: The notion of “economic operator” shall be understood as defined in Article 2 of the Financial Regulation (Regulation (EU, Euratom) 2018/1046). Kindly also refer to the answer given in question #14 in the Industry Day Clarification Note.

Core team members: As per Section 2.2.10 of the Tender Specifications constituting Annex I to ITT, "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. Kindly also refer to response provided in question #36 in Clarification Note 3.

Subcontractor: The notion of “subcontractor” shall be understood as defined in Article 2 of the Financial Regulation (Regulation (EU, Euratom) 2018/1046). It should be highlighted that, in line with Section 2.2.11 of the Tender Specifications constituting Annex I to ITT, “subcontracting shall not relieve the eventual Contractor from its obligations under the FWC. In this respect, the Contractor shall remain the sole person legally and financially responsible vis-à-vis the Contracting Authority.”.

**Question #73: If an economic operator is in a consortium (intended as group of economic operators jointly liable) for a Lot as leader or as Co-contracting, is it free to be involved in another core team for another Lot as Subcontractor (without joint consortium)?**

**Answer #73:** Yes, that is correct. Precisely on that note, you may also consult the responses given to Questions #20 and #28 in the Industry Day Clarification Note, as well as associated references made thereto.

**Question #74: We understand that only one Financial Proposal is expected, both in Consortium mode (for Consortium leading entity) than in Prime/Subco mode (Prime Financial Proposal). Do you confirm?**

**Answer #74:** One single template file is to be submitted. Please also consult the answer to question 21 of the Industry Day Clarification Note.

**Question #75: Ref.# 10 is missing, is that a typo or there is a missing document in the list of Administrative Documents for the Envelope 1?**

**Answer #75:** We confirm the existence of a typo. There is no missing document in the list of Administrative Documents for the Envelope 1.

**Question #76: B.Selection Criteria Evidence: in the sentence "All evidence relating to the selection criteria in section 3.2.3 - Technical and professional capacity (T1 and T2) above" a criteria T2 is quoted, while in the section 3.2.3 there's only one criteria (T1). Is a criteria missing or there's a typo?**

**Answer #76:** It has been confirmed that reference to T2 constituted a typo - kindly consult in this respect answers #11 and #14 of Clarification Note #2, as well as Corrigendum #2.

**Question #77:** In the Cost Sheets section, the sentence "Due to the fact that those elements are composing the unit prices, any further details which make them clearer (e.g. using the cost sheet form A2 for each job profile), explaining their structure and the costs included, will be positively evaluated in the Qualitative award criteria (see Q1.3 in 3.4.1)." it quotes a Cost Sheet A2. The above-mentioned Cost Sheet A2 has not be found in the financial volume: Is it referred to the Instructions of the Annex.I.F.4 (typo) or a form is missing in the data package?

**Answer #77:** Because it's optional, we have not added the procurement standard sheet A2 (cost breakdown) in the financial template. An example of the Cost Sheet A2 could be downloaded from the following link (<https://www.euspa.europa.eu/opportunities/procurement>), clicking on the Cost Sheets Master Template links.

**Question #78:** Annex I.M Mgt req Service Support Contract Corrigendum 2 uploaded on the website is in fact IndustryDay Calrification Note. Can you please update the file?

**Answer #78:** Indeed, there was a technical issue while uploading Annex I.M Mgt req Service Support Contract Corrigendum 2 on 22 March, which was resolved on 26 March. Hence, as of the latter date the said document is available in the Funding & Tenders Portal.

**Question #79:** 1) In tender specification, namely in the article 2.2.7.5., is stated that contractor, all consortium members even subcontractors need to be holders of FSC, unless the Tenderer/Contractor can demonstrate to EUSPA's satisfaction in writing the absence of that consortium member's, or subcontractor's need to access classified information for performing the tasks under the respective contract outside Contracting Authority's premises. As this statement is not concrete, can you 1) provide more details about the ways how to demonstrate this? 2) How we can understand at the time of making a bid, that "all consortium members + subcontractors" need to be holders of FSC, respectively is mandatory that all consortium members + subcontractors need to have FSC in the time of making bid?

**Answer #79:** Selection criterion L3 in conjunction with Section 2.2.7.5 of the Tender Specifications require that "the Contractor(s) (including any consortium member) and subcontractors need to be holders of a Facility Security Clearance (FSC) at the moment of submission of the tender", as "The Contractor(s) of all lots will have to deal with classified information in the execution of the respective contract up to level of SECRET UE/EU SECRET, not necessarily restricted to the Contracting Authority's premises".

However, such requirement may be waived if Tenderers "submit to the Contracting Authority's satisfaction in writing the document evidencing that the consortium member or subcontractor does not need to have access to the classified information CONFIDENTIEL UE / EU CONFIDENTIAL or above for performing the activities under the FWC outside the Contracting Authority's premises". It is left to the tenderers to elaborate and provide supporting information and evidence to explain such circumstances, linked with the intended role of the entity in the contract implementation.

Please also consult the responses provided to questions #38 and #39 of Clarification Note #3.

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