

## Clarification Note #2

EUSPA internal reference: 302082

**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 #10:** Can the volume of MMs included in Annex I.F.x (Delivery provision scenario) be changed or not?

**Answer #10:** If **MMS** means man-days, the answer is **yes**, surely, this is the purpose of the Financial Template. If **MMS** means the number of deliverables in 12 Months, the answer is **no**, because it is part of the comparison on the scenario, to be applied on equal basis for all bidders.

**Question #11:** Tender Specifications - Table 9 – Envelope 2 content – technical proposal: The text in the table states: "[...] B. Selection Criteria Evidences • All evidence relating to the selection criteria in section 3.2.3 - Technical and professional capacity (T1 and T2) above. [...]". We were not able to find the technical and professional capacity criterion T2. Could EUSPA please clarify?

**Answer #11:** It is confirmed that reference to the technical and professional capacity criterion T2 is a typo, the right reference is T1.

*(see Corrigendum #2)*

**Question #12:** In the TS (p.8) it is said "the CA will limit the number of lots to be awarded to same tenderer either as first or as second Contractor in cascade to 2 (two) out of 5 (five) lots". Does this apply to prime and joint partners only or also to subcontractors?

**Answer #12:** The limitation envisaged in Section 1.5 of the Tender Specifications as regards the number of contracts to be awarded does not apply to subcontractors, which are not in a contractual relationship with the Contracting Authority and, therefore, are not as such to be awarded any contracts.

*Please consult also responses given to questions #2, #6 and #8 in Clarification Note #1.*

**Question #13:** In the TS (p. 57) it is stated that the tender should include one Identification sheet (Annex IA) per Tenderer including all the legal entities involved in the consortium and subcontractors and containing, where appropriate, as many sections as legal entities involved, while in the TS (p. 74) the Identification sheet (Annex IA) has to be "submitted by Prime only". Can you please clarify which section is correct and if Annex IA has to be provided only for the prime or for all the economic entities involved in the tender?

**Answer #13:** Indeed, one Identification Sheet (Annex I.A) is requested to be provided, including all the legal entities involved in the consortium and subcontractors and containing, where appropriate, as many sections as legal entities involved. The Prime (or consortium coordinator – if there is a consortium) shall submit this form filled in for all entities / organisations included in the tenderer's organisation.

**Question #14:** In the TS (p.59, point B), a reference is made to T2. Is this a typo?

**Answer #14:** It is confirmed that reference to T2 is a typo, please refer to the answer given in question #11.

*(see Corrigendum #2)*

**Question #15:** 1. Can you please provide the missing reference "section 0Error! Reference source not found." in TS (p. 56)?

**Answer #15:** Reference is made to section 2.2.11 (iii) of the Tender Specifications (Subcontracting).

*(see Corrigendum #2)*

**Question #16:** Can you please provide the missing reference "Error! Reference source not found." in TS (p.44)?

**Answer #16:** Reference is made to section 2.2.2 of the Tender Specifications (Specific conditions for PRS-related activities).

*(see Corrigendum #2)*

**Question #17:** Can you please clarify what is requested to be included in the cover letter (Tender Specifications (p. 56) "if the tender is submitted by consortium or grouping") by "include a letter signed by each member undertaking to participate as detailed"? Where is it detailed? Which letter you are referring to?

**Answer #17:** 1. In the case of consortia, reference is made to the duly signed and dated statement/declaration by each of the consortium members specifying the company or person heading the project (Annex I.C), as detailed in section 4.6.1. (13) of the Tender Specifications;

2. In the case of subcontractors, reference is made to the duly signed and dated Letter of Intent (Annex I.D), as detailed in section 2.2.10 of the Tender Specifications (only when the Tenderer relies on the subcontractor's resources in order to fulfil the selection criteria).

**Question #18:** In section 2.1.7 of TS point a.i is written "The proposed". Can you please complete the sentence?

**Answer #18:** Please refer to the answer given in question #1 (Clarification Note #1).

*(see Corrigendum #1)*

**Question #19:** Can you please confirm that the word "Executive Summary" in section 2.2.7.2 of TS should in fact be read as "Cover letter"?

**Answer #19:** It is confirmed that in section 2.2.7.2 of the Tender Specifications (Professional Conflicting interest) reference is made to the Cover Letter (section 4.6.1. (1) of the Tender Specifications). It is also confirmed that the provision includes reference to section 2.2.7.2.

*(see Corrigendum #2)*

**Question #20:** In Lot SoW, the Task numbering jumps from Task 3 to Task 5 (no task 4). Could EUSPA please clarify if it is a typo? If not, could the details for Task 4 please be provided?

**Answer #20:** The number jump is an artefact from the drafting process. There is no task 4 foreseen in Lot 2.

**Question #21:** Are there clear, objective and detailed criteria to define when and where are there conflict of interests and when not? Not only for contracts in that company also in other contracts of the same group, in participated companies, in consortia, in tendering groups, etc.

**Answer #21:**

The notion of conflict of interests refers to situations where personal or professional interests of the tenderer affects or risk affecting its capacity to perform a contract in an independent, impartial and objective manner, including, without limitation to, situations of previous involvement of the tenderer in the preparation of the tender documentation.

In this regard, please also consult also Section 2.2.7.2. ("Professional Conflicting Interest") of the Tender Specifications (Annex I to the ITT) and the Draft Contract (Annex II to the ITT).

**Question #22:** With reference to the statement "the same economic operator cannot be member of more than one consortium" (Tender Specifications - par. 1.5.3), we kindly ask you to confirm that each of the following cases for tender participation are allowed:

- **Case a)** Company X is Prime Contractor in consortium A bidding for Lot 1 and Company X is also Core Team Member in consortium B bidding for Lot 2
- **Case b)** Company X is Prime Contractor in consortium A bidding for Lot 1 and Company X is also subcontractor to consortium B bidding for Lot 2
- **Case c)** Company X is subcontractor to consortium A bidding for Lot 1 and Company X is also subcontractor to consortium B bidding for Lot 2
- **Case d)** Company X is subcontractor to consortium A bidding for Lot 1 and is also subcontractor to consortium B bidding for Lot 2 and also subcontractor to consortium C bidding for Lot 3

**Answer #22:**

It is confirmed that:

- if Company X is a member of consortium A and consortium B, this is not allowed. If Company x is a member of consortium A and subcontractor of consortium B (although part of the Core Team), this is allowed.
- the example you provide under case b) is allowed;
- the example you provide under case c) is allowed;
- the example you provide under case d) is allowed.

*Please consult also responses given to questions #2, #6 and #8 in Clarification Note #1; as well as responses given to questions #12, #23 and #26 in Clarification Note #2.*

**Question #23:** Can a company acting as a subcontractor to all lots be awarded more than two lots?

**Answer #23:** A company acting as subcontractor is not awarded any contract. Only tenderers will enter into contractual relationship with the Contracting Authority. *Please consult also responses given to questions #2, #6 and #8 in Clarification Note #1; as well as response given to question #12 in Clarification Note #2.*

**Question #24:** Reference is made to the Participation Conditions set out in Annex I to Invitation to Tender - Tender Specifications – point 2.2.1.4 Participation conditions for subcontractors not involved in security sensitive activities and Annex I.I.3 Statement of Work\_Lot3 / Annex I.I.4 Statement of Work\_Lot4: 1) With regard to Lot 4, please confirm our understanding that all activities and tasks within Lot 4 can be qualified as "NON-Security-Sensitive Activities". 2) With regard to Lot 3, is it possible to identify some activities and tasks as "NON-Security-Sensitive Activities" and if so, then would it be eligible the participation as Subcontractors not involved in security-sensitive activities in this specific Lot?

**Answer #24:** With regard to Lots 3 and 4, your understanding is not confirmed, as Lots 3 and 4 tasks include security sensitive activities.

The security and PRS sensitivities and clearances needed are specified for Lots 3 and 4 in the simulation exercise (tables 5 and 6). Here you can deduce which tasks have no EUCI or PRS NTK classification and are thus to be considered non-security sensitive.

Participation of subcontractors, not involved in security-sensitive activities in Lot 3 is possible for these respective activities.

**Question #25:** In section 1.5.3 about consortia it is stated that the same economic operator cannot be member of more than one consortium.

a. Does this mean that if company A forms a consortium with company B in one lot, company A cannot form a consortium with company C to bid for another lot?

b. If company A forms a consortium with company B for one lot, can company A act as sole prime or subcontractor in another lot?

**Answer #25:**

It is confirmed that:

- the example you provide under case a) is not allowed;
- the example you provide under case b) is allowed in the both cases:
  - o where company A may bid as a sole prime in another lot, and as consortium member with company B in another lot
  - o in case company A forms a consortium with company B for one lot and acts as subcontractor in another lot.

*Please consult also responses given to questions #2 (and Corrigendum #1), #6 and #8 in Clarification Note #1; as well as responses given to questions #12, #22, #23 and #26 in Clarification Note #2.*

**Question #26:** In section 1.5.1 the number of lots to be awarded to the same tenderer either as first or as second contractor in cascade is limited to two.

a. Does this limitation apply for subcontractors as well?

b. If company A bids as a sole prime in two Lots and as subcontractor under company B in the other three lots, and company A presents the most economically advantageous tender, could company B be awarded one or two of the other lots?

**Answer #26:**

- a. The limitation envisaged in Section 1.5 of the Tender Specifications as regards the number of contracts to be awarded does **not** apply to subcontractors;
- b. The limitation envisaged in Section 1.5 of the Tender Specifications as regards the number of contracts to be awarded does not apply to subcontractors; hence, the answer would be affirmative in the example you provide, if the company B' tenders are evaluated as most economically advantageous in the respective lots

*Please consult also responses given to questions #2, #6 and #8 in Clarification Note #1; as well as responses given to questions #12 and #23 in Clarification Note #2.*

**Question #27:** At page 13 of the Tender Specifications, EUSPA states: "The Contracting Authority will not accept double financing of Contractor's staff and expenses across lots and tasks. The Tenderers

shall therefore ensure through appropriate organisational measures that resources and related activities are clearly allocated to individual lots and tasks and do not overlap with activities in other lots / tasks.". In consideration of the fact that a tenderer can't know at forehand which it might be awarded, we interpret this statement as a need to ensure at contract award that, in case an individual is presented as possible consultant in 2 separate lots that have been awarded to the tenderer, measures need to be in place for a unique allocation in either one lot or the other. We do not interpret this as the impossibility to present the same candidate in several Lots at proposal submission. Could EUSPA please confirm or clarify?

**Answer #27:** No modification of the submitted offers is acceptable before award of the contract. It is therefore expected not to present the same candidate in more than one Tenders, i.e. for several Lots. Should the one individual be proposed for more than one tasks, the total level of his/her engagement may not exceed 100%.

The bidders are recalled the possibility to propose additional consultants upon the contract signature as per Article I.18.6 of the Draft Contract (Annex III to the ITT).

**Question #28:** In page 44 of the Annex I.I.3 Statement of Work for Lot 3, it is mentioned the following: "As related to language skills: Persons assigned by the contractor to the Task should have, except proficiency in English, the language skill in the mentioned language, indicated at a level in line with the Common European Framework of Reference for Languages (CEFR)<sup>1</sup>, forming part of their CV to be submitted with the tender." Could you please clarify, what is the language that will be used during the implementation of the tasks? Could you also clarify, if there is any language requirement other than the English language?

**Answer #28:** Please consult section 4.4 of Annex I.I.3 (Lot3 Security – Cyber and Risk Analysis – Statement of Work), according to which *"The working language for all tasks is English and any other EU language if so indicated in the task description"*.

**Question #29:** We have identified several errors within the procurement documents concerning references to other sections or parts of the same document, resulting in messages such as: "Error! Reference source not found" or "Error! Bookmark not defined". In particular, we've found these errors in the following documents: (1) Annex I\_EUSPA-OP-37-23\_TS\_V1, (2) Annex I.I.3 Statement of Work\_Lot3\_V1, (3) Annex I.M Mgt-requirements\_V1 and (4) Annex II FWC incl. Annex II.IV and II.VII\_V1. We kindly request a corrected version of the above-mentioned documents.

**Answer #29:** The missing references are clarified herewith as follows:

Annex I\_EUSPA-OP-37-23\_Tender Specifications\_V1:

- Index:1.6 Transfer of undertakings **8**
  
- Footnote 12 of page 16: Provided to ensure level playing field – see section **1.6**
- Table 3 Criterion L7 - see the answer to question 16
- In section 4.6.1. Table 9, last bullet of line for the Cover Letter see the answer to question 15

## Annex II EUSPA-OP-37-23\_Draft Contract

- Index, last line deleted
- In Article I.13.9 – reference Article to I.6 clarified
- In Article I .13 Background IPRs clauses numbering corrected
- In Article I.13.25– reference Article to I.13.1 clarified
- In Article I.18.6– reference Article to II.2.4 clarified

## Annex I.I.3 Statement of Work\_Lot3\_V1

- In Section 4.2– reference Table 5 clarified

## Annex I.M Management Requirements

- Index: Page numbers of section 3.1.2 and 3.1.3 clarified

(see *Corrigendum #2*)

**Question #30:** I refer to the participation conditions mentioned in the attached Annex I - art. 2.2.1.1. (p. 18). There are 3 cumulative conditions which need to be fulfilled:

- Legal entities established in a Member State with their executive management structures established in that Member State: Yes
- Committing to carry out all relevant activities in one or more Member states: Yes
- Legal entities not being subject to control by a third country or third country entity: here we have a question, as an entity is being controlled (through other intermediate legal entities) by our its group company in a country outside EU.

This means the three conditions are not cumulatively fulfilled. The question we have is: can we have an exemption for being part of the Group (being in a country, outside of the EU), as we're a complete different entity and located in Europe? Thank you in advance for your response.

**Answer #30:** Whether a waiver from the requirements of the Participation Condition may be granted depends on the role of the entity in the tenderer's organisation. In line with section 2.2.1 of the Tender Specifications, no waivers for any of the elements of the Participation Condition are possible for the Primes and the Core Team members (see section 2.2.1.2).

Waiver may be granted to subcontractors involved in security sensitive activities under the conditions explained in section 2.2.1.3 for the requirement of section 2,2.1.1. (c ).

The subcontractors not involved in security sensitive activities, and not part of the Core Team have to comply only to the establishment requirement set in art. 176 of the Financial Regulation, which does not impose any restriction regarding the third party control existence (see section 2.2.1.4).

**Question #31:** Based on the information provided in the Tender Specifications (sections 2.2.9 and 3.2.1) and Annex I.G. Part 1, our understanding is that compliance with L6 criterion is to be evidenced by 1) Cover Letter and Annex I.B (Declaration on Honour) stating full compliance with the SAL, and 2) an affidavit confirming that the CIS and respective interconnections have been accredited for handling

EUCI (RESTREINT UE/EU RESTREINT) in fulfilment of REQ 3.9.2 of the SAL. Please confirm our understanding, otherwise kindly clarify the type of evidence is required for this criterion.

**Answer #31:** As mentioned in Section 3.2.1 TS, we confirm that the compliance with L6 criterion is to be evidenced by a statement of full SAL compliance in the Cover letter and in Annex I.B and evidence that the CIS and respective inter-connections have been accredited for handling EUCI (RESTREINT UE/EU RESTREINT and above) in fulfilment of REQ 4.6 of the SAL.

Please also note that, accordingly, in Section 3.2.1 of Annex I to ITT – Tender Specifications, Criterion L6, reference to REQ 3.9.2 of the SAL is replaced by reference to REQ 4.6.

*(see Corrigendum #2).*

**Question #32:** In the TS (p.61, 2nd bullet), a reference is made to "each risk in service mode". Can you please confirm that "risk" should in fact be read as "task"?

**Answer #32:** It is confirmed that reference to "risk" in section 4.6.2, par. D., 2<sup>nd</sup> bullet of the Tender Specifications is a typo and it should be read as "task" instead.

*(see Corrigendum #2)*