



21 MARS 2009

Brussels,
AGRI L.4/MZ D (2009) / 8315
D69\DF1\Certification schemes\ Q&A1

Subject: Request for additional information related to the Open Call for Tender "Inventory of certification schemes for agricultural products and foodstuffs marketed in the EU Member States". Tender N° AGRI-2009-EVAL-01

Dear Madam, Dear Sir,

Please find enclosed the answer of the European Commission to the question raised by a potential tenderer.

In view of improving the quality of the tenders and to ensure that all additional information is evenly distributed amongst the participants in the tendering process, this letter will be made available to all interested parties.

QUESTION:

May I ask you to confirm that under the open procedure for tender there are no restrictions for companies from EFTA (Norway in particular) countries and beyond to participate?

ANSWER:

Yes, a non-EU company can participate in an open call for tender **provided** that the conditions explained below are respected.

Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has with the European Communities a special agreement in the field of public procurement under the conditions laid down in that agreement. Hence, suppliers established in third countries have the right to participate in tendering procedures if an international agreement in the field of public procurement grants them the right to do so. In case there is no such an agreement, or the agreement does not apply to the kind of contracts put out to tender, suppliers of third countries are, in principle, not entitled to participate. The relevant international agreements in the field of public procurement are, at this moment:

- The **EEA Agreement**. Pursuant to this agreement, suppliers of **Iceland, Norway and Liechtenstein** have full access to tendering procedures organised by the Community institutions.

- Under the **Stabilisation and Association Agreements (SAA) Croatia¹, FYROM² and Albania³** have been granted access to tendering procedures of the Community.
- The **bilateral agreements with Mexico and Chile.**

Coverage under the agreement with **Mexico** is set out in the annexes to Decision 2/2000 of the EC/Mexico Joint Council. All texts can be found on:

http://ec.europa.eu/trade/issues/bilateral/countries/mexico/index_en.htm

Coverage under the association agreement with **Chile** (OJ L 352 of 30.12.2002) is set out in the annexes to the agreement. All texts can be found on:

http://ec.europa.eu/trade/issues/bilateral/countries/chile/euchlagr_en.htm .

As regards supplies and services, which is the case here, Chilean and Mexican entities have access only above the thresholds of 130.000 SDR⁴, while no minimal threshold applies for economic operators from countries covered by the SAA or EEA Agreement.

The other bilateral agreements in the field of procurement (with **Israel** and **Switzerland**) are not relevant for contracts awarded by the Community institutions on their own account. Nevertheless, both countries are parties to the GPA and have therefore access to those contracts under the conditions set in that Agreement (see below).

More information on these and other agreements can be found on the following sites:

http://ec.europa.eu/trade/issues/bilateral/countries/index_en.htm

and

http://www.consilium.europa.eu/cms3_fo/showPage.asp?lang=en&id=252&mode=g&name=

Furthermore, WTO Agreement on Government Procurement – usually called the GPA – grants access to procurement procedures of Community institutions to nationals of states having ratified this Agreement. The following states have ratified the GPA: Canada, Hong Kong China, Israel, Japan, Korea, the Netherlands with respect to Aruba, Singapore, Switzerland, and the United States; Iceland, Norway and Liechtenstein are also GPA Parties, but their suppliers already enjoy full access under the EEA Agreement discussed above.

As regards supplies and services, entities from GPA countries have access only above the threshold of 130.000 SDR.

¹ See Official Journal of the European Union at <http://eurlex.europa.eu/Notice.do?val=394752:cs&lang=en&list=411789:cs.394752:cs,&pos=2&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=#texte>.

² See Official Journal of the European Communities at http://eur-lex.europa.eu/RECH_celex.do, entering the celex document number: 22004A0320(03)

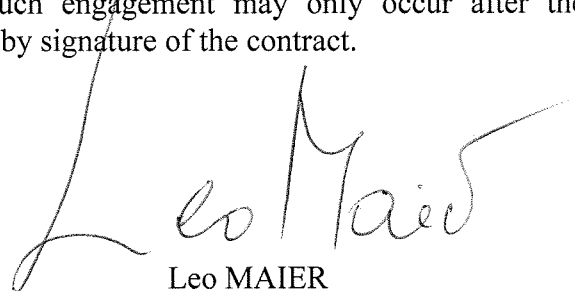
³ The SAA with Albania has not yet been ratified. However, an Interim Agreement between the European Community and Albania on trade and trade related provisions entered into force on 1 December 2006; see Official Journal of the European Union at <http://europa.eu.int/eur-lex/lex/JOIhtml.do?uri=OJ:L:2006:239:SOM:EN:HTML>.

⁴ SDR is a basket of several currencies. The value in euros of the thresholds fixed in SDR is reviewed every 2 years. For period 2008-2009 130.000 SDR = 133.000 €

The GPA does not cover all contracts awarded by the institutions of the Commission; Appendix I to the GPA sets out which contracts are covered. The full text of the GPA and its appendices can be found on: http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

However, please note that, in case a candidate/tenderer is not eligible according to the above-mentioned agreements, Community institutions are nevertheless not required to reject tenders. The respective candidate/tenderer **can be admitted on an ad hoc basis** to the respective procurement procedure without creating a precedent or obligation for the future

Please note that all the information, questions or observations of all nature which are in this note, do not engage the Commission in any way. Such engagement may only occur after the completion of the corresponding market procedure, by signature of the contract.



Leo MAIER
Head of Unit