



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate K. Relations with other institutions; Communication and Documentation
K.1. Internal and external communication

Ans (2011) 409561

Brussels,
(2011) 444768

12 AVR. 2011

Subject: Request for additional information related to the Open Call for Tenders on a "Framework contract for communication activities". Tender N° 2010/S 250-382231

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:

In the set of clarifications issued on 9 March 2011 on the question of joint venture, it was clarified that "the proposed joint venture agreement is not sufficient and that the legal structure that will be created in the (to be named) Member State concerned must be defined with the draft proposed legal documents. In addition, the mode of operation for the consortium, the specific technical and financial contributions from each 'service provider' within the consortium (as well as any guarantees provided by each participant) must be provided."

This answer seems to imply that the joint venture has to be **incorporated** meaning that the Joint Venture should become, in fact, a separate legal entity with its own VAT number and separate seat in the country of incorporation (and that it should also observe all financial, tax and other legal and administrative formalities of applicable law), rather than the more widely used "contractual" joint venture where the terms, obligations, and liabilities of the parties are set forth in a written instrument signed by all the parties.

In our experience, the European Commission has always accepted "contractual" joint ventures and has not required "corporate" joint ventures which produce heavy additional financial and administrative burdens on the consortium given the size of the project.

Can you please clarify that the type of joint venture you are requiring for this project – i.e. a "contractual" joint venture or a "corporate" joint venture ?

If it is indeed the case of a "corporate" joint venture, then could you please provide additional details on the legal nature that the incorporated JV entity which would be preferable or most appropriate for the nature of the project (e.g. should the JV take the form of a profit or non-profit entity? is the form of a legal partnership between the members of the consortium enough, or should the JV take the form of a corporation (e.g. SA?)

ANSWER:

Section 7.3 of the tender specification defines the structure for a consortium either already in existence (7.3.1) or the intention to create one (7.3.2) as a "separate legal entity".

This is already defined in the tender specification, namely that the joint venture is or will be created as a separate legal entity in a Member State of the EU (observing all financial, tax and other legal and administrative formalities of applicable law).

In a recent request for clarification, a "contractual" joint venture was suggested. This is also possible but in that situation, the offer should be presented within the definition of Section 7.3.3. (subcontracting). Tenderers would then have no need to create a new separate legal entity.

You therefore have three choices for submitting a joint tender.

In the case of a joint tender offer as a separate legal entity (sections 7.3.1 and 7.3.2), an example is a European Economic Interest Grouping (EEIG), as defined in Council Regulation (EEC) no 2137/85 of 25 July 1985.

QUESTION :


In the Price Schedule, item 7. "Reporting" refers to costs in EUR per report for "Final technical report for each specific contract in English or French". Kindly clarify: What is the cost here referring to? E.g. fees of preparing the report, translation of the report, printing and binding of the report, or other? Does "the EUR cost per report" mean for each version of the report – i.e. cost for the report in English, cost of the report in French?

ANSWER:

The amount entered at this point of the price schedule should cover all costs related to the production of the report which can include, among others, personnel costs for preparing the report, translation of the report, printing and binding of the report, etc. The Commission will not require different language versions of the same report, one version in EN or FR will be sufficient.

Please note that any information, questions or observations, of whatever kind, contained in this correspondence can in no way be regarded as a commitment on the part of the Commission. No binding commitment will be entered into until after completion of the procurement procedure, with the signing of the relevant contract.

Yours faithfully,



Angela FILOTE,
Head of Unit