

# FREQUENTLY ASKED QUESTIONS

## INVITATION TO TENDER NO. ENER C3/2013-414

**for a service contract regarding the assessment of cost optimal calculations undertaken by the Member States in the context of art. 5 of Directive 2010/31/EU on the Energy Performance of Buildings (recast).**

**contract notice in OJEU 2013/S 051-082671 of 13/03/2013**

**Last update: 19/04/2013**

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### **Question 1:**

Can a company involved in the cost-optimal calculations for a Member State participate to the call for tender?

### **Answer 1:**

The tender specifications (Art.2.3.2.b) request, inter alia, 2 qualified experts with at least 3 years of experience in providing expertise in the area of energy efficiency of buildings across the EU, including in particular the cost optimal calculations of the energy performance of buildings, the establishment of reference buildings, and the use of renewable energy sources and energy efficient technologies in buildings.

This expertise could have been gained by participating to cost-optimal calculations for a Member State. If so, the same article of the tender specification lays down that "*it should be made clear how the organization of the team will solve the conflict of interest.*"

### **Question 2:**

In order to get more insight in the specifications of the project would it be possible to send us a login for the Q&A website (<http://www.costoptima-methodology.eu>)?

### **Answer 2:**

The login for the website can be provided on request by email at [ENER-TENDER-2013-414@ec.europa.eu](mailto:ENER-TENDER-2013-414@ec.europa.eu).

### **Question 3:**

Tenders specifications, point 3.3, page 12 – "*Report format and publication: 3 copies of the reports shall be supplied in paper form and one copy in electronic form in MS Office format*". Could you please clarify if this instruction refers to all types of reports (meetings, minutes, progress reports and final report) or only to the final report?

### **Answer 3:**

This refers to all reports (progress report and final report).

**Question 4:**

Is it possible to get some information regarding following issues

- Where the buildings are located (city or country)
- Buildings surfaces
- Type of buildings

**Answer 4:**

The calculations to assess within the contract have been undertaken by the member states on 'reference buildings'. These reference buildings have to be set according to delegated regulation 244/2012 and the guidelines 2012/C115 accompanying this regulation.

**Question 5:**

Could we please receive all documents (relevant Annexes, e.g. 1 and 2) that should be filled in and signed in Word or a format where we can easily write down the requested information?

**Answer 5:**

Annexes 1 to 3 are now made available at:  
[http://ec.europa.eu/dgs/energy/tenders/index\\_en.htm](http://ec.europa.eu/dgs/energy/tenders/index_en.htm)

**Question 6:**

Can we receive a standard format for European CVs?

**Answer 6:**

Details about European CVs can be found at:  
<http://europass.cedefop.europa.eu/en/home>.

**Question 7:**

According to 1.7.1 of the Special Conditions the contract shall be governed by Union law and the law of Brussels. However the law of Brussels does not exist and Union law consists of Treaties mainly referring to the establishment of the European Union and Regulations and Directives based on these Treaties. It does not provide sufficient rules (law) applicable on contractual relations. Therefore we kindly wish to propose to apply the law of the country in which the services are performed (in our case Dutch law; "*The contract shall be governed by Union law, complemented, where necessary, by the law of the country in which the services are largely performed*").

**Answer 7:**

An official corrigendum will be published in coming days that replaces in the article 1.7.1, the words "*law of Brussels*" with the words "*law of Belgium*". Besides this corrigendum to-be, the contract cannot be changed.

**Question 8:**

II.3.3 General Conditions: We would like to ask the EC to take into consideration to add the following clause used in similar wording in other General conditions for service contracts financed by the EC, in order to exclude liability for indirect damages: *“The contractor’s liability shall be limited to actions, claims, losses or damages directly caused by an attributable failure to perform its obligations under the contract and shall not include liability arising from unforeseen occurrences or incidental or indirect damages”*.

Furthermore we would like to propose to clarify the liability period in order to provide contractors more certainties. Therefore we would be pleased if we may add the following clause: Contractor’s liability is limited to a period of five years after Contractor terminated his services under the contract”.

**Answer 8:**

The contract cannot be changed.

**Question 9:**

II.12 General Conditions: This liquidated damages clause for late delivery is unlimited and contractors are unable to take out insurance with regards to this unlimited risk. We would like to ask the EC to take into consideration to add a maximum of 5% of the total amount of the contract.

**Answer 9:**

The contract cannot be changed.

**Question 10:**

We kindly request to change the interim payment schedule as follows:

- Advance payment of 20% which will be settled at the end of the contract. In return we are willing to give a bank guarantee for the amount of the advance payment. (interim payment schedule =>start: 20%; after 9 weeks: 20%, after 9 months: 40%, end: 20%)
- More interim payments, e.g. 8 payments (the interim payment schedule will change)

**Answer 10:**

The contract cannot be changed.

**Question 11:**

A total of four meetings is set out in the timetable. When desired to ensure the quality of the process and/or assessment; is it possible to convene extra meetings with the accompanying Commission?

**Answer 11:**

This number of meeting must be seen as Commission's minimum requirement. If deemed necessary by the contractor extra meetings can be scheduled and convened on his request.

**Question 12:**

We assume that all relevant documents of the Members states concerning the cost optimal calculation are presented in English, including previously published documents that are referred to in the report of the MS. Is this correct? If not what will be the procedure to receive these documents in English?

**Answer 12:**

Regarding the national reports, "*The full reports will be provided in the original language and the main part, excluding annexes, will be provided in English (the translation will be performed by the Commission's services).*" as mentioned in Article 3.2 of the technical specifications.

**Question 13:**

The assessment reports states the level of compliance of the national/regional report(s). Part of the assessment is to check the conformity with the binding requirements of the EPBD-recast and of the delegated regulations. Is the purpose of the conformity check only to assess and report to what extent the guidelines are followed or not, or is it also desirable to propose how potential errors can be resolved when the choices of MS are less good as the recommendations provided by the guidelines?

**Answer 13:**

Article 3.2 of the technical specifications requires that "*The assessment reports will have to state the level of compliance of the national/regional report(s) and will at least include information regarding [...] recommendation for clarification requests that could be addressed to MS.*"

Therefore, it is up to each Member States to resolve potential non-compliance in the national reports. The Commission will require clarification to the Member States on the basis of the recommendation prepared by the contractor.

The guidelines as such are non-binding. Assessment national/regional practises is planned to be done at EU-level in the context of revising the guidelines and, if necessary, developing new supporting tools for the MS (Cf. Article 3.2 of the technical specifications).

**Question 14:**

To determine the primary energy demand of the member state specific reference buildings, the member states had to made use of the national assessment method. Can we assume that the results of these calculations are correct and can be used as starting point of the calculations and results?

**Answer 14:**

The delegated regulation 244/2012 lays down specific rules for the calculation of the primary energy demand that are further explained in the guidelines 2012/C115 accompanying this regulation. Compliance with these rules will have to be checked within the contract although it is not the purpose of this

contract to recalculate all intermediate calculations such as e.g. the energy needs and energy uses.

**Question 15:**

The following is stated in the tender specifications: "*Draft assessment reports will have to be provided 1 month after the date of receipt by the contractor of each MS' calculations report*". Based on this statement we assume that the reports will not be provided at once. Is this correct? If yes, how will the schedule for receiving national/regional reports look like and/or is it possible to receive all reports at once before the country-specific assessments will start?

**Answer 15:**

This is correct. National/regional reports will be provided to the contractor on their receipt from member states.

So far we received seven national reports that can be consulted in original language at: [http://ec.europa.eu/energy/efficiency/buildings/implementation\\_en.htm](http://ec.europa.eu/energy/efficiency/buildings/implementation_en.htm)

Commission services already requested the remaining 20 Member States to communicate as soon as possible their reports but we cannot precisely schedule the reception of the reports.

The preparation work planned in the technical specification (*'Develop a template for the assessment of all national/regional reports'*) will therefore be crucial to comply with this 1 month deadline.

**Question 16:**

Tenders specifications, point 2.3.2.(c). - Evidence, page 6 – "*The educational and professional qualifications of the persons who will provide the service for this tender (CV's) including the management staff...*". Could you please clarify if it is needed to include, as well (apart from the other 3 CVs), the CV of the proposed Project Director for this project?

**Answer 16:**

Yes, the Project Director nominated for this project should be considered as 'management staff' and his/her CV should be included.