

FREQUENTLY ASKED QUESTIONS

Subject: Invitation to tender No. ENER/C3/2013-484 for a Multiple Framework contract with reopening of competition for qualified legal, technical and economic expertise in the field of Energy Efficiency to support the Commission in the design, preparation and proper implementation of EU initiatives and legislation in the area of Energy Efficiency

Ref: Contract notice in OJEU 2014/S 054-089395 of 18/03/2014

Last update: 13/05/2014

In order to be as transparent as possible, the questions and replies will subsequently be assembled and published via this FAQ document.

Question n°1:

Concerning the call for tenders ENER/C3/2013 484: “Multiple framework contract with reopening of competition for qualified legal, technical and economic expertise in the field of energy efficiency to support the Commission in the design, preparation and proper implementation of EU initiatives and legislation in the area of energy efficiency”, can you clarify whether this will be replacing a framework that is already existing? If so, could you tell us who is on the existing framework?

Answer:

The Multiple framework contract related to this call for tender will not replace an existing framework contract.

Question n° 2:

Section 2.4 of the Specification (Award Criteria for the framework contract) indicates that the quality of the proposed methodology of work will be based on the:

- Understanding of the objective of the tender, and
- Quality and appropriateness and level of detail of the proposed approach for undertaking the different tasks defined in the Terms of reference, methodology to collect and analyse data as demonstrated by three examples, one for legal, one for economic and one for technical assistance based on previous experience or fictive examples.

For this latter criterion we have a number of questions:

Question n° 2.1:

In relation to the “quality and appropriateness and level of detail of the proposed approach for undertaking the different tasks defined in the Terms of reference”, do the different tasks refer to the Description of Services in Section 3.3 of the Specification?

Answer:

Yes, "the different tasks" refers to the tasks necessary to implement the kind of services listed under section 3.3.

Question n° 2.2:

If so, are you expecting that an approach to be provide for all of the services listed in Section 3.3. or is it acceptable to just provide an approach from a selection of these?

Answer:

The tenderer is requested to present the methodology it proposes to use for the implementation of the type of services listed in section 3.3. The tenderer is requested to demonstrate the quality and appropriateness of its approach by submitting 3 examples; one for legal, one for economic and one for technical assistance based on previous experience of fictive examples.

Question n° 2.3:

The specification reads ‘.... based on previous experience of fictive examples’. Is this meant to read ‘.... based on previous experience or fictive examples’, which means we can create fictive examples to demonstrate our approach and do not necessarily need to base these on our previous project experience.

Answer:

Yes, it is to be read "based on previous experience or fictive examples.

Question n° 2.4:

In relation to the above, do you plan to provide any further specification of the fictive examples, for example by outlining hypothetical studies for the tenderer to bid against, so that all contractors can be evaluated against the same examples, or are you happy with us to provide our own examples?

Answer:

Tenderers shall provide their own examples, one for legal, one for economic and one for technical assistance. Each of these examples can be based on the methodology used for a service contract carried out in the past by the tenderer for a service similar to one of those listed under section 3.3. and/or on a fictive case study. The tenderer has the choice to provide three real examples, two and a case study, one and 2 case studies or 3 case studies.

Question n° 2.5:

If the latter, do the fictive examples relate to just “methodologies to collect and analyse data” or to all potential services outlined in Section 3.3. (Description of services) in the Specifications?

Answer:

The tenderer is expected to propose a detailed approach for undertaking the different services listed in section 3.3.including the methodology for the collection and analysis of data needed in the context of those types of services. The examples shall demonstrate the approach proposed by the tenderer.

Question n° 3:

Tender specification p. 6 paragraph 2.3.2 section a) criteria relating to tenderers, point 1: in the tender is indicated that the project references to be provided need to be carried out as ‘contractor’. Could you confirm our interpretation that ‘contractor’ doesn’t strictly refer to the role of ‘leading firm’ but it can involve a role of partner within a consortium?

Answer:

Your interpretation is correct. In the case of a joint tender, combined capacity of all tenderers, and of identified sub-contractors are to be taken into consideration given that the conditions of the Tender Specifications are met, in terms of the content (e.g. experience or capacity required) and evidence.

Question n° 4:

Tender specification p. 6 paragraph 2.3.2 section a) criteria relating to tenderers, point 1: in the tender is indicated that the reference need to be completed in the last 3 years. According to the EU PRAG rules on going project references are generally accepted provided that a proof of completion of a relevant part of a project is given. Could you please indicate if such interpretation could be applied to the current tender procedure?

Answer:

The EU PRAG Practical Guide explains the contracting procedures applying to all EU external aid contracts financed from the EU general budget. This guide is therefore not applicable to call for tender ENER/C3/2013-484. Here, the tenderers must have projects successfully completed in the last three years. Partial delivery/completion cannot be taken into consideration.

Question n° 5:

Tender specification p. 6 paragraph 2.3.2 section a) criteria relating to tenderers, point 1: in the tender is indicated that the project references to be provided need finalised in the last 3 years. Could you confirm that project references started before the three years and finalised with the last three years will be accepted? (ex. A project started in 2010 and finished in 2013)

Answer:

Yes, this is correct.

Question n° 6:

Tender specification p. 6 paragraph 2.3.2 section a) criteria relating to tenderers, point 1: in the tender is indicated that at least 8 references need to be presented altogether covering all the sectors a) to g). Could please clarify if the references related to the sector g) Evaluation of EU programmes and initiatives refer to evaluations exclusively carried out within the EU or references could include also evaluations of EU programmes and initiatives outside the EU Member States?

Answer:

The list of references may also include, but not consist exclusively of, evaluations of EU programmes and initiatives outside the EU.

Question n°7:

Tender specification p. 6 paragraph 2.3.2 section a) criteria relating to tenderers, point 1: in the tender is indicated that at least 8 references need to be presented altogether covering all the sectors a) to g). Could please clarify if, for the sectors described with a comma (e.g.

environmental impact of products, eco-design, energy labelling), references shall cover all the 'sub-sectors'?

Answer:

Yes, the references shall cover all the sub-fields.

Question n° 8:

Tender specification p. 7 paragraph 2.3.2 section b) criteria relating to the team delivering the service and c) Evidence: In the tender it is mentioned the following wording: 'staff members' and 'Management staff'. Could you please confirm that they are indeed two distinct categories of experts to be presented by the contractor? In case of positive reply, could you please clarify if the components of the staff members could also be considered for a position within the management staff?

Answer:

The categories of 'senior staff members' and 'qualified experts' are indeed distinct categories of experts. The tenderer shall propose a team of minimum 16 experts, of which at least 4 senior staff members and 12 qualified experts.

Question n° 9:

Our Consortium members have some questions concerning Article I.8.2 "Pre-existing rights and transmission of rights"

"All pre-existing rights incorporated in the results and directly related to the uses foreseen in Article I.8.1 shall be fully and irrevocably acquired by the Union as provided for in Article II.10.2 and by derogation to Article II.10.3."

A corrigendum will be published replacing the current drafting of Article I.8.2 by the following sentence: "All pre-existing rights shall be licensed to the Union in accordance with Article II.10.3".

Question n° 9.1:

If, for example, models or software tools are going to be used to generate results in an assignment under the framework contract, are these models or tools considered "pre-existing rights incorporated in the results and fully acquired by the Union" as mentioned in article I.8.2?

Answer:

Pre-existing rights are those that already exist prior to the contracting authority or the contractor ordering them for the purpose of the contract execution. In practice, they concern parts of the results created before the contract signature and also during the contract execution but for other purposes than the contract execution. A model or software that already exists at the moment of their use for the contract execution qualifies as pre-existing rights.

Question n° 9.2:

How to deal with third parties' rights which cannot be acquired? Which types of third parties' rights shall be listed? What is foreseen by the Union in that respect?

Answer:

A corrigendum will be published shortly in order for Article I.8.2 of the draft contract to read: "All pre-existing rights shall be licensed to the Union in accordance with Article II.10.3".

Question n° 9.3:

Could you please provide examples of "pre-existing rights incorporated in the results"? What types of pre-existing rights are foreseen by the Union in that respect? What is the general rationale behind Art. I.8.2? Why does the Union need to acquire the pre-existing rights by derogation to Art. II.10.3 (licensing of pre-existing rights to the Union)?

Answer:

An example of a pre-existing right incorporated in the results would be a photo (protected by copyright) inserted in a study or a video/logo included in a website. A corrigendum will shortly be published at http://ec.europa.eu/dgs/energy/tenders/index_en.htm so as the Union only acquires a licence on the pre-existing rights.

Question n° 10:

We would like to have some clarification regarding the ITT's term 'energy efficiency in networks' (p. 13, listed as one of the areas related to EE policies). Does this refer to networks of organisations or is it referring to energy grids?

Answer:

The term 'energy efficiency in networks' does not refer to networks of organisations but to 'physical' networks such as district heating and cooling, IT networks, electricity grids, etc.

Question n° 11:

Tender specification p. 7 paragraph 2.3.2 section c) evidence: In the ToR is indicated 'The tenderer should provide an indication of the in-house available information and of contacts (e.g. with industry associations, participation in specialist networks etc.) allowing easy access to comprehensive information necessary for the tender'. Could you please clarify what the DG energy intends for "indication of the in-house available information and of contacts"? Could you please clarify what kind of evidence should our consortium produce in order fulfil the criteria?

Answer:

As regards the question on the indication of the in-house available information and of contacts, the tenderer should describe and provide evidence of any data sources, knowledge base and expertise that is available within its organisation without a need to request the permission of third parties and that can be used to perform the tasks defined in the tender specifications. This can include, for example, the following: own data bases; a list of projects performed by the organisation and its members on the relevant field the results of which can be utilised; modelling and other analytical tools created or developed in-house; a library of publications produced by staff members; the staff's professional experience, qualification and publications.

As regards the contacts, the tenderer should provide evidence of working contacts with professional, academic and any other organisations specialised or active in the field of the tender that can be used to swiftly mobilise and acquire relevant information and expertise from these organisations. The evidence can, for example, be a letter of intent or an agreement to cooperate, which is signed by a representative of an industry association, a network of experts and other specialised professional or academic networks or can be any other document able to prove that such working level contact exists and can be mobilised for the purposes of fulfilling the tasks defined by the tender specifications.

Question n° 12:

With respect to tender specification Annex 2 point g) respectively framework service contract Article II.4.1, is there a conflict of interest for an organization that is contracted by a Member State to accompany and monitor the implementation of Directives 2006/32/EC and 2012/27/EU in this Member State?

Answer:

In principle, there would not have to be a conflict of interest in the situation described but this would amongst others depend on the specific conditions of the contract with the Member State. Tenderers are invited to identify in their offer how they intend to deal with possible conflicts of interest arising during the framework contract with the Commission.

Question n° 13:

Tender specification p. 7 paragraph 2.3.2 section c) evidence: could you please clarify if the declaration to be provided by the experts not employed by the tenderer and the potential letter of intent to be signed by representatives of industry association, network of experts and other specialised professional or academic networks can be scanned copy of the originals?

Answer:

The originals of the declarations have to be provided. However, if it is impossible for the tenderer to gather and send all the declarations with the tender before the closing date of the call, the Commission will request it to do so at a later stage, in accordance with Article 96 of the Financial Regulation and Article 158.3 of its Rules of Application.

Question n° 14.1 (follow-up to question n° 9):

Please could you let us know if the new wording of I.8.2. foresees that the implemented pre-existing rights could only be used in the context and together with the exploitation of the results? Our concern is that we will not be able to license our background to third parties on an exclusive basis in other areas than it will be used by the Commission.

Answer:

Indeed, Article I.8.2 read in conjunction with Article II.10.3 sets the right for the Union to use the pre-existing rights (based on a license) as stated in the modes of exploitation listed in Article I.8.1;

Question n° 14.2:

The second question relates to the implemented pre-existing third-party-rights: it is not customary to receive user rights with the right sub-license these rights worldwide for ALL purposes (see under 1.). Therefore, we would be grateful if you could include a possibility to list all third-party-rights in a table that are restricted to a certain extent (territorial restrictions or restrictions relating to the content - for instance if the right to sub-license is not granted if it is not connected to the results).

Answer:

The pre-existing-third-party-rights contract provisions are to be read and interpreted in relation with the results and within the scope of the contract. A third party right not connected with the results would be irrelevant to the contract. The Union has to be sure that it will be able to use the results (as per the modes listed in Article I.8.1) without infringing third party rights or suffering claims from third parties. As the Union action is global, the licensing of pre-existing rights has to cover all territories worldwide.

Question n° 15:

Does the Commission have an expected range for the ‘single maximum price per person-day’ as described at the bottom of page 9 (section 2.6) of the tender document?

Answer:

No.

Question n° 16:

With regards to pricing, the tender specifications call for only one rate for all services, though it is indicated that different rates can be applied for individual tasks. Can we provide a rate table that gives maximum day rates by title? If not, the maximum rate (which applies only to the most senior staff) would be considered in the price proposal no matter what level the staff person were at.

Answer:

The tender may include, as background information, a rate table, but, for the purpose of evaluating the price element of the tender, the amount quoted as the maximum price per person-day will be considered as the financial offer.

Tenders failing to clearly single out one maximum person day-price, will be considered to be non-compliant with the Tender Specifications, and will be excluded from the further evaluation.

Contractors may apply a lower, but not higher, price per person-day when bidding for a specific contract.

Tenderers could consider proposing an average price per person-day as the maximum price per person-day or use any other method they choose for the estimation of that price.

Question n° 17:

In the Frequently Asked Questions updated on 25/04/14, your response to Q2.2 states the following:

“The tenderer is requested to present the methodology it proposes to use for the implementation of the type of services listed in section 3.3. The tenderer is not requested to present a detailed approach for each specific service”.

However, your response to Q2.5 states the following:

“The tenderer is expected to propose a detailed approach for undertaking the different services listed in section 3.3. including the methodology for the collection and analysis of data needed in the context of those types of services”.

Can you confirm whether or not the tenderers are expected to provide a detailed approach when submitting three examples, one for legal, one for economic and one for technical assistance?

Answer:

The tenderer is expected to propose a detailed approach for undertaking the different services listed in section 3.3.including the methodology for the collection and analysis of data needed in the context of those types of services. The answer to question 2.2 has been amended accordingly.

Question n° 18:

Section 2.6 of the Tender Specifications states the following:

“Tenders shall specify one single maximum price per person-day whatever the type of service and qualification requested”.

Given the diversity in day rates for legal, technical and economic expertise required for this framework contract, can you confirm whether you only require a single maximum price per person-day or would accept a maximum price per person-day depending on the field of expertise?

Answer:

Please see response to question 16 above.

Question n° 19:

Section 2.7 ‘Award of Specific Contracts’ of the Tender Specifications states that offers must include the total number of man-days as part of the total labour cost calculation. Can you confirm whether tenders issued under the framework will specify an indicative numbers of days required for a specific project?

Answer:

In most of the cases, requests for services issued under the framework contract will specify the maximum budget available for the work to be undertaken.

Question n° 20:

Can you confirm whether it is possible to present a single rate in the bid based on our best guess of the split of work, but for the framework contract to reflect blended day rates for each organisation on a consortium if we were successful?

Answer:

Please see response to question 16 above.

Question n° 21:

Framework Service Contract Article II.15.5 Pre-financing and performance guarantees p.20: could you please inform us if the performance guarantee will be always asked for a specific contract?

Answer:

No, and for the contract in hand no performance guarantee is expected from the contractor – please see article III.4 of the model specific contract that forms a part of tender documents published.

Question n° 22:

Framework Service Contract Article I.4 payment arrangements and performance of the framework contract: Could you please clarify if, in case of award of a specific contract, an advance payment is foreseen?

Answer:

For the contract in hand, no advance payment (pre-financing) is foreseen under the specific contracts – please see article I.4.2 of the draft framework contract that forms a part of tender documents published.

The payments to be made under the specific contracts are: interim payment in the amount of 40% of the price agreed in the specific contract, and payment of balance (final payment) in the amount of 60% of the agreed price.

Question n° 23:

In relation to the “quality and appropriateness and level of detail of the proposed approach for undertaking the different tasks defined in the Terms of reference” (section 2.4, criterion 1b), is there guidance on the format or page limit of the case studies and fictive examples that we may submit?

Answer:

There is no guidance on the format or page limit for the case studies and fictive examples that tenderers should submit.