Study for the analysis and the conceptual development of a European port access system

Contract notice: JO S 143-2087171

FAQ / Draft Service Contract

1.   *Question: With regard to* Article I.3.1 *will the maximum total amount to be paid by the Commission under the Contract be determined on the basis of the winning contract?*
        Answer: **Yes**

2.   *Question: With regard to Article II.1.9 how will this be determined?*
        Answer: By the requirements contained in the Tender Specifications and in the Tender of the winning contract.

3.   *Question: Under Article II.2 a successful tenderer needs to accept unlimited liability, while the Commission will not accept any liability except in the event of wilful misconduct or gross negligence. Is it possible that both parties are bound by the same liability stipulations?*
        Is it possible that instead of unlimited liability a successful tenderer assumes liability for an amount which, for example, equals three times the project fee per specific contract? Taking the nature of the services into account, could the duration of the liability be limited to five years and the liability to be limited to accountable failures to perform? To what extent would the Commission be willing to limit the liability?
        Answer: According to point 8 of the invitation to tender, submission of a tender implies acceptance of all the terms and conditions set out in the draft contract and are binding on the tenderer to whom the contract is awarded during the performance of the contract.

4.   *Question: With regard to Article II.9, should we read this as that the Commission will provide a confidentiality agreement for the Contractor and possible third party? What will the tenor and duration of this agreement be?*
        Answer: No, the Commission does not provide a confidentiality agreement.

5.   *Question: With regard to Article II.15.4, what will the consequences be if the Contractor terminates the Contract?*
        Answer: see Article II.1.9 and Article II.12 for a Force Majeure situation.

6.   *Question: How do Article II.16 and II.15.1 (k) relate to each other?*
        Answer: Article II.16 allows the Commission to apply liquidated damages in case the Contractor would fail to perform his obligations under the Contract within the time limits set by the Contract, <u>without prejudice</u> to the Commission rights to terminate the Contract.
One thing is the application of the liquidated damages and another thing is the termination of the Contract by the Commission.

7.   *Question: Does a failure to perform with the set time limit immediately lead to liability/application of liquidated damages?*

Answer*: As stipulated in Article II.16, once the Commission decides to apply liquidated damages:*

"… the Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable."

8.   *Question:* Liquidated damages are meant to provide certainty to both parties with regard to specific breaches of contract, to save time and expense regarding costly legal proceedings and to deter a breach of contract. Could you please confirm that Liquidated damages are only applied in case of failure to perform within the set time limits and no other remedies will be used by the Commission? If not, what is the ratio and width of application of the stipulation?

Answer: *See as well Article II.1.9*

9.   *Question:* If a situation would arise, that the set time limit would need to be extended, what would be the procedure to achieve this?

Answer: **As for the extension of the set time limit, in public procurement contracts, as a general principle, amendments may not substantially alter the conditions on which the original contract was awarded for competition reasons. Therefore, unless the new situation is completely unforeseen, an extension of the time limit will not be allowed.**