

## Call for Tenders VT/2013/037

### Answers to questions sent on the Call for Tenders VT/2013/037

**Q1. In reference to the operation of the Framework Contract, it is mentioned in section 3 on page 5 of the specifications that a First contracting party would be called on. In section 12 on page 20 it is mentioned that a ranking will be established. Please could you specify if the specific contract process will follow a cascade format according to the ranking of 3 firms selected or if this instead will be reopening of competition format with specific requests addressed simultaneously to all selected contractors?**

The framework contract will be on a cascade basis as indicated in point I.1.3 of the draft Framework Service Contract. It means that each specific contract will first be sent to the contractor which has been ranked in the first position. If this contractor cannot perform the mission, the specific contract will then be sent to the contractor ranked in second position. If the second contractor cannot perform the mission, the specific contract will be sent to the contractor ranked in third position.

**Q2. In reference to Annexes III and IV, could you please clarify whether it is correct that some of the countries in Annex III (namely Serbia and the 4 Schengen Associated States) do not feature in the Annex IV table?**

The tenderers are requested in Annex III to indicate prices for Serbia and the 4 Schengen Associated Countries. However, no financial envelope has yet been decided for Serbia, and the four Schengen Associated Countries are specific for DG HOME programmes. These 5 countries will therefore not be taken into account for the determination of the price of each offer as indicated in annex IV.

**Q3. In reference to the specifications: administrative part, please could you confirm that subcontracting is permitted? Aside a letter of intent, are there any other specific requirements to be applied for subcontractors?**

Article II.7 of the draft Framework Service Contract contains the provisions related to subcontracting. Point II.7.1 stipulates that "the contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the FWC to be de facto performed by third parties."

**Q4. Would you be able to share an example of an audit report template, based on current practices?**

Annex II describes in broad terms the model structure of a report. Depending on the type of mission to be performed, a detailed template may be agreed between the contracting authority and the contractor when signing the specific contract.

**Q5. In the Tender Specifications, Chapter 5, § 5.2.2, before last alinea, it is indicated that "The working papers are the property of the Commission and they will accompany the final report". As the Co-ordinator (who will take responsibility and sign all reports) will need to be an audit partner (§ 4.2.1), it is highly probable that he/she will be submitted to professional secrecy rules in his Member State of establishment. These rules will extend to the members of his/her team. As a matter of example, in Belgium, art. 458 of Belgian Criminal Code (which defines professional secrecy) being of public order, it applies to work performed by registered auditors in Belgium (even if the contract is not under Belgian law). The statement above that the working papers of the auditor would be the property of the Commission and would have to accompany the final report would therefore lead to infringing Belgian law and professional secrecy rules, as said working papers are likely to contain information about the audited entity (but also about 3rd parties) that have been obtained by the auditor in the exercise of his profession. The registered auditors in Belgium are relieved of their professional secrecy obligation in very specific circumstances (appearance in court, etc). Executing audits on behalf of the European Commission is not one of them. However, not all information contained in the working papers of an auditor are covered by the professional secrecy (information already public, information on the audit work itself, etc.). The following information could therefore be communicated to the European Commission as part of the final report (even if also contained in the working papers) without infringing the professional secrecy rules: - planning of the audit work - nature, planning and extent of the audit procedures - corresponding results and conclusions drawn from the audit evidence obtained - reasoning of all significant matters which require the exercise of judgement and conclusion - relevant facts on areas involving questions of principle or judgement; This would ensure that the final reports would contain all information the European Commission needs to obtain the assurance they need on the payment requests from beneficiary countries. As a matter of comparison, this is the way all the audit contractors work on other audit framework contracts managed by European Commission Directorates General (CNECT, Europeaid, BUDG, RTD, ECHO) In addition, access to the audit files to EC staff would also be granted upon request (provided a confidentiality agreement would be signed by the persons requesting such access). To conclude, a recognised auditor may not, as a matter of principle, transfer the ownership on his audit files to a 3rd party without committing a criminal offence. We do believe however the contractors will be able to supply all the information needed by the Commission to exercise its control role in the final reports, and that confidential access to the audit files can be granted. Could the Commission confirm the above is an acceptable "modus operandi"? Thanking you in advance for your time and consideration.**

The contractors should supply all the information needed by the Commission to exercise its control role in the final reports, and that confidential access to the audit files can be granted

Please refer to:

- Tender Specifications – Art 5.2.2. Content (of the Audit report) - Tender Specifications – Annex II Model Final Reports

The requirements expressed do not lead to infringement of the Auditor's professional rules.

In addition, access to the audit files to EC staff needs to be granted upon request provided a confidentiality agreement would be signed by the persons requesting such access.

Please refer to - the General Conditions For Framework Service Contracts – Art. II.10.2 Ownership of the results

"Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the FWC or order form or specific contract explicitly provides for it to be treated as a self-contained result."

The term 'Audit' has to be understood as Agreed-upon procedures, and the working papers the Commission will require are checklists, calculation sheets, copies of the invoices and any other documents used to support audit observations, recommendations and / or conclusions.

**Q6. Based on the table of weighting (P29 of the tender dossier), where 10% weight is given for Coordinators and project leaders, in our experience of managing batches of audits of this type across the same geographical region, the coordination time for the whole process to take into account: set up, planning, quality review, finalisation etc., is likely to be significantly more than the 10% indicated in the table. Should this weighting be taken as a guide to the tender authorities' expectations for the amount of coordination and project leader work required on each audit?**

No, the weightings are given exclusively to calculate the price according to the procedure set out under point 12 of the tender specifications.

**Q7. Is it expected that the coordination office be based in Brussels, or can the coordination office be located in any of the member state countries?**

No, the coordination office is not expected to be in Brussels.

**Q8. Is there a current framework contract in place for carrying out similar audits, and if yes, are you able to provide a breakdown for 2012 of the number of audits for each type of audit indicated in Section 4.1 of the tender specifications?**

The information is not relevant for this tender.

**Q9. Page 2 of the ToR (last paragraph before 2.1) states: "Through specific contracts as described in Point 4.2.2, the Commission will provide the Contractor with the audit methodology and define the tasks to be prepared for each assignment."**

On this basis, please confirm that the tenderer is not required to provide details of their own audit methodology including audit programme, audit sampling approach and other related audit documentation. Our reason for this question is based on the fact that we have noted the table on qualitative criteria on P19 of the tender specifications,

which indicates in the second category, that information is required through presentation of methods and system intended to control the quality of services...

The sentence on page 2 is confirmed. The table on page 19, 2nd category, refers to the internal quality management of the tenderer.

**Q10. Please confirm that the tenderer will not be required to submit time sheets to accompany invoices submitted for performing Specific Contracts both for interim payments and balance payments**

We confirm that no time sheets will be required.

**Q11. P20 of the draft framework contract states provisions for an interim payment – upon delivery of intermediary results, followed by payment of the balance. For the types of audits that are to be performed under this contract, are you able to provide an indication of the percentage of the contract amount that would be payable at the interim payment milestone?**

According to art I.4.3. of the special conditions, interim payments are not applicable to this contract.

**Q12. Since we submitted a tender for the previous (external audit services) procurement procedure launched in 2009, we have compared the Tender Specifications for the call in subject with that of the previous procurement procedure. The text relating to how tenders can be submitted (i.e., point 9. Groupings of economic operators or consortia) is exactly the same. In 2009 we submitted our tender with one XXX audit legal entity, relying on the capacities of other audit entities from within our XXX network in the eligible countries. The lead XXX audit legal entity provided all the required documentation and, as an integral part of the proposal, provided a full description of how we intended to cooperate with our partner firms, including details on the organisation/coordination of services to be provided. The other audit entities from within our XXX network provided: - a signed undertaking stating their readiness to provide full support and resources, together with - a declaration of honour stating that they were not in any of the situations referred to in Articles 106 and 107(1) of the Financial Regulation. Please note that this approach was accepted by DG Employment in 2009 and has become accepted practice at the European Commission, namely DG DEVCO, under procurement procedures for Multiple Audit Framework Contracts. It was also accepted by the IMI JU for a similar procedure. It aims at reducing the administrative burden for contractors when responding to audit framework contracts covering such an important number of countries. The issue of liability remains unchanged, as it would be the lead XXX audit legal entity that would bear full liability towards the contracting authority. QUESTION: Would the above-mentioned approach be acceptable for this procurement procedure?**

At this level of the call for tender, only the "Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflicts of Interest" letter has to be provided, by all the members of the grouping.

The documents requested in appendix 1, are the supporting documents to be provided by applicants or tenderers to whom the contract will be awarded.

**Q13. In reference to the 3rd Q&A on subcontracting, we would hereby like to ask more explicitly what is the administrative documentation that is required to be submitted from subcontracting parties together with the offer and / or before signature of the contract. In section 9 of the specifications, there is a reference to a "grouping of economic operators" and a stipulation that the documentation listed in sections 10 and 11 needs to be submitted by each member. Could you please clarify if this is applicable only to members of a consortium or also to subcontracting parties? Our assumption is that this is only applicable to consortium members, and that letters of intent are sufficient for subcontracting parties, but we prefer to be sure in order that we are compliant with the requirements.**

It has already been replied that "the contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the FWC to be de facto performed by third parties". At this level of the call for tender, no authorisation for subcontracting is given by the Commission. Hence, no documentation is required to be submitted from subcontracting parties.

In the case the bid is submitted by a grouping of economic operators, at this level of the call for tender, only the "Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflicts of Interest" letter has to be provided, by all the members of the grouping. The documents requested in appendix 1, are the supporting documents to be provided by applicants or tenderers to whom the contract will be awarded.

**Q14. In section 11.b of the specifications on page 17 tenderers are requested to provide, inter alia:**

**References from the tenderer's customers including a list of customers from the last 3 years**

**We would be grateful if you could clarify in more detail what you would require as "references" in this context, and whether this equates to certificates provided by clients related to the tenderers' relevant references (examples of work done directly related to these services) or should it be understood as being more general? We assume that such certificates from the client can be in the national language of the country where the engagement was conducted.**

The tenderer can provide the Commission either with a written reference by its customers – in any of the official languages of the European union – or may also provide the Commission with references on its customers, including in each case all the necessary contact details of these customers.

**Q15. Art. I.8.1(c) - Modifications of the results. Please confirm that article II.3 (Liability) will not apply to the contractor in the event of any modifications, listed in article I.8.1(c).**

Yes, the article II.3 does not apply for the modifications listed in article I.8.1(c).

**Q16. Art. II.1.9 - Reduce/Recover payments etc. Please confirm that the contracting authority will always send a prior written notice to the contractor in order to enable the contractor to improve performance of the services within a reasonable timeframe.**

As indicated in § 5.2.1 of the tender specifications, there is a draft report that has to be approved by the contracting authority and delays are foreseen in case the contracting authority rejects the draft report allowing the contractor to improve its work.

**Q17. Art. II.3.1 - Compliance with legal obligations. Please confirm –in addition- that any and all rules of professional conduct that apply to the contractor are part of the FWC and that a contracting authority at all times will fully respect any and all obligations deriving therefrom.**

Yes

**Q18. Art. II.3.3 - Any claims by a third party. Please confirm that the wording ‘... and for any claim by a third party...’ will be deleted, since this is such a broad scope that it is too detrimental to the contractor.**

Not deleted as it is the standard text for framework contracts of the European Commission.

**Q19. Art. II.3.4 - First sentence (‘The contractor ... any claim’). Please confirm that this sentence will be deleted, since its scope is unreasonably broad (no relation whatsoever to performance under the FWC) and therefore unacceptable.**

Not deleted as it is the standard text for framework contracts of the European Commission.

**Q20. Art. II.3.4 - Unlimited exposure. Please note that there is no maximum amount of the compensation, the contractor may have to pay under this article. Please confirm that the cap on liability of article II.3.3 also applies to this article II.3.4.**

There is no maximum amount as it depends on each specific action, claim or proceeding brought by a third party.

**Q21. Art. II.13.2 (b) last sentence - No entitlement to claim compensation on account of suspension. Please confirm that the contractor is entitled to full payment of the fees up to the moment of suspension.**

In case of suspension of the contract, the contractor should take actions in order to allow the contracting authority to resume the service.

**Q22. Art. II.14.3 - Recover any amounts. Please note that this right of the contracting authority is extremely harmful to the contractor. Please describe under which circumstances (defined, limited) such a right may be enforced.**

The circumstances are listed in II.14.1.

**Q23. Art. II.14.3 - Claim compensation in the event of termination . Please confirm that this right will mutually apply (both parties).**

The first sentence of II.14.3 clearly indicates that "the contractor shall waive any claim for consequential damages...".

**Q24. Art. II.18.3 – Audit. Please confirm that the contracting authority will inform the contractor in advance (min. 5 working days) of any and all audit.**

In case of audit, the contractor will be informed well in advance.

**Q25. When we submit our proposal as a group of economic operators do we have to provide all requested information as mentioned under paragraph 11 of the call for tender (page 17)? In this paragraph it is mentioned that approved annual accounts, statements of annual turnover and statements from banks have to be provided.**

**Do we have to provide these documents for all the economic operators or will it be sufficient to provide these documents only for the lead firm of the group of economic officers?**

As indicated in paragraph 9 (page 14) of the tender specifications, the documents required in paragraphs 10 and 11 have to be provided by every member of the grouping. The grouping, as a whole, has to demonstrate that, through its members, it has the economic and financial capacity and the technical capacity to carry out the required services.

**Q26. In paragraph 13 of the call for tender (page 20) it is mentioned that we have to provide proof eligibility and a legal entity form.**

**When we submit our proposal as a group of economic operators, do we have to provide these documents for all of the economic operators, or will it be sufficient to provide these documents only for the lead form of the group of economic operators?**

Every member of a grouping of economic operators has to provide proof of eligibility as the legal commitment of the contracting authority is established with each member of the grouping.

As indicated in paragraph 9 (page 14) the grouping "must nominate one party to be responsible for the receipt and processing of payments...", so only the legal entity form, as well as the financial identification form, of this leading member is requested.

**Q27. Whether under requirements of Call for Tenders VT/2013/037 (included in Specification) the person who has the right to conduct audit as Certified Internal Auditor (CIA) - who does not belong to International Federation of Accountant (IFAC) - also may fulfil the eligibility criteria for abovementioned Call for Tenders, especially when in Specification is indicated condition of providing all audit services in accordance with International Standards of Auditing (ISA)?. Whether that standards (ISA) apply only to members of IFAC or for every auditor (also CIA)?.**

As indicated in paragraph 4 of the tender specifications, all audit services must be performed in line with the International Standards on Auditing (ISA), whether or not the auditors in charge are certified IFAC or CIA.