Invitation to tender MOVE/A4/2013/247 for a supply contract regarding Cruise Ship Security

Contract notice in OJEU S 2014/S 107-187439

QUESTIONS & ANSWERS

**Latest update: 16 July 2014**

**Question 1:** Where can I find the tender documents?

**Answer:** All the relevant documents and information in relation to the call for tenders are available on [http://ec.europa.eu/transport/facts-fundings/tenders/index_en.htm](http://ec.europa.eu/transport/facts-fundings/tenders/index_en.htm)

**Question 2:** Can the proposal be drafted in German or English language?

**Answer:** The tender may be drawn up in any EU official language.

**Question 3:** Is the due date to deliver the proposal the 19th August 2014?

**Answer:** No, the time-limit for receipt of tenders is 30 July 2014 (at 16:00). The opening of the tenders is foreseen on 19 August 2014.

**Question 4:** Our company was recently founded and is currently in the process to become a registered company. As a start-up company with a focus on management and technology consulting, we actually do not yet possess the project experience and references, which are requested in the tender documents. However, our founder has more than 14 years of experience in the relevant area. Does it make sense or is it feasible to make a proposal, knowing that we cannot directly fulfill the given reference requirements (as per § 2.3.2. Technical and professional capacity criteria and evidence, notably the criteria relating to tenderers)?

**Answer:** In the case a tenderer alone is not able to fulfil some of the selection criteria, it is entitled to rely on the capacity – financial, technical, etc. – of other entities, either by forming a consortium and thereby submitting a joint tender, or relying on the capacity of sub-contractors. It can be done in a combined way, submitting a joint tender by a consortium, where the consortium members (the joint tenderers) rely on the capacity of the subcontractors.
The tenderers or subcontractors submitting a tender can be either legal entities or natural persons, but their common capacity must at all times comply with all of the selection criteria.

In addition, in the case of a tenderer as a legal entity, that tenderer must be established (registered) according to the law of the Member State in question, and have a legally complete legal status as foreseen under this law.

**Question 5:** National authorities will not grant your maritime expert(s) with a security clearance until the EU has confirmed that we will award the contract. Can we prove the possession of this security clearance later?

**Answer:** As the Maritime experts will be requested to analyse security requirements for cruise ships, they need to be in possession of an active security clearance issued by one of the EU Member State's appropriate authority. Provisions of a copy of the security clearances after the awarding of the contract is acceptable, without prejudice of the main requirements of the selection criteria.

**Question 6:** How can the Commission assist the contractor to get access classified information from ports and ship operators?

**Answer:** It is not for the maritime expert to access to ISPS classified documentation but to be able to analyze the implementation of measures to improve the security of cruise ships on a need-to-know basis.

A recommendation letter for the purposes of this study will be issued by the Commission services, which combined with the possession of an active security clearance, could help to achieve a high degree of confidence with the Cruise ship and Cruise Port facility operators.

**Question 7:** What is the distinction between ports-of-call and places of embarking/disembarking?

**Answer:** Ports-of-call are ports at which cruise ship calls during the course of a cruise and where the cruise passengers pay visits and excursions. Also sometimes it referred to as a transit port or destination port.

Places of embarking/disembarking (or also known as home port) are ports at which a cruise ship is based, normally for a series of cruises. May also be referred to as a base-port, embarkation port or turn around port where cruises start and end.

**Question 8:** What is the reason of cancelling the prior tender and is there a possibility that the current call for tender to be cancelled?

**Answer:** The Commission services decided to cancel the previous call for tender due to a number of errors occurred during the internal procurement procedure before the award of the contract. Those errors do not concern the offers received nor their quality. The bidders have been informed of the cancellation by letter dated 22 April 2014.
Question 9: Is there a possibility that the current call for tender to be cancelled?

Answer: All necessary measures have been taken to prevent these errors occur once again in the future. Before the decision to award a contract, the relevant rules and procedures for the evaluation of the offers and for the preparation of the award decision designating the successful tenderer are verified by an internal Advisory Committee on Procurements and Contracts.

Question 10: Are there noticeable differences between last year's and the present call for tender?

Answer: The scope of the study is explained in the tender specifications. The technical specifications have been slightly revised in order to be clearer and more accurate.

Question 11, part 1: The tenderer must prove experience in the field of maritime security with at least 2 projects delivered in this field in the last three years with a minimum value for each project of 100 000 €. Can this criterion be fulfilled with the help of subcontractors?

Answer: Yes.

Question 11, part 2: If so, is this possibility restricted to subcontractors whose share in performing the contract is above 20% or to consortium partners?

Answer: No. As a rule, an economic operator may rely on the capacities of other entities, regardless of the legal nature of links it has with them, i.e. consortium members (joint tenderers) or subcontractors.

Question 12: Do subcontractors with a contract share of above 20% have to supply forms and documents other than Annex 1 (legal identity) and Annex 2 (declaration of honour)? Notably, do such subcontractors have to supply the Legal Entity Form; a legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment and a copy of the profit & loss account for the last two years for which accounts have been closed?

Answer: Subcontractors do not have to submit the Legal Entity form, as, according to paragraph 1.6 of the Tender Specifications, this is to be submitted by the tenderers, that is, by a sole tenderer or by a member of consortium in the case of a joint tender.

In the same way, the obligation to indicate information on the authorised representative does apply to the tenderers, but not to the subcontractors.

Concerning the copies of the profit & loss accounts, in practice, they are presented by subcontractors only in the cases the financial turnover of sole tenderer or joint tenderers is not sufficient to comply with the selection criteria, in particular, the requirement for yearly financial turnover.
**Question 13:** Is the 30th July 2014 the final date for the submitting of the application or the date a company should inform on its interest to participate?

**Answer:** No. This is the date at which the tenderers must submit full tenders as required in tender documents, consisting of technical, financial and administrative part (see also answer to Question 3).

**Question 14:** What is the purpose of the opening committee?

**Answer:** The tenders received are opened at the same time by an internal opening committee which is specially appointed for that purpose. The aim is to verify whether the tenders are 1) submitted in the deadline foreseen, that is, posted or delivered no later than on 30th of July 2014, 2) verify that the confidentiality of the tenders has been maintained, that is, tenders have arrived unopened.

The opening of the tenders is foreseen on 19 August 2014. Each tenderer may be represented by no more than one (1) person.

**Question 15:** Is a company allowed to submit more than one application, first as part of a group of companies and second as an independent lead applicant?

**Answer:** Yes.

There is no objection that a company replies twice to the call of tender as an independent bidder or as part of a group of operators. In case of joint tender, all operators assume jointly liability for the performance of the contract as a whole (see also answer to Question 4).

**Question 16:** Is there an incumbent for this work? If so, who is the incumbent?

**Answer:** No. Please see also the following response.

**Question 17:** Is this follow-on to past studies, or new work? If follow-on, please disclose who did the previous studies?

**Answer:** No, it is a new study.

**Question 18:** Is the scope of the study limited to ocean-going cruises (e.g are river cruise operations excluded from the study)?

**Answer:** Technical specifications are set out in Section 3 of the invitation to tender. It is clear that the study should focus on a representative sample of cruise ship companies and of cruise terminals. It is to the bidder to determine its own sample. In addition, an annex 6 - attached to the call for tenders - provides an indicative list of ports.

**Question 19:** In order for us to have a complete picture of the financial rules to be followed, I would like to put some financial questions. We are currently participating in a number of H2020 proposals. The budget for these proposals was built based on H2020 financial rules (i.e. 25% flat OH on personnel + other direct costs). I understand from this call that this would instead be a firm fixed price type of contract (i.e. we would be allowed to
base the proposal on our own internal accounting practices. Our actual OH etc). Could you please confirm that I got this point right?

**Answer:** Yes. Article 2.6 of the Tender Specifications stipulates: "The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately."

**Question 20:** To what extent we will receive security plans from cruise ship companies and cruise port facilities? Is it up to the contractor to provide you with a proposal in their bid of the respective companies and ports, or will you provide security plans for all ports and cruise ship companies? Will security plans be provided free of charge?

**Answer:** It is not for the contractor to access to ISPS classified documentation but to be able to analyze the implementation of measures to improve the security of cruise ships on a need-to-know basis.

A recommendation letter for the purposes of this study will be issued by the Commission services, which combined with the possession of an active security clearance, could help to achieve a high degree of confidence with the Cruise ship and Cruise Port facility operators (see also answer to Question 6).