Questions & Answers

Subject: Study on the risks of elderly people in road traffic

Ref no: Tender no MOVE/C4/2014-244, Contract notice JO 2014/S 112-196337

Updated: 03/09/2014

Q1: Do we need original signatures from each partner on the annexes and on the application?
A1: Please see the tenders invitation, paragraph 5:
  "Tenders must be:
  - signed by a duly authorised representative of the tenderer. The original signature of the single tenderer’s or lead partner’s authorised representative (preferably in blue ink) on the identification form (Annex 1 of the technical specifications) shall be considered as the signature of the tender, binding the single tenderer or the group of partners to the terms included in the tender;"

Detailed information about the tender documents and required signatures on the application and its annexes can also be found in the published tender specifications, chapter 1.

Please note that original signatures are required and that scanned or electronic signatures are not considered to be originals unless such exceptions are specifically mentioned in the tender specifications or tenders invitation.

Q2: If we do not have a legal representative as mentioned in legal entity annex, are other documents needed?
A2: Please see the tender specifications, article 1.6 and the information and instructions that can be found via the link provided in these tender specifications: http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm.

There you can find all information about what supporting documents are required and what information to be filled into the form, depending on whether the tenderer is a natural person, a public entity or a private company.

Q3: Is there any template for the proposal or guidelines for what the proposal should look like?
A3: There is no template or guidelines but the tender must include all the information requested in the tender invitation and tender specifications so please read these documents very carefully, notably the checklist in the tender specifications, article 1.5.

Q4: What should the proposed budget look like and how detailed must it be?
A4: Please see the tender specifications, article 2.6: "Financial offer" with the requirements for the financial offer to accompany your tender. Note especially that "The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately."
Please note also that the allocation of resources will be assessed as part of one award criteria (tender specifications, article 2.4: award criterion "organisation of the work") and the presentation of a realistic budget is therefore an important factor in the selection of tenderers.

Q5: Do we need to add also a filled Annex 5 (contract) to the proposal?  
A5: No, the annex 5 is attached for information and will only be filled in by the successful tenderer at a later stage of the process.

Q6: For an international consortium, would it be enough to have a copy of the signature of the bank on the financial statement instead of the original?  
A6: Please see the tender specifications, chapter 1 and in particular, article 1.6 which states that "The tenderer (only the leader in case of joint tender) must provide a Financial Identification Form and supporting documents." and also that "In order to prove their legal capacity and their status, all tenderers (including any member of a consortium of grouping) must provide a signed Legal Entity Form with its supporting evidence."

In addition, please read also the reply under A1 above.

Q7: Different employees from the same company could submit different offers for the same call?  
A7: If this is the case, please make sure that all the selection criteria, including the one about the financial turnover (paragraph 2.3.1 of the Tender Specifications) are met.

Q8: Medical issues as for example the effect of prescription drugs including in combination with alcohol are part of this call?  
A8: Any medical issues related to elderly people that can foresee to take any measures that could be implemented at EU level could be part of the study, general conclusion or recommendation applicable to the whole population are not part of this study.

Q9: A company can submit different offers for the same call signed by different people?  
A9: There is no legal ground to prohibit one (legal) entity to submit two different tenders.

Q10: An Australian partner (one University) could be member of the consortium as partner or subcontractor? Does the subcontractor with the share of work under 20% have to sign the declaration of honour or other documents??  
A10: Access to entities from outside the European Union is allowed on the grounds foreseen in the WTO Government Procurement Agreement. Please refer to paragraph 1.1 of the Tender Specifications. In the case the access is entitled; entity from the third country must comply with the requirements of Tender Specifications and other tender documents in the same way as the entities of the European Union. In the case the share of work of the subcontractor would remain below 20%, it does not have to sign the declaration of honour. In no case a power of attorney is required from a subcontractor.

Q11: Who has to organize the workshop?  
A11: The Commission will arrange the meeting venue on Commission premises and the organization of the workshop is described on Chapter 3. d. 2.

Q12: The financial offer must include a breakdown of costs?  
A12: No, the offer has not to include a breakdown of costs.
Q13: Power of Attorney must be included in the envelope "Administrative and technical parts"?
A13: Yes, this document could be included on the “Administrative and technical parts”.

Q14: Referring to the objectives of the tender specifications, the description of the deliverables (p 14-15) and the service contract’s articles regarding exploitation of the results of the contract (articles I.8 and II.10), we interpret this as it does not entail any license or assignment of ownership to pre-existing rights such as quoted/reviewed literature and databases. Only if pre-existing tables or figures are included in the deliverables, the contractor must ensure that the Commission is entitled to use said pre-existing rights as stipulated in the draft contract. Is our interpretation correct?
A14: Your interpretation is basically correct.

The Contracting Authority will, on the basis of article I.8.2 and in accordance with article II.10.3 of the contract, acquire the right to use (the license, but not the ownership) of pre-existing intellectual property rights - if any - through the contractor, who has acquired these rights beforehand from the third parties in question.

It is the responsibility of the contractor to identify any pre-existing rights and rights of third parties (if any). It has to be done in the tender.

The extent of the pre-existing rights to be acquired by the Contracting Authority is defined by the article II.10.5 of the contract, in particular with the words "for any use envisaged by the contracting authority". The pre-existing rights are to be used by the Contracting Authority if their objects form a part of a deliverable or if the possibility of this use is otherwise necessitated by the objectives of the invitation as indicated in the Tender Specifications.

The possible modes of use are listed in article I.8.1 of the contract.

As opposed to the user’s rights of pre-existing rights, the Contracting Authority will acquire the ownership of the results (deliverables) produced by the contractor under the contract.

Q15: We have a subcontractor whose share of the work represents exactly 20%. Should this subcontractor fill in the identification of tenderer documents?
A15: Yes, if you refer to Annex I of Tender Specifications, then all subcontractors with a share of 20% or more of the contract must fill in this document.

Please read the tender specifications and invitation to tender carefully in order not to miss any documents to be completed and submitted.

Q16: Can the contracting party accept that the contractor shall not be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on him before 5 years after completion of services? (Draft contract, Article II.3 Liability)
A16: No. Please refer to point 7 of the Invitation to Tender: "Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the tender
In order the tender to be considered compliant with tender documents, and to be further evaluated, the tenderer must accept all terms and conditions of the tender documents, including the ones of the draft contract and must refrain from coming up with terms and conditions that differ from those of the tender documents.

Q17: Can the contracting party accept that neither party shall be liable in contract, tort or otherwise for any loss of profit or any special, indirect, incidental or consequential damages or losses?

A17: No. Please see answer to the previous question.

Q18: Does the financial limitation of the contractors liability in article II.3.3 (three times the total amount of the contract) apply to any loss, damage, cost or compensation incurred by the contracting authority under both article II.3.3 and II.3.4?

A18: Articles II.3.3 and II.3.4 apply to the contractor only. As for the contracting authority's liability and its limits, please see Art. II.3.2. of the draft contract, explaining that the contracting authority shall not be held liable for any damages except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

Please note also that the financial limitation of Art II.3.3 does not apply in case of gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors.

Q19: Please clarify which claims are covered by article II.3.4?

A19: The article covers any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the contract, for example an alleged breach of intellectual property rights or other claims concerning loss or damages sustained by the contracting authority or by third parties.

"Third party" means any person that is not a party to the contract, that is, is not the contractor, or one of the contractors in the case of a joint tender. On the other hand, the category of "third party" also includes the subcontractors.

Q20: Does the financial limitation of the contractors liability (three times the total amount of the contract) apply to the indemnification of the Commission for all damages and costs under article II.3.4?

A20: Yes, the financial limitation refers to any loss or damage sustained by the contracting authority in performance of the contract but please note that this of course does not apply in case of gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors.

Q21: Can the contracting party accept that the liquidated damages are capped at 10% of the amount specified in article I.3.1?
Q22: Can the contracting party accept that only payment of the disputed part of an invoice can be suspended?

A22: As a rule, no. Such a partial suspension of payment is not provided for in the draft contract. Please see Article II.15.7 for more details.

Q23: Can DG MOVE clarify whether any changes have been made to the original study specification?

A23: If any change occurs, a document called ‘Corrigendum’ is published on the web page. Tenderers are therefore invited to consult this site regularly until the deadline for submission. On the date of 3 September 2014 there has been one change, which concerns the extension of the deadline.

Q24: Can DG MOVE clarify where information on the fixed budget is to be presented in the proposal, i.e. is this part of the technical proposal?

A24: A financial offer is to be presented together with the technical offer. Please read the reply under A4 above.

Q25: Should the costs for the workshop catering (coffee-breaks, ...) be covered by the contractor? Is there a limit for the number of participants?

A25: The costs of the workshop are covered by the Commission. There is no limit for the number of participants. Please also read the reply under A11 above.