Q&A

Latest update: 17/03/2015

Subject: Study on the possible introduction of an electronic tag as a supplement or a replacement of the wheel mark in marine equipment

Ref no: Tender no MOVE/D.2/2015-372 V1.0

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Q1: Where can the information about the tender be found on internet? Is there a procurement division, or anyone else who may be able to assist in finding this?

A1: as per the Invitation to Tender Letter

Before the final date for submission of tenders:

At the request of the tenderer, the contracting authority may provide additional information solely for the purpose of clarifying the nature of the contract.

Any requests for additional information must be made in writing only to MOVE-MARITIME-TRANSPORT-AND-SAFETY@ec.europa.eu

Requests for additional information received less than five working days before the final date for submission of tenders will not be processed.

The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the text of the call for tenders.

Any additional information including that referred to above will be posted on http://ec.europa.eu/transport/facts-fundings/tenders/index_en.htm. The website will be updated regularly and it is the tenderers' responsibility to check for updates and modifications during the tendering period.

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Q2: The question concerns the liability clause in the service contract which reads:

“Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.”
The concern is that this is an unlimited liability for acts performed by subcontractors. Is there any way of ensuring that this is not seen as an enormous potential risk?

A2:

This standard liability clause cannot be modified. Submitting a tender automatically implies acceptance of this clause by the tenderer or joint tenderers. Please refer to point 7 of the Invitation to Tender, as well as to the following clause on the first page of the Draft contract: "The parties identified above and hereinafter collectively referred to as 'the contractor' shall be jointly and severally liable vis-à-vis the contracting authority for the performance of this contract."

From the Commission point of view, there is no other possibility but to exclude tenders deviating from the tender documents, including from those clauses, e.g. by proposing limits to the liability.

On the other hand, any sole contractor or consortium using sub-contractor(s) can make sure of having arrangements with the sub-contractors, foreseeing legal remedies, e.g. payment of compensation, in favour of the contractor or contractors, for the damages claimed by the Commission and caused by the sub-contractor(s) concerned. These remedies might possibly also be taken ex-ante, e.g. in the form of a guarantee. But please bear in mind that these arrangements would not be valid vis-à-vis the Commission.

However, the liability is strictly limited to the cases where there has been a gross negligence or wilful misconduct, to be proven separately for each case.

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Q3: The question concerns specific templates on which prepare the Tender.

"We have been unable to find a document that needs to be completed or indeed a template? Is there a standard format in how we should reply?"

A3:

No there are not specific templates. All the documents needed are specified in the Tender web page: http://ec.europa.eu/transport/facts-fundings/tenders/index_en.htm

The only Template available at the above mentioned web address refers to the standard word template for studies to be used by the winning submitter(s) when finalizing the report of the study.