Questions and Answers

Subject: Study on driver training, testing and medical fitness

Ref no: Tender No. MOVE/C4/2015-166

Q1. In the Technical Specifications section under c) Tasks (Page 12) it says that the Commission can provide statistics on road fatalities from the CARE database. What will be the form of these statistics (i.e. will it be in the form of detailed data from the database or summary high-level statistics)?

A1: The statistics from the CARE database can be provided in detailed form. The database covers data from the EEA countries (+ Switzerland) on road accidents resulting in death or injuries. The data can be shown using different parameters (country, year, fatalities, accidents, victims, vehicle type, age of driver, age of vehicle, time of accident etc.).

Q2. Will proposals in excess of EUR 180000 still be compliant?

A2: In the case of exceeding the amount of EUR 180 000, it is not possible for the Commission to guarantee the availability of the higher budget as proposed by the tenderer, due to internal budgetary reasons.

Q3. Can amendments be done to the special conditions and the general conditions of this Service contract? See suggested amendments below:

1. Special Condition I.7.1: Please delete SC clause I.7.1 and insert: “The Contract shall be governed by and construed in accordance with the law of Belgium”.

2. Special Condition I.8.1: Please add to SC I.8.1: “The Union hereby agrees that the discharge of the Specification by the contractor and the presentation of the results are confidential to the Union and shall not be disclosed or made public as attributable to the contractor, but shall be published by the Union alone”

3. Special Condition I.8.2: Please add to SC I.8.2: “The Union hereby expressly agrees that the contractor shall owe no obligation to obtain any third party intellectual property rights on behalf of the Union, in the discharge of the Specification by the contractor”

4. General Condition II.12: Please add to GC II.12: “The Union hereby expressly agrees that its right to impose liquidated damages for any contractor culpable delay shall be the Union’s sole remedy in the circumstances of such proven culpable delay” “The time-limits set for
delivery of the results in the discharge of the Specification shall be revised as is reasonable in the circumstances, for any Union default and/or for any supervening event outside the contractor’s reasonable control”.

5. General Condition II.3.1: Please add to GC II.3.1: “provided always that the contractor shall owe no obligation to procure any legal encumbrance on behalf of the Union”.

6. General Condition II.3.2: Please amend GC II.3.2 to read: “...any physical damage caused or sustained by the contractor...” “....including any third party property damage caused by the contractor...”.

7. General Condition II.3.3: Please delete and add: “The contractor shall be held liable for any loss or damage sustained by the contracting authority due to established negligence in the performance of the contract (including any subcontracting), subject always to a maximum aggregate amount not to exceed three times the total price of the Contract. 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, the limitation shall not apply. For the avoidance of doubt, “gross negligence or wilful misconduct” in the context of this provision shall mean any act and/or omission committed by the contractor in wanton recklessness and/or in total disregard for the consequences of such acts and/or omissions by the contractor”.

8. General Condition II.3.5: Please delete and replace with:
“The contractor shall maintain professional indemnity insurance in a sum not less than €[●] for each claim or series of claims arising from the same originating cause for the contract period and for [ten] years following the discharge of the services, subject to commercially reasonable rates and terms” “The contractor shall maintain during the term of this agreement Public Liability insurance for not less than €[●] for each occurrence or series of occurrences arising from the same event, subject to such insurance being available at commercially reasonable rates and terms”.

9. General Condition II.5.2: Please amend (c) to read: “the disclosure of the confidential information is required by law and/or by order of any statutory and/or regulatory authority having jurisdiction over the contractor”

Please add a new (d): “the contractor, of necessity, needs to exchange information with a third party, in order to discharge the concluded contract Specification”

10. General Condition II.5.3: Delete “third parties” and replace with “subcontractors”

11. General Condition II.13.2: Delete “or any part thereof”

12. General Condition II.14.1: Please delete GC clause II.14.1(c) and replace with: “where the contractor commits a material breach of the contract”.

13. General Condition II.14.3: Please add to GC clause II.14.3: “Where the Union terminates the contract for convenience, the contractor shall be entitled to reimbursement of all directly incurred costs not otherwise included in the fee at termination”.

14. General Condition II.15.5: Please delete all reference in the contract to “performance guarantees”.
15. General Conditions II.17.1, II.17.2: Please add to GC clause II.17.1: “provided always that the contractor shall only be liable for damages where any such damages are awarded in favour of the Union by a competent tribunal established under Article I.7.2” Please delete GC II.17.2

A3: Thank you for your proposals. However, the Commission is not in the position to make any changes to the published Tender Documents, including to the draft contract.

Please refer to paragraph 6 of the published 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 specification and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. Submission of a tender is binding on the tenderer to whom the contract is awarded for the duration of the contract."

Q4: As per the Contract notice:

Tender must be placed inside two sealed envelopes. The inner envelope, addressed as indicate above, should be marked as follows: Call for tenders-not to be opened by the internal mail department.

The inner envelope must also contain two sealed envelopes, one containing the technical tender and the other the financial tender. Each of these envelopes must clearly indicate the content (Administrative and technical parts and Financial offer (part E).

Do we understand well that:

1. Only on the inner envelope should be marked "Call for tenders-not to be opened by the internal mail department"?

2. There is an external envelope including an inner envelope, and that the inner envelope includes two more envelopes: one containing the three copies of the technical and one containing the financial offer?

A4: The understanding is correct. The offers have to be put indeed in several envelopes as described, in order to ensure confidentiality and security of the offers until the day of the opening of the tender, mentioned under point 3 in the invitation to tender.