Invitation to tender MOVE/C3/2015-344 for a Service contract regarding
Study on access to in-vehicle data and resources

Contract notice in OJEU 2015/S 248-450626 of 23/12/2015

QUESTIONS & ANSWERS

Latest update 15 March 2016

Question 1: Identify the geographical spread which the study is expected to cover.

Answer: Please refer to section 3.2 of the Tender Specifications, description of tasks. E.g. part A – Legal analysis, 2nd and 3rd bullet point imposes the obligation on the contractor to analyse the existing EU, national and international legislation. The same applies to part B – Technical analysis, 1st bullet point: the contractor undertakes the analysis of EU, national and international legislation, etc. Under part D – Scenario-based analysis, the proposed scenarios and solutions must essentially cover and be addressed to the European Union.

The tenderers should read carefully the scope and the description of the each task, and propose the relevant coverage, e.g. international, EU and national legal acts to be analysed under particular task, with the rationale behind this choice. The methodology proposed by the tenderer, including the appropriateness of the coverage will, along with other aspects of the proposed methodology, be evaluated under the award criterion Quality of the proposed methodology.

Question 2: As the title indicates the study is to cover in vehicle resources. Please clarify the width of the definition of the term “resources”.

Answer: All components of the vehicle which allow to access to vehicle data and to propose services to the customer (e.g. human-machine interface, communication means, physical/electrical/logical interfaces etc.).

Question 3: Specify the type of data which needs to be derived from the vehicles.

Answer: Potentially all data generated by the vehicle or the usage of the vehicle which would be necessary for the provision of services to the user. A first analysis of use cases and related data can be found in the Annex 6 of the Call for tender.
**Question 4:** Can you clarify that if we provide evidence that the tender left our organisation by courier before 16:00 on Friday 4th March that this is acceptable and compliant with your requirements (for example with delivery by 17:00 7th March). We propose to do this in the form of a signed letter from the courier driver on 4th March. We would be grateful if you could please confirm that we have correctly understood the postal and delivery requirements.

**Answer:** There is no format or template to prove that the tender has been dispatched within the deadline for the submission of tenders – 4th of March 2016 the latest. The timely dispatching of the tender must be proven by the postmark or deposit slip issued by the relevant courier company, post office, etc., or, in the case of delivery by hand, the confirmation by the official in the Commission central mail department, in accordance with the invitation to tender. No additional formalities, contrary to as proposed in the question, are required.

The key requirement is essentially that the date of the dispatch of the tender is clearly traceable.

**Question 5:** We would like to ask if there are possibilities for the extension of the deadline set to Friday 4th March.

**Answer:** Due to the complexity of the study and the necessity to combine very different competences, and also due to the fact that the call for tender was launched just before the holidays of end of 2015, the deadline is postponed to 18 March (see corrigendum).

**Question 6:** Regarding paragraph 2.1.2 (a), (b) and (c) of the Tender Specifications, "Technical and professional capacity criteria and evidence" - do the certificates of satisfactory execution refer to the tenderers and subcontractors as legal entities in general or to the particular team members (project manager, experts and other involved team members) or both, as appropriate?

**Answer:** The certificates of satisfactory execution of previous projects under Section 2.1.2 (a) and (c) of the Tender Specifications relate to the tenderer, and, when applicable, to the combined capacity of the main tenderer, the consortium members and / or identified subcontractors, e.g. one reference project has been carried out by the main tenderer, and the other one by a sub-contractor, etc. The certificates do not relate to individual team members.

**Question 7:** Regarding Section 2.1.2 (a), (b) and (c) of the Tender Specifications - to comply with the selection criteria, would it be sufficient to provide such certificates of satisfactory execution for the three most important services provided in the field of Intelligent Transport Systems regarding legal, technical and cost-benefit in the automotive sector, survey techniques, data collection, statistical analyses and drafting reports and recommendations?

**Answer:** Yes, given, that each reference project is worth at least EUR 100,000 and the projects have been delivered or completed in the last three years. The minimum number of reference projects required from tenderers to be selected is 2, but the tenderers are welcome to refer to a greater number of projects.
**Question 8:** Data from previous studies - for conduction cost-benefits analyses, is quantitative data regarding cost estimations and underlying assumptions available from previous studies? If yes, is it required to include specific data into the cost-benefit analyses? If not, do we need to consider cost for purchasing such data?

**Answer:** The tenderers must propose, in their tenders, the data and / or assumptions they will rely on in order to complete the tasks. As for the cost of the data, the financial offers of the tenderers must be submitted as lump sum offers and including all costs the tenderers foresee for the implementation of the contract. The financial offer must not exceed EUR 340,000. Please refer to Section 2.6 of the Tender Specifications.

**Question 9.1:** Restriction of provision of legal services to registered attorneys/law firms - according to Section 3.2 of the Tender Specifications, a legal analysis has to be undertaken. Due to potentially applicable local professional laws, the provision of such legal services may be restricted to registered attorneys/law firms. As such, would it be an option to split the services into legal services and non-legal services and to reflect this accordingly in the contractual set up, i.e. contractual obligation to perform the legal analysis by the law firm and contractual obligation to perform the other analysis by the (non-law-firm) service provider. Both contractors will work closely together and secure a common approach. Furthermore the whole project management and coordinating role will be provided by one firm to ensure the contents of the call of tender.

**Answer:** The tasks to be undertaken are closely intertwined, all serving the objective as described in the introductory part of Section 3.2 of the Tender Specifications, therefore separating the tasks in the manner proposed in your questions would not be justified.

On the other hand, the tenderers are free to compose a consortium to submit a joint tender and / or engage sub-contractors in order to cover the tasks foreseen in Section 3.2 of the contract, e.g. one member of the consortium being a law firm, the other member(s) and / or sub-contractors covering other areas of expertise.

**Question 9.2:** Alternatively, if the European Commission insists in its operating model with a joint tender including joint and several liability, we would like to ask if at least the primary liability (provision of the legal services) can be excluded to ensure full compliance with local mandatory law. For the secondary liability (compensation for damages) the consortium could offer a joint and several liability.

**Answer:** Please refer to Section 7 of the invitation to tender, submission of a tender entails the acceptance by the tenderer of the terms and conditions of the procurement documents, including of the draft contract. The tenders waiving from the procurement documents, e.g. imposing different liability clauses, are considered inadmissible.

**Question 10:** Legal analysis of a negotiation model – Section 3.2 (A) of the Tender Specifications requires a “legal analysis of the negotiation model (see Report of Working Group 6 of the C-ITS platform in annex 6) put forward by some stakeholders for the access to in-vehicle data and resources.” At page 19 of the C-ITS Report mentions “Non-automotive aftermarket, to which a negotiation model for the access to data is to be applied” without further elaboration. The presentation from the ACEA (WG6 – A2D – Annex 12) also includes no further information. According to the report, this position has not yet been discussed by the Workgroup.
Can you please specify which negotiation model is meant?

**Answer:** The negotiation model as described in WG6 – A2D – Annex 12 is based on direct negotiations between vehicle manufacturers and other service providers, i.e. to enable to apply different conditions for the access to data, depending on the customer (i.e. the service provider). It may be necessary to seek further information on this subject for the purposes of this study.

**Question 11:** Adequate limitation of liability under national law - due to professional legal requirements for audit and law firms, regarding an adequate limitation of liability under the national law, we are asking, for the case if separate contracts for legal and non-legal services are possible, as addressed in question 9.1 above, the limitation of liability in Article II.3.1 Service Contract shall be adapted as follows:

- Legal services: liability for cases of damage resulting from slight negligence – except for damages resulting from injury to life, body or health – is limited to a maximum amount of EUR 10 million.
- Non-legal services: liability for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to EUR 4 million.

If separate contracts are not possible, can the limitation of liability in Article II.3.1 Service Contract be adapted so that liability for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to EUR 10 million?"

**Answer:** For the separation of contracts, please refer to the answer 9.1 above. For the modification of the procurement documents, including of the draft contract, please refer to the answer 9.2 above.

**Question 12:** Working results as a basis for economic decisions of third parties - will the working result of the Contractor be specially designed for third parties in order to base an economic decision on it?

**Answer:** Please refer to Section 3.1 of the Tender Specifications, i.e. the following parts:

"The recent adoption of the eCall type approval Regulation has brought back the attention on the need to put in place the conditions for an open and undistorted competition for the use of in-vehicle data. The European Parliament and the Council have requested the Commission in Article 12 of Regulation (EU) 2015/758 (eCall type-approval) to assess the need of requirements for an interoperable, standardised, secure and open-access platform. If appropriate, and no later than 9 June 2017, the Commission shall adopt a legislative initiative based on those requirements."

and,

"In order to further progress and also to help in fulfilling the legislators request (cf Article 12(2) of the eCall type-approval Regulation), all elements approved or issues identified within the Working Group 6 of the C-ITS Platform should contribute to and benefit from a scenario-based analyses on legal, liability, technical and cost-benefits aspects, and from further legal and technical analyses."

Therefore, the primary purpose of the contract would be to give the Commission an objective, reliable and evidence-based analysis of the state-of-play in the field of in vehicle data, of the related problems and possible solutions. The analysis can serve as a basis for the Commission
to decide upon whether to take further actions falling in its competence, e.g. to propose legislative initiatives.

**Question 13:** Ownership of data, software, utilities, tool, models, systems etc. – would it correct to conclude that the Contractor will grant the Commission the exclusive right to use the working results, the Contractor will retain ownership of all data, software, utilities, tool, models, systems and other methodologies and know-how, including any improvements or knowledge developed while performing the study?”

**Answer:** Please refer to article I.8.1 of the draft contract. The Commission will acquire the ownership rights of the results of the contract as defined in Tender Specifications, this means the analyses and scenarios as described in Section 3.2 of the Tender Specifications, as included in the reports foreseen in Section 3.5 thereof.

**Question 14:** Indemnification for infringements - is it possible to limit the indemnification for infringements stipulated in Article II.3.4 Service Contact to the sums of limitation of liability?

**Answer:** No. Please refer to the answer 9.2 above.

**Question 15:** External people performing quality checks or alike - as audit firm we are legally obliged to professional secrecy and to independence. We therefore have to take into account these obligations, if we have external people performing quality checks or alike. Can we therefore add some wording in the respective provision that such quality assurance checks shall in any case be made “only to the extent legally permissible and in compliance with all applicable laws and regulations” and that internal working papers of the contractor are not subject of an audit?

**Answer:** No. Please refer to the answer 9.2 above.

**Question 16:** Separate liability resulting from expression „warrants“- „The expression „warrants” is used throughout the Service Contract. Are we right in assuming that the no separate liability regardless of negligence or fault shall be established? Nevertheless, the principle of fault shall be applicable and the section sets out that Contractor shall respect these requirements while providing the services.”

**Answer:** The liability clauses in the General Conditions of the draft contract are exhaustive.

**Question 17:** Copyright or other third-party rights –is it correct to assume that the documents provided by the Commission will not infringe any copyright or other third-party rights?

**Answer:** Yes.

**Question 18:** Individual conflicts of interest declarations – is it correct to assume that the Commission will not ask Contractor's employees to sign individual conflicts of interest declarations, as we as audit firm have installed internal control mechanism regarding conflicts and independence and have already obliged all employees in labour contracts?

**Answer:** Yes. The declaration on the non-exclusion criteria and on the absence of the conflicts of interest (Annex II to the Tender Specifications) must be submitted by the tenderer, and where applicable, by the members of the consortium in the case of the joint
tender, and by sub-contractor, whose planned share of work would be equal to or exceed 20% of the contract. The requirement does not extend to the individual team members, unless they would fall under one of these categories, e.g. an individual expert is hired as a sub-contractor and his/her work would exceed 20% of the total work under the contract.