

**Clarification Note #14**

**EUSPA internal reference: 322405**

**Procurement procedure: EUSPA/OP/16/25 (EUSPA/PRG/2026/OP/0003)**

**Title: 'Administrative support services to EUSPA'**

**Question #77:** In relation to the Corrigendum No. 2, we would kindly request a clarification on the financial evaluation methodology. In particular, we understand from Section 3.3 and Section 12.2.1 (as amended) that the maximum amount related to the transfer of undertakings risk:

- shall be indicated as a stand-alone amount in the financial proposal.
- shall not form part of the Total Tender Evaluation Price and therefore not be taken into account for the financial evaluation of the tenders.

Can you please confirm that:

- the evaluation of the financial offer will be carried out exclusively on the basis of the Total Tender Evaluation Price, excluding any amount related to the transfer of undertakings risk.
- no indirect consideration (e.g. qualitative, comparative or risk-related assessment) will be applied to such stand-alone amount in the evaluation or ranking of tenders. This clarification will help ensure full alignment of our financial proposal with the intended evaluation methodology.

**Answer #77:** see Clarification Note #12, Question #68 (# 88273 in F&T portal) and #73 (# 88276 in F&T portal). The Contracting Authority confirms that the financial evaluation is carried out on the basis of the Total Tender Evaluation Price, which excludes any stand-alone amount relating to the transfer of undertakings risk.

**Question #78:** In line with the official guidance of the Czech National Security Authority, security clearances (EU Secret) can only be granted where a concrete employment relationship and a justified "need-to-know" exist. Consequently, maintaining a pool of pre-cleared personnel without a specific assignment is neither standard practice nor compliant with applicable legislation. NBÚ expects a contract with EUSPA first. Furthermore, NBÚ guidance confirms that such clearances are granted only in situations where individuals are effectively integrated into the end-user organization. This corresponds to a temporary staffing model, where personnel perform their duties within the contracting authority's environment. Simple service contract under our control would not constitute eligible for clearance. In this context, the current requirement to have valid PSCs before EUSPA contract is competition restriction favoring incumbent. Please remove this requirement.

**Answer #78:** see Clarification Note #11, Question #61 (# 87968 in F&T portal) and #63 (# 87970 in F&T portal), and Clarification Note #9, Question #53 (# 87813 in F&T portal).

Section 1.3.1 of the Tender Specification requires the classified administrative support services under Lot 2 to be provided by resources holding a PSC at SECRET UE/EU SECRET level (such requirement is

also included in the SAL, to which you have to comply) and section 10.1.3, requires evidence of possession of Personal Security Clearances for at least three Service Providers expected to handle EUCI at the required level.

The requirement is stemming from Commission Decision 2015/444 on the security rules protecting EU classified information and the Decision of the Administrative Board of the EUSPA, adopting the EUSPA Decision on the security rules for protecting EU Classified information (ref. EUSPA-SEC-AB-DEC-A22114). The Contracting Authority is therefore not envisaging removing such security requirements.

Further, the Tender Specifications provide in section 10.1.3 explanation how cases of impossibility to present evidences (stemming from the applicable national legislation) shall be treated :

*“ In case the abovementioned documentation cannot be obtained (e.g., due to specific national security applicable rules) or exceptional circumstances, a detailed explanation must be provided, accompanied by relevant proof, justifying the reasons why the required documents cannot be submitted. EUSPA reserves the right to assess such explanation and to reject the relevant entity, should this be found unsatisfactory.”*

Regarding the timeline for the submission of the evidence required therein, see the respective provision, copied here for convenience:

*“In the case listed under item 2. above, the official documentation proving the Service Provider’s PSC must be delivered to EUSPA at the latest before awarding the Framework Contract. Failing the submission of the official documentation within the deadline indicated by EUSPA will lead to the rejection of the Tenderer, unless duly justified as per item 3. above.”*

As to the specifics of the Czech national legislation - the employees of the bidder may be in a possession of PSC, if the bidder has FSC of the relevant classification level and if they have applied for it in the National Security Authority, and the bidder may also make available for the delivery of the services freelancers with the relevant clearance (see section 5.1.1 of the Tender Specification. Paragraph 2 (c)).

And last - the Contract Manager as such is not required to hold a PSC, unless that same person is also proposed to perform tasks requiring the handling of EUCI or access to tools processing EUCI.

**Question #79:** In case of transfer of undertakings, contracting authority is obliged to inform all tenderers about the salaries of the incumbent service provider. We feel that currently the purpose of this requirement is to favor incumbent service providers and deter new tenderers. If the tenderer declares transfer of undertakings 0% (just happened here in QA section) it means that the service provider is an incumbent service provider. Newcomers have no idea about the risks associated with transfer of service providers. Accordingly, please inform us about salary levels of experts provided by incumbent service providers (LOT1 and LOT2). Kindly, please also publish all tender documents in a manner that would enable open competition without giving unjustified advantages to the incumbent service providers. Consequently please extend the deadline accordingly.

**Answer #79:** see Clarification Note #8, Question #45 (# 87219 in F&T portal), Clarification Note #9, Question #52 (# 87812 in F&T portal) .

The transfer of the undertaking related stand-alone amount is excluded from the Total Tender Evaluation Price. This approach is intended to avoid distortions in the comparison of tenders where

the exposure to that risk may differ between tenderers, including between incumbent and non-incumbent tenderers.

**Question #80:** Under Czech labour law (Labour Code + Employment Act) temporary staffing exists where all of the following features are present: the worker performs work for the user undertaking; the worker is integrated into the user's organisation; the work is carried out using the user's premises and work equipment; the day-to-day direction and instructions come from the user; the arrangement is not clearly distinguishable as an independent service result, but rather constitutes the supply of labour; security clearance is covering the user's organisation and its secrets. Accordingly, where these features are present, the arrangement qualifies as de facto agency work, even if the contract states otherwise. The fact that EUSPA may have applied a different qualification in a previous framework contract, or provides mere declaratory statements that the arrangement constitutes a "service", does not alter the factual circumstances nor the Czech law. Please make corrections to the tender document.

**Answer #80:** The Contracting Authority takes note of the points raised in the question. See Clarification Note #10, Question #56 (# 88212 in F&T portal), Clarification Note #13, Question #75 (# 88280 in F&T portal) and #76 (# 88282 in F&T portal), Clarification Note #4, Question #13 (# 86133 in F&T portal), #15 (# 86135 in F&T portal) and #16 (# 86136 in F&T portal). The subject matter of the procurement is the provision of administrative support services, not lease of personnel. The procurement documents expressly provide that the Contractor is responsible for the Service Providers and exercises its authority over them without interference by the Contracting Authority (Article II.2.7 of the draft FWC).

**Question #81:** Across jurisdictions relevant for Lot 2 (France, Spain and the Netherlands), labour laws qualify arrangements involving on-site personnel, integration into the user organisation, and day-to-day instructions from the contracting authority as temporary agency work (or equivalent forms of labour leasing) - irrespective of the contractual label used. Such qualification is based on the factual working conditions ("substance over form") and typically triggers mandatory requirements, including equal treatment, licensing of temporary work agencies, and restrictions on the lawful provision of such services. Consequently, the operational model described in the TOR is temporary staffing in multiple Member States. EUSPA described model may expose both the contractor and the Contracting Authority to risks of non-compliance and violation of labour law. If this happens, will EUSPA cover associated risks and penalties as you confidently keep stating this is "service" not temp staffing.

**Answer #81:** The Contracting Authority takes note of the points raised in the question. See Clarification Note #3, Question #8 (# 85999 in F&T portal), Clarification Note #10, Question #56 (# 88212 in F&T portal), and Clarification Note #13, Question #75 (# 88280 in F&T portal) and #76 (# 88282 in F&T portal). The Contracting Authority will not cover risks or penalties that may arise from the contractor's compliance obligations under applicable national law. The procurement documents expressly provide that it is the Contractor's sole responsibility to comply and ensure full compliance with all applicable laws relevant to performance of the contract.

**Question #82:** Is it required that all subjects - prime and all subcontractors are employers of administrative assistants who provide administrative services or it would suffice in order to fulfill the conditions of Tender Specifications that subcontractor is only performing actions that are supporting the process e.g. performing recruiting activities on 20% of administrative assistants pool and subcontractor is recruiting them for prime who will be their employer?



**Answer #82:** see Clarification Note #9, Question #55 (# 87815 in F&T portal).

**Question #83:** There are questions unanswered. Please respond.

**Answer #83:** The responses have been published on the EU Funding & Tenders Portal.