Clarification Note #2

EUSPA internal reference: 304942

Procurement procedure: EUSPA/OP/17/23

Title: 'HADG Infrastructure for HAS Phase 2'

Question #2:

"This question relates to the Facility Security Clearance (FSC) requirement as stipulated in the Tender Specifications, specifically in section 2.3.7.1.

In accordance with the EU law (COMMISSION DECISION (EU, Euratom) 2019/1963, Chapter 2, Article 3, (5) a)), it is our understanding that the requirement for an FSC should not be a ground for exclusion from participation in this tender. Therefore, we kindly request the FSC and PSC requirements to be reconsidered and removed from the tender documents.

In this view, we also respectfully request an extension of the submission deadline by one month to allow us adequate time to prepare a competitive and comprehensive proposal."

Answer #2:

The referenced Article of the Commission Decision (EU, Euratom) 2019/1963 stipulates that:

> "*Where the contract notice or the invitation to tender concerns a contract that will involve EUCI at CONFIDENTIEL UE/EU CONFIDENTIAL or SECRET UE/EU SECRET level but does not require the tenderer to handle such information at the tender stage, a tenderer which does not hold an FSC at the required level shall not be excluded from the bidding process on the grounds that they do not hold an FSC."*

In line with this provision of the Commission Decision 2019/1963, Section 2.3.7.1 of the Tender Specifications requires that the Tenderer either submits an (i) FSC or (ii) a duly signed and dated statement from the entity's Local Security Officer, confirming that the entity is in the process of acquiring an FSC, in which case such process shall be achieved before the award or (iii) in case of exceptional circumstances detailed explanation accompanied by relevant proof, justifying the reasons why these documents cannot be provided or (iv) evidence that the relevant participating entity does not need to have access to the classified information CONFIDENTIEL UE/EU CONFIDENTIAL or above for performing the activities under the Contract outside EUSPA's premises. Therefore, no potential tenderer is excluded from participating in the tender on the ground of not having an FSC at the tender submission date if it meets any of the criteria (ii)-(iv) mentioned above.

It is also stated in the Section 2.3.7.1 that Compliance with these requirements will be assessed under selection criterion L.4 (section 3.2.1).

As for the requirements regarding PSC reference is made to Section 2.3.7.2 of the Tender Specifications which describes the process of evidencing compliance. It is noted in this section that in case the PSC documentation cannot be obtained (i.e. due to security applicable rules) or exceptional circumstances, the tenderer shall submit a detailed explanation accompanied by the relevant proof, justifying the reasons why these documents cannot be provided. EUSPA will assess compliance with the requirements under Selection criterion L5.

As (i) no potential tenderer is excluded from the bidding process on the grounds that they do not hold an FSC and (ii) the processes for evidencing compliance with FSC and PSC requirements were indicated in the Tender Specifications from the publication date of the contact notice and remained unchanged during the submission period the Contracting Authority rejects the request to postpone the deadline and request the tenderers to evidence compliance with the requirements under Section 2.3.7.1 and Section 2.3.7.2 according to the methods described therein.

Nevertheless, please note that the submission deadline has been extended. Please refer to Corrigendum No. 4.

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