Clarification Note #9

EUSPA internal reference: 325990

Procurement procedure: EUSPA/OP/19/26 (EUSPA/PRG/2026/OP/0011)

Title: 'Administrative support services to EUSPA'

Question #42: Further to EUSPA's response (ID 99555), we kindly request confirmation as to whether the assessment referred to in Paragraph 7.1.1(c) must be submitted only as part of the tender or whether it may be provided in advance for EUSPA's preliminary assessment. Should advance submission be possible, we would appreciate clarification on the appropriate communication channel. Furthermore, should the assessment issued by the Italian Ministry of Universities and Research not be considered sufficient, we kindly request clarification as to which authority or body EUSPA would consider competent to issue the assessment required under Paragraph 7.1.1(c). Although originally issued in the context of an EU-funded initiative, the assessment concerns the entity's ownership structure, control mechanisms, security organization and information protection measures, which remain relevant to the entity's current corporate structure.

Answer #42: Please submit the documentation relevant to Section 7.1.1(c) as part of the tender. To avoid misunderstanding, please note that the 'assessment' on whether you are compliant with the mentioned Section 7.1.1(c) is made by EUSPA on the basis of the documentation you will submit.

If instead you refer to the 'assessment' by national competent authorities pursuant to Section 7.1.2 - which comes into play, inter alia, in case of non-compliance with the condition c) of Section 7.1.1 – please note that EUSPA does not identify the competent national authority(ies). Please identify the suitable National Security Authority (e.g., the Ministry of Interior), which issues assessment on security matters, in this case specifically referring to compliance with Art. 24 Space Regulation (Reg. (EU) 2021/696) guarantees.

Question #43: The provisions of Article 3.1.4.1, Part 1 – "The contractor's service providers may have to be granted access Agency's tools…" – and Article 3.1.8 – "The contracting authority may introduce a ticketing system or other dedicated communication tool" – raise doubts as to which systems the contractor should take into account when preparing its tender. Does this mean that the contractor is expected to provide its own system, but that EUSPA may prefer the use of its own system or a combination of systems? The tender specifications, which are somewhat unclear, do not set out the clear rules for preparing a tender. Can the Contracting Authority provide any guarantee that the approach chosen by EUSPA doesn't simulated legal transaction and that the factual performance of services under FWC such would be in fact a temporary assignment of a temporary agency staff (agency employment).

Answer #43:

As per section 3.1.4.1 of the Tender Specifications (IT tools and access to EUSPA IT systems), "The Contractor shall make available to the Service Providers, all IT equipment and tools, necessary for the provision of the administrative support." Separately, and only as needed for specific tasks, its Service Providers may be granted access to specific EUSPA systems/tools following the Annex I.M.1 process. As per the section 3.1.8 - "Communication with the Contractor" of the Tender Specifications, the possible introduction of a ticketing/communication tool is an independent and optional arrangement, limited to communication traceability, subject to agreement between the Contracting Authority and the Contractor, and does not modify the above allocation of IT-tool responsibilities, as per section 3.1.4 of the Tender Specifications.

As stated in Section 6.4 of the Tender Specifications: "*The Contractor is responsible for the Service Providers who carry out the services and exercises its authority over its Service Providers without interference by the Contracting Authority. The Contractor must also inform its Service Providers that they may not accept direct instructions from the Contracting Authority and that their participation in the provision of the services does not result in any employment or contractual relationship with the Contracting Authority.*"

The performance of the contract according to the applicable law and requirements of the contract is the responsibility of the contractors. The Agency expects full compliance with these requirements with no deviation or simulation.

Question #44: From the CN No. 6, Answer No. 33 it appears that The Contracting Authority insists on a thesis about instructions written there. In view of the nature of the support services to be actually provided, and taking into account further Clarif. Notes, there is a legitimate concern that the entire contract represents nothing else than a simulated legal transaction and that the factual performance of services under FWC such would be in fact a temporary assignment of a temporary agency staff (agency employment). Therefore, a performance of such services under FWC may be found illegal with relevant consequences for all subjects involved, including EUSPA, the Contractor as well as the Service Providers. Can the Contracting Authority provide any guarantee that the approach chosen by EUSPA in the Tender including the legal transaction scheme is – in view of the factual performance of services – legal?

Answer #44: As stated in Section 6.4 of the Tender Specifications: "*The Contractor is responsible for the Service Providers who carry out the services and exercises its authority over its Service Providers without interference by the Contracting Authority. The Contractor must also inform its Service Providers that they may not accept direct instructions from the Contracting Authority and that their participation in the provision of the services does not result in any employment or contractual relationship with the Contracting Authority*."

The performance of the contract according to the applicable law and requirements of the contract is the responsibility of the contractors. The Agency expects full compliance with these requirements with no deviation or simulation.

Question #45: From the CN No. 6, Answ. No. 30 it appears that, quote-unquote, 'The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such impression. The same applies to the Service Providers. They shall act on behalf of the Contractor. In connection therewith, however, 'Payments for bookings requested by EUSPA shall be made through instruments that will be made available to the Contractor by EUSPA.' Regrettably, the subject of original question is still shrouded with ambiguity, and the answer raises more questions. Let's imagine a simple scenario where the Service Provider acting on behalf of the Contactor (as insisted by EUSPA) arranges a booking of a hotel and a conference room. The booking is therefore made under Contractor's name (and hardly can by otherwise). Please describe the mutual billing process connected therewith. Is such a process of booking and billing in accordance with accounting standards?

Answer #45:

For the scenario described, either EUSPA's instrument will enable direct billing to EUSPA (as it is ultimately decision of EUSPA's representative, governed by EUSPA's internal rules, to confirm particular hotel and conference room) or EUSPA's staff member responsible for the particular booking/benefitting from the booking will cover the cost (e.g. pay the hotel bill).

Question #46: From the CN No. 6, Answ. No. 30, 'The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such impression. The same applies to the Service Providers. They shall act on behalf of the Contractor. In connection therewith, however, 'Payments for bookings requested by EUSPA shall be made through instruments that will be made available to the Contractor by EUSPA.' Let's imagine a simple scenario where the Service Provider acting on behalf of the Contactor (as insisted by EUSPA) arranges a booking of a hotel and a conference room. The booking is therefore made under Contractor's name (and hardly can by otherwise). Whose responsibility is the booking made on? Who is responsible for the cancellation costs? How these costs shall be settled between the parties? Is the settlement charge subject to VAT? Does it have any influence on the financial parameters of the Tender Offer?

Answer #46: Bookings are made under the responsibility of the authorizing officer for financial commitments, who needs to authorize any booking before it is finally confirmed. Costs related to bookings are either directly billed to EUSPA or EUSPA's staff member responsible for the particular booking/benefitting from the booking will cover the cost. Costs of booking – and their cancellation – will thus not go through the selected contractor.

Question #47: From the Clarification Note No. 6, Answer No. 30 it appears that, quote-unquote, 'The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such impression. The same applies to the Service Providers. They shall act on behalf of the Contractor...' In connection therewith, however, 'Payments for bookings requested by EUSPA shall be made through instruments that will be made available to the Contractor by EUSPA.'. Regrettably, the subject of original question is still shrouded with ambiguity, and the answer raises more questions. Let's imagine a simple scenario where the Service Provider acting on behalf of the Contactor (as insisted by EUSPA) arranges a booking of a hotel and a conference room. The booking is therefore made under Contractor's name (and hardly can by otherwise). a) Please describe the mutual billing process connected therewith. Is such a process of booking and billing in accordance with accounting standards?

Answer #47: Please see Clarification Note 9, Question #45 (#103070 in F&T Portal).

Question #48: From the Clarification Note No. 6, Answer No. 30 it appears that, quote-unquote, 'The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such impression. The same applies to the Service Providers. They shall act on behalf of the Contractor...' In connection therewith, however, 'Payments for bookings requested by EUSPA shall be made through instruments that will be made available to the Contractor by EUSPA.'. Regrettably, the subject of original question is still shrouded with ambiguity, and the answer raises more questions. Let's imagine a simple scenario where the Service Provider acting on behalf of the Contactor (as insisted by EUSPA) arranges a booking of a hotel and a conference room. The booking is therefore made under Contractor's name (and hardly can by otherwise). a) Shall the Contractor recharge the costs to EUSPA? Is it a subject of VAT? Is VAT to be charged to EUSPA?

Answer #48: Please see Clarification Note 9, Questions #45 & #46 (#103070 and #103071 respectively in F&T Portal). Costs will not be recharged, as they will be billed directly to EUSPA. By principle, EUSPA is VAT exempt. Practical application of this exemption differs based on country of establishment of the contractor.

Question #49: Can you provide information on SUMMA financial system? Is any training for Service Providers required? Is Contractor about to buy a licence to use SUMMA for relevant Service provider(s)? Who is the owner or authorised user of SUMMA financial system?

Answer #49: SUMMA is the European Commission's corporate financial platform and accounting system used to control and manage financial transactions, budgets and payments. In case a Service Provider is required to perform any task in SUMMA, she or he will receive specific, task related training at that time. Any ex-ante, general trainings of the Services Providers are not foreseen or necessary.

The selected contractor is not expected to purchase any licence to use SUMMA. Please see section 3.1.4. of the Tender Specifications (IT tools and access to EUSPA IT systems).

Question #50: Is the contractor and/or the Service Provider(s) about to use mailboxes of EUSPA's domain?

Answer #50: Please see section 3.1.4. of the Tender Specifications (IT tools and access to EUSPA IT systems).

Question #51: Is the contractor and/or the Service Provider(s) about to use any software products licensed to EUSPA?

Answer #51: Please see section 3.1.4. of the Tender Specifications (IT tools and access to EUSPA IT systems), Art. I.13.3 and Art. I.20 of the Draft FWC.

Question #52: It is apparent from the agency's tender specifications that the Bidders may either base their Specific Contract proposal on this indicative effort, or propose alternative level of effort, whereby in the latter case they have to duly justify it in the specific contract technical proposal. The robustness and the credibility of such justification shall be assessed in the frame of the assessment of qualitative award criterion Q1. We consider that, under this model, those who have a precise understanding of EUSPA's processes and requirements have an advantage and do not need to rely on the table you have provided. In particular, for example, the number of hours allocated to individual tasks proposed by EUSPA could be reduced, thereby achieving a lower total price. We consider such a tender procedure to be non-transparent and discriminative for certain tenderers.

Answer #52: The indicative effort specified in the Terms of Reference for Specific Contracts reflects EUSPA's respective needs and requirements to the extent reasonably foreseeable, based on its internal calculations gained from the implementation of similar tasks to date.

Therefore, there can be no additional or "more precise understanding" beyond what is already publicly shared in the Tender Specifications. Any proposed deviation from the established indicative figures should be based on the tenderer's own processes, working methods, organisational arrangements, technical approach or other relevant specificities, where these provide a sound basis for proposing different effort estimates. Any such deviation must be supported by a robust and credible justification demonstrating the appropriateness of the proposed figures.

In relation to the last part of your question, we refer to the second part of the answer to question 27 in Clarification Note#6 (#101678 in F&T Portal).

Question #53: From the CN No. 6, Answ. No. 30 it appears that, quote-unquote, 'The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such impression. The same applies to the Service Providers. They shall act on behalf of the Contractor. In connection therewith, however, 'Payments for bookings requested by EUSPA shall be made through instruments that will be made available to the Contractor by EUSPA.' Let's imagine a simple scenario where the Service Provider acting on behalf of the Contactor (as insisted by EUSPA) arranges a booking of a hotel and a conference room. The booking is therefore made under Contractor's name (and hardly can by otherwise). What payment instrument(s) will be made available to the Contractor by EUSPA? Is a credit card (or similar) issued under name of EUSPA amongst such instruments? May it be considered as one of the key work tools for performance of the works under FWA?

Answer #53: Currently, the instrument is on-line system/interface for reservation and booking of flights, hotels and car rentals. It is to be noted that the current working arrangement for booking of flights, hotels and car rentals is also subject to public procurement and may change over time. Credit cards are not used in EUSPA.