

Clarification Note #5

EUSPA internal reference: 309439

Procurement procedure: EUSPA/OP/20/24

Title: Penetration Testing Support Services

Question #13:

Please clarify the reference in Section 1.5 of the Tender Specifications (Annex I) to the activities / services currently being performed by the incumbent Contractor and the applicability of the Council Directive 2001/23/EC of 12 March 2001. In this respect, please confirm:

(a.) The reason for mentioning the incumbent Contractor and potential changes of a contractor in this context?

(b.) Whether the Contracting Authority foresees any specific circumstances or aspects of this tender that, it is believed, could potentially trigger the application of this Directive?

Answer #13:

As explained in Section 1.4 of the Tender Specifications (Annex I), a framework contract with partly overlapping content (EUSPA/OP/01/23) is currently being performed by the incumbent Contractor. The present Contract (EUSPA/OP/20/24) will be implemented only if the incumbent Contractor is unable to deliver services according to the requirements of the incumbent Contract, or if the incumbent Contract needs to be suspended or terminated for other reasons.

In such case, the implementation of the present Contract would in practice entail a change of contractor (with regard to the performance of at least part of the activities covered by the incumbent Contract). Such change of contractor (from the incumbent Contractor to the one to be awarded the present Contract) could potentially trigger the application of the Council Directive 2001/23/EC of 12 March 2001 (or the national laws implementing the Directive).

It is for the tenderers to assess the possible applicability of the Directive as well as any risks or impacts stemming from such application, which should be considered by the tenderers in the formulation of their offers.