



Clarification Note No. 1

Procurement procedure: GSA/OP/15/19 – Complementary health insurance

(WFID: 254596)

Question #1:

According to Section 1.3 of the Tender Specifications, tenderers are required to waive their own general conditions. However, we note that the terms and conditions set out in the invitation to Tender are general to service providers while insurance requires additional clauses (i.e : time and formalities to submit a claim, complaints, definition of benefits, duration of cover, data protection, exclusions etc). Could GSA confirm whether it is willing to sign a dedicated tailored insurance contract negotiated with the insurer?

Answer:

This procurement procedure is an open procedure in accordance with Article 164(1)(a) of Regulation 2018/1046 on the financial rules applicable to the general budget of the Union, and therefore negotiations with tenderers are not envisaged.

According to Section 2.1 of the Tender Specifications, the tenderer shall propose the concrete terms and conditions of the insurance coverage (notably in an insurance policy). Subject to the minimum requirements described in section 3.3., these terms and conditions should define for example time and formalities to submit a claim, complaints, definition of benefits, duration of cover, data protection, exclusions. The contractor's tender and model insurance policy will be annexed to the Contract and it will become integral part thereof.

Further, in case a tenderer does not comply fully or partially with one or more technical requirements of the Tender Specifications and their Technical Annexes, it shall indicate it in the Statement of Compliance (Annex I.I of the Tender Specifications). Such statement will be annexed to the Contract.

Question #2:

In Section 2.1 of the Tender Specifications it is specified that the tenderer is expected to sign a framework contract with GSA and insurance policies signed with the Staff members. As a per law a contract needs to have consideration and only GSA will pay the premium, we suggest to sign a master insurance policy with GSA instead to which the Staff members would individually subscribe. Would that be acceptable?

Answer:

Please refer to Section 2.1 of the Tender Specifications, where it is mentioned that "unless otherwise indicated by the tenderer, the insurance policies will be signed with the Staff Members". Further, Section 2.2.5 lays down that "unless otherwise indicated by the tenderer, the insurance policies will be signed by each of the Staff Members who will be the insured parties, notwithstanding that premiums will be paid by the GSA (there will be as many insurance policies as the number of the Staff Members)". Therefore, tenderers may indicate otherwise in their offer and propose signature of the insurance policies with the GSA.

Question #3:



In Section 2.1.5 of the Tender Specifications it is specified that the tasks will be performed mainly at the contractor's premises. Is it possible that tasks are also performed at the Subcontractor's premises?

Answer:

The contractor may call on subcontractors to collaborate in the execution of tasks. Please refer to the relevant provisions in Sections 2.2.6 and 2.2.7 of the Tender Specifications. It follows that the tasks can be also performed at the subcontractor's premises.

Question #4:

Could you please confirm that due to the status of the GSA and its immunities and exemptions, the insurance contract subscribed with the Insurer would not be subject to any VAT nor Insurance premium tax?

Answer:

Please refer to Section 4.6.3.3 of the Tender Specifications according to which "the GSA is exempt from all taxes and duties, including value added tax (VAT), pursuant to Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union". Therefore, such taxes must not be included in the price.

Further details on the invoicing are provided in Article II.13.5 of the Draft Framework Contract.

Question #5:

Section 4.12 of the Tender Specifications: Please note that as per GDPR the Insurer would be considered a Data Controller. We are subject to GDPR and as such we would need to include specific wording in the Insurance contract (or master contract) signed with GSA.

Answer:

The legal framework governing the processing of personal data by the GSA is Regulation (EU) 2018/1725, not the GDPR. Notwithstanding the aforementioned, according to Article 4(7) GDPR – which is identical in Regulation (EU) 2018/1725 (Article 3(8)) – the 'data controller' is the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.

It follows from such definition that, for the purpose of the framework contract which may be signed as a result of the present tender procedure, the GSA is the data controller, not the awarded insurance company, considering that the GSA is the entity which solely determines the purpose (i.e. implementation of the framework contract) and means (i.e. defined under Article II.5.6 of the draft framework contract) of the processing of personal data. Accordingly, the awarded insurance company will be nominated a 'data processor' by way of signing the draft framework contract and will process personal data on behalf and solely under the instructions of the GSA, without the possibility of determining the purpose or means of the processing.

If the awarded insurance company infringes the framework contract's provisions by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing under the GDPR (Article 29(10) Regulation (EU) 2018/1725).

Question #6:



Would you agree to remove Section I.10 of the Draft Framework Contract, as this is not relevant for an insurance contract?

Answer:

Please note that this procurement procedure is an open procedure in accordance with Article 164(1)(a) of Regulation 2018/1046 on the financial rules applicable to the general budget of the Union, and therefore negotiations with tenderers are not envisaged.

Further, these clauses are standard clauses for public contracts financed by the Union's budget.

Question #7:

Would you agree to remove Section I.13 of the Draft Framework Contract, as this is not relevant for an insurance contract?

Answer:

Please refer to the reply to question no.6 above. Further, please refer to Section 2.1.4 of the Tender Specifications as regards the deliverables to be provided during the execution of the framework contract, according to which reports may be requested, *inter alia*, by the GSA.

Question #8:

As per the nature of the contract, the penalty system included in Section I.14.2 of the Draft Framework Contract does not seem appropriate. Would you agree to remove it?

Answer:

Please refer to the reply to question no.6 above.

Question #9:

Section I.15 of the Draft Framework Contract: There are very few provisions of European Union law applicable to a contract of insurance, only the insurance activity (i.e. distribution or solvency regime) would be regulated. Belgian laws would not take into account the specificities of international organizations and would not be applicable unless chosen. As per the nature of the GSA and its international personality, we suggest that the general principles of law govern the contract.

Answer:

Please refer to the reply to question no.6 above.

Question #10:

Section II.5 of the Draft Framework Contract: Please note that the Insurer would be Data Controller as per the GDPR. The Insurance contract should therefore include a Data protection provision and Privacy notice.

Answer:

Please refer to the reply to question no.5 above. Additionally, please note that Article II.5 of the Draft Framework Contract already foresees the purposes and means of the processing of personal data which is carried out directly by the GSA as data controller and by the awarded insurance company as data processor.



Question #11:

Section II.12 of the Draft Framework Contract: We note that termination grounds are significantly unbalanced between the Insurer and the Policyholder. Would you agree to review these?

Answer:

Please refer to the reply to question no.6 above.

Question #12:

Section II.15 of the Draft Framework Contract: could you please specify what would be the recoveries under an insurance contract?

Answer:

As recovery must be understood any amount that is to be recovered under the terms of the framework contract or the order form.

Question #13:

Section II.16 of the Draft Framework Contract: Considering the nature of the contract we believe a 2-year duration would be more appropriate.

Answer:

Please refer to the reply to question no.6 above. This requirement stems from the Financial Regulation.

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