



Procurement procedure: GSA/OP/03/17 Legal advice and support to GSA

GSA internal reference: 232705

Clarification Note #1

Question #1: According to Section 3.3.1 of the “General tender specifications”, “Proposed advisers must be registered with a Bar in an EU Member State or be otherwise qualified to practice law in this Member State.”

Are the tenderers required or expected to submit proofs of registration of the proposed advisers with the respective Bar associations?

Answer: The tenderers are neither required nor expected to submit proofs of registration in the Bar of the proposed advisers. The compliance may be demonstrated only by signature of the Declaration of Honour included in Annex I.5 of the tender specifications. The successful tenderer will be required to submit the proofs of registration in the Bar upon notification of award by the GSA. In case of doubt, the GSA reserves the right to request this proof during the tendering procedure (see section 3.3.1 of the general tender specifications).

Question #2: Section 4.6.2 of the “General tender specifications” states that “... tenderers (whether being sole contractor or part of a consortium/grouping) are requested to demonstrate how their proposed methodology/strategy/organisation will guarantee the most efficient implementation and management of the requested tasks.”

Is it correct to assume that (a) each member of a consortium is required individually to demonstrate the proposed approach, and that (b) subcontractors are neither required nor expected to make such a demonstration?

Answer: The consortium is required to submit one single technical proposal in which it must describe the proposed approach. If the approach is common to all consortium members and subcontractors, it is not necessary that each consortium member or subcontractor describes individually the proposed approach. If the approach differs among the consortium members or the subcontractors, the technical proposal shall describe the different approaches.

Question #3: Section 4.6.2 of the “General tender specifications” suggests that the technical offer should include also a list of references.

Are there any specific requirements regarding the content or form of the list of references or the references themselves? Furthermore, are the tenderers required or expected to submit a proof of provision of the respective legal services (e.g., by attaching certificates of provided legal services signed by the respective clients)?



Answer: The tenderer can include the list of references or the references themselves, in particular for the purpose of evaluation of award criterion Q2 (quality and adequacy of the team proposed). There are no specific requirements regarding the content or form of such references. The tenderers may also submit a proof of provision of the respective legal services but they are not required to do so.

Question #4: According to footnote No. 3 on page 20 of the “General tender specifications”, the template contained in Annex I.2 should be submitted “One per tenderer (presenting all the legal entities involved in the consortium and/or sub-contractors).” However, the template contained in Annex I.2 states that “Each service provider, including subcontractor(s) or any member of a consortium or grouping, must complete and sign this identification form.” It is not clear whether these two requirements are consistent.

Could you please confirm our understanding, that – in case of a tender submitted by a consortium with subcontractors – each member of the consortium and each subcontractor will need to fill and sign the template contained in Annex I.2 separately, i.e., that the tender will contain multiple documents prepared on the basis of the template contained in Annex I.2 (1 per each member of a consortium and each subcontractor)?

Answer: We confirm that this understanding is correct.

Question #5: Could you please confirm that the tenderers are neither required nor expected to include the Framework Service Contract and its annexes in their tenders?

Answer: We confirm that it is neither required nor expected.

Question #6: Article II.3.3 of the draft Framework Service Contract states: “The Contractor shall be held liable for any loss or damage sustained by the Contracting Authority in performance of the Contract and/or the specific contract, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding the insurance limit under the professional liability insurance policy provided to the GSA according to section 3.3.1 of the general tender specifications before signature of the Contract, or provided after the signature of the Contract and accepted by the GSA. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or subcontractors, the Contractor shall have unlimited liability for the amount of the damage or loss.”

Section 3.3.1 of the “General tender specifications”, referred to in the above quoted provision, does not contain any requirements regarding professional liability insurance policy of the tenderers. Could you please specify, what are these requirements (e.g., what is the required insurance limit)? Are these requirements different if the tender is submitted by a consortium consisting of several members (e.g., is every member of the consortium required to provide GSA with an insurance policy with a certain insurance limit)? Are tenderers required or expected to submit a proof of their professional liability insurance policy?

Answer: Please see corrigendum #1.

The tenderers are not required to submit a proof of their professional liability insurance policy. They can however submit this proof as one of the elements to demonstrate the “quality, adequacy,

completeness and suitability of proposed organisation and applied processes to fulfil the tasks” (award criterion Q3).

Question #7: Section 2.2 of Annex I states that activities under the FWC of lot 3 may entail handling and production of documents classified up to RESTREINT UE/RESTRICTED EU, requiring neither PSC nor FWC. Section 2.2 also states that tenderers shall declare compliance with the SAL, which shall be signed as part of the FWC by the successful tenderer.

We kindly request the GSA to clearly indicate which of the requirements mentioned in the SAL shall and which shall not be applicable for the tenderers/contractor in view of the above mentioned statements contained in section 2.2 of Annex I on the level of classification not expected to be higher than RESTREINT UE/RESTRICTED EU.

Answer: The tenderer does not have to possess the Facility Security Clearance to provide the legal services. The proposed advisers do not have to possess the Personnel Security Clearance either. This applies to services provided under all lots, including lot 3.

The Security Aspect Letter (SAL) is applicable only to provision of legal services under lot 3.

The SAL included in Annex II.VI is a standardised GSA document which is used for treatment of all classified information and assets. If the contractor is not required to treat certain categories of information or assets, the corresponding parts of the standardised SAL are not relevant for the performance of the contract.

Under the contract awarded following the present procurement procedure, the contractor will not be requested to deal with COMSEC (Communication Security) items and treat information classified CONFIDENTIEL UE/EU CONFIDENTIAL or above.

Consequently, the requirements related to treatment of information classified CONFIDENTIEL UE/EU CONFIDENTIAL or above are not relevant for the implementation of the contract. This concerns notably [REQ 3.2], fourth bullet point and [REQ 3.5].

Similarly, the references to documents AD 2 (EU GNSS Programme COMSEC Instructions) are not relevant for the implementation of the contract. This concerns notably the requirement of applicability of EU GNSS Programme COMSEC Instructions (AD 2) in seventh paragraph on page 3 and requirement in point 5 of appendix 1.

Question #8: The SAL in section 9.1 lists applicable documents which are not provided as part of the tender documents. We kindly request the GSA to provide these documents for download or inform about the URL where they may be downloaded.

Answer: As stated in reply to the previous question, document AD 2 (EU GNSS Programme COMSEC Instructions) is not relevant for implementation of the contract concluded following the present procurement procedure. Consequently, access to this document is not necessary.

As regards the access to applicable document AD1 [European GNSS Programme Security Instructions (PSI)], please see corrigendum #1.

Question #9: The SAL in section 9.2 lists reference documents which are not provided as part of the tender documents. We kindly request the GSA to provide RD 5. Considering the security classification of the document as RESTREINT UE/RESTRICTED EU, please also inform about the required means of communication for receiving the document (Note: CHIASMUS crypto software is available for electronic transmission from our side).

Answer: Document RD 5 (EU GNSS Programme Security Classification Guide) is only a reference document. It contains requirements applicable notably to the GSA. The contractor will not be required to comply with it. Consequently, access to this document is not necessary.

Question #10: Annex I.2 of the general tender specifications “Template identification sheet of the tenderer” asks the tenderers to fill in a “reference of the NDA relating to this procurement procedure” and identify contact persons and legal representatives regarding the NDA.

Could you please specify what NDA is Annex I.2 referring to?

Answer: This part refers generally to any non-disclosure agreement/undertaking (NDA/NDU) signed during the present procurement procedure. Consequently, this part must be filled in only if the tenderer submitted a NDA or NDU. This is the case if the tenderer submitted the NDU contained in Annex to corrigendum No 1. In all other cases, this part shall be marked as “non applicable”. The same holds true for other sections mentioning “NDA” in the Identification sheet of the tenderer (identification of contact persons and legal representatives regarding the NDA) which must be also filled in only if the tenderer submitted a NDU.

Question #11: Annex I.2 of the general tender specifications “Template identification sheet of the tenderer” further asks the tenderers to fill in a description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance). A footnote accompanying this requirement states “For natural persons”.

Is it correct to assume that tenderers who are legal entities (*e.g.*, companies) should not fill in any information?

Answer: This is correct.

End of document