



Clarification Note #5

(non-Proprietary Information)

GSA internal reference: 257765

Procurement procedure: GSA/OP/25/19 "Galileo Reference High Accuracy Service (HAS) User Algorithm and User Terminal"

Question #15: The RVM asks for a compliance assessment towards AD11 and AD12, but also DEL7 and DEL10. Besides, Annex I.M is a SoC. Could you please clarify the approach to the SoC you request?

Answer #15: The compliance assessment in the Requirements Verification Matrix (RVM) towards requirements in DEL7 and DEL10 are to be traced to requirements in AD11 and AD12. Annex I.M (Statement of Compliance) is to provide a compliance assessment to all technical requirements of the tender specifications and its technical annexes as part of the offer. The RVM may refer to the sections of Annex I.M (Statement of Compliance) stating compliance to AD 11 and AD.12.

Question #16: According to Clause I.8.7, for the entire Contract Period, the Contractor and the Contractor Parties shall obtain a nontransferable, free of charge, non-exclusive right to use the Results for the purposes of performing its obligations under the present Contract with the right to grant sub-licenses to its Subcontractors within the limits of the scope and duration of the Contract. Can you please explain how the Contractor can receive usage rights beyond the scope and duration of the Contract, namely for its own exploitation of the Results (production of user terminals) and the associated process and conditions?

Answer #16: The contract arranges the use—right of the Results by the Contractor for the purpose of the Contract. Outside the Contract perimeter, the European Commission, being the owner of the Results, may decide to whether / how to make them available to third parties or to the public, following the principles of equal treatment, non-discrimination, sound financial management and accounting for the Programmatic aims.

Question #17: According to clause I.11, following a successful Critical Design Review, where all deliverables are accepted by the Contracting Authority, the amounts related to the first 2 (two) interim payments made will not be recovered by the Contractor in case of failures/non-performances revealed during the Acceptance Review. Can you confirm that it should say “recovered by the Contracting Authority from the Contractor”?



Answer #17: It is confirmed.

Question #18: According to clause II.1.4.2, the Contractor shall replace at its own expense any item which becomes damaged or defective in the course of normal use during the warranty period within 2 (two) months upon notification by the GSA of the defects or malfunctioning.

Other provisions in Clause II.1.4 mention that the Contractor can either correct, repair or replace the item concerned.

Can you please confirm that the Contractor is allowed to use any of these methods in case of defects or malfunctioning?

Answer #18: It is confirmed.

Question #19: According to clause, II.1.4.5, the Contractor warrants that all equipment and materials incorporated into the work that are purchased by Contractor or by any subcontractor shall not be subject to any chattel mortgage, conditional sales contract, or security agreement under which an interest or lien is retained; provided, however, that such equipment and materials may be subject to the security interest of the Contracting Authority, to secure the payment of the purchase price of the affected equipment and materials.

Can you confirm that the term “work” as used in this clause refers to the delivered five User Terminals? Security interests may be applicable for suppliers of the Contractor, but not for the Agency as final customer. We therefore do not understand the meaning of the last part of provision. Can you please explain its meaning and scope of application?

Answer #19: Article II.1.4.5 refers to all equipment and material purchased by the Contractor or by any subcontractor for the implementation of the tasks under the Contract.

Question #20: According to clause II.1.7 (g), in the event of disruption resulting from the action of one of the Contractor's personnel working on the Contracting Authority's premises,

Can you please explain the meaning of the term “disruption” and what type of events may lead to a request for staff replacement under this provision?

Answer #20: In accordance with Article II.1.7 (g), the Contracting Authority shall have the right to make a reasoned request for the replacement of the Contractor's personnel, whose expertise fails to correspond to the profile required by the Contract, or their action cause disturbance or problems which lead to an interruption of the implementation of the tasks under the Contract in case the Contractor's personnel is working on the Contracting Authority's premises.

Question #21: According to clause II.4.3, the Contractor must have all the relevant obligations counter acknowledged and passed on in writing to:



- (a) its personnel;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the performance of the Contract, including subcontractors.

Does that mean that any of the Contractor's personnel, any of its management members and any third party involved must sign the Col Declaration in Annex VII of the Contract? That seems to be an undue burden, considering that no secondment to the Agency are foreseen under the Contract. According to the Tender Specifications, the Contractor must only provide these Declaration on behalf of its subcontractors. Please clarify.

Answer #21: It is confirmed that Annex VII to the Contract shall be signed as requested in Article II.4.3 of the Contract.

Question #22: According to clause II.8.1, any amendment to the Contract shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.

Can you please explain the meaning of "before fulfilment of any new contractual obligations and in any case before the date of payment of the balance".

Answer #22: Any amendment to the Contract shall be made in writing before implementation of any contractual obligation not included in the Contract before such amendment and in any case it shall be made before the date of payment of the balance as defined in Article I.4.3.1.

Question #23: According to clause II.13.1 (c), the Contracting Authority may terminate the Contract if the Contractor does not perform the Contract as established in the tender specifications or fails to fulfil another substantial contractual obligation...

This seems to indicate that any requirement in the tender specifications constitutes a substantial contractual obligation for the Contractor. This contradicts in our view Article 1.9 (Minimum Requirements), which states:

"When implementing the Contract, the Contractor shall at all times ensure full compliance with the minimum requirements as laid down in section 3.3 of Annex II. In case of failure of such compliance, the Contractor shall be considered in breach of a substantial contractual obligation in the meaning of Article II.13.1 (c). Can you therefore please clarify the concept of substantial contractual obligations and what they encompass exactly?"



Answer #23: It is confirmed that failure to perform the contract as established in the tender specifications will be considered a breach of substantial obligations in case of repetitive unremedied breach or it will generate damages, which the parties, acting reasonably have established as irremediable. Article II.13.1(c) does not contradict Article 1.9, which defines failure to comply with the minimum requirement defined in section 3.3. of Annex II as a substantial contractual obligation.

Question #24: According to clause II.14.5 (Performance guarantees) when requested by the Contracting Authority, performance guarantee shall cover performance of the service in accordance with the terms set out in the tender specifications until its final acceptance by the Contracting Authority.

The tender specifications do not mention the requirement to provide a performance guarantee. Can the Agency please confirm that the general requirement of clause II.14.5 does not apply to the present Contract?

Answer #24: It is confirmed that a performance guarantee is not requested.

Question #25: According to clause II.15.4 (d), daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.3; Article I.3 does not mention any flat rates for daily subsistence. Can you please clarify the reference and can you provide information on the applicable flat rates?

Answer #25: Please refer to Corrigendum 6.

Question #26: According to GSA/OP/25/19 CORRIGENDUM 3 from the 08/04/2020, the Signature of the Contract is expected to be in August 2020. Would it be penalizing w.r.t. the award criteria (i.e. score awarded) if the submitted offer foresees a later KO date, e.g. as of January 2021?

Answer #26: The kick off meeting is planned to be organised as soon as the contract enters into force as per the date estimated in Section 1.2 of the Tender Specifications as amended via Corrigendum 7.

Question #27: As per Art. 2.9.9 of Annex I Tender Specifications to the ITT referenced above, *the tenderer and the Proposed Assignee shall explicitly state their compliance with Article I.14 of the draft Contract (Annex II) (clause related to assignment) by a declaration in writing to be submitted as part of the tender.* The said Art I.14 of the draft Contract does not exist. Is our assumption correct that the tenderer should state compliance to ARTICLE I.12 – ASSIGNMENT AND NOVATION OF CONTRACT?

Answer #27: It is confirmed the typo in section 2.9.9 of the Tender Specifications. The Proposed Assignee shall explicitly state their compliance with Article I.12 of the draft Contract.

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