



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

GSA internal reference: 234021

### **Clarification Note #5**

**Question #14: Regarding the applicable deadline to submit the offer: in order to avoid any misunderstanding, shall the offer be mailed out before September 29th at 23:59 (date as per postmark) or shall the offer be received by GSA before September 29th at 23:59?**

Answer: The deadline for submission is respected if the offer is mailed out before September 29th at 23:59 (date as per postmark) (see section 4.7 of the general tender specifications). The offer does not have to be received by the GSA by this date.

**Question #15: Regarding the Technical offer: for the sake of clarity, could we include the documents "table staff and organization" (annex I.3), "curricula vitae" and "list of references" in the technical proposal (for example as a part of the developments on the team proposed for the delivery of services – Q2) or should these documents form a separate section of the technical offer?**

Answer: The documents can be included in the technical proposal provided that the format of Annex I.3 is maintained.

**Question #16: Section 4.6.1. of the Specific technical terms of reference indicates the estimated needs of performance of the tasks at GSA premises: as far as we understood, the senior and the junior advisers are equally eligible to be asked to carry out the requested activities at GSA premises. We request therefore to clarify if the choice between the senior and the junior adviser is made by GSA in the specific contract request or by the contractor in his offer for the specific contract.**

Answer: The availability to perform tasks at the GSA premises is not a mandatory requirement. Such availability will be positively evaluated under award criterion Q5, taking into account the profile of the lawyers proposed in the tender (submitted in the present procurement procedure) to perform tasks at GSA premises, when so requested. The request will be made by the GSA at specific contract level, in accordance with the tender submitted by the tenderer in the present procurement procedure.

**Question #17: Please confirm that there is not any specific limit in terms of maximum number of pages and/or documents for the Technical proposal.**

Answer: Confirmed, there is no limit.

**Question #18: Please confirm that in case of participation to several lots:**

- a) it is possible to propose the same profiles in each lot and
- b) in such case the needs of performance at the GSA's premises, as indicated in par. 4.6.1., shall be consequently added up (i.e. in case of offer for lots n. 1 and n. 2, the correct reference is: junior/senior adviser 10 working days a month in Prague).

Answer: It is possible to propose the same profiles for each lot. However, the tenderer must propose a sufficient number of profiles

- to fulfil the tasks in case it is awarded contracts of all the lots for which it submitted an offer,
- taking into account the indicative quantity of man days and hours per year referred to in Annex I.4 (template financial offer).

In its tender, the tenderer should explain its approach as regards its capacity to comply with GSA needs, which will be evaluated under award criterion Q3.

If the tenderer proposes the same profiles for each lot and it provides its availability to perform the tasks at GSA premises, it should also specify to which extent it can satisfy the cumulated estimated needs of all the lots for which it submitted a tender. In this respect, the estimated needs of the GSA shall be consequently added up (i.e. in case of offer for lots 1 and 2, the estimated need will be junior or senior adviser 10 working days a month in Prague).

IN THIS CONTEXT, IT MUST BE RECALLED THAT IF THE TENDERER SUBMITS TENDERS FOR SEVERAL LOTS, EACH OF THE TENDERS MUST BE CONTAINED IN A DIFFERENT OUTER ENVELOPE OR PARCEL CARRYING A DIFFERENT REFERENCE NUMBER OF THE INVITATION TO TENDER (I.E. GSA/OP/03/17/LOT[NUMBER APPLIED FOR]) (SEE SECTION 4.5.2. OF THE GENERAL TENDER SPECIFICATIONS). CONSEQUENTLY, THE TENDERER MUST SUBMIT AS MANY OUTER ENVELOPES/PARCELS AS THE NUMBER OF LOTS FOR WHICH IT IS APPLYING. That said, the supporting documents, which are the same for all the lots, can be included only in one tender, provided that the other tenders contain clear references to these supporting documents.

**Question #19: As to subcontracting, please clarify:**

- a) whether there is a maximum threshold for subcontracting and**
- b) which is the reference criterion to evaluate the incidence of the subcontracting in terms of percentage of turnover and resources, as requested by section 2.3.6. of the tender specifications, since the requested activity to be performed can involve very different expertise and national laws which are not known at the time of the offer.**

Answer: a) There is no maximum threshold for subcontracting.

b) In accordance with section 2.3.6. of the general tender specifications, the tenderer must indeed indicate which tasks will be sub-contracted. This concerns the type of tasks and/or the field of expertise. However, the tenderer can include only an estimation – in terms of proportion in % of turnover and resources – to which it will subcontract the tasks, this estimation being based on an assumption that all tasks listed in section 3 of specific terms of reference will have equal importance.

**Question #20: Section 2.2. of the Specific Technical Terms of Reference states that GSA contracts are, in principle, governed by Belgian Law. At the same time, Section 2.4 of the Specific Technical Terms of Reference states that the legal support may require interpretation and application of national laws of the named EU states. Could you please provide estimate of structure of contracts in terms of governing law, e.g. in percent?**

Answer: More than 95 % of contracts are governed by EU law, as completed by Belgian law. Remaining contracts are governed by EU law, as completed by other national laws, notably French law and Czech law.



Tasks related to interpretation and application of national laws may also concern aspects which are not related to contracts signed between the GSA and contractors, such as national labour law or tax law.

As already explained (see clarification note #2), the interpretation and application of national laws is expected to be marginal.

**Question #21: Section 4.1 of the Specific Technical Terms of Reference specifies requirements on Tenderer's staff in terms of years of practical relevant experience in the area of responsibility. Is it correct to assume that if a person is registered with the Bar as required under the Section 3.3.1 of the General Tender Specifications, but at the same time such person obtained relevant practical experience in the area of responsibility also prior to admission to the Bar, such experience is also counted towards the prescribed years of experience?**

Answer: Correct.

**Question #22: Should legal services be provided through attorneys at law, who are members of a law firm, but who may have a status of a self-employed person from the tax laws perspective, is it correct to assume that these attorneys at law are not to be treated as subcontractors of the law firm, but rather as permanent staff of such law firm?**

Answer: Correct.

**Question #23: Under section 3.3.2 of the General Tender Specifications the tenderer is asked to submit a justification note providing an analysis and comprehensive justification as referred to in section 2.3.5. Is it correct to assume that one analysis is sufficient for the consortium as a whole?**

Answer: Such an analysis is sufficient provided that it covers all members of the consortium.

**Question #24: It is stated in Section 2.2.e of the Annex I.1 "Specific technical terms of reference" that "GSA contracts being, in principle, governed by EU Law completed, where necessary, by Belgian Law". Are all the contracts concluded under this scheme by the GSA for tasks 1, 2, 3 and 4 of each lots (with the exception of the application of other EU member states law as stated in Section XX 2.4)?**

Answer: Please see reply to question # 20. The reply is valid for all tasks of each lots.

**Question #25: The estimated value of each lot provided in the Contract Notice is for the total duration of each contract (i.e. 48 months)?**

Answer: Correct.

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