

Clarification Note #1

GSA internal reference: 262972

Procurement procedure: GSA/OP/25/20 GRC Guarding, Security and Safety monitoring services

Question #1: Will personal data be processed in the provision of the services? Will a processing agreement be concluded? Will such an agreement be provided for review?

Answer #1: Yes, personal data will be processed in the provision of the services in accordance with Art. I.9 and Art. II.5 of the Framework Contract. Currently the GSA does not foresee concluding a processing agreement. This said, in accordance with Section 2.2.6.4 of the Tender Specification, the GSA reserves the right to ask the Contractor or its Staff performing the services to sign a declaration regarding precise obligations of processing of personal data.

Question #2: Would it be possible to amend Article I.10 of the Framework Contract to include a limitation of liability in cases of gross negligence or willful misconduct of the Contractor or a breach of IP-rights?

Answer #2: In accordance with Point 16.2 of Annex I to the Financial Regulation¹ and as provided in Point 4 of the Invitation to Tender, the submission of a tender implies acceptance of the terms and conditions set out in the procurement documents. As provided in Sections I.2 and I.3 of the Tender Specifications, GSA/OP/25/20 is an Open procedure and Tenderers are required to accept the conditions set out in the Invitation to Tender, Tender Specifications and draft contract. Accordingly, no amendment to the Framework Contract is currently foreseen.

Question #3: Would it be possible to amend the Framework Contract Article I.10 so that only direct damages are eligible for compensation but neither Party is liable for indirect and/or consequential damages suffered by the other Party?

Answer #3: Please see Answer #2.

Question #4: How will the evidence for the insurance policy against risks and damage or loss relating to the implementation of the Framework Contract (Art. I.10.3 of the Framework Contract) be verified if the insurer prohibits the Contractor from allowing third parties to inspect the policy conditions? Would a declaration by the insurer showing that the Contractor is adequately insured (policy certificate) suffice?

¹ REGULATION (EU, Euratom) 2018/1046 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

Answer #4: Whether the provided evidence is sufficient will be determined on a case-by-case basis, as the insurance depends on the relevant applicable legislation and industry standard practice. In any case, such evidence does not have to be presented unless requested by the GSA, as provided in the mentioned Article.

Question #5: The Tender documentation does not include any provision for the loss of keys. What will be the Contractor's liability in this case?

Answer #5: Such situation will be governed by the standard liability provisions of the Framework contract (see Art. I.10 of the Framework Contract).

Question #6: Would it be possible to process the information obtained in the context of the services or goods supplied (such as data and signals) within the Tenderer's/Contractor's group, as provided in article 2:24b of the Dutch Civil Code?

Answer #6: The confidentiality is governed by Art. I.12 of the Framework contract. As provided in Art. I.12.2, the parties are allowed to disclose confidential information to its directors, employees and representatives, as well as external legal, accounting, financial and other advisors on a strict need to know basis and provided that they act under a written or statutory confidentiality obligation.

Question #7: Would it be possible to amend the Framework contract in a way that would ensure the Contractor can maintain the intellectual property rights to the items and/or services developed and delivered by the Contractor under the contract?

Answer #7: Please see Answer #2.

Question #8: Will the GSA indicate in writing, with reasons, the objections to the persons charged with carrying out the services and/or why replacement is necessary or desirable, as provided in the Tender documentation and Art. II.2.8 of the Framework Contract?

Answer #8: In accordance with the mentioned article, the GSA's request for Personnel removal shall be reasoned.

Question #9: We do not agree that the GSA will have the right to a partial payment and retention of payment before the Court would decide whether or not the services have been provided. Would it be possible to remove or amend this clause in the Framework Contract?

Answer #9: As provided in Art. II.10.3 of the Framework Contract, the GSA's right to partial payment or retention of payment shall only be exercised following an appropriate contradictory procedure in which the Contractor will have the right to submit observations. Further dispute resolution measures are available to the Contractor in accordance with Art. I.15 of the Framework Contract. Regarding the Framework Contract amendments, please see Answer #2.

Question #10: It seems unfair that the GSA has the right to suspend and even terminate the performance of the contract without giving at least 3 months' notice. Could this be changed? After all, the Contractor needs the necessary time to redeploy its staff.

Answer #10: The GSA may only suspend the performance of the contract in a limited number of exceptional cases defined in Art. II.11.2 of the Framework Contract. In such cases, the suspension may take effect on the day the Contractor receives a Formal Notification or at a later date provided in the Notification (Art. II.11.4 of the Framework Contract). In case of termination, both Parties may terminate the Framework Contract with one month notice period, unless agreed otherwise, as provided in Art. II.12.3 of the Framework Contract. For amendment of the Framework Contract, please see Answer #2.

Question #11: Could the Framework Contract's General conditions be amended to give right to the Contractor to terminate the contract if there are good reasons to do so?

Answer #11: The Contractor may terminate the Framework or Specific contract in accordance with Art. II.12.2 of the Framework Contract. With regard to the amendment of the Framework contract, please see Answer #2.

Question #12: How often will the checks and audits mentioned in Article II.16 of the Framework contract be performed? Would it be possible to agree that an audit will be conducted no more than once a year?

Answer #12: The GSA cannot estimate or commit on the frequency and/or total number of audits that will be performed. This is due to the fact that as provided in the mentioned Article, the audits may be carried out also by authorities other than the GSA, most notably the European Anti-Fraud Office, the Court of Auditors and the European Public Prosecutor's Office. The GSA does not have any insight or influence on the activities of these authorities.

Question #13: Is it necessary to have potential subcontractors' employees required to sign declaration of confidentiality even if the confidentiality requirements follow from the contract of employment and CAO private security?

Answer #13: Yes, all staff involved in the service provision have to sign the GSA's declaration of confidentiality, as provided in Section 2.2.6.2 of Tender specifications. As mentioned in Section 2.2.6.4 of the Tender Specifications, the assignment is to be considered as a highly sensitive issue, considering that the Contractor will not only have direct access and knowledge of the GSA's internal organization, including personal details of members of staff and external visitors, but will also have to deal with sensitive information.