

Helsinki, 11/01/2012
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CLARIFICATIONS 9

Open call for tender ECHA/2011/103: Provision of IT services for the IT Applications of the European Chemicals Agency (ECHA)

Question 9.1

Tender Specifications, section 3.3.2.1 AW1. Quality and completeness of the suggested project plan for the scenario (50 points), Lot 2, page 37 – *“Special attention should be given to ensure the project team is properly skilled to ensure high quality web design that will result to good usability of the final product”*

and

Tender Specifications, section 3.3.2.1 AW1. Quality and completeness of the suggested project plan for the scenario (50 points), Lot 3, page 38 – *“Special attention should be given to ensure that the project team will have the necessary skills to successfully implement the requirements related to the portability of the plug-in of eCHEM”*

Questions:

Considering the limited number of pages allowed could you please clarify the following:

- a) What criteria are you going to use in order to evaluate the skills of the proposed Tenderer’s project team?
- b) Should the Tenderers present in detail (in the context of the 25-page proposed project plan) the skills of the proposed roles?
- c) Should the respective project plans for Award Criterion (AW1) present specific individuals for the entire project team and for all profiles, also providing their particular skills and competences?
- d) Our understanding is that no CVs should be included in the Tenderer’s respective responses to the project plans for AW1 as well as to any other part of the Tender. In case our understanding is correct, could you please elaborate on how the Tenderers are expected to demonstrate that the project team is properly skilled in relation to the above quoted parts of Lot 2 and Lot 3 respectively?

What information would be adequate to you in order for the Tenderer to fully cover the specific aspects of the respective project plans?

Answer

Tenderers must use the profiles defined in section 4.3 of the Specifications in order to build a team, which shall have all the necessary skills to deliver the services and carry out the tasks requested in the scenario.

Tenderers shall not include CVs and do not need to present specific individuals for the respective profiles.

Tenderers may present and highlight certain skills of the selected profiles, as well as the foreseen utilisation of individual profiles within the team, in order to successfully deliver the requested services.

The evaluation of the tenders regarding the skills of the proposed project team is part of the holistic assessment of the quality and completeness of the proposal in light of the requirements set out in the Specifications.

Question 9.2

Article I.15.3 states that software has to be delivered error free, which is not reasonably possible. We propose to work by defining critical/major errors and minor errors. Would ECHA be willing to make this distinction?

Answer

Article I.15.3 of the draft Framework Contract has to be understood in light of section 4.2.6.4 of the Specifications which further defines "error free" as "materially error free".

Question 9.3

The liability provision is not in line with the usually accepted clause of limitation on liability used by the European Commission's DIGIT. Would ECHA agree to use the standard DIGIT liability clause rather than article II.2?

Please find the mentioned liability below:

II.2.1 The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.

II.2.2 The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.10. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

Notwithstanding the above, the Contractor shall not be liable for consequential loss and/or indirect damage exceeding the sum as set out for his professional risk insurance provided that this sum is no less than three times the total price/total amount of the Specific Contract(s)/Order Form(s) the execution of which is relevant for the loss or damage. The Contractor shall remain liable without any limitation as to the amount if the damage or loss is caused by the gross negligence or wilful conduct of the Contractor or by its employees, and for death caused by negligence or wilful conduct of its employees.

II.2.3 Subject to the maximum amount provided in II.2.2, the Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4 In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred to this end may be borne by the Commission.

II.2.5 The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

Answer

The definition and limitation to liability falls within the discretion of the Contracting Authority.

As provided in the Invitation to Tender (paragraph 7) and section 1.9 of the Specifications, "Submission of a Tender implies acceptance of the terms and conditions set out in this Invitation to Tender, in the Tendering specifications and in the draft contract and, where appropriate, waiver of the Tenderer's own general or specific terms and conditions in respect to this framework contract. The submission of a tender under any other terms than those set up by the Agency, or including a disclaimer with respect to that essential requirement of the procurement procedure, will determine the rejection of the tender"

Question 9.4

Tender specification 2.3.3 describes a procedure that allows price revisions according to a mentioned index. Do you consider this legal according to Finnish law? There is a law in Finland that restricts usage of indexes.

Answer

We refer to Section 2 Exceptions, paragraph 6, of the Finnish Act on Limiting the Use of Index Clauses that provides that this Act does not apply to procurement or markets international in nature, as this Framework Contract governed by EU Law, complemented, where necessary, by the national laws of Finnish Law (Art. I.9). The eligibility rules for participation in this supra-national Call for Tenders are defined in Section I.9 of the Specifications.

Question 9.5

Intellectual property rights (IPR): The terms of agreement are unclear on whether the license conditions concerning proprietary (off-the-shelf) software packages are applied extensively. How will it be? Usually these license conditions are applied extensively.

Answer

For the implementation of the Contract the Contractor will use the software tools that are necessary for the delivery of the services. The use of software tools shall be governed by the provisions of the draft Framework Contract, including those of Art II.10 on Intellectual Property Rights, which cover pre-existing rights.

Question 9.6

TENDER SPECIFICATION CHAPTER 3, assessment and award of contract

After assessment of tenders the Agency will verify, before awarding more than one lot to the same Tenderer, whether the Tenderer sufficiently meets the aggregated capacity required by the selection criteria for the given contracts.

The tender evaluation goes in three stages.

a) At what stage Agency will do aggregated capacity verification?

TENDER SPECIFICATION CHAPTER 3.2.2 Evidence of the economic and financial capacity. All the Tenderers must provide proof of their economic and financial capacity by submitting the following documents:

- a) a full copy of the concerned legal entities' annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) **of the last three years**, as approved by the general assembly of the company and, when applicable, audited and /or published. These documents must be signed by the authorised representative of the Tenderer;
- b) as alternative to a) above, by filling the Annex 5.3, consisting of an extract of the concerned legal entities' annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) **of the last two years**, as approved by the general assembly of the company and, where applicable, audited and/or published. These documents must be signed by the authorized representative of the Tenderer;

The time period for needed proof of economic and financial capacity in alternative a) is three last years and in b) two last years. In selection criteria (chapter 3.2.1) is said three past years.

b) For clarification we ask the time period for needed proof of economic and financial capacity?

c) For clarification we ask if tenderer choose to use alternative b) there is now need to provide any other documents than Annex 5.3. filled?

d) If tenderer use subcontractor(s) shall he fulfill aggregated figure in Annex 5.3. or provide separate Annexes?

Answer

a) As provided in the Specifications (page 29), after the three evaluation stages concerning the assessment of exclusion, selection and award criteria are concluded, the Agency will verify, before awarding more than one lot to the same Tenderer, whether the Tenderer sufficiently meets the aggregated capacity required by the selection criteria for the given contracts.

b) We refer to clarification 4.4 a).

Please note that in alternative b) of Section 3.3.2 of the Specifications there is a clerical error, the financial information to be filled in Annex 5.3 must refer to the last three financial years, and not to two years as incorrectly indicated in the Specifications.

c) Annex 5.3 must be supported with the relevant extracts of the concerned legal entities' annual accounts confirming the financial information provided in Annex 5.3

d) Tenderers may present a consolidated Annex 5.3 for all legal entities involved in the Tender or separate Annexes per entity, together with all relevant supporting evidence as in c) in either case.

ECHA