

Helsinki, 09/01/2012
D(2012)

CLARIFICATIONS 8

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

Question 8.1

Security clearance - 1.14 in the tender specifications. A security clearance is performed by a national authority, e.g. the police. Who will make the request for a security clearance - the Agency or the Contractor? Will the Agency stand for the possible costs of the clearances? In Finland there are three levels of security clearances.

Answer

Daily prices must be all-inclusive as explained in Section 1.7, as well as in the instructions for the preparation of the price catalogue (Annex 5.6), of the Specifications.

Whereas security clearance legislation and practices vary from country to country and there is no common practice established at the EU level, the fee of a security clearance performed by national authorities is generally rather low.

The actual practice to be used for security clearances, if applicable, will be agreed with the Contractor as pre-condition for the signature of the specific contract. ECHA wants to highlight that the requests for security clearances are exceptional in nature.

Question 8.2

In relation to the order of precedence of the contractual documents that are part of the contract, we feel it would be appropriate to modify the order indicated in the framework contract. We understand that the Tender Specifications have priority on the Contractor's Tender (should the Tender address specific points in a different way). We believe that the proposed order of precedence would by nature allow for contradictions. The same applies to the order of precedence between the Framework Contract and the Specific Contracts which may not deviate from the Terms and Conditions: if some specific provision are adapted and agreed by the parties (e.g. in the Tender, or Specific Contract) these should prime on the general conditions laid down. We believe the order should be: 1) Specific Contract; 2) Framework Contract; 3) Tender; 4) Tender Specifications. Does ECHA agree to adapt the order of precedence?

Answer

By submitting an offer the tenderer accepts the terms and conditions of ECHA as expressed in the Specifications, including the contractual documents (as stated in paragraph 7 of the Invitation to Tender).

Question 8.3

Article I.17.2 requests tenderers to provide a copy of their insurance policy. Would ECHA accept a statement confirming the insurance cover of the tenderer in order to guarantee the confidentiality of the document for clear commercial reasons of insurance companies?

Answer

Yes, as long as the insurance coverage in line with the requirements of the Specifications is clear from the document presenting the statement.

Question 8.4

There seems to be an error in the formula within article II.12 on liquidated damages. Could ECHA explain the mechanism for liquidated damages based on the formula or adapt the formula and also insert a financial maximum?

Answer

ECHA may decide to impose liquidated damages per calendar day of delay according to the formula in the contract: $0.3 \times (V/d)$ where V is the price of the relevant purchase and d is the duration specified in the relevant order form or specific contract expressed in days.

In principle, there is no cap for liquidated damages. The maximum amount is determined by the time the Contractor takes to be in line with his contractual obligations.

Question 8.5

Number of requested Project References:

In relation to clarification 2.1, would ECHA be willing to reconsider the position by which one reference can only be used under one lot only? If the reference matches Lot 1 requirements (higher thresholds than the other two lots) we believe it is reasonable that it should be accepted for qualification under the three lots and therefore 5 references should be sufficient to qualify for the three lots altogether.

Answer

*Tenderers can re-use references for **tendering** for different lots, but **to be awarded** all three lots, the tenderer needs to present 15 different project references. In this respect we confirm Clarifications 2.1 and 3.3.*

Question 8.6

Liability, page 75 in the tender specification: In case of damage the liability has been limited to be up to three times the total amount of the contract. What is "Contract" referring to? The Frame Agreement, Specific Agreement or part of the Specific Agreement?

Answer

"Contract" refers to Specific contract, or order form, during the implementation of which the damage is caused.

Question 8.7

Termination of the contract, pages 80-81: It remains unclear whether the cap placed on the limitation of liability is applicable in these situations. Could you please explain?

Answer

Liability applies as indicated in Art. II.2 for all damage caused during the implementation of the contract with the conditions and limitations indicated in the contract.

Question 8.8

If needed to do some high level security tasks and these tasks need special arrangements for example isolated rooms etc like isolated environments.

Do we have to include these costs in the price we give you or can we negotiate these costs separately?

Answer

Daily prices must be all-inclusive as explained in Section 1.7, as well as in the instructions for the preparation of the price catalogue (Annex 5.6), of the Specifications.

Contractor's responsibilities for infrastructure costs are explained also under Section 1.7 (Conditions applicable to all three kinds of orders, page 18)

Question 8.9

Frame Work Contract article I.16

"I.16.3 The Contractor shall take all appropriate steps for each product to ensure that the data and the media upon which they are stored are safely preserved. The deliverables provided shall not contain any mechanism (for example viruses) which could compromise their proper operation and that of other products. The cost of repairing the damage caused by such a mechanism shall be borne by the Contractor." Is the cost of repairing damage restricted only for those Security requirements which are possibly defined in a Special Contract?

Answer

The cost of repairing damages covers all the cost of repairing the damage caused by such a mechanism which, by failing to reach the security standards defined at specific contract level, could compromise the proper operation of the deliverable and that of the other products. We also make reference here to the general liability clause in Article II.2 of the draft Framework Contract, paragraph II.2.2 in particular.

Question 8.10

Can we assume that test data includes only imaginary information of individual persons, data which is not real?

Answer

For the purpose of the scenario tenderers can assume that only ECHA staff on ECHA's premises will use samples of confidential production data as part of the test data. The Tenderer will use test data which is imaginary or otherwise non confidential data.

ECHA