

## QUESTIONS AND ANSWERS

### INVITATION TO TENDER N° ACER/OP/DO/11/2017

**Provision of consultancy services in the areas of security, business continuity and data protection for the Agency for the Cooperation of Energy Regulators**

**Contract notice: OJ/S 101 of 27/05/2017 (200017-2017-EN)**

***Last update: 12/07/2017***

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#### **Question N° 1:**

Can a Ukrainian entity apply as the lead of the project?

#### **Answer N° 1:**

Section 7 of Annex I - Tender specifications states: *'Pursuant to Article 119 of the Financial Regulation, the participation is also open to all natural and legal persons from non-EU countries that have a ratified agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. The Agency can therefore accept offers from and sign contracts with tenderers from 36 countries, namely: the 28 EU Member States, 3 European Economic Area (EEA) Countries (Lichtenstein, Norway, Iceland) and 5 Stabilisation and Associations Agreements (SAA) Countries (the Former Yugoslav Republic of Macedonia, Albania, Montenegro, Serbia and Bosnia and Herzegovina). The Agency's procurement procedures are not open to tenderers from other countries covered by the Agreement on Government Procurement (GPA).'*

Therefore a Ukrainian entity is not eligible to apply for the above mentioned procurement procedure as the lead and also not as a partner in a consortium or grouping of service providers.

Nevertheless economic operators are free to choose their subcontractors from any country. Thus, in principle all economic operators can act as subcontractors of other economic operators who have themselves access to the EU procurement procedures, i.e. a Ukrainian entity could apply as a subcontractor.

#### **Question N° 2:**

Is there any advantage for consortium partners who have signed up for more lots?

#### **Answer N° 2:**

As stated in Annex I Tender Specifications tenderers may submit offers for one or several lots. Tenderers wishing to apply for more than one lot must submit a separate tender for each lot. There shall be no advantages for tenderers who submit offer for more lots.

#### **Question N° 3:**

In the case that leading partner and subcontractor are apply to LOT which organization should sign ANNEX I.H (Just sub-contractor or both organization's)?

**Answer N° 3:**

In case a tender is submitted by a consortium or grouping of service providers, each partner in the consortium or in a grouping of service providers needs to fill in and sign Annex I.H except the lead partner. This does not apply to subcontractor(s) therefore subcontractor(s) do not need to fill in and sign Annex I.H.

**Question N° 4:**

In the case if there is leading partner and subcontractor apply for LOT who should prepare information's regarding provision and services for years 2015 and 2016 (both together, each other for their parts of LOT project or separate for all LOT requirements)?

**Answer N° 4:**

The requirement for the provision of services falls under the selection criteria, namely under technical and professional capacity.

This selection criteria specifies that the tenderer needs to fulfil, among other selection criteria, also the selection criteria related to the provision of services of the type as requested for the relevant Lot, and covering the areas as specified for the Lot in question, for a total invoiced amount (i.e. total amount effectively invoiced to the customer(s)) of at least the amount as specified for the Lot in question in the last two (2) years combined.

Annex I 'Tender specifications' states that tenderers must demonstrate that they have the necessary technical and professional capacity to perform the tasks described in the tender specifications.

Annex I 'Tender specifications' also states that if the tenderer relies on the capacity of a third party for technical and professional capacity, it can only do so for the tasks for which this particular capacity is required, for example by providing a document stating clearly the allocation of tasks between entities.

In addition Annex I 'Tender specifications' states that proof of the technical and professional capacity of the tenderers shall be furnished on the basis of the documents listed in the respective section of Annex I 'Tender specifications' (i.e. evidences to be provided). It also states that for joint applications, the capacities of all members of the joint application, including subcontractors, shall be taken into account.

**Question N° 5:**

Are ACER's data stored on local server / private cloud server / public protected server?

**Answer N° 5:**

Data are stored mainly on Local Private Servers.

**Question N° 6:**

If on a local server, what operating system and database is used?

**Answer N° 6:**

At the present stage the Agency is mainly using Windows Server as main core Operating Systems, plus Linux Red Hat on Mission Critical Systems. Databases can vary, mainly Oracle and SQL Server are used.

**Question N° 7:**

What is the approximate volume of daily data handled?

**Answer N° 7:**

The approximate volume of data per day vary from to 300 to 400 Megabytes.

**Question N° 8:**

How many external interfaces does ACER manage for its incoming data?

**Answer N° 8:**

The Agency two main entry points/interfaces for data. Data entry is strictly monitored by the Agency staff.

**Question N° 9:**

Has ACER conducted intrusion tests in the past?

**Answer N° 9:**

The Agency orders regularly penetration testing an all the systems.

**Question N° 10:**

Does ACER use SSL Certificates and code signing?

**Answer N° 10:**

For some activities the Agency is using SSL Certificates. Code signing is used only on Microsoft platforms which represent the vast majority of the software installed and produced by contractors.

**Question N° 11:**

Be so kind and be more specific what are the main points you expect regarding »Standard project management methodology proposed for the implementation of the FWC«?

**Answer N° 11:**

For points 20.1.(a) and 20.2.(a) 'Standard project management methodology proposed of the implementation of the FWC' the tenderers need to present the methodology which will be

undertaken in the course of implementation of any of the tasks defined in the tender specifications for Lot 1 or Lot 2 respectively and shall include standards (e.g. templates, artefacts, procedures, organisation, etc.) to which the Contractor shall comply along the full duration of the FWC for the respective Lot.

**Question N° 12:**

If we have projects that were completed in 2017 (in January, February, March, April, May and/or June). Are we allowed to include those as well?

**Answer N° 12:**

As stated in point 19.3. 'Technical and professional capacity' of Annex I – Tender specifications tenderers shall, for each respective Lot for which the tender is submitted, provide evidence which shall include *'name(s) of customer(s), a description of services undertaken ..., starting and ending date(s) of each project listed, total financial volume of the contract(s) effectively delivered (i.e. total amount effectively invoiced to the customers) in 2015 and 2016 combined'*. This needs to include the total financial volume of the contract(s) effectively delivered (i.e. total amount effectively invoiced to the customers) in 2015 and 2016 combined. If project(s) started before 2015 and/or were completed after 2016, this information needs to be clearly indicated. The tenderer also needs to indicate the amounts of such projects that were effectively invoiced to the customers in 2015 and 2016 combined.

**Question N° 13:**

If we have projects that have been completed but we are still doing maintenance on the matter (therefore the total amount was not effectively invoiced to the customers), are we allowed to include those as well? We will make sure, that we only include delivered services and amounts that were already effectively invoiced to the customers.

**Answer N° 13:**

Please see answer no. 12.

**Question N° 14:**

Our team (lead partner + subcontractor), consisting of consultancies of an international network with offices in the EU member state, non-EU country A and non-EU country B (and elsewhere in the world).

If the company from the EU member state and non-EU country A meet the economic requirements (financial robustness and reference turnover), would the company from non-EU country B need to submit a full set of administrative documents to be part of the bid, or can we just include their CVs and references ?

**Answer N° 14:**

Annex I 'Tender specifications' states that tenderers must demonstrate that they have the necessary economic, financial, technical and professional capacity to perform the tasks described in these tender specifications in accordance with the payment schedule specified in the draft FWC at Annex III to the Invitation to Tender.

Annex I 'Tender specifications' also states that if the tenderer relies on the capacity of a third party for economic and financial capacity, the contracting authority may require that the third party be jointly liable for performance of the FWC.

Further, Annex I 'Tender specifications' states that if the tenderer relies on the capacity of a third party for technical and professional capacity, it can only do so for the tasks for which this particular capacity is required, for example by providing a document stating clearly the allocation of tasks between entities.

In addition Annex I 'Tender specifications' states that proof of the technical and professional capacity of the tenderers shall be furnished on the basis of the documents listed in the respective section of Annex I 'Tender specifications' (i.e. evidences to be provided). It also states that for joint applications, the capacities of all members of the joint application, including subcontractors, shall be taken into account.

On page 32 of Annex I 'Tender specifications' it is stated that where the tenderer relies on the economic, financial, technical and professional capacity of the subcontractor(s) to meet the selection criteria, subcontractors shall be treated as if they were partners in a consortium or a group of companies for the purposes of the evaluation of the selection criteria, and therefore, they shall provide proof of economic, financial, technical and professional capacity as well.

If the company from the EU member state and the company from a non-EU country A fulfil all minimum requirements for economic and financial capacity then the tender does not need to include evidence for economic and financial capacity for the company from the non-EU country B.

#### **Question N° 15:**

We have the intention to send our proposals through courier, and we request some clarification about the deadline for reception of tenders when this type service is used. As stated in the invitation letter, could you please clarify if the envelopes should arrive at ACER before the 17/07/2017 (16:00 local time) or it is valid that the envelopes are delivered to the courier company before the 23:59 of the 17/07/2017. (So after the delivery we send you a scan copy of the deposit slip of courier service).

#### **Answer N° 15:**

The time limit for receipt of the tender is 17.07.2017.

In case the means of submission is via courier then deposit slip of courier service must show clearly that the tender (envelopes) was delivered to the courier service before 23:59 hours on 17.07.2017.

In case the means of submission is via post then the postmark must show clearly that the tender (envelopes) was delivered to the post before 23:59 hours on 17.07.2017.

In case the means of submission is 'in person' (hand delivery) at the Agency's headquarters then the tender (envelopes) must be delivered to the Agency's headquarters before 15:59 hours on 17.07.2017 and the proof of receipt is signed and dated by the official in the mail department who takes delivery at the Agency's headquarters.