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Reg. 1402

Tender: Treatment of Third Nationals at EUs External Borders
- D/SE/10/06
Subject: Additional information regarding the tender

European Union Agency for
Fundamental Rights

Agence des droits fondamentaux
de l'Union Européenne

Agentur der Europäischen Union
für Grundrechte

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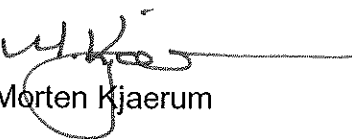
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Dear Sir / Madam,

We received questions of general interest from the tenderers.

Please find herewith the answers to these questions.

Yours faithfully,



Morten Kjaerum
Director

**Treatment of Third Nationals at EUs External Borders
D/SE/10/06**

Questions and Answers I

Question 1:

Point 9 of the Tender specifications (Volume of the Contract) stipulates the following

"The indicative volume for PHASE I of the contract is estimated at 350,000.00 EUR (three hundred fifty thousand). The indicative volume for PHASE II of the contract is estimated at 410,000.00 EUR (four hundred ten thousand). Depending on the budget availability and the needs of the FRA, the total amount of the two phases could be increased up to 50%."

We assume that the price offer needs to be within the limits of the indicative budget as indicated in the first two sentence of point 9 of the tender specifications.

- Is this interpretation correct?
- If yes, under what conditions and following which procedures might the budget be increased up to 50% during the implementation of the project?

Answer 1:

Regarding the first part of your question, the estimated volume of the contract for both phases is 760,000.00 EUR. The tenderers' offered price shouldn't exceed the estimated contract value.

Regarding the second part of your question, the Contracting Authority may increase up to 50% the budget of the initial contract in the cases and under the conditions set out in Article 126 of the Implementing Rules (Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council regulation No 1605/2002 on the Financial regulation applicable to the General Budget of the European Communities).

Question 2:

Point 6 (Participation in tendering procedure) of the tender specifications stipulate:

"Participation in tendering procedures is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement.

Where the Plurilateral Agreement on Government Procurement concluded within the WTO applies, the contracts are also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down. In that connection, it should be noted that the services under Annex IIB to Directive 2004/18/EC and the R&D services listed in category 8 of Annex IIA to that Directive are not caught by the Agreement."

We find it difficult to assess which countries specifically are eligible for participation on the basis of the above provision and therefore would like to specifically request clarification for specific

countries. Thus, for a part of the fieldwork for component 1 and 2 to be conducted with TCN, authorities and others in third countries we are considering a formal cooperation with research partners from Morocco and Turkey. Would partners from these two third country would be eligible as co-tenderers? If not, would it be permissible to subcontract relevant part of the research to partners from these countries?

Answer 2:

Morocco and Turkey have not ratified the GPA (Agreement on Government Procurement), and therefore, economic operators from these countries cannot demand to be allowed to participate in the above mentioned tender procedure as sole tenderers or as partners. Nevertheless, economic operators from Morocco and Turkey may be included as subcontractors in a tender submitted by an economic operator from an eligible country.

Question 3:

Given the short time available for preparing the tender and the closure of many academic institutions during August and sometimes up to early September, especially in Southern Europe and relevant third countries we experience difficulties in collecting all original documents by the submission date. Would it be permissible to provide prints of scanned versions or alternatively faxed versions of original documents required?

Answer 3:

Scanned copies or copies of faxed versions of the original documents can be accepted. However, the successful tenderer will be required to provide the originals of those documents before the signature of the Contract.

Question 4:

What is meant by "maritime border sectors"? Our interpretation is that border sectors refer to different zones/ areas that are commonly differentiated and that "border zone" is a pragmatic concept used to delimit case studies but has no precise legal or other meaning. For example, in Italy we would suggest to distinguish between two border sectors (Southern mainland Italy on the one hand, and Lampedusa and Sicily on the other), or three border sectors (Southern mainland Italy, Sicily, Lampedusa); similarly, in the case of Spain we would be inclined to separate the Southern mainland maritime borders (around Gibraltar) from the maritime borders around the Canary Islands. Is this interpretation correct?

Answer 4:

The term "maritime border sectors" is a pragmatic term used to delimit case studies based on practical realities. It has no precise legal meaning.

Question 5:

Cyprus: Cyprus is mentioned as one of the countries that potentially could be studied in component 1 of the project on maritime borders. However, according to the information available to us, there have been hardly any incidences regarding interception at sea in recent

years in the Republic of Cyprus itself. According to the information we have, most irregular migrants cross the sea to the Turkish controlled areas, although they then tend to cross the land borders to the Cyprian government controlled part of the island and end up staying in the area controlled by the Republic of Cyprus. We assume therefore that Cyprus is de facto not a potential case study for component 1 of the study, as any related practices would have de facto to relate to administrative practices in the Turkish controlled part whose international status is disputed. Is this interpretation correct?

Answer 5:

Cyprus is one of the countries covered by component 1. Whether it will be possible to conduct interviews with the different target groups will depend on the situation at the time of the implementation of the project. However, even if arrivals by sea have been limited, the FRA would encourage including Cyprus among the countries to cover in the research.

Question 6:

Melilla/ Ceuta: one border crossing point? In general, we interpret border crossing point as any official border crossing point in the conventional sense of the term. In the case of the border crossing points at the Spanish exclaves of Ceuta and Melilla, we wonder whether these could be studied as if they were one single border crossing point (even though they are obviously geographically two separate BCPs)?

Answer 6:

The FRA is flexible as regards the interpretation of border crossing points in relation to Melilla/Ceuta.

Question 7:

Meaning of BCP: We understand border crossing points to mean officially designated border crossing points and that the research conducted under component 2 / regarding land borders should focus on these. Our question, however is whether 'green borders' are not part of the research relating to (land) borders at all, or whether green borders should partly be covered and if yes in what way (desk research or empirically).

Answer 7:

Green borders are not part of the project.

Question 8:

Fieldwork in third countries: Does FRA also provide support in Third Countries covered by the study to facilitate access to respondents and any research permissions that may be needed?

Answer 8:

The FRA will not be able to provide support for the research in the third countries.

Question 9:

Module on Human Rights Training: do we understand the tender specification correctly that fundamental rights training assessment and report are only expected for maritime border control and surveillance including rescue at sea? (Arg. Deliverable 11 links to Component 1 and expects 5 country reports on fundamental rights training). Does this conclusion also apply to deliverable 12 – should the recommendations for training of border guards only refer to maritime border controls? However, the table of activities for phase 2 of the project on p.15 of the technical specifications suggest that there is also a link with component 2 of the project (according to the table, activities 14 – 18 on 10 BCPs are linked with deliverable 11 - 5 country reports on FR training); As already mentioned, in the description of deliverable 11 it is stated that the deliverable is linked with Component 1 (Maritime borders). Are we correct understood that Deliverable 11 is ONLY linked to the 5 countries chosen on maritime borders?

Answer 9:

Fundamental rights training assessment and report are expected to focus on maritime border control and surveillance including rescue at sea. This is to be understood as covering all fundamental rights issues that are relevant for control and surveillance at sea, including those which are specific to sea borders as well as those that are common to other borders. In that sense, findings from component 2 of the project should, where relevant, also be used for deliverable 12.

Question 10:

Under Activity 19 stakeholder consultations are expected to take place "... in each of the five countries covered ...". According to Activity 12 the 10 BCPs (land and air borders) component covered in Phase 2 should ideally "be located in 10 different EU Member States". Is the assumption therefore correct, that this stakeholder interviews should take place in as many EU countries as covered by the research under Phase 2 (i.e. up to 10 rather than 5 countries as stipulated in the tender specifications)?

Answer 10:

Activity 19, as well as Activity 9, relate to informal consultations with stakeholders possibly organised in the form of a workshop or similar. As regards Activity 19, such consultations should take place in as many EU countries as covered by the research under Phase 2.

Question 11:

Transcription of interviews: Interviews with TCN conducted under Activity 3 should be transcribed verbatim and provided to the Agency.

- a. Should only these interviews resulting from semi-structured interviews be transcribed or does the requirement also relate to the structured interviews conducted in other activities both in phase 1 and 2 which may potentially include narrative elements?
- b. Should the documentation of interviews not transcribed or recorded (e.g. completed questionnaires, protocols, fieldwork diaries) also be provided to the Agency?

c. Should the fieldwork material (documentation, transcripts, diaries) be available in English or may all fieldwork material be left in the original language/ the working language of the research teams involved?

Answer 11:

- a. Structured questionnaires do not need to be transcribed. But a space for "Additional information" shall be added at the end of the questionnaire for interviewee's comments to be registered by the interviewers.
- b. Yes, all the data gathered in the fieldwork should be provided to the Agency.
- c. Documentation filled in or drafted by researchers e.g. questionnaires, ethnography notes etc should be provided in English. Narrative interviews are not to be translated in English but we would highly recommend drafting an English summary of each interview based on a template to be discussed with FRA.

Question 12:

According to FRA's Projects Web-page, there are two projects ongoing on the above subject - one on arrival at sea and one on arrival at border points. Both started in February and March 2010 and are indicated as being in their inception phases.

How do they relate to the tender that is presently out (FRA-D/SE/10/06) on the same thematic area?. Are there any documents available from the ongoing projects that would be of relevance for Tenderers?

Answer 12:

The present tender covers both projects described on the FRA's Projects webpage at http://fra.europa.eu/fraWebsite/research/projects/proj_thirdcountry-seaborders_en.htm and http://fra.europa.eu/fraWebsite/research/projects/proj_thirdcountry-externalborders_en.htm. Additional information relating to this tender is available under the following link: http://fra.europa.eu/fraWebsite/news_and_events/infocus10_2604_en.htm

Question 13:

In reviewing the Standard Submission Form, there does not seem to be an allotted space for the technical offer aside from C.4 (where the evaluation grid is indicated). I have then two questions:

- Could you confirm that we can develop our technical offer (including CVs and elaboration of the points required by the tender and technical specifications) as a separate Annex(es)? (This would then be eligible for review as annexes or should they be pasted into the C.4 section?)
- Could you also confirm that there are no other preferred templates for the technical offer itself?

Answer 13:

- Tenderers must present their technical offer in Annex C.4 of the Standard Submission Form. It shall be drawn in accordance with the requirements set in the Technical Specification (Annex A.1) and following the guidelines included in section 18.3 of the Tender Specifications.
- The evaluation grid included in Annex C.4 of the Standard Submission Form is only for information. The tenderer is free to develop its technical offer in accordance with its professional experience, but it must be in accordance with the requirements of Annex A.1 and Annex A.
- CVs must be included in Annex C.6.1 of the Standard Submission Form and must be presented in the EUROPASS format.
- The tenderer must structure its tender in accordance with section 25 of Annex A (Tender Specifications) and include all the documents mentioned therein.