

Administration –FRA, A-1040

Vienna, 30.07.2010
Reg. 1258

Subject: F/SE/10/03- Data collection and research services on fundamental rights issues

Contract notice: 2010/S 134-205087 of 14/07/2010, as amended

Ref.: Additional information regarding the specifications of the tender.

Dear Sir / Madam,

We received questions of general interest from the tenderers. Please find herewith the answers to these questions.

Yours faithfully,



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Constantinos Manolopoulos

Head of Administration

QUESTIONS & ANSWERS (I)

Data collection and research services on fundamental rights issues Open Call for tender No F/SE/10/03 (OJ/S 134- 2010/S 134-205087, 14/07/2010)

Question 1:

Could you please give an estimate for the amount of the requested deliverables per year regarding each format?

Answer 1:

No estimates for the amount of the requested deliverables per year regarding each format can be provided as it relates and depends on the Annual Work Programme adopted by the Agency's Management Board.

Question 2

Could you please define more precisely the possible format and size for the deliverable „Reports of various sizes“(described in Annex A.1 to the Technical specifications under 5.2.6?).

Answer 2:

The sizes of these reports and format will be "variable", as the title of the deliverable indicates, therefore the price will also be variable based on a price per person/work day needed to produce the deliverable under the category of quoted times and means specific contracts.

Question 3:

Could you please give information regarding the schedule processing of the tasks and research projects in the FRA and EIGE and if possible the information about the FRA's Work Programme for 2011 and 2012? We have checked the website and have only found the work programme for 2010.

Answer 3:

Please note that the Annual Work Programme 2011 is now available in the FRA Website.

No information with regards to the schedule of the tasks and the research projects in the FRA and EIGE can be provided as the signature of a Framework Contract imposes no obligation on the Contracting Authority to purchase. Only implementation of the framework Contract through specific contracts is binding on the Contracting Authority. The information for 2012 will only be available after the Work Programme has been adopted by the Agency's Management Board.

Question 4:

Since FRA and EIGE can request deliverables please clarify: Has the tenderer to demonstrate his ability to work on 3 or on 6 different assignments at the same time in parallel and his ability to complete up to 3 or 6 assignments in parallel (see Annex A under 18.3. regarding Criterion A)?

The tenderer has to demonstrate his ability to work on 3 different assignments (deliverables) at the same time in parallel, if required.

Answer 4:

The tenderer has to demonstrate his ability to work on 3 different assignments (deliverables) at the same time in parallel, if required.

Question 5:

Is there a limit for the prices tendered as a criterion for exclusion?

Answer 5:

The exclusion criteria are the criteria mentioned in Section 18.1 of the Tender Specifications.

Question 6:

We would like to ask you for clarification on the requirements for Technical and professional capacity, as described in paragraph 18.2.2 a) of the Tender specifications for the FRA tender F/SE/10/03 Data collection and research service on fundamental rights:

In relation to the provision of CV's of persons the specifications describe:

- a) 'A given CV may only be used for one lot and one profile' and
- b) 'Please note that in case of tenders for more than one lot by the same tenderer, staff may only be used for one lot and one profile.'

Can you explain what is meant by the term 'staff' under b)? Does this relate to persons whose CV will be submitted for one of the profiles or does this also cover staff which is not named in the tender proposal? Can you explain the difference of the meaning between the sentence under a) and the sentence under b)?

Answer 6

In accordance with the Tender Specifications (Section 18.2.2 a), in case of tenders for more than one lot by the same tenderer, staff may only be used for one lot and one profile.

The term "staff" in 18.2.2.a) has a broad meaning and means all the human resources part of a bid. This includes the team proposed by the bidder to meet all profiles specified in the call for tender.

This is also applicable to the subcontractors and/or freelancers where the tenderer relies on their capacity and proposes them as part of the team. In accordance with the Tender Specifications (Section 25.3-Application of selection criteria), the same freelancers cannot be proposed for more than one lot.

Question 7:

Does the requirement that a given CV only may be used for one lot also apply across different tenderers? How will tender proposals from different tenderers be judged in case a given CV has both been proposed by tenderer A for lot X and by tenderer B for lot Y? Will both tenderers be judged not having the minimum capacity to deliver the required services?

Answer 7

As far as the selection criteria are concerned, the compliance of each tender to these criteria will be assessed individually and lot by lot. In this respect, the requirement that a given CV may only be used for one lot will be applied in case the same expert is proposed by different tenderers as subcontractors or freelancers in different lots. The Agency will assess in this respect if there is a distortion of competition or conflict of interest in the meaning of the principles of the Union law and may conclude that the tenderers concerned do not have the minimum capacity to deliver the required services.

Question 8

Does the requirement 'A given CV may only be used for one lot and one profile' also apply to the profile of Project Manager and the profile of Language editor? Given the capacity necessary for each of these two profiles for the provision of services under one lot, one person can easily perform these tasks for more than one lot. If the requirement applies to these positions, can you explain the reason?

Answer 8

See answer 7 above.

Question 9

In case the requirement that a given CV only may be used for one lot also applies to the profile of Project Manager, this will limit the possibility for small organisations to submit offers for more than one lot, despite having the capacity to deliver the required services. Can you explain how in this case the principle of equal treatment of tenderers, according to which tenderers (big and small) must be in a position of equality when they formulate their tenders, which is a general principle of Community law, is fulfilled?

Answer 9

All tenderers are and will be treated according to the principle of equal treatment. See also answer 7 above.

Question 10

We have a question regarding the inclusion of non-EU nationals in the proposal. I have read the terms and am familiar with the WTO agreement but am unclear regarding those nationals not covered under the stipulated annexes of Directive 2004/18/EC. Is there any exclusion in the case of the following nationals: USA, Kenya, Sri Lanka, Australia? We have an international team. Please advise.

Answer 10

Economic operators of states eligible to have access to procurement procedures of Union institutions under the Multilateral Agreement on Government Procurement (GPA) concluded within the World Trade Organisation are legal entities. Leading companies or partners in a consortium, national of the eligible states are covered by the GPA.

If members of the team are national of non-eligible states, then the Agency may admit them in ad-hoc basis to this present procurement procedure without creating a precedent or obligation for the future.

The following states have ratified the GPA: Canada, Hong Kong China, Israel, Japan, Korea, Singapore, Switzerland and the United States. Iceland, Norway and Liechtenstein are also GPA Parties. It should be noted that the GPA in the WTO only applies to the European Commission and the Council of the European Union. The Agency has accepted on ad-hoc basis to apply the GPA to this present procurement procedure.

Question 11

(a) Which other means are allowed to prove financial capacity required according to par.18.2.1 of Annex A,

(b) May the overall turnover be proven, according official financial documents, such as auditors' certification documents on the basis of the two last calendar years (e.g. 7/2008 – 7/2010)?

(c) What constitutes an exceptional reason to request other means of proof (e.g. bank statements)?

(d) May bank statements be means for proof of financial capacity? May they be used as complementary means to balance sheets or auditors' certificates for the turnover of the last two financial years?

Answer 11

(a) In accordance with Article 136 of the Implementing Rules of the Financial Regulation, the tenderer unable to provide reference requested may prove its economic and financial capacity by any other means. The reason shall be exceptional and justified. The Agency may consider in this respect that other means of evidence may be appropriate, for instance where the

statute of a tenderer in accordance with the legislation applicable does not require to complying with the obligation of establishing a balance sheet.

- (b) Yes
- (c) The reason is considered exceptional in comparison with the regular statutory obligations of an economic operator in the context of the business activities.
- (d) Bank statements may be accepted for proving that the economic operator has a sound financial standing. These statements are not required if balance sheets or auditors' certificates for the turnover of the last two financial years have been already furnished by the tenderer.

Question 12

(a) Is there or not a document required to prove the commitment (i.e. letter of intent) of an individual expert to a certain offer and an organisation or consortia, in order to include her/his CV in the proposal? Is there a specific template/format for such documentation?

(b) May individual experts be part of two or more competitive offers (for the same lot) of different organisations?

Answer 12

- (a) Please see "Important remark to freelancers" under section 25.3 of the Tender Specifications.
- (b) See answer 7 above

Question 13

In the financial offer, the amounts of the different concepts should be proportionate to the percentages shown in column Weighting?

Answer 13

The weightings indicated in the tender specifications (Annex C-Standard Submission Form) are criteria for the evaluation of the financial offer

Question 14

When the FRA commissioned some task type Price per person / work day, you have to do before starting work an economic assessment of the costs of contract labour?

Answer 14

The call relates to the award of a framework contract (Section 2 of the tender specifications). The specific contracts will be concluded in accordance to the Article 1.4 - implementation of the contract" of the framework contract.