

**Clarifications during tendering  
F-SE-13-T01  
Web Development Services  
Questions and Answers III**

Vienna, the **27. März 2013**  
Ref: 2013-outgoing- **0 5 1 4**

**Reference:** Open call for tender F-SE-13-T01 Web Development Services  
**Subject:** Clarifications during tendering

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

Morten Kjaerum, Director

European Union Agency for Fundamental Rights

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**Clarifications during tendering****F-SE-13-T01****Web Development Services****Questions and Answers II**

(Cont.)

**Question 65:**

Do you have an estimation on the Times and Means allocation per profile between FRA and ENISA for lot 1 and lot 2? The documents only provide a total volume outline per Lot divided into the organizations. For calculating reasons we have to know the planned allocation per Organization per profile for Times and Means for both lots.

**Answer 65:**

Annex A.1 Technical Specifications, section 6 states: "Times & Means requests for services, which correspond to the order of a number of days for defined profiles. These orders normally will be a few man-days. The orders under Times & Means specific contracts will be executed at the Contracting Authorities' premises".

Therefore for calculation purposes an indication of effort for the Times and Means services will not exceed between 5 and 10% of the FWC. This applies for both FRA and ENISA.

**Question 66:**

Draft Framework Service Contract (Art. 1.8) requires the ownership regarding all results and all pre-existing rights to be fully and solely acquired by the Contracting Authority.

Thus, the Contractor is contractually obliged to transfer full title to all possible results under the framework contract as well as any pre-existing rights to the Contracting Authority.

Yet, it is very likely that in order forms or specific contracts, as common in software development in general, third parties' frameworks or libraries or other open source software will be used, or in case of designs/websites photographs/icon/graphics of third parties' commercial databases. Certain open source software licences (so called copyleft open source software licences, e.g. GPL) require even amendments or linkage with other software to be under same licensing conditions (viral effect). However, regarding such pre-existing third party material, full ownership cannot be transferred.

Can we therefore assume that the Contractor is only obliged to transfer the intellectual rights for any third party material (software, photographs/icon/graphics etc.) or any amendments of copyleft open source software (or its linkage with other software) according to their respective applicable licensing conditions?

**Answer 66:**

In accordance with article 1.8.2 of the draft framework contract, and by derogation of article 2.10.3, all pre-existing rights shall be fully and irrevocably acquired by the contracting authority.

As mentioned in your question, when developing software during the implementation of the framework contract by means of specific contracts, the contractor may need to use open source libraries which are covered by agreements like GPL. Such potential cases should be identified by the contractor and the contracting authority shall be informed for a prior assessment and agreement. Provided that the contracting authority can acquire directly the use of open source software and/or licensed software via the corresponding licenses like GPL, the contractor is not required to transfer ownership of those pre-existing rights.

If the contractor develops a software solution that does not make use of third party open source or licensed software as described above and such solutions are incorporated to the results produced during the implementation of the framework contract, then those pre-existing rights shall be fully and irrevocably acquired by the contracting authority as provided for in article 2.10.2 of the draft framework contract.

**Question 67:**

I am writing to enquire about the above-mentioned invitation to tender and in particular with reference to Section 17.2.2 (Technical and professional capacity): "The list of the principal services shall be accompanied by certificates of satisfactory performance and completion of the services".

Can tenderers provide the URL of the website developed (internet or intranet) instead of the certificate of satisfactory performance and completion of the services?

**Answer 67:**

If the URL of the website referred to above provides all the information that the contracting authority needs to assess if a project reference meets the minimum requirements as



specified in section 17.2.2 b) of Annex A –Tender Specifications, then the tenderer is kindly requested to print out a copy of that page and to include it in its tender under Part 1 – Administrative Proposal.

**Question 68:**

Regarding 17.2.2 Technical and professional capacity (per Lot) of Annex A – Tender Specifications:

„ a.2) The professional experience and fields of expertise described in the CVs of the proposed profiles must cover, as a team, all technologies and fields of expertise described under Section 6 of Annex A.1 – Technical Specifications.“

Could you please confirm us that the professional experience and fields of expertise described in the CVs, all technologies and fields of expertise are described under Section 8 „Description of profile“ of Annex A.1 – Technical Specifications.“ and not in Section 6 of Annex A.1 – Technical specifications Contract execution as stated above.

**Answer 68:**

Please see answer to question 11 in Questions and Answers I.

**Question 69:**

In the ANNEX C – Standard submission form, at FORM D.2 – LIST OF PRINCIPAL SERVICES PROVIDED/SUPPLIES DELIVERED it is mentioned that the tenderer has to provide a list of principal services.

Please clarify if the tenderer has to provide a list with principal general services in a declaration separate/different from FORM D.2 – LIST OF PRINCIPAL SERVICES PROVIDED/SUPPLIES DELIVERED.

Also, please clarify if the partner in a consortium has to provide this list if the leader is the one providing the similar experience.

**Answer 69:**

A separate Form D.2 has to be used per project/reference. If the leader of the consortium has enough projects/references to meet the minimum technical and professional capacity requested under section 17.2.2.b of Annex A –Tender Specifications, then the partner does not need to include the list of references.

**Question 70:**

In Tender Specification at section 14 Contacts between the tenderer and the Contracting Authority, it is mentioned that "in the case of requests for information received less than eight calendar days before the deadline for the submission of tenders" but in the Invitation to tender at point 8 it is mentioned that "Requests for additional information received less than five working days before the final date for submission of tenderers will not be processed."

Please clarify which is the final day for send requests for information?

**Answer 70:**

As stated in section 14 of Annex A –Tender Specifications, in case of requests for information received less than eight calendar days before the deadline of submission of tenders (4/04/2013), the contracting authority must provide an answer as soon as possible. The contracting authority is not obliged to answer to any question received less than five working days before the deadline for submission of tenders (25/04/2013). However, the contracting authority may decide to answer questions received after that date.

**Question 71:**

We would like to confirm that the following is satisfactory to the Agency:

- The leading legal entity is a wholly owned subsidiary of its parent company.
- Both personnel from, the leading legal entity and its parent company will provide services for the Framework Contract
- We intend to submit one legal entity form for both the leading legal entity and its parent company

**Answer 71:**

If the subsidiary company is the one that will sign the contract and the parent company is not a member of the consortium, then only the legal entity of the subsidiary has to be included in the tender.

If the parent company is a member of the consortium, then the legal entity of the parent company has to be included in the tender as well.

If the parent company is not part of the consortium and the subsidiary company will rely on the economic and financial capacities and/or technical and professional capacities of the parent company to perform the contract, then, as stated in the last paragraphs of sections 17.2.1 and 17.2.2 of Annex A – Tender Specifications, the subsidiary company “must prove to the Contracting Authority that it will have at its disposal the resources necessary for the performance of the contract, for example by producing an undertaking on the part of the parent company to place those resources at its disposal”.

**Question 72:**

Annex A - Tender Specifications, Section 23, page 20: “The Contracting Authority wants to migrate its online databases of fundamental rights-related legal information (Charterpedia and the Case-Law Database) from the old content management system (CMS) to the new Drupal 7 CMS.”

Will the online databases be migrated to a new website or to the existing FRA’s website under <http://fra.europa.eu/en/charterpedia> and <http://fra.europa.eu/en/publications-and-resources/case-law> respectively?

**Answer 72:**

The online databases will be migrated to the existing FRA website. However, the URLs of the databases might be different from those given in the question.

**Question 73:**

Annex A - Tender Specifications, Section 23, Part 2, Lot 1, Scenario A, page 20: “The activities requested are:

- Analysis and design model of the information system including architecture and database model.”

Our understanding is that the above bullet includes the analysis and design of the architecture and database model. Please confirm.

**Answer 73:**

The point referred to **does include** the analysis and design of the architecture and database model.

**Question 74:**

Annex A - Tender Specifications, Section 23, Part 2, Lot 2, Scenario B, page 21: "The task of this service is assured technical support, corrective maintenance and evolutive maintenance of the CMS."

Our understanding is that "evolutive maintenance" refers to the development of new features of the software or the addition of new functionalities to existing features. Please confirm.

**Answer 74:**

The term "evolutive maintenance" does refer to the development of new features or the addition of new functionalities.

**Question 75:**

Annex A - Tender Specifications, Section 23, Part 2, Lot 2, Scenario B, page 21/23: "The duration of the requested services is 12 months and the number of foreseen person days per year is 350 of which 40 person days relate to corrective maintenance and the rest for technical support and maintenance."

Are the Takeover activities included in the 350 person days? If not, is there a number of foreseen person days for the takeover of the application?

**Answer 75:**

Takeover activities are included in the amount of person days mentioned in Annex A - Tender Specifications.

**Additional clarification from the contracting authority:**

The contracting authority would like to add the following to the answer provided to Question 16 of Questions and Answers I:

"If the sum of more than one specific contract under a framework contract, collectively meet all the requirements specified under Section 17.2.2 b) of Annex A - Tender Specifications, then they can be counted as one project reference out of the three needed to meet the minimum technical capacity requirement"