

Helsinki, 30/08/2011
D(2011)

CLARIFICATIONS 3

Open call for tender ECHA/2011/66

Framework contract for the provision of Enterprise Content Management Services and Solutions

Question 3.1:

In section "4.1.2 Content of the tender", page 24 of the "specifications and model contract" document, it is written that "*tenderer or subcontractor that presents a formal relationship with the Documentum software vendor (EMC Corporation) regarding software and/or services based upon EMC Documentum software, is expected to carry out 50% or more of the tasks under the Framework Contract*".

In the case where three or more companies form a consortium, and two or more companies of the consortium have a formal relationship with EMC Corporation; since it is not possible that each of these two or more companies carries out 50% or more of the tasks of the Framework Contract, could you please confirm that ECHA will accept the offer if this limit is exceeded by the *combined percentage* of the companies having the necessary formal relationship?

Answer:

In case of joint offer or in case of sub-contracting, when two or more companies in the consortium, including sub-contractor/s, have a formal relationship with EMC Corporation, the Agency will consider the combined percentage of contract implementation of the companies with formal relationship with the Documentum software vendor, as basis for the assessment of compliance with the requirement of 50% or more of the tasks under the Framework Contract being carried out by the tenderer or subcontractor that presents a formal relationship with the Documentum software vendor (EMC Corporation) regarding software and/or services based upon EMC Documentum software.

Question 3.2:

In section "4.1.2 Content of the tender", page 25 of the "specifications and model contract" document, it is written that "the tenderer shall present photocopies of the referred certificates"; In a case where a tenderer has (2-3 max.) consultants who have successfully passed the examination and are entitled to the official certificates but that these certificates of relevant examinations have not as yet reached the consultants; if the tenderer provides photocopies of the pass confirmations, as proof that they have successfully passed the exams, instead of the certificates (which they are entitled to but which are pending EMC's administrative handling and delivery), can you please confirm that ECHA will accept these examination pass confirmations in the place of the certificates? We again stress that these will be maximum three of the minimum total number of twenty.

Answer:

Concerning the evidence for selection criterion 2.3 (Professional Capacity), the Agency will accept a photocopy of the examination pass confirmation, as equivalent to the copy of the official certificate, in the exceptional cases of consultants who have successfully passed the required examination but still have not received the corresponding certificate of professional credentials from EMC Corporation.

Question 3.3:

In section "5.1.2 Basis for Technical Tender", page 38 of the "Specifications and model contract" document, it is written that "Quality assurance plan, including security assurance". Please clarify what you mean by security assurance and what this encompasses.

Answer:

The notion of security assurance, as referred to in Section 5.1.2 of the Specifications of this Call for Tender, encompasses any technical and organisational solutions that the Tenderer proposes to apply during the Contract implementation in order to comply with the security requirements set forth in Section 3.7 (Data protection) on pages 14 and 15 of the Specifications of the Call for Tender.

Question 3.4

ECHA Clarifications no 1, dated 12/8/2011, Q1.4. If we understand your answer correctly, ECHA allows a company that is part of a consortium, or even leading one, to be a subcontractor in one or more other bids with another completely different consortium structure.

(a) Can you please confirm that our understanding is correct?

(b) Can you please explain how, in such a case, ECHA is in a position to assure that all bids will be evaluated on equal grounds, when a single company has access to the technical and financial information of more than one bid?

Answer:

The Specifications of the Call for Tender (Summary table on page 4) explicitly provide that each Tenderer can only submit one offer. However, as stated in the piece of clarification No.1.4 the same economic operator can appear as tenderer in one bid, and sub-contractor in another bid.

ECHA will evaluate all submitted tenders on equal grounds against the exclusion, selection and award criteria publicly announced in the Call for Tender.

Question 3.5:

According to the paragraph 7 of the Invitation to Tender, the submission of a tender implies acceptance of the terms and conditions set out in this tender and specifications. Does this mean that ECHA will not negotiate or amend any of the provisions of the framework contract with the successful tenderer? If negotiations are possible, can the supplier without further liability refuse to enter into the framework contract if ECHA and the supplier cannot agree on the content of the framework contract?

Answer:

See Clarification 2.3. ECHA will not negotiate the provisions of the draft Framework Service Contract with the successful tenderer. The Terms and Conditions of the draft Framework Contract as published in the Specifications (Annex 5.2) of the Call for Tender are binding on the tenderer to whom the contract is awarded for the whole duration of the contract.

Question 3.6:

Please confirm whether we have understood correctly that entering into the proposed framework contract would not impose any obligation for the supplier to enter into Specific Contracts or to approve order forms, even if they would conform to the terms of the framework contract?

Answer:

Entering the Framework Contract does not impose any legal obligation for the contractor to enter into Specific Contracts or to approve order forms, even if they would conform to the terms of the Framework Contract.

Please note, however, that ECHA intends to benefit from the expertise of the service provider and make extensive use of the services to be provided under the Framework Contract. In this regard, the Steering Group foreseen in the Specifications (Management Team in Section 5.1 of Annex 5.1.1) shall be the context for preliminary discussions prior to the request for services under Specific Contracts, within the terms and conditions established in the Framework Contract. Discussions may also follow the presentation by the Contractor of a quotation or an estimate of the resources to be allocated for its execution, with particulars in support, as provided by Article 1.4.3 of the draft Framework Contract.

Question 3.7:

The framework contract includes clauses, such as unlimited liability for direct damages and liability for indirect damages and the Agency's right to explain or rectify any ambiguities or discrepancies within the contract that we fear are unacceptable as such for all tenderers. Is it still necessary to submit a tender to ensure participation in a potential negotiation procedure to be started should none of the tenderers accept the framework contract without modifications? The question is presented with a sense of urgency to avoid misuse of both time and efforts for ECHA and the tenderer.

Answer:

Limitation of liability is provided for in Article 11.2.2 and 11.12 of the draft Framework Contract (Annex 5.2 of the Specifications). Please also note (see Clarification 3.6) that a Steering Group, with representation of both contractual parties, shall be established for the duration of the Framework Contract. The steering group will be responsible for overseeing the implementation of the Framework contract and all the related Specific Contracts.

Where the original terms of the draft Framework Contract as specified in the Call for Tender have to be substantially altered, in order for these conditions to be acceptable to the tenderers, the Agency may not make use of a negotiated procedure, pursuant to Article 126 or Article 127 of the Implementing Rules of the Financial Regulation applicable to the General Budget of the European Communities.

ECHA

