

Clarifications

Open call for Gas Capacity Booking Platforms to submit offers for Mallnow and GCP

Last updated: **24 May 2019**

23 May 2019

Question

1) Requirements for the submission of the offer

- a) *"Network users shall have non-discriminatory access to capacity booking platforms, and continuous developments of the booking platform infrastructure shall respond to market needs and be maintained for the whole duration of the service contract with the TSOs concerned. A specific set of minimum provisions to that end shall be included in the service contract, and this shall be considered in the formulation of the offer"* – in the request for offer the draft of a service contract is not required. Therefore, we are not sure, what the Agency means by stating that above-mentioned provisions shall be considered in the formulation of the offer and how to prove it?

Answer: A draft service contract is not a required part of the bid. The offer shall in any case specify the measures that the operator wishing to submit an offer intends to implement to ensure that "network users shall have non-discriminatory access to [the] capacity booking platform, and continuous developments of the booking platform infrastructure shall respond to market needs and be maintained for the whole duration of the service contract with the TSOs concerned". Such measures shall constitute integral part of the offer and since they may have an impact on the formulation of the fee and therefore, operators wishing to submit an offer are recalled of the need to consider this aspect in setting the fee.

- b) *"Statement providing the shareholders composition of the platform"* – could you please specify what do you mean by this requirement? The [operator] is not a separate legal entity and therefore is not registered in the National Court Register, due to that it is impossible for us to get such statement for the [operator]. Therefore, do you expect us to provide you with such statement with regard to the [operator]? If yes, shall [the legal entity]'s excerpt from the National Court Register be submitted in English, and in case yes shall it be a sworn translation? Or the description of the shareholders composition of [the legal entity] and statement on the owners' structure of the platform, duly signed by the person authorised to represent the company, would be eligible?

Answer: The legal entity submitting the offer shall submit a copy of the most recent official records of the shareholder composition together with a sworn translation. In case the booking platform does not

have a separate legal entity, a declaration on honour that unambiguously states the business structure of the legal entity identifying the booking platform shall be included.

- c) *“Legal representative” and “legal attorney”* – it is difficult to understand what is meant by these two phrases and what is the difference between them. Would that be eligible if one of GAZ-SYSTEM’S internal qualified attorney-at-law signs the „Template on legal requirements”? Also, we wanted to confirm whether by legal representative you understand the person authorised to act before ACER in a given proceeding, e.g. based on the relevant power of attorney?

Answer: The signature of the legal representative of the operator submitting the offer is deemed sufficient.

- d) *“Evidence of the entitlement of the legal representation of the capacity booking platform operator”* – we understand that you require the power of attorney, granted to the persons signing the offer and accompanying documents included therein. Please confirm if such understanding is correct. Do you also require confirmation that such power of attorney has been issued in line with the representation rules of the company? Moreover, any translation of such document is required once submitting the offer? We also understand that a hard copy of the power of attorney is not required.

Answer: The understanding about the evidence of legal representation is correct. The offer must be submitted in English and sent to the email address provided in the Open Call.

- 2) **Annex 3** – the general rule is that evidences to prove given functionality/ compliance with EU law in different regards, shall be submitted upon the request of the Agency. Nonetheless, in Annex 2, the Agency listed the number of features (REMIT, IO, avoidance of cross-subsidies) for which the detailed description of the required proofs is provided. Shall we submit such documents together with the offer? Or they will be submitted only upon the Agency’s request?

Answer: see clarification on the question posted 14 May

- 3) **Annex 4** –

- a) it is not specified whether we should just answer the question with yes/no or additionally award the points for each answer. We would appreciate your answer in this regard as soon as possible, as the catalogue has to be send to an auditor for countersignature for answers and scoring;

Answer: the self-assessment template shall include the ‘yes’ and ‘no’ answers, countersigned by the auditor. The Agency will verify the scoring based on the answers to the questions.

- b) questions a.3 and a.4 – we have already referred this issue to ACER with an e-mail dated as of 8 of May 2019. We believe that to be awarded with the points the answers to these questions should be ‘no’.

Answer: the catalogue specifies the scores of the ‘yes’ and ‘no’ answers to the concerned questions (see also clarification of 8 May)

- 4) **Case study** – the description of the given case study would require us to refer to other documents, being basis of the Platform functioning (e.g. SLA). However, in the description of the case study there is a strict limitation for number of words to be used and the length of the document. Do you require us to send you the documents that case study was based on as attachments? Or they shall be provided to the Agency upon request?

Answer: the case study shall be carried out according to the specifications in the Open Call and its Annex 6. The case study shall be comprehensive and self-standing without cross-reference to external materials. If such information is deemed necessary, it should be included within the case study.

Question

- 1) [...] The requirement in pt. 3 of the call for offers is not in line with pt. 3.1 of the call for offers, where “the overall yearly fee for the employment of the capacity booking platform for each interconnection point shall cover all the costs due by the TSOs concerned for using the capacity booking platform in line with the EU legal requirements and the national requirements.” It is our understanding, that the costs due reflect the actual costs to be paid by the TSOs concerned [...]

Answer

The Requirements at Section 3 and sub-section 3.1 are consistent.

In particular, at Section 3, second paragraph, it is reported that “the evaluation will focus [inter alia] on the overall yearly fee for the employment of the web-based booking platform for each of the two interconnection points regardless of any existing service contracts between the existing capacity booking platform operator and the TSOs concerned”. Section 3.1 further specifies that “the overall yearly fee for the employment of the capacity booking platform for each interconnection point shall cover all the costs due by the TSOs concerned for using the capacity booking platform in line with the EU legal requirements and the national requirements”.

At section 4.1, first bullet point, operators are requested to submit “a financial statement indicating the overall yearly fee for the employment of the web-based booking platform for each of the two interconnection points identified above, i) regardless of any existing service contracts between the operator and any of the TSOs concerned and ii) considering the need to ensure platform developments to respond to market needs. If the fee consists of multiple components (e.g. entrance fees, yearly fees, etc...), a relevant breakdown shall be provided together with the overall yearly fee applicable at each interconnection point (i.e. per IP side)”.

Operators wishing to submit an offer shall comply with the above-mentioned requirements, allowing evaluating offers and the selection of the one best matching the ratio reported in the call.

As reported at Section 3.1, second paragraph, the overall yearly fee shall remain fixed for the overall duration of the service contract to be signed with the TSOs concerned - a maximum three (3) years. The overall yearly fee represents the maximum fee to be applied for the employment of a web-based booking platform at each of the two interconnection points for the TSOs concerned. The negotiations of the details of the service contract is out of the scope of the Agency’s remit. In that context, it is for the TSOs and the selected booking platform to define their business relationship.

- 2) What is meant with "legal attorney" of the company next to the legal representative, who needs to sign e.g. the declaration of fulfilment of the catalogue on legal requirements? Is it necessarily an external lawyer, or would it be sufficient if an internal lawyer, also admitted to the bar and bound to the same legal professional obligations, but exclusively for the company, would sign in addition? Which evidence is necessary to prove to be a legal attorney? Why is it necessary that a legal attorney signs next to the legal representative of the company?

Does every row of the catalogue needs to be signed or is the signature at the end sufficient (the two asterisks in each row in the signature column indicate that each row needs to be signed, whereas the signature at the end of the document would cover all declarations)?

Answer

- *The signature of the legal representative of the operator submitting the offer is deemed sufficient.*
- *As the template on legal requirements reports, each row of the catalogue, corresponding to a different legal requirement, shall bring the signature of the legal representative of the operator submitting the offer. A final signature of the Declaration on Honour shall also be included.*

3) Questions on the case study

- How will the points be awarded for each criterion of the case study? Is there any scale description from 0 to 20 per criterion?

Answer: *Points are awarded based on an assessment of the Case Study submitted by the candidate platform against the criteria as indicated in the Open Call.*

- Case study task B – CR1 - what is meant with "any possible operation" on the platform? Processes related to transactions only (as referred to in the last sentence) or any possible activity that can be performed on the platform?

Answer: *"any possible operation" shall be understood as any possible activity which can be performed on the platform in the scope of providing services relevant for the 2 (two) interconnection points (called IP1 and IP2).*

- Case study task B – CR1 - We understand the task with a focus on usability for shipper users (and not TSO users). Is this correct?

Answer: *Where not specified, as from the case of usability, the audience which shall be considered is the widest possible.*

- Case study task B – CR1 - Does the time for the completion of any possible operation of 3 minutes refer to an average time or is it considered for any maximum business scenario, including the maximum load?

Answer: *It shall be understood as the time of completion of any possible operation in less than 3 (three) minutes for any maximum business scenario, including the maximum load. If it is not possible to achieve under a specific scenario, you may provide explanations on the reason(s) why this is not possible.*

- Case study task B – CR2 - The task is to decrease the response time "from the time of opening the issue, until the operator is informed that the platform received the request and started to work on it". It is rather unclear what response time should be considered here:
 - (a) from the time of opening the issue, until the operator is informed that the issue has been received and is taken care of
 - (b) from the time of opening the issue, until the operator receives the first solution answer
 - (c) from the time of opening the issue, until the ticket is solved and closed

[...] Can you please clarify? It is also unclear, what is meant with „opening the issue“? Is it the first contact of a user to the platform or the opening of a ticket by the platform operator?

Answer: “from the time of opening the issue, until the operator is informed that the platform received the request and started to work on it” shall be understood as “from the time of opening the issue, until the operator receives the first solution answer”. For opening the issue, it shall be understood as “the opening of a ticket by the platform operator”.

- Case study task B – CR2 - Can you confirm that shippers are also to be considered as “operators” and thus considered in this task?

Answer: If a network user is a potential user of the platform, s/he can be considered equivalent to the “operators”.

- Case study task B – CR2 - Can you clarify what the exact task is here?
 - (a) decrease the response time by 20% or
 - (b) increase the number of channels.

Answer: The focus shall be on increasing the number of channels of the helpdesk with the aim to reduce the response time and to shorten the time to the solution. Both elements are part of the task: first, how will an additional channel be added, second, how will the additional channel contribute to reducing the response time in respect to the helpdesk services.

- Case study task B – CR2 - Can you please clarify what is meant by the usage of a specific channel?
 - (a) a channel is used to complete a business operation on the platform (e.g. triple: Web interface – booking capacity – Graphical user interface)? or
 - (b) a channel is used to get in contact with the helpdesk ?
 - In case option (a) is the answer, what is the correlation between increasing the number of access channels and the helpdesk?

Answer: The channel is a way to contact the helpdesk and to facilitate the flow of communication and information.

- Case study task B – CR3 - The Edig@s format does not cover all the processes of the platform. Is it intended in this task that all the existing interfaces between the platform and the TSOs are implemented in the Edig@s format?
 - If yes, how to proceed with the uncovered processes?
 - If no, what processes are supposed to be covered in this task?

Answer: Yes, it has to be intended as “all the existing interfaces between the platform and the TSOs are implemented in the Edig@s format”. In case the processes are not vital to the correct functioning of the operations of the Gas Capacity Booking Platform, then they shall be excluded from the scope of the task.

16 May 2019

Question

- 1) Is it permitted to contact the relevant TSOs after the bid submission deadline (but before the result announcement) in order to do some preparatory works? If I remember correctly, this kind of activity was permitted in the previous selection round even during the bid submission phase (see the attached email).

Answer: The capacity booking platform operators may contact the concerned TSOs. Such communication occurs outside the Agency's administrative proceeding.

2) *How should we interpret point 4.1. compared to the previous selection round, where practically only the additional costs had to be stated by incumbent platform operators? Is this method the same, or "regardless of any existing service contracts between the operator and any of the TSOs concerned" means that all platform operators have to provide fees as if TSOs were newly contracting these services?*

Answer: The yearly fee must be stated in accordance with point 4.1 of the Open Call, and hence "[...] regardless of any existing service contracts between the operator and any of the TSOs concerned". In other words, existing contracts are to be treated as irrelevant for the purpose of the proposing a yearly fee:

- i) *for each of the two IP;*
- ii) *for each side of the border;*
- iii) *for all the services.*

Please consider that this is a completely new procedure, so conclusions should not be drawn from past proceedings.

14 May 2019

Question

We have a question regarding the Open Call point 2. (Selection Procedure), page 2 of 7, last paragraph. The text says:

*"To verify compliance with EU legal requirements and the national requirements, the operator should fill in, and **include the verification of their claims**, in the provided "Template on legal requirements (including a declaration on honour on their fulfilment)", in Annex 3, to be signed by the legal attorney of the company and its legal representative. **Upon request** of the Agency, the operators shall submit the necessary evidence to prove the fulfilment of the requirements as indicated in the declaration on honour on their fulfilment."*

It is unclear from the text, whether verification means the signature by the required representatives of the company, or it means that further supportive evidence of the requirements must be provided with the Bid (e.g. like in the previous call) or only upon request of the Agency? See the two statements marked with bold and highlighted.

Answer: the bid must include the signed declaration on honour as specified in the letter requesting offers. Any supporting evidence must be kept available, but must not be submitted at the time of the bid. It must only be submitted upon request by the Agency.

8 May 2019

Question

As far as we understand, the IT questionnaire (Annex 3) is developed in a way that the points are awarded for an 'yes' answer. However, we are not sure whether it is true for the following questions:

a) *in the section Access Management, q. a3, a4;*

b) *in the section Change Management, q. a55.*

Could you please inform us how the above mentioned questions will be evaluated and whether points will be awarded for 'yes' or 'no' answer.

Answer: The updated questionnaire in the letter requesting offers clarifies the query, in particular for q55 (the only question), where the *no* answer is scored with positive points.