

**Invitation to tender no. ACER/OP/ADMIN/14/2012**

**IT infrastructure hosting services**

**Answers to Questions from 24 to 32**

**Question no. 24:**

I we understood correctly, we can submit the tender in Slovenian language. Is this true?

**Answer no. 24:**

In section 15, page 14 of Annex\_I\_Tender specifications, it is stated that "Tenders may be drafted in any of the official languages of the European Union. The working language of the Agency is English." therefore you can submit the tender in the Slovenian language

**Question no. 25:**

Form: Annex 1 4. Do we need the form from every bank, that we have open with them an account or is enough from just one?

**Answer no. 25:**

You do not need to fill the form with every account that you have open with a bank, what is needed is a valid bank account that could be used for contractual payments from us .

**Question no. 26:**

Order of Precedence: Is it correct that the Special Conditions shall take precedence over those in the other parts of the Contract?

**Answer no. 26:**

This is correct.

**Question no. 27:**

Order of Precedence: According to the Order of Precedence the Service Level Agreement shall take precedence over those in the Contract. However, the Service Level Agreements are part of the Contract. Can you please specify over which document the Service Level Agreements take precedence?

**Answer no. 27:**

The wording of the sentence was incomplete and, in its current wording, devoid of any meaning. The phrase has to be understood as meaning "The Terms set out in the Service Level Agreement (Annex IV) shall take precedence over those in the Contractor's Tender (Annex III)'.

**Question no. 28:**

Order of Precedence: It is our understanding that the Specific Contracts shall describe the project specific scope of services and conditions. Is it correct that if project specific requirements deviating from the framework service contract take precedence over the conditions of the framework service contract?

**Answer no. 28:**

Project specific requirements can be laid down in the Specific Contracts. However, in case of conflict, the terms of the Framework Service Contract shall take precedence over those in the specific contracts.

Further, please note that specific contracts based on framework contracts can only be awarded in accordance with the terms of the framework contract. No substantial changes can be made to the terms laid down in the framework contract.

**Question no. 29:**

Contract Details: We assume that clarifications or additional information that is given by the agency during the tender phase or after opening of the tender according to Art 9 of the Invitation to Tender will become part of the contract documents? Will they be incorporated in the draft contract documents that have to be signed or will they be summarized in a separate document which will become prevailing part to Framework Service Contract?

**Answer no. 29:**

All contracts, awarded following a public procurement procedure, must comply with the general principles of transparency, proportionality, equal treatment, non-discrimination and genuine competition. Clarifications or additional information related to the contract could be incorporated into the contract, provided that sufficient time was provided to all tenderers to acquaint themselves with the information concerned and no substantial changes are made to the terms laid down in the draft contract

**Question no. 30:**

Art I.9.2, I.9.3, II.10.4 Framework Service Contract, Art. 10.2 Tender Specifications: In Art.10.2 of the Tender Specifications it is regulated that where Copyrights and other intellectual or industrial property rights belong to a third party there is also the possibility to grant a license to the Agency instead of fully transferring the unconditional rights to the Agency. Is it correct that in case third parties deliverables, results, works or software components are used the license terms of the third party shall apply and prevail as far as the Contractor points out these deliverables, results, works or software components in his offer?

**Answer no. 30:**

This reading is correct.

**Question no. 31:**

Art. II.1.9 Framework Service Contract: In Art.10.2 of the Tender Specifications it is regulated that where Copyrights and other intellectual or industrial property rights belong to a third party there is also the possibility to grant a license to the Agency instead of fully transferring the unconditional rights to the Agency. Is it correct that in case third parties deliverables, results, works or software components are used the license terms of the third party shall apply and prevail as far as the Contractor points out these deliverables, results, works or software components in his offer?

**Answer no. 31:**

This right refers to the possible actions open to the Agency in case it is confronted with a failure of the contractor to perform any of its contractual obligations, including SLA infringements.

In case of a contractor's failure, the Agency could decide to reduce its payments in proportion to the scale of the failure. The precise reduction of payments will have to be assessed on a case-by-case basis, depending on the scale of the failure at hand.

**Question no. 32:**

Art. II.4.2 Framework Service Contract: Is it correct that the undertaking according to this Article has to be obtained from the respective members of staff, board and directors involved in performance of the Contract?

**Answer no. 32:**

Article II.4 of the General Conditions of the Framework Service Contract obliges the Contractor to respect and safeguard the confidential nature of any information that it receives from the Agency in the context of the contract.

From the above, it follows that the Contractor has to request an undertaking from any member of staff, board and director who may, directly or indirectly, have access to the information concerned.

If, due to the above, not all staff of the Contractor is requested to sign the undertaking, the undertaking should be worded in such way that, for the member signing the undertaking, it is made clear that his/her colleagues who have not signed the undertaking shall also be considered third parties to whom the information may not be divulged to.