

# QUESTIONS AND ANSWERS

## INVITATION TO TENDER NO. ACER/OP/DIR/08/2013

### Provision of legal, economic and technical assistance in the field of energy regulation for the Agency for the Cooperation of Energy Regulators

- Lot 1: Legal assistance in the field of energy regulation
- Lot 2: Economic assistance in the field of energy regulation
- Lot 3: Technical assistance in the field of energy regulation

**Contract notice: OJEU S 2013/S 156-271429 of 13/08/2013**

**Last update: 20/09/2013, 2<sup>nd</sup> update**

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#### Question 1:

Reference table page 1 reads: "Balance sheets or extracts from balance sheets for at least the last two (2) years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established."

- a) If this is not a legal obligation for a company to publish balance sheets under the law of the country where it is registered, do you confirm that you do not require this piece of information?
- b) If a company in a consortium does not have two years of balance sheets history (say 18 months activity only with one year completed only), is it acceptable to provide the available information only i.e. less than two years?

#### Answer 1:

- a) According to point 19.2 of the tender specifications, the balance sheets or extracts from balance sheets for at least the last two (2) years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established, shall be presented

In case these documents are not required by the country in which the economic operator is established, it may prove his economic and financial capacity by other means which will be analysed by the contracting authority.

- b) According to point 19.2 of the tender specifications, the balance sheets or extracts from balance sheets for at least the last two (2) years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established, shall be presented. According to section 19 of the tender specifications, an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal. A consortium of economic operators may rely on the capacities of members of the consortium or of other entities.

In case the documents mentioned above are not available, the tenderer may prove his economic and financial capacity by other means which will be analysed by the contracting authority.

**Question 2:**

Reference table page 1 reads: "In case of a consortium, audited accounts for each consortium partner shall be presented." If a company in a consortium does not have sufficient activity history to have audited accounts, say the first year is not completed, does this make it impossible to submit an offer in a consortium? Can any other piece of information be submitted instead?

**Answer 2:**

According to point 19.2 of the tender specifications, a statement of overall turnover concerning the services covered by the Framework Contract during the last two (2) financial years. In case of a consortium, audited accounts for each consortium partner shall be presented. According to section 19 of the tender specifications, an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal. A consortium of economic operators may rely on the capacities of members of the consortium or of other entities.

In case the documents mentioned above are not available, the tenderer may prove his economic and financial capacity by other means which will be analysed by the contracting authority.

**Question 3:**

Page 15 of the Tender Specifications (item 17) states:

- "Tenderers must present in their offers a proposal on the general methodology and the organisation of the work they will apply to the possible tasks under the specific contracts."
- and
- "A general presentation of the different methodologies applied by the tenderer for the main categories of tasks described."

Pages 6-8 of the Tender Specifications (item 4) list six possible tasks under Lot 1, ten possible tasks under Lot 2, and seven possible tasks under Lot 3.

If we bid for Lot 1, are we required to submit six different methodologies which set out how we would approach each of the six possible tasks? Could you please clarify?

**Answer 3:**

In case the tenderer is of the view that the performance of the tasks listed in Section 4.1 of the Tender Specifications requires the application of different methodologies, the tenderer should describe those methodologies. If the tenderer believes that some tasks are similar and can be carried out following the same methodology, he/she can group the tasks and explain which methodology he/she is going to apply to each category. If, on the other hand,

the tenderer believe that the same methodology can be applied to all the tasks, then he/she should describe the one methodology he/she is going to follow.

#### **Question 4:**

We are contemplating submitting a proposal in response to the above ITT. We note from the Specifications (paragraph 10.1), "Any limitation, amendment or denial of any of the terms and conditions set in the draft Framework Contract (Annex III to the invitation to tender) shall lead to automatic exclusion from the procurement procedure."

However, we observe several terms in the draft contract, outlined below, that are potentially contradictory. Please could you clarify how they are intended to apply. In particular, could you confirm, i) where rights are transferred or licensed, whether they are to the Union or the Agency, and ii) whether pre-existing rights are to be acquired by, or are merely licensed to the Agency (or the Union as the case may be).

Article I.8.1 - contemplates that the Agency will obtain the results.

Article I.8.2 - regarding pre-existing rights and transmissions of rights - states that they will be transferred to the Union.

Article II.10.2 states that Results will be owned by the client and they have free use of it. The clause also implies that the Agency shall own also the pre-existing rights.

Article II.10.3 states that the Agency shall not acquire ownership of pre-existing rights, and they will be licensed to the client.

We would suggest that, generally, relinquishment of IP rights by a contractor is more difficult to accept than a licensing arrangement. It will lead, in the long-run, to higher costs for the Agency/Union as the contractor potentially loses the ability to resell elements of the work in a different, and often specific, context. As, we imagine, it would generally be the case that the Agency would wish material produced under this framework contract to be transparent (noting the potential exception of legal advice obtained under Lot 1), we do not see why the transfer of rights is necessary over a licensing arrangement which allows the Agency to publish the work material.

We would therefore urge, in the interpretation of the possible contradictions, that Article II.10.3 is allowed to prevail over any contradictory Articles, and that a form of words is inserted to that intent (perhaps, "Notwithstanding any other Article in the agreement, ...") Moreover, we would urge that all the IP related terms are redrafted to adopt the principle that IP will be licensed rather than transferred.

As well as providing the clarity on the particular concerns mentioned above, I would be grateful if you could provide some clarity on the reasoning behind your need for contractors to fully relinquish IP rights, and would be happy to receive any reflections you might have on the topic generally.

#### **Answer 4:**

The draft contract makes a distinction between pre-existing rights and new intellectual property rights that are created as a direct result of the work performed on behalf of and for the Agency.

- The ownership of pre-existing rights held by the contractor does not need to be transferred. As described in Article II.10.3, a license should be given to the Agency for those pre-existing rights that are relevant to and required for the work assigned by the Agency to the consultant.

Article 1.8.2 needs to be read in light of Article II.10.3. It does not require a transfer of ownership of pre-existing rights to the Agency, but only aims to prevent the situation whereby pre-existing rights would be used as an obstacle for the Agency to use its intellectual property rights over the new work.

- As regards the new works, which are created by the contractor for the Agency following the conclusion of the specific contract(s), Article II.10.2 foresees an assignment of the economic rights of the works. The Agency hereby becomes the owner of the work (e.g., the study, the results of a particular analysis) that was requested by the Agency, enabling the Agency to make use of all possible intellectual property rights related to it although it will acknowledge the consultant as author of the document. By doing so, the Agency wishes to retain control over the results of the works.

However, the Agency agrees that in general, studies performed for the Agency are likely to be published thereafter on the Agency's website. In this respect, the Agency website contains a general license to reproduce and/or to distribute the information and documents made available on the Agency's webpages, "totally or in part, irrespective of the means and/or the formats used, for non-commercial and commercial purposes, provided that the Agency is always acknowledged as the source of the material". In these cases, the consultant would be able to use elements or the entirety of the work it has performed for the Agency also for other contractors.

The provisions on the intellectual property rights are standard clauses in EU public procurement contracts, and are adopted by analogy by the Agency. In this respect, please note that the use of the word "Union" in Article I.8.2 concerns an editorial error, and is meant to be the "Agency".

#### **Question 5:**

Should the tenderer submit a bid together with another entity, is it mandatory for both organizations to submit the balance sheets or extracts? Or is it mandatory only for the tenderer?

#### **Answer 5:**

According to section 19, Annex I Tender specifications, where the tender is submitted by a consortium or group of service-providers, the economic and financial capacity must be provided at the level of each economic operator forming part of the consortium or group; therefore each member of the consortium or group of service-providers must provide balance sheets or extracts from balance sheets for at least the last two (2) years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established. In case of a consortium, audited accounts for each consortium partner shall be presented.

Where the tender is submitted by a tenderer who intends to subcontract part of the tasks or entrust them to another economic operator, the subcontractors or economic operators involved must demonstrate upon the request of the Agency that they have the requisite economic, financial, technical and professional capacity.

Evidences of financial and economic capacity listed in point 19.2 of Annex I of Tender specifications are mandatory for the tenderer, all members of the consortium and all members of the group of service-providers.

**Question 6:**

With regard to the second requirement (overall turnover concerning the services..), the grouping will not have the form of a consortium: What documentation can be provided instead of audited accounts?

**Answer 6:**

According to section 19, Annex I Tender specifications, where the tender is submitted by a consortium or group of service-providers, the economic and financial capacity must be provided at the level of each economic operator forming part of the consortium or group; therefore each member of the consortium or group of service-providers must provide a statement of the annual turnover for the last two (2) financial years for which the accounts have been closed. In case of a consortium, the annual turnover for each of the partners shall be presented.

Where the tender is submitted by a tenderer who intends to subcontract part of the tasks or entrust them to another economic operator, the subcontractors or economic operators involved must demonstrate upon the request of the Agency that they have the requisite economic, financial, technical and professional capacity.

Evidences of financial and economic capacity listed in point 19.2 of Annex I of Tender specifications are mandatory for the tenderer, all members of the consortium and all members of the group of service-providers. In case the documents mentioned above are not available, the tenderer may prove his economic and financial capacity by other means which will be analysed by the contracting authority.

**Question 7:**

A company that is legally registered in Republic of Serbia is interested to participate in the consortium. Its majority owners are XXX of Republic of Serbia, Montenegro and FYR of Macedonia. Pursuant to the Chapter 6 of the Tender specification, they appear ineligible to be partners in the consortium. However, are they eligible to participate as subcontractors?

**Answer 7:**

The second paragraph of section 6, Annex I Tender specifications, should read:

“Pursuant to Article 119 of the Financial Regulation, the participation is also open to all natural and legal persons from non-EU countries that have a ratified agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. The Agency can therefore accept offers from and sign contracts with tenderers from 35 countries, namely: the 28 EU Member States, 3 European Economic Area (EEA) Countries (Lichtenstein, Norway, Iceland) and 4 Stabilisation and Associations Agreements (SAA) Countries (the Former Yugoslav Republic of Macedonia, Albania, Montenegro and Serbia). The Agency’s procurement procedures are not open to tenderers from countries covered by the Agreement on Government Procurement (GPA).”

Therefore the participation in the Agency’s procurement procedure is open to natural and legal persons from Serbia. In addition, all natural and legal persons from the Former Yugoslav Republic of Macedonia, Montenegro and Serbia are eligible to be partners in the consortium. They are also eligible to participate as subcontractors.

**Question 8:**

Does the ownership of a tenderer by a TSO constitute an ineligibility condition?

**Answer 8:**

The tenderer has to comply with the requirements stated in Annex I.C (Declaration of honour on exclusion criteria and absence of conflict of interest) of the tender specifications; more specifically but not limited to, the tenderer should declare that he has no conflict of interest in connection with the contract (a conflict of interest could arise in particular as a result of economic interests, political or national affinity, family, emotional life or any other shared interest). In case there might be a potential conflict of interest the tenderer should declare this when submitting the tender. This will be analysed by the contracting authority.

**Question 9:**

ACER has recently launched a tender for external assistance (No: ACER/OP/DIR/08/2013). The consulting company would like, as a member of a consortium, put together a bid for this tender. Can the consulting company include a CV of an alternate member in ACER's Board of Appeal? Is an alternate membership in ACER's Board of Appeal a conflict with such a bid?

**Answer 9:**

The tenderer has to comply with the requirements stated in Annex I.C (Declaration of honour on exclusion criteria and absence of conflict of interest) of the tender specifications; more specifically but not limited to, the tenderer should declare that he has no conflict of interest in connection with the contract (a conflict of interest could arise in particular as a result of economic interests, political or national affinity, family, emotional life or any other shared interest). In case there might be a potential conflict of interest the tenderer should declare this when submitting the tender. This will be analysed by the contracting authority.

**Question 10:**

With regard to the three additional documents requested in case of a tender submitted by a grouping, are there models/layout we can follow?

**Answer 10:**

There are no models/layouts foreseen for the additional documents which need to be provided in case a tender is submitted by a consortium or grouping of service providers.

**Question 11:**

In case of a tender submitted by a grouping, are all participants to the tender required to present the document listed in point A?

**Answer 11:**

Yes. Section 18 of the tender specifications, page 18, states "*In the case of tenders submitted by consortia or groups of service providers, each of the economic operators involved in the tender must provide a dated and signed declaration on honour, based on the*

*model provided in Annex I.C to these tender specifications, confirming that none of the exclusion criteria for participation in or award of the Contract apply to them.”*

**Question 12:**

“A declaration of any contractual relations during the last three (3) years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency, to be evaluated under this invitation to tender and a statement that the tenderer shall during the validity period of the Framework Contract(s), declare any changes in their situation regarding the contractual relations referred to in this paragraph.”

- a) For what purposes does ACER seek the information on historic contractual arrangements with stakeholders involved in ACER's work?
- b) Can you please clarify that the scope of ‘any stakeholders and companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency, to be evaluated under this invitation to tender’ refers to stakeholders directly involved in ACER's work; and that this include national regulators and European industry associations (such as ENTSOG, ENTSO-E, Eurelectric etc) or any companies that have provided services relative to the tender? Please clarify that it does not include any energy company in the EU or indeed beyond with whom bidders have had a contractual relationship over the last 3 years. Energy companies are generally indirectly rather than directly involved in ACER's work. While some representatives of energy companies may attend meetings/ respond to consultations on ACER's programmes or legislative activities, this doesn't necessarily constitute a deep level of involvement and where it does (e.g. such as the development of network codes) these representatives are acting on behalf of a European association. It would be difficult for contractors to identify, which companies representatives may be considered ‘directly involved’ so it would essentially require declaring any contract over the last 3 years. Clearly, any conflicts with particular work offered by ACER would be picked up in future conflict checks.
- c) If the above interpretation is incorrect, then please clarify how to interpret the requirement set out above.

**Answer 12:**

- a) As specified in point 19.3 of the tender specifications the tenderers have to declare any contractual relations in order for the contracting authority to assess whether there is any conflict of interest. Since the services, for each lot, will be a subject of a multiple Framework Contract with re-opening of competition, this will not be exclusion criteria as such at the time of awarding a framework contract. Nevertheless, according to point 21.3 of the tender specifications, once the framework contracts are awarded, the specific contracts will not be awarded to contractors who, during the procurement procedure for a specific contract are subject to a conflict of interest and/or are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition for participation in the procurement procedure, or fail to supply this information.
- b) The scope of ‘any stakeholders and companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency, to be evaluated under this invitation to tender’ refers to stakeholders directly involved in the Agency's work and includes National Regulatory Authorities, European industry

associations (such as ENTSOG, ENTSO-E, Eurelectric etc.). It includes energy companies either in the EU or beyond with whom the tenderers have had a contractual relationship over the last 3 years but only if the tenderer's contractual relationship with the energy company concerned related to the energy company's participation in the programmes, projects and legislative activities, conducted or subcontracted by the Agency (such as the development of network codes).

**Question 13:**

According to INVITATION TO TENDER , point 2. „If you are interested in this contract, you should submit a tender in one original and two copies in English language“ I would like to ask you the following question: Is it possible to provide certified copies of documents instead of original ?“

**Answer 13:**

Point 2 of the invitation to tender should read: „If you are interested in this contract, you should submit a tender in one original and two copies in in one of the official languages of the European Union.“

The tenderers should submit a tender in one original and two copies. The documents relating to the selection criteria listed in section 19 of the tender specifications (i.e. certificate of enrolment on the professional or trade register, statements from the bank indicating good financial viability or evidence of professional risk insurance covers, balance sheets, etc.) may be copies; the tenderers do not need to provide originals or certified copies of these documents.

**Question 14:**

Between the proofs of technical and professional experience it is required: “A declaration of any contractual relations during the last three (3) years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency, to be evaluated under this invitation to tender and a statement that the tenderer shall during the validity period of the Framework Contract(s), declare any changes in their situation regarding the contractual relations referred to in this paragraph”.

Could you please specify better how to select the contractual relations to be declared? Should we restrict the declaration to the contractual relations that specifically regard one of the agency's activities (such as for example network code implementation)?

**Answer 14:**

Please see answer no. 12.

**Question 15:**

With reference to the above tender for Lot 1 (Legal), I would be grateful if you could provide clarification on the following points.

- a) Evaluation clarification  
The evaluation section states:  
“For those tenders including subcontracting, the tenderer must submit:



- A document stating clearly the identity, roles, activities and responsibilities of the subcontractor(s) and specifying the volume/proportion of the tasks of (each of) the subcontractor(s), as well as the description of the quality control measures he intends to apply on the tasks to be carried out by (each of) the subcontractor(s).
- A letter of intent by (each of) the subcontractor(s) stating his/her unambiguous undertaking to collaborate with the tenderer if he wins the contract and the extent of the resources that it will put at the tenderer's disposal for the performance of the contract.
- In the absence of this, a document stating that the tenderer does not intend to subcontract and that he will inform the Agency about any change in this situation. The Agency reserves the right to judge if such change would be acceptable".

As such, could you clarify, "if the Agency asks for local law advice from one of the EU 28 that we don't represent then we would need to sub-contract to a local lawyer for that purpose, but that otherwise we do not propose to sub-contract. In such a situation can we simply indicate who we would use in such a jurisdiction without procuring a letter of intent?".

b) Examples of work to be provided

With reference to the C.1. Technical capacity for Lot 1 – questions 2 and question 4 – is there any restriction on tenderers using examples of work highlights in response to more than one question?

**Answer 15:**

- a) In case the tenderer does not intend to subcontract at the time of submitting the offer, the tenderer has to provide a statement that he/she does not intend to subcontract and that he/she will inform the Agency about any change in this situation. According to point 10.4 of the tender specifications subcontracting during the performance of the framework contract is permitted only with the prior written consent of the Agency.
- b) There is no restriction on tenderers using examples of work highlights in response to more than one question.

**Question 16:**

With regard to the documents to be provided by the members of a grouping, besides the declaration of honour do members (besides the tenderer) have to provide also the documents listed under the section A. Professional capacity?

**Answer 16:**

Where the tender is submitted by a consortium or group of service-providers, the economic and financial capacity must be ascertained at the level of each economic operator forming part of the consortium or group. Technical and professional capacity may be ascertained at consortium or group level, or at the level of each member of the consortium or group.

**Question 17:**

Can you confirm into which envelope(s) ("Financial" or "Technical") the following documents / information should be inserted:

- Cover Letter
- Reference Table

- Signed Declaration of honour on exclusion criteria and absence of conflict of interest (ANNEX 1.C)
- Identification of the Tenderer (ANNEX 1.B)
- Financial Identification (ANNEX 1.D)
- Legal Entity (ANNEX 1.E)
- Other documents relating to 'Selection Criteria' listed in section 19 of the Tender Specifications

**Answer 17:**

The envelope marked "Technical" should include the following documents: cover letter, reference table, signed declaration of honour on exclusion criteria and absence of conflict of interest (Annex 1.C), all the documents relating to the selection criteria listed in section 19 of the tender specifications (including identification of the tenderer (Annex 1.B), financial identification (Annex 1.D) and legal entity (Annex 1.E)) and the technical tender, as described in section 17 of the tender specifications.

The envelope marked "Financial" should include the financial offer based on the model in Annex II to the invitation to tender

**Question 18:**

Can you please confirm what evidence should be provided for "Certificate of enrolment on the professional or trade register in accordance with the legislation of the Member State in which the tenderer is established" – outlined in section 19.1, Page 19 of the Tender Specifications? Our company does not operate in a regulated industry, and therefore we do not need to enrol on a trade register in order to operate.

**Answer 18:**

In case the "Certificate of enrolment on the professional or trade register in accordance with the legislation of the Member State in which the tenderer is established" is not required by the Member State where the tenderer is registered, the tenderer shall provide the following evidence: a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the value added tax (VAT) register; depending on the legislation of the Member State in question.

**Question 19:**

Can you please confirm whether a receipt from our chosen courier company which is timed and dated when they collect the Tender from our office in XXX is acceptable as proof of submission by the deadline (provided the time and date stamp is before 16:00 hours Ljubljana time on 30.09.2013)?

**Answer 19:**

Yes. Please note that the tender submitted by courier has to have the evidence of the date of dispatch.

**Question 20:**

Could you clarify what will be acceptable forms for the evidence required for the following requirements:

- a) "Evidence of employing directly or being readily capable of constituting a team of experts capable of carrying out in a professional and timely manner the tasks requested under the Framework Contract(s)."
- b) "Evidence that the tenderers have successfully completed at least two (2) projects in the field(s) related to the lot(s) concerned in the past three (3) years representing together a total budget of at least EUR 150,000."

**Answer 20:**

The tenderers have to provide evidences for both points mentioned above.

**Question 21:**

Notwithstanding the answers you have already provided to question 13, could you clarify precisely which documents need to be originals?

**Answer 21:**

All documents constituting a tender should be submitted in one original and two copies except certain documents relating to the selection criteria listed in section 19 of the tender specifications (i.e. certificate of enrolment on the professional or trade register, statements from the bank indicating good financial viability or evidence of professional risk insurance covers, balance sheets, etc.) which may be copies.

**Question 22:**

Regarding the answer already given to question 13, could you indicate whether the evidence needs to be in one, and one only, of the official EU languages, or whether it is acceptable to have a mix of official languages in the proposal? (We are intending to use several subcontractors with different primary languages).

**Answer 22:**

Point 2 of the invitation to tender should read: „If you are interested in this contract, you should submit a tender in one original and two copies in in one of the official languages of the European Union.” It is acceptable to provide evidences in more than one official languages of the EU.

**Question 23:**

Could you clarify that the "Certificate of enrolment on the professional or trade register in accordance with the legislation of the Member State in which the tenderer is established" is, for example, the certificate of XXX registered with XXX?

**Answer 23:**

Please see answer no. 18.

**Question 24:**

The Tender Specifications (page 20 for Lot 1) requires us to provide: "A declaration of any contractual relations during the last three (3) years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency, to be evaluated under this invitation to tender and a statement that the tenderer shall during the validity period of the Framework Contract(s), declare any changes in their situation regarding the contractual relations referred to in this paragraph." Could you please explain what this means?

**Answer 24:**

Please see answer no. 12.

**Question 25:**

With regards to the tender procedure indicated in the title, the tender documentation indicates within the inputs needed as proof of technical and professional capacity, the provision of a *declaration of any contractual relations during the last three years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Agency, to be evaluated under the tender.* For the purpose of providing this specific declaration, we would like to kindly ask if possible to make available the list of the respective programmes, projects and legislative activities which are envisaged to be evaluated under the current call for tender.

**Answer 25:**

Please see answer no. 12.

**Question 26:**

According to INVITATION TO TENDER , point 3: „The inner envelope must also contain two sealed envelopes, one containing the technical tender and the other the financial offer. Each of these envelopes must clearly indicate the content („Technical“ and „Financial“). I would like to ask you the following question: if „Technical“ envelope contains just technical tender (methodology) and „Financial“ envelope contains just financial offer (Annex II), within which envelope should we enclose documents related to exclusion and selection criteria ( reference table, other annexes, balance sheets, statements...)?

**Answer 26:**

Please see answer no. 17.

**Question 27:**

Please can you confirm whether you require the "A", "B", "C" and "D" parts of the tenderer's offer described in Section 16 of the Tender Specifications to be submitted separately.

**Answer 27:**

Parts "A", "B" and "C" should be placed in an envelope marked "Technical" and part "D" should be placed in an envelope marked "Financial". Please see also answer no. 17.

**Question 28:**

Regarding section 19.3 of the tender specification and referring to question and answer number 12: should the contractual relations to be declared also include projects where ACER was involved (for example in steering committees or in stakeholder interviews) but which were not initiated by ACER?

**Answer 28:**

The requirement to provide an overview of the contractual relations, as mentioned in point 19.3 of the tender specification, and as discussed in question and answer number 12, only relates to programmes, projects and/or legislative activities which were conducted or subcontracted by the Agency. Its scope does not cover cases where the Agency is involved in e.g. a particular workshop or consultation organised by the European Commission; since such activity was not conducted by the Agency, the tenderer does not need to declare the contractual relations related to such an event.

**Question 29:**

We have a question regarding the minimum level of qualification of the proposed experts for LOT 2. For A-level and B-level experts it is requested that these experts “completed university studies of at least three years’ duration attested by a diploma relevant to the scope of the services requested (i.e. economics or sciences)”. Could you please specify what type of studies “sciences” refer to?

**Answer 29:**

Studies “sciences” refer to mathematics, physics, chemistry, computer science, engineering, and similar formal, natural or applied sciences.

**Question 30:**

Can you explain the extent to which the tasks set out in section 4.3 of the “tender specification” relate to EU network code work as opposed to other areas of work? The first, third and seventh tasks seem primarily code related. However a review of asset management investment costs to develop a cross border transmission line could also be relevant one or more these tasks.

For lot 3 tasks it would be helpful if you could provide examples of typical “code related” and other more “engineering related” work.

**Answer 30:**

The tasks in section 4.3 of the tender specifications (Lot 3) more or less relate as follows:

- Point 1 relates more to general assessment and not only to code related work,
- Points 4 to 7 are code related; more specifically:
  - point 4 relates primarily to the monitoring of the network codes, those that are already in force, namely the scope of work mainly relate, but is not limited, to technical assistance in the evaluation of stakeholders’ proposals aiming at improving the rules on system operation and grid connection as well as in the preparation of the impact analysis on the proposed amendments to the network codes. For example, the relevant network codes in electricity are related to the areas of system operation and grid connection,

- point 7 relates to the preparation on the framework guidelines, a document preceding the network codes development.
- Points 2, 3, 5 and 6 relate to cost-benefit analyses, including assessments of existing and planned infrastructure in area of analysis, technical features of proposed infrastructure and other pertinent parameters allowing for the correct assessment of costs and benefits, as well as analyses of the progress of the implementation of projects of common interest, risk analyses, implementation of infrastructure investment and project analyses, benchmarking transmission planning national practices and transmission costs assessments.

Below are links to some examples to code related support in the field of gas:

- [http://www.acer.europa.eu/Gas/Framework%20guidelines\\_and\\_network%20codes/Documents/Impact%20assessment%20of%20policy%20options%20on%20incremental%20capacity%20for%20EU%20gas%20transmission.pdf](http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/Impact%20assessment%20of%20policy%20options%20on%20incremental%20capacity%20for%20EU%20gas%20transmission.pdf)
- [http://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Opinions/Opinions/ACER%20Reasoned%20Opinion%2004-2012%20Consultants%20Study%20Final%20Report.pdf](http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Reasoned%20Opinion%2004-2012%20Consultants%20Study%20Final%20Report.pdf)
- [http://www.acer.europa.eu/Media/Events/Public%20Workshop%20on%20FG%20on%20Harmonised%20Transmission%20Tariff%20Structures%20for%20Gas/Document%20Library/1/06%2008%202012\\_Brattle%20Draft%20FG%20tariffs%20IA%20report%20-%20Tables%20included%20v2.pdf](http://www.acer.europa.eu/Media/Events/Public%20Workshop%20on%20FG%20on%20Harmonised%20Transmission%20Tariff%20Structures%20for%20Gas/Document%20Library/1/06%2008%202012_Brattle%20Draft%20FG%20tariffs%20IA%20report%20-%20Tables%20included%20v2.pdf)

### **Question 31:**

Point 3 of the Invitation to Tender “Tenderers shall submit tenders by letter”: “The inner envelope must contain two sealed envelopes, one containing the technical tender and the other the financial offer.” We understand that all declaration and Annexes requested in the Reference Table Annex I.A should be submitted in a sealed envelope along with the technical tender. Please confirm.

### **Answer 31:**

Yes. Please see also answer no. 17.