

## Questions and Answers

### Consultancy Services for ECB Procurements

17510/A/ACP/2011

QUESTIONS RELATING TO THE FRAMEWORK AGREEMENT		ANSWERS RELATING TO THE FRAMEWORK AGREEMENT
1	Regarding Section 1.1: What is the definition of “Works” and “Services” in legal terms, i.e. “Werk” and “Dienstleistung”?	Yes
2	Regarding section 1.1.: Do you intend to award a “Werkvertrag” or “Dienstleistungsvertrag” or a connection of both for the respective Orders?	Depending on the particular procurement need, both could be the case.
3	Regarding Section 1.1: Please define the meaning of “Works” and “Services” especially in the context of the service description mentioned in Annex1, i.e. what kind of services do you define as “Works” and what as “Services”?	Again, this depends on the actual procurement need. The ECB will distinguish between the contract types in accordance with the practice under German contract law.
4	Regarding Section 1.3.: In case of situations described in this section: Do we have to execute a change request? Will that change request have to be agreed between both of us?	No 1.3 only reflects minor changes which the ECB is allowed to ask for unilaterally.
5	Regarding Section 2.3: In case of us being a contracted supplier in an ECB framework agreement: Do we have to take part in all mini competitions or is the participation in the mini competitions optional?	The ECB is signing a number of framework contracts following a tender procedure. We do expect companies which are awarded a contract to take part in all mini-competitions. If there are specific services that you plan not to take part in if awarded a contract, please indicate them in your offer in response to the ongoing tender procedure.
6	Regarding Section 2.4.: Please specify “any other relevant terms and conditions”.	This cannot be specified yet. It is not the intention to change the terms and conditions of the FA. Rather business needs might require minor adjustments in the order procedure.

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7	Regarding Section 3.1. Do you mean with “issuance of the Order” mentioned in section 3.1 the Order countersigned by us according to section 2.4 and 2.5?	That is the specific contract to be signed with the winners of each mini-competition launched by the ECB.
8	Regarding Section 4.3.: Please define “substantial defect”.	Substantial defect is comparable with the term “ <i>wesentliche Mängel</i> ” under German contract law.
9	Regarding Section 6.1.: Is the non-replacement of staff subject for negotiation? We would like to keep the flexibility as high as possible since we cannot reserve all staff deployed for an Order for a certain time period. The replacement would be done on same functional level. No replacement of the key personnel in a running project except the mentioned reasons like e.g. sickness of employee or termination of the employment contract.	No, this is not subject to negotiation. By introducing this clause, the ECB wants to ensure continuity of the staff involved. Changes are not excluded, but is subject to the ECB’s approval which will not be unreasonably withhold.
10	Regarding Section 7.9.: Can this be negotiated on a case-by-case basis in view to the specific duration of the respective Order? For example, we cannot wait for payment if a project under an Order is scheduled for a timeline of 6 months. For each project, payment internals/payments on account need to be agreed.	On an exceptional basis, instalments may be agreed upon (“unless otherwise agreed...”). The formal requirements, e.g. with regard to the ECB’s accounting division cannot be changed.
11	Regarding Section 7.10.: is the reference to 7.10 in section 7.10 correct?	No, this is a typo. The reference should be to 7.9.
12	Regarding Section 8.1, 8.2.: This provision widely allowing you the disclosure and use of our work products to/by third parties exposes us to non-assessable third party liability risks.  It is customary in our profession to grant usage rights narrowed by certain restrictions and obligations giving us the necessary liability protections. May we propose such a provision customary in our profession?	Due to respective ECB policies and the interaction of the NCBs in the ESCB needs the flexibility which is foreseen in the respective section. The Contractor’s interests are sufficiently reflected in 8.2. Changes are not possible.

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<b>13</b>	Regarding Section 8.2.: is the reference to 6.2 in section 8.2 correct?	There is indeed a mistake in article 8.2. The right reference should have been article 8.1 and not article 6.1.
<b>14</b>	Regarding Section 9.3: May we propose a provision allowing us to retain copies of the Confidential Information due to internal compliance policies relating to working papers or security procedures relating to the automatic backup storage of electronic data, provided that the confidentiality obligations remain unaffected?	Such amendments need to be approved on an individual basis by the ECB.
<b>15</b>	Regarding Section 11.9.: Does this provision mean, that any extraordinary termination right provided by law one of us might have remains unaffected by Section 11?	Mandatory termination rights remain unaffected by the contractual ones contained in Section 11.
<b>16</b>	Regarding Section 12: May we propose a limitation of liability customary in our profession as consultancy firm, inter alia a limitation to an amount of EUR 5.000.000 for claims of compensatory damages of any kind for an individual case of damage?	Since this is not a negotiated procurement procedure such a limitation couldn't be considered a minor adjustment. Therefore it cannot be accepted.

QUESTIONS RELATING TO THE TENDER		ANSWERS RELATING TO THE TENDER
1	We need to estimate the volume and complexity of the potential orders resulting from the mini competitions. Could you specify or estimate the potential order volume for all mini competitions per year? Could you specify the complexity of the orders in terms of ECB purchasing volume per year that is subject for potential projects.	We cannot do that estimation at this stage. The demand a direct consequence of the annual procurement plans of the ECB. The 2012 (and beyond) plans are not yet known.
2	What is the smallest size of a mini competition?	An example of small-size mini-competition might be supporting the ECB in conducting a market survey for a particular good or service, in contrast to supporting the ECB from the market survey phase throughout a tender procedure and until the signature of a contract with a selected supplier.
3	Do you have a centralized or decentralized procurement organization?	The ECB has a centre-led procurement organisation.
4	Do you have category manager in charge?	There are no formal category management processes implemented in the ECB, and therefore there are no category managers in place.
5	How many mini competitions are planned within the 4 years?	See please our answer to question 1 (questions related to the tender).
6	We would like to understand the probability for winning the mini competitions since we agree fixed flat rates. How is the procedure of awarding in terms of mini competitions? What are the criteria for awarding an order?	Tenderers are required to, at this stage, provide us with maximum daily rates (section 2.3.a of the ITT). At the level of mini-competition you may consider lower rates depending on the concrete services. Other variables may be number of days, team composition, for instance.  The criteria for awarding orders will be a combination of quality and price criteria in full alignment with the particular circumstances of each mini-competition.

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7	In case we are a selected supplier in your supplier pool and contracted by frame contract: Do we <u>have to</u> take part in all “mini-competitions” within the 4 years contract duration”? (question from questionnaire).	The ECB is signing a number of framework contracts following a tender procedure. We do expect companies which are awarded a contract to take part in all mini-competitions. If there are specific services that, if awarded a contract, you plan not to compete for, please indicate them in your offer in response to the ongoing tender procedure.
8	How many mini competitions are planned within the 4 years? (question from questionnaire).	Same as above. See question and answer 5 questions related to the tender).
9	Do you prefer an offer in Word or PowerPoint format?	No particular preference, please use the one you feel more comfortable with. For us, the content is what matters.
10	How many employees are working for the ECB's Central Procurement Office?	At the moment, we are around 15 staff members in the CPO.
11	Which IT-systems are deployed to support the ECB's procurement function?	At the moment, we use an electronic document and record management system as well as an in-house developed procurement database.
12	What is the estimated yearly FTE for the requested technical support services?	We cannot do that estimation at this stage. The demand for requested technical support services is a direct consequence of the annual procurement plans of the ECB. The 2012 (and beyond) plans are not yet known.
13	What is the allocation of the business case scenarios in annex 4 to the requested types of services (type a, b1 and b2)?	If we understand your question correctly, scenarios 1 and 2 belong to services type a) and scenario 3 to services type b2).
14	Regarding services of type b, what exactly is meant with “specific category management (or alternative strategies)”?	This is described in section 1.2 b) of our document ‘Annex 1 Tender Specifications’.
15	What is the estimated annual procurement volume affecting the requested technical support services (e.g. number of tenders) and how is the procurement structure (e.g. national/international procurements)?	We cannot do a sufficiently accurate estimation at this stage about the annual volume. The demand is a direct consequence of the annual procurement plans of the ECB. The 2012 (and beyond) plans are not

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		yet known. You can have a look at our website ( <a href="http://www.ecb.europa.eu">www.ecb.europa.eu</a> ) to see how many and which type of procedures we have conducted since 1998 in the form of public tenders. In addition, many other procurements not conducted following a public tender have included as well suppliers from many countries around Europe. The vast majority of the procurements for which your support will be requested are of an international nature.
16	Can the scope of all services requested in annex 1, section 1.2 of the tender documents be understood as a limited <i>support function</i> ? Who is responsible for management decisions for e.g. decision over supplier selection criteria ? Who is responsible for the supplier pre-selection? What exactly are the deliverables expected in this context?	The ECB will be responsible for all management decisions including the ones that are indicated in the question. The deliverables expected are outlined in annex 1 – section 1.2 (a) and (b).
17	What would be the level of our involvement in tender evaluation and award procedures? Up to formal, technical and mathematical reviews, analyses and evaluation of tenders or even beyond (i.e. taking award decisions)?	The expected involvement in the tender evaluation and award procedures will be to support the ECB in the conduct of the supplier selection process (e.g. by providing technical input to the specifications of the services tendered out, market research, tender strategies, etc), as outlined in annex 1 section 1.2 (a) but not to take award decisions, which fully belong to the ECB internal decision-making bodies.
18	Who is responsible for providing the necessary capacities and resources for the operational conduction of procurement procedures? Where should operational procurement sub-processes (e.g. opening or evaluation procedures) take place? In the ECB's Central Procurement Office or in our premises?	All procurement procedures are conducted in cooperation between the responsible budget centre (e.g. IT department, HR department, Statistics department) and the Central Procurement Office. In the cases where framework contractors are involved, they will team up with the above two stakeholders (and our legal department for contractual related issues). Resources, thus, come from all those areas.

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		The opening of applications will take place in the ECB premises in Frankfurt. The tasks allocated to framework contractors (e.g. support in the evaluation of offers) may be performed both off-site and on-site (e.g. in meetings with the above internal ECB stakeholders).
19	ITT 5.2 (page 14): “Account and quality management approach” shows a weighting of 50% of the award criteria. Can you please describe in more detail ECB’s expectation in this context?	This is related directly to our requirements about the content of your technical offer as per our section 2.2 (see our third bullet point in this section containing additionally 4 sub-bullet points in page 8 of the ITT document).
20	ITT 4 (page 13) Europass Language Passport. Are the mentioned levels just an orientation to define the minimum requirements or do we need to prepare an individual Europass Language Passport for each resource we propose?	You can consider that as an orientation and indicate the level of languages of the resources you propose that matches the levels in the mentioned passport.
21	Can ECB already give any information regarding which ECB resources (#, FTE, skills) will be available for the activities described in this tender?	A typical situation in services type a) is that the resources dedicated include a procurement expert, a legal expert, and 1-2 technical experts. If the procurement is very complex, there might be some additional technical experts (e.g. an IT project manager, an IT security expert, or more). In addition, a manager will be present for the decision-making at all times. In respect of services type b2), this may include two persons from the central procurement office and several experts and a manager from the area which is benefiting from the category management exercise. In the case of services type b.1) the work will be done directly with the central procurement office, and a maximum of 3 persons would be involved from our side.
22	Annex 1, 1.3 Can ECB provide more information	We don't have that information available at this

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	(spend cube, maturity etc.) about the listed categories?	stage and look forward to joint work with the framework contractors to progress in that area.. Some clues about what the major procurements have been since 1998 at the ECB can be obtained by looking at the section 'for suppliers' in our website ( <a href="http://www.ecb.europa.eu">www.ecb.europa.eu</a> ) - click there in the area marked as 'archive' to see past large procurements and at 'tenders' to see ongoing large procurements.
23	We need to estimate the volume and complexity of the potential orders resulting from the mini competitions. Could you specify the complexity of the orders in terms of number of locations included in potential orders (Location means all ECB procurement sites that could be involved in the procurement projects. More precisely, all ECB sites that have procurement responsibility beside the central procurement department).	All procurements are conducted from the ECB premises in Frankfurt. The ECB is an organization with some 1500 employees and 17 business areas. All of them may buy together with the Central Procurement Office services such as technical consultancy. In addition, some business areas have centralized budget and contract management responsibilities to buy certain categories of goods or services (e.g. all IT goods and services procurements are channelled via the IT department in cooperation with the procurement office, and the same applies for HR-related procurements - HR department-, marketing and communication related procurements - Communication department -, or others.
24	How many strategic and operational employees (functional view) work in your procurement organization?	This question is difficult to answer in the time available as this would mean to add up the resources of the procurement office to the resources on the budget centres working in co-operation with us in all procurements.
25	What is your purchasing volume per year?	This information is confidential at this moment and cannot be disclosed.
26	How many active suppliers do you have? In terms of ABC-Distinction, how many active A Suppliers do	We are not in the position to produce detailed figures on that in the time available. In terms of A

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	you have?	suppliers we could possibly talk about nearly 40.
27	Regarding Section 3.1.: Please specify the reconciliation process between you and us, if any, regarding the timelines/deadlines for the performance of the services under an Order (Reconciliation process means the alignment process and approach between the ECB and us during the offering processes in the respective mini-competitions. More precisely, alignment will be needed if the ECB a) request a certain timeline to place an offer or b) requests a certain timeline for an procurement service and you may propose a different time line due to different reasons like e.g. our experience from other projects).	In the case of a) we will establish deadlines for the submission of offers which are in proportion with the complexity of the request. Typically, between 3 and 4 weeks may be given to framework contractors to submit their offers. In the case of question b) we will most probably request all framework contractors to give their input as to the time needed for delivering the specified services. In some cases, due to internal ECB planning, we may fix some delivery dates. In other cases, we may be ready to negotiate different timelines with the framework contractors where there is flexibility for that and the proposals of the framework contractors for different timelines are convincing to us.