

Helsinki, 22/08/2011
D(2011)

CLARIFICATIONS 2

Open call for tender ECHA/2011/66 Framework contract for the provision of Enterprise Content Management Services and Solutions

Question 2.1:

Can we add annexes to the solution design document? If so, is this document taken into account for restriction of max. 5000 words?

Answer:

The tenderers can not add annexes and must limit themselves to the maximum of 5000 words. Nonetheless, they can add as many diagrams as necessary and words in diagrams are not counted.

Question 2.2:

This question refers to the case study that constitutes the basis for assessment of AW 2. The answer (Corrigendum III) will be therefore sent exclusively to the tenderers who have submitted a signed NDA, as required in the Specifications (Page 26).

Question 2.3:

The RFP includes a draft contract ("echa_2011_66_specifications_and_model_contract.pdf"). Our legal department has several comments on various topics. Is this draft contract to be considered as the final and definite version of the awarded contract or is will we be able to negotiate certain clauses?

Answer:

As indicated in paragraph 7 of the Invitation to Tender of the Agency submission of a tender implies acceptance of the terms and conditions set out in the invitation to tender and in the specifications, including the technical documentation and the draft contract, and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. It is binding on the tenderer to whom the contract is awarded for the duration of the contract.

The submission of a tender under any other terms than those set up by the Agency, or including a disclaimer with respect to that essential requirement of the procurement procedure, will determine the rejection of the tender.

Question 2.4:

Regarding 1.11.4 in the draft contract: we would require this to be clarified to exclude any IP currently owned by the software vendor (in this case standard software from EMC). ECHA would retain all right to adaptations, configurations and software developed specifically for ECHA. Is this possible?

Answer:

As mentioned in Article 1.11.4 of the draft Framework Contract, "In case of software developed on its behalf under this Contract, the Agency shall become the owner of its specifications, sources, documentation and test results."

The Contractor will remain, however, the owner of industrial or intellectual property rights that exist prior to the Contract being entered into (i.e. Article 11.8 of the draft Framework Contract).

Consequently, the Agency shall become owner of the specifications, sources, documentation and test results only of the software developed on its behalf under this contract. As mentioned in section 3.10 of the Tender Specifications, any deliverables, information asset, software asset created or used within the realm of this Framework contract shall be the intellectual property of ECHA, with the exception of specifications, information asset or software asset specifically purchased/licensed by the Contractor from a third party, or owned by himself.

Question 2.5:

Regarding 11.2.2 in the draft contract: can/will this clause be part of a negotiation (direct/indirect damages, liability cap etc)?

Answer:

See reply to Question 2.3 above

Question 2.6:

Regarding insurances: our organisation is large and of considerable financial strength. We have adopted a policy of not utilizing insurances since we can cover any liability cost without it. How/Can this policy be accepted by ECHA as part of this RFP?

Answer:

*As provided in section 3.5 of the Specifications (Guarantees, page 13) "The Tenderer shall describe in his offer the arrangements (e.g. professional risk **indemnity insurance**), already existing or taken specifically for this Contract, which he will have in place in order to cover liability, which he could incur during the implementation of the Contract, as laid down in Article 1.16 of the Draft Framework Contract".*

As provided in Article 1.16.2 of the draft Framework Contract, "The Contractor shall provide the required insurance coverage either by utilising its existing insurance policies or by acquiring new insurance policies for the purposes of this Contract only".

Tenderers may utilise their existing corporate level insurance policies provided that there is clear undertaking on the part of the Corporation to place the insurance policy at the disposal of the Tenderer.

Please note that the Contractor shall provide proof of insurance cover upon request by the Agency, but only within thirty (30) days of the signature of the Contract.

ECHA