

Helsinki, 26/9/2011  
D(2011)

## CLARIFICATIONS 5

### Open call for tender ECHA/2011/66

### Framework contract for the provision of Enterprise Content Management Services and Solutions

#### Question 5.1:

According to Annex 5.3.1, Letter of intent of subcontractor, subcontractors are required to accept the general conditions attached to the tendering specifications for the call for tender, and in particular art. II.17 in relation with checks and audits. Our question is the following:

Will ECHA apply the general terms and conditions attached to the call for tender (other than Art. II.17 in relation with checks and audits) directly to a subcontractor during the duration of the Framework Contract on the basis of the Letter of Intent?

The background for the question is that we as a subcontractor are about to enter into a subcontracting agreement with a company that will work as a prime contractor towards ECHA. The relationship between the prime and subcontractor is governed on basis of a separate subcontracting agreement which will not be tied to the final Framework Contract. Thereby, we as a subcontractor want to clarify that by signing the Letter of Intent, we are not subject to the terms and condition of the final Framework Contract but can solely operate on basis of a separate subcontracting agreement, where mandatory terms and conditions required by ECHA are separately inserted.

#### Answer:

*As described in the Specifications (Section 3.6.2) and stipulated in the draft Framework Service Contract (Art. II.13), certain tasks provided for in the Contract may be entrusted to subcontractors, but the main contractor retains full liability towards the Agency for performance of the Contract as a whole.*

*Nevertheless, as provided by Article II.13.3 of the draft Framework Contract, the Contractor shall make sure that the subcontracting does not affect the rights and guarantees to which the Agency is entitled by virtue of the Contract, notably Article II.17.*

*A contract which includes subcontracting is subject to certain general conditions of the Draft Framework Contract, in particular the provisions on subcontracting (II.13), checks and audits (II.17), and confidentiality (II.3).*

*Consequently, the subcontracting arrangement between the contractor and his subcontractor will render directly applicable to the subcontractor those contractual obligations with regard to the Agency, in particular the provisions on Checks and Audits (Art. II.17).*

*Tenderers must therefore inform the subcontractor(s) and include in their sub-contracting documents that Article II.17 of the Draft Framework Contract may be applied to sub-contractors.*

**ECHA**