

REGIONAL DIALOGUE INVITATION TO TENDER 2024-1

Questions and answers

Question no. 1:

Dear regional dialog,

I have a question regarding the tender about the requirement for one employee. Does the employee need to be employed on the day of the tender?

Under point 8.1.1, sections 1-4, what forms do I need to submit? In Slovene, do I need to provide a criminal record certificate and proof that all taxes are paid?

Regarding English language proficiency, is any specific certificate required, or is it enough if I attended a course?

As for the bank guarantee, is it mandatory? If I don't include it, is that acceptable (it only provides additional points)?

Answer:

1. Regarding point 8.1.4 Personnel requirements or capability of tender documentation: The nominated personnel must be employed by or have another contractual relationship with one of the entities participating in the tender no later than on the date of submission of the tender.
2. Regarding point 8.1.1 Grounds for exclusion, sections 1-4: As proof of the fulfilment of the condition is required the completed form "Declaration for the economic operator" for all economic operators in the tender (including subcontractors and operators whose capacity the tenderer intends to use).

Tenderers may also attach other supporting documents to prove compliance with the condition (e.g. criminal record, tax certificate etc.) at the tender submission stage, although it is not necessary to do so at this stage.

In any case, the Contracting Authority reserves the right to request additional supporting evidence from tenderers for the purpose of verifying this condition (e.g. criminal record, tax certificate etc.).

3. Regarding point 8.1.4 Personnel requirements or capability, point 2: As proof of the fulfilment of the condition is required the completed form "Nominated personnel data".

Tenderers may also attach other supporting documents to prove compliance with the condition at the tender submission stage, although it is not necessary to do so at this stage.

In any case, the Contracting Authority reserves the right to request additional supporting evidence from tenderers for the purpose of verifying this condition. The Contracting Authority will accept a certificate of language proficiency at C1 level (at all three levels - understanding, speaking, writing); a certificate of completion of a C1 level course (at all three levels - understanding, speaking, writing) or other comparable evidence showing that the nominated

personnel have C1 level language proficiency (at all three levels - understanding, speaking, writing).

If the nominated personnel has completed a course of study in the English language (bachelor and/or master programme), the Contracting Authority will consider that the language proficiency requirement has been met, i.e. that the nominated personnel has a C1 level (at all three levels - understanding, speaking, writing) of proficiency.

4. The submission of adequate financial collateral is only required for the successful tenderer and will be required after the signature of the contract, as specified in the tender documentation.

However, at the stage of the submission of the tender, the tenderer may offer a longer warranty period than the one required and for this will be awarded additional points under the criterion, as specified in the tender documentation. Each tenderer submitting a tender must offer at least the required warranty period.

Question no. 2:

Dear regional dialog,

Regarding the requirement that an economic operator must submit all withholding tax returns in respect of income from employment for the past five years, we kindly ask for clarification on how to proceed in a situation where the company (Ltd.) is newly established, has no employees, and the business is currently conducted through a sole proprietorship (s.p.) or as an employed individual elsewhere.

Would it be sufficient to provide documentation from the sole proprietorship or as an individual (e.g., proof of paid contributions from the previous period)?

Thank you for your guidance.

Kind regards,

Answer:

If an economic operator is newly established, it is quite understandable that it does not have evidence for the period before its establishment. Nor was it subject to any obligations prior to its establishment, e.g. to pay taxes, employee contributions etc.

At this stage, the contracting authority only requires as proof "The completed form "Declaration for the economic operator".

Please note that the condition under point 8.1.1 Grounds for exclusion, point 2, must be fulfilled for each economic operator appearing in the tender (i.e. both s.p. and Ltd.).

In the specific case you describe, the Contracting Authority will therefore consider that the condition in this part (last sentence of the condition) is fulfilled if the newly established economic operator had no employees. However, if the economic operator was established less than five years before the date of publication of this tender and had employees, the economic operator must prove that the condition is fulfilled from the date of establishment of the economic operator until the date of submission of the tender.

Question no. 3:

Dear Regional dialog,

I hope this email finds you well.

Following my review of the contract, I have several questions and points that require clarification:

1. Article 4 - Nature of Changes:

- Could you provide more detail on the types of changes that are expected under this clause?
- Under what specific conditions can these changes be implemented?
- While the contractor's liability is capped at 10% of the total contract value, this measure does not seem proportionate to the potential scope of changes. Could you explain the rationale?

2. Article 11 - Response Time:

- The requirement to respond within 24 hours, even outside of working days, seems demanding. Could you confirm if this is the intended interpretation, and if so, explain the reasoning behind this expectation?

3. Article 12 - Financial Collateral and Warranty:

- The clause mentions upgrades and adaptations during the warranty period. Could you specify what types of changes and updates are expected?
- My understanding is that updates and adaptations typically fall under a separate maintenance agreement. Could you clarify this?

4. Contractual Penalty Clause:

- Regarding the penalty of 1% of the contract value for each day of delay (up to a maximum of 10%), does this mean the penalty is calculated per individual delay (i.e., each missed deadline can accrue up to 10%), or is this a one-time penalty capped at 10% for the entire project? or for every work package ?

5. Article 13 - Deadlines and Fault:

- The clause states that penalties apply if the contractor fails to meet deadlines "through no fault of his own." Could you elaborate on what circumstances would qualify as "no fault of his own"? How is this determined, and what evidence would need to be provided?

Your clarification on these points will help ensure we are fully aligned on the terms of the agreement.

Looking forward to your response.

Answer:

1: The exact modifications are not known at this stage. As explained in Article 4(2) of the contract, changes may include services related to the development of the Information System (e.g. a change in legislation that would affect the development of the Information System differently than originally planned, the development of additional functionalities of the Information System, services related to ensuring information security, unforeseen developments in the technological environment (development of artificial intelligence, etc.).

This concerns possible changes to the current technical specifications during the implementation of the contract, and not changes that would occur (e.g. due to changes in legislation) after the conclusion of the contract, i.e. after the implementation has already been completed.

The 10% limit is to prevent the contracting authority (and not the contractor) from requesting (if necessary) a higher scope of modifications (than 10%) in relation to the total contract value.

2: The Contractor must respond to the message within 24 hours, without providing answers to questions or offering a solution or correcting the error within that timeframe. The Parties will mutually agree on the specific deadlines for providing answers to questions or offering a solution or correcting the error within that timeframe. The Contractor will be given a reasonable time limit for these.

3: The financial collateral is intended to ensure that the Contractor will remedy any faults/defects that may arise during the warranty period.

The warranty period applies to the system (and its upgrades and adaptations and any deviations in the operation, if any) developed and implemented by the Contractor under this Contract. If no upgrades are carried out during the performance of the contract, but e.g. additional upgrades are ordered after the conclusion of the contract, these additional upgrades are not covered by the warranty.

4: If the Contracting Authority decides to invoke a contractual penalty, the contractual penalty will be calculated and charged per individual delay (each missed deadline). All contractual penalties charged are capped at 10% of the contract value. The 10% cap therefore applies to all contractual penalties taken together for the whole project.

5: These are circumstances which have caused the delay but do not fall within the Contractor's sphere of influence (i.e. force majeure) and are assessed on a case-by-case basis.

As these circumstances are currently unknown, at this point it is not possible to determine what evidence the contractor will be required to provide (if these circumstances occur). However, it is certain that the evidence provided will have to sufficiently explain the circumstance that caused the delay, the causal link between the circumstance and the delay, and exclude the liability of the contractor for the circumstance.