

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.

Question no. 4:

Dear Regional dialogue,

I am considering applying for RD tender, and I have a few questions regarding the process and agreement:

1. What happens once I submit my application? Are there any commitments that apply immediately?
2. Is it possible to withdraw from the process at a later stage if needed?

3. Regarding the agreement and its terms, is there any flexibility to negotiate specific conditions?

Thank you for your time and assistance. I look forward to your response.

Best regards,

ANSWER:

1. As set out in point 4. DEADLINE AND METHOD OF OFFER SUBMISSION tender documentation (instructions to tenderers), once a tender has been submitted, it is binding for the period stated in the tender, unless the tenderer withdraws or modifies it before the deadline for submission of tenders. Among all the tenders received, the Contracting Authority will select the tenderer who has submitted the most economically advantageous tender, in accordance with the provisions of the tender documentation. The contract will be signed with that tenderer.
2. Withdrawal from the Contract is possible in accordance with the provisions of the Contract and the provisions of the Code of Obligations (Official Gazette of the Republic of Slovenia, No. 97/07 - Official Consolidated Text, No. 64/16 - Decree of the US and No. 20/18 - OROZ631), which is in force in the Republic of Slovenia, as set out in the Contract.
3. Until the deadline for questions, interested tenderers may propose modifications to the model contract. The Contracting Authority will consider the suggestions and, if necessary, amend the model contract. The Contracting Authority points out that it is not obliged to follow the suggestions. The contract signed between the contracting authority and the successful tenderer will be equivalent to the model contract (or, as the case may be, to the amended model contract).

QUESTION no. 5:

Dear RD,

I hope this message finds you well.

As we move forward with our collaboration, I would like to share a few thoughts and suggestions regarding some contract terms that may require further clarification or adjustment. Addressing these points will help ensure a smoother process for both parties.

1. **English Language Limitation (C1):**
The language limitation should be restricted to the primary contact or project manager. While we generally communicate fluently in English in software development, obtaining confirmations from all team members can be challenging.
2. **Scope Changes:**
When altering the scope of work, I suggest defining changes as one-time alterations to prevent multiple minor changes within phases that could significantly increase the workload. We also need to clarify how deviations will be tracked and how to measure a 10% deviation. If the deviation exceeds 10%, should this trigger additional payment and a time extension?
3. **Article 4 - Without Good Reason:**
Could we clarify what constitutes a "valid reason"? The current wording is somewhat open-ended, and a clearer definition would be helpful.

4. **Paths to Uzbekistan and Other Routes:**

It's unclear how many trips to Uzbekistan and other routes are included, especially since the contract mentions that everything is included. I assumed that 1-2 visits from the project manager throughout the project would suffice.

5. **Contract Termination:**

In case of contract termination, how are partially completed phases compensated? What percentage of the phase completion will be paid?

6. **Duplicate Article 7:**

It seems there are two versions of Article 7 in the contract, which may be an oversight.

7. **Article 5 - Price Adjustment:**

I recommend adding a clause for price recalibration in case of delays or inflation increases during the project.

8. **Article 9 - Requirements from the Client:**

To avoid delays, the client should ensure that all requirements and the final web application design are provided within the first 2-3 months so the contractor can begin implementation.

9. **Article 10 - Subcontracting Services:**

The clause stating, "The subcontractor must not subcontract services that have been accepted," needs further clarification. What exactly does this mean?

10. **Article 11 - Response Time:**

To avoid ambiguity, I suggest specifying "working days" in the response time clause.

11. **Article 12 - Warranty and Defects:**

The contractor should have the opportunity to fix defects before the warranty is invoked. If the system is designed for a limited number of users and later expanded to the public, the contractor cannot guarantee its functionality. Similarly, if the user imports an incorrect file type (e.g., Excel instead of CSV), this should be considered an additional feature, not the contractor's responsibility. The contractor cannot guarantee library updates during the warranty period due to obsolescence.

12. **Article 12 - Maintenance and Updates:**

Maintenance activities, such as system administration, security upgrades, and library updates, should be excluded from the warranty period. The contractor's responsibility should be limited to deviations from the technical documentation and actual implementation.

13. **Article 13 - Delay Penalty:**

I suggest adding a clause that limits the total delay penalty to a maximum of 10% of the total contract value.

14. **Article 13 - Liability for Delays:**

The clause "Where the Contractor, through no fault of his own,..." implies the contractor is responsible even when not at fault. This should be rephrased for clarity.

15. **Article 13 - Actual Damages:**

Damages should be limited to a reasonable amount. Furthermore, since the customer has the right to cancel the contract if the contractor is delayed, it may be beneficial to include other cancellation options as well.

16. Article 20 - Termination Clause:

It would be helpful to specify under what conditions the contractor may terminate the contract. "Material breach" needs further clarification. Additionally, in the event the client terminates the contract, should the contractor be compensated for work completed, even if not finished?

I believe that addressing these points will enhance our collaboration and ensure that both parties are aligned on expectations moving forward. I would greatly appreciate your feedback on these suggestions.

Thank you for your time and attention. I look forward to hearing from you.

Best regards,

ANSWERS:

1. The Contracting Authority will not modify the condition set out in point 8.1.4. (2).
2. The Contracting Authority will not modify the model contract in this respect. The Contracting Authority considers that the contract is clear in this part.
3. It is a legal standard to be assessed on a case-by-case basis.
4. Two trips to Uzbekistan are planned (by a representative of the contractor involved in the project), which must be taken into account by the tenderer in the preparation of the tender and included in the tender price. In the event that additional trips are required, this will be agreed between the Contracting Authority and the selected contractor in the form of an annex to the contract.
5. As provided in the last paragraph of Article 20 of the contract, the withdrawal from the contract shall not affect the Contracting Authority's payment obligations under the Contract which have accrued during the duration of the contract. The Contractor will be paid for all work carried out in accordance with the contract.
6. An error has occurred in the numbering of the Articles. The Contracting Authority will make the necessary corrections to the model contract before signing the contract with the awarded tenderer.
7. The Contracting Authority requires that prices are fixed throughout the entire duration of the Contract. The Contracting Authority will not modify the model contract in this respect.
8. This matter is already covered in the Article 9 of the model contract. The Contracting Authority will not modify the model contract in this respect.
9. If the tenderer subcontracts part of the public tender, that part of the public tender must be carried out by the nominated subcontractor. However, the nominated subcontractor is not allowed to further subcontract the performance of this work, i.e. to a third economic operator that is not nominated in the tender. Only subcontractors nominated in the tender or whose

nomination the contractor proposes to the contracting authority during the duration of the contract may participate in the performance of the public contract.

10. The Contracting Authority agrees with the suggestion and will make proper amends to the Article 11 of the contract with the awarded tenderer by stating a 1 working day response time (instead of 24 h).
11. The model contract already sets out in Article 12 the deadlines for remedying defects/faults that occur during the warranty period. The financial collateral shall not be automatically redeemed (e.g. on discovery of a defect/fault), rather the contractor shall be given first the opportunity to remedy the defects.
12. The warranty doesn't apply to any subsequent changes, modifications, alterations etc. made after the contract has been completed, i.e. after the final handover of the system which is the subject of the contract.
13. This limitation is already set out in Article 13 of the contract. The Contracting Authority will not modify the model contract.
14. The clarification is given in subsequent paragraphs stating the "objective circumstances" or situations where the timely performance of the services is not provided because of the Contracting Authority not fulfilling its obligations. The Contracting Authority believes that this provides enough certainty and clarity for the contractor to know when the contractual penalty would/could be applied. To avoid any doubt, the Contracting Authority will add to Article 13 of the model contract the following sentence: the contractual penalty shall not be charged if the delay is not the fault of the Contractor. The Contracting Authority will make this change to the model contract before signing the contract with the awarded tenderer.
15. The Contracting Authority reserves the right to claim any damage incurred by the Contractor. The Contracting Authority will not modify the model contract in this respect. Withdrawal from the contract is stipulated for both parties. The Contracting Authority will not modify the model contract in this respect either. The Code of Obligations shall apply to cases not covered by the contract.
16. The Contracting Authority would like to clarify that this clause applies to both parties of the contract. Material breach is considered a significant failure by either party to fulfil its contractual obligations, jeopardising the core purpose of the contract, etc. The contractor will be paid for the work that has been carried out.

The Contracting Authority hereby informs all tenderers that, in view of additional clarifications provided by the Contracting Authority, it extends the deadline for submission of tenders until 9 December 2024, until 11:00 a.m. CET.