

QUESTIONS & ANSWERS and CLARIFICATIONS RELATED TO TENDER PROCEDURE REF. SJU/LC/0043-CFT

SATELLITE CAPABILITIES FOR OPTIMI (SAT-OPTIMI)

Updated version of 13 July 2010

N°	Subject	Reference in the corresponding tender documents, draft contract or contract notice	Questions	Answers
1	Co-funding	Section 2.6 of the Tender Specifications	Please clarify how we should interpret co-funding in this context.	As specified under Section 2.6 of the Technical Specifications, the activities under the service contract to be awarded as a result of this call for tender shall be co-funded. The maximum available amount for co-funding is 100.000 € (one hundred thousand EURO), VAT excluded. The share of co-financing will depend on the total price of the Services as proposed and quoted in the Financial Proposal. In any case, the maximum total contribution of the SJU is limited to 100.000 € VAT excluded.
2	Applicable Law & Jurisdiction clause	Article 1.7 of Draft Contract attached to the Invitation to tender	As with the European Space Agency (ESA) and other EU projects, we would expect that each participant is able to use any EU law. Is English Law acceptable?	<i>“European Union law contract”</i> in the sense of Article I.7 of the draft Contract reflects those provisions of the EU law which apply to the SJU (e.g. the SJU Financial Regulation, associated EU legislation as well as case law of the Court of Justice of the EU). Where EU Law does not regulate the subject matter of the dispute (i.e., absence of legislation, competence or case-law), the Belgium substantive law is, according to the draft contract, applicable. English Law does not apply to disputes arising from the Contract.
3	Liability	Article II.2	We understand from your draft contract that we	Please note that the Draft Contract attached to the

		(General Condition) of the Draft Contract attached to the Invitation to tender	would be required to indemnify the SJU against loss and damages and that appropriate insurance cover is required. We can only insure a liability that is capped at a maximum amount (joint and/or several). Would a liability cap in the value of the contract be acceptable?	present Invitation to tender is based on the draft service contract currently used by the European Commission. Given its status (i.e., Union body), the SJU is under tight institutional constraints regarding contract terms and conditions. To accept the deviations you currently propose would not be compliant with the SJU contract and procurement rules. Therefore, the SJU has decided not to amend Article II.2 of the Draft Contract.
4	Liquidated Damages	Article II.16 (General Conditions) of the Draft Contract attached to the Invitation to tender	Regarding the Liquidated damages, we would like to ask for a reasonable cure-period before Liquidated Damages would be applicable, and also statement that Liquidated Damages shall not apply if delays caused by the SJU. Is this acceptable?	Please refer to the answer to Question n°3 hereabove.
5	Consortium members – Accession to the contract	Articles I.1.2, I.1.3, I.1.4 of the Draft Contract Annex III to the Draft Contract	In the Draft Contract Special Conditions Article I.1.3, there is reference to an “Annex III” which must be completed and signed by each Consortium Member within 45 days after entry into force of the Contract. In reading the Draft Contract Special Conditions Articles I.1.2 and I.1.4, it seems that Article I.1.3 should describe the procedure by which the Consortium Members accede to the main Contract. Neither an Annex III nor a formulaire for acceding to the Contract was provided with the Invitation to Tender documents. Will the SESAR Joint Undertaking provide an Annex III / formulaire for acceding to the Contract? Or is the Coordinator expected to present its own accession agreement signed by each the Consortium Member to the SESAR JU, which will be included as Annex III?	A model Annex III has been published on the SJU website at the following address: http://www.sesarju.eu/about/procurement
6	Applicable law	(Revised) Article I.8 of the Draft Contract	Draft Contract Special Conditions Article I.7.1 states: “ <i>The Contract shall be governed by Union’s law Contract, complemented, where necessary, by the national substantive law of Belgium.</i> ” It is not	Please refer to the answer to Question n°2 hereabove.

			<p>clear from this Article exactly which law applies to the Contract.</p> <p>Please clarify if only Belgian law applies or if Belgian law will supplement another applicable set of laws, in which case please clearly what the other applicable law is.</p>	
7	Terms of reference attached to the Draft Contract	Draft Contract	<p>Which Terms of Reference are considered to be Annex I of the Draft Service Contract?</p> <p>Shall the Tenderer consider it to be the Terms of Reference as stated in "Specifications attached to the ITT", Page 8?</p>	We confirm that Annex I of the Draft Contract refers to Section 3 of the Technical Specifications attached to the Invitation to tender (i.e., "Terms of Reference").
8	Deliverables	Section 3.1 of the Technical Specifications	<p>Could the Contracting Authority provide the list of the expected deliverables? Should the table associated with the Time Schedule on Page 9 of "Specifications attached to the ITT" be considered as the list of deliverables?</p>	<p>The list of the expected deliverables in the frame of this study is provided under Section 3.1 of the Technical Specifications attached to the Invitation to tender, namely:</p> <ul style="list-style-type: none"> - High-level work plan for the execution of the activities, - Draft Report: Analysis of satellite service provision for OPTIMI, - Final Report: Analysis of satellite service provision for OPTIMI.
9	Payments	Article I.4 of the Draft Contract	<p>How many payments are foreseen under the study contract and what is the payment schedule?</p>	In accordance with Articles I.4 and II.4 of the Draft Contract, a single final payment will be made by the SJU to the Contractor upon acceptance of all deliverables due under the Contract (i.e., no pre-financing nor interim payments are foreseen in the frame of the present study).
10 (new)	Submission of proposal : practical procedure	Section 4.1.3 of the Technical Specifications	<p>Section 4.1.3 (Page 10) of the "Specifications attached to the Invitation To Tender SJU/LC/0043-CFT - Satellite Capabilities for OPTIMI (SAT-OPTIMI)"</p> <p>Which exact reference number of the call for tender has to carry the outer envelope or parcel (SJU/0043-CFT as indicated, or SJU/LC/0043-CFT as mentioned in other parts of the documentation</p>	<p>Please consider that the exact reference number for this call for tenders is SJU/LC/0043-CFT.</p> <p>This reference number shall be indicated on the outer envelope or parcel containing the proposal.</p>

			provided by the Contracting Authority)?	
11 (new)	Financial evaluation	Section 5.4.2 of the Technical Specifications	<p>1°From the Contracting Authority perspectives, what will be considered as the "Lowest Price"? Does the "Lowest Price" encompass the Total Price (co-funding from the Contracting Authority + co-funding from the tenderer) or does the "Lowest Price" encompass only the co-funding from the Contracting Authority?</p> <p>2°In both cases how will the level of co-funding from the Contracting Authority be determined?</p>	<p>The proposed "price" referred to in Section 5.4.2 of the Specifications corresponds to the requested amount for co-financing, taking into account that the maximum total amount of co-financing available for this project is 100.000,00 EUR.</p> <p>The level of co-financing from the SJU will depend on the proposed price, i.e., the amount of the requested SJU contribution.</p>