

Call for tenders' details

Title: Identifying market and regulatory obstacles to the development of private placement of debt in the EU.

Start date: 31/05/2016

Time limit for receipt of tenders: 06/07/2016

Contracting authority: European Commission, DG Financial Stability, Financial Services and Capital Markets Union (FISMA)

Status: Closed

Call for tenders question list

Call for tenders questions summary

#	Submission date	Publication date	Question subject	Question	Answer
1	30/06/2016 10:39	01/07/2016 14:59	Tender FISMA/2015/146(3)/C - Question	<p>Dear Sir and Madam,</p> <p>could you please confirm that (i) a legal service firm and a separate business service firm shall be able to participate jointly in the tender and shall not be excluded and, if so, (ii) in order to comply with the German legal service act (Rechtsdienstleistungsgesetz), each service firm will be able to enter into a separate agreement with the EC for the legal part and the economic part, respectively (in contrast to the possible set-up mentioned in section 1.7 and 1.8 of the Tender Specifications)? Please note that under the aforementioned act, only a licensed firm is able to provide legal services in Germany and such service may not be subcontracted.</p>	<p>01/07/2016</p> <p>Firstly, you are asking whether a legal service firm and a separate business service firm shall be able to participate jointly in the tender and shall not be excluded. On this point, Article 1.7 of the tender specifications allows "joint tender" and provides that "A joint tender is a situation where a tender is submitted by a group of economic operators (natural or legal persons)". As a consequence and according to the tender specifications, a legal service firm and a separate business service firm shall be able to participate jointly in the tender. In such a case, it should be reminded that "All economic operators in a joint tender assume joint and several liability towards the contracting authority for the performance of the contract as a whole", according to section 1.7(2) of the tender specifications.</p> <p>Secondly, you are asking if each service firm (e.g. a legal service firm and a business service firm) will be able to enter into a separate agreement with the EC for the legal part and the economic part, respectively. As mentioned in Article 1.6 of the tender specifications, this contract is not and therefore it cannot be divided into two different lots.</p> <p>Finally, it is not for the Commission to</p>

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					Finally, it is not for the Commission to comment on the application of national laws, such as the German legal service act ("Rechtsdienstleistungsgesetz"). Nevertheless, in the context of this tender, it should be underlined that the contractor(s) will be asked to carry out a study, i.e. to provide the EC with an overview of the laws applying to private placements in general, without regard to their application in specific, concrete individual cases.

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#	Submission date	Publication date	Question subject	Question	Answer
2	01/07/2016 10:48	01/07/2016 15:03	Call for tenders FISMA/2016/146(3)/C	<p>German Legal Service Act legal services may only be provided by licensed persons qualified to provide legal services in Germany (subject to certain limited exemptions). Typically, law firms are licensed in that respect whereas business service firms are usually not. In the structures suggested by the tender specification, only a joint tender or subcontracting structure may be established. These limited structures do not allow the combination of a legal service firm and a business service firm to provide an offer:</p> <p>1. Joint tender: Although the legal part will be provided by the legal service firm, the business service firm would be liable to perform the entire contract (including the legal part of the tender). However, the business service firm is usually not licensed under the German Legal Service Act and hence cannot enter into such contract.</p> <p>2. Subcontracting-business service firm being the main contractor: Again the business service firm would be obliged to perform the entire contract without being licensed to perform the legal part. This view does not change, if the legal part is subcontracted to a licensed law firm. German courts have taken the view that the main contractor is required</p>	<p>01/07/2016</p> <p>Firstly, you are asking whether a legal service firm and a separate business service firm shall be able to participate jointly in the tender and shall not be excluded. On this point, Article 1.7 of the tender specifications allows "joint tender" and provides that "A joint tender is a situation where a tender is submitted by a group of economic operators (natural or legal persons)". As a consequence and according to the tender specifications, a legal service firm and a separate business service firm shall be able to participate jointly in the tender. In such a case, it should be reminded that "All economic operators in a joint tender assume joint and several liability towards the contracting authority for the performance of the contract as a whole", according to section 1.7(2) of the tender specifications. Secondly, you are asking if each service firm (e.g. a legal service firm and a business service firm) will be able to enter into a separate agreement with the EC for the legal part and the economic part, respectively. As mentioned in Article 1.6 of the tender specifications, this contract is not and therefore it cannot be divided into two different lots. Finally, it is not for the Commission to comment on the application of</p>

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				<p>that the main contractor is required to be licensed under the German Legal Service Act, irrespective of any subcontracting.</p> <p>3. Subcontracting-legal service firm being the main contractor: The legal service firm may not be allowed under its professional conduct rules to provide non-legal services. In the case of a German law firm, the firm would lose the preferential tax treatment under the German Legal Service Act, if it were to provide non-legal services. Hence, a successful tender by a German legal service firm would have a significant negative impact.</p> <p>The solution would be to allow a joint pitch, but separate agreements in respect of the economic and legal part.</p>	<p>comment on the application of national laws, such as the German legal service act ("Rechtsdienstleistungsgesetz"). Nevertheless, in the context of this tender, it should be underlined that the contractor(s) will be asked to carry out a study, i.e. to provide the EC with an overview of the laws applying to private placements in general, without regard to their application in specific, concrete individual cases.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
3	04/07/2016 16:38	04/07/2016 16:43	Evidence on selection criteria	<p>Dear Sir/Madam,</p> <p>I would very much appreciate if you could consider my request.</p> <p>Our consortium will submit a reply to the call for tenders FISMA/2015/146(03)/C.</p> <p>Based on the Annex 3, my understanding is that the consortium doesn't have to submit the list of studies/publications/projects requested for both the economic and legal part of the study at this stage.</p> <p>If the contract is awarded to us, then the consortium will have to submit the list and supporting evidence within the deadline given by the contracting authority.</p> <p>Is my understanding correct?</p> <p>Many thanks, [...]</p>	<p>04/07/2016</p> <p>Dear Madam,</p> <p>The evaluation of the selection criteria is to be made based on the basis of your declaration on honour (Annex 3), no supporting evidence is requested to be submitted at this stage (submission of offers).</p> <p>However, please note that the contracting authority reserves the right to require such evidence (on the technical and professional capacity), at any time during the procurement procedure and, of course, after contract award; in such cases you are supposed to provide the requested evidence without delay or within the deadline given by the contracting authority.</p> <p>With best regards,</p> <p>EC FISMA CONTRACTS</p>