

Call for tenders' details

Title: 2DIGIT/A3/PO/2017/023 – Software for Innovation, Diversity and Evolution II (SIDE II)

Start date: 04/05/2018

Time limit for receipt of tenders: 04/06/2018

Contracting authority: European Commission, DG Informatics (DIGIT)

Status: Closed

Call for tenders question list

#	Submission date	Publication date	Question subject	Question	Answer
1	07/05/2018 14:51	08/05/2018 16:21	Awarding of the CRO1 Clarification	In chapter 3.2 of the tender specifications you mention: The EC will conduct a first EC reopening of competition procedure among the five tenderers that were awarded the FWC. Does this mean that the CRO1 will not be awarded at the same time as the Framework contract ? (Although the CRO1 is the almost the sole element to do the evaluation ?)	08/05/2018 The first Commission reopening of competition procedure can only be awarded after the award of the Framework Contracts, since they form its legal basis. That being said, the evaluation of the call for tenders and CRO1 will happen in parallel. It is possible that the notification of results to tenderers regarding the call for tenders will already contain the results of CRO1 as well. However, the Commission reserves the right not to award CRO1, or to award it at a later stage, within the validity period of your tender.

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#	Submission date	Publication date	Question subject	Question	Answer
2	08/05/2018 18:18	15/05/2018 09:54	Document CRO1 - Annex 2 - Financial Model	<p>Is our understanding correct that tenderers have to transfer the values from cells G305, G306 from tab "CRO1 Details" to cells C7 and C8 in tab "Summary CRO1"?</p> <p>We also assume that during the execution not the average uplifts from the Summary tab but the individual uplifts per ISV as shown in tab "CRO1 Details" apply.</p> <p>Please confirm or explain in detail.</p>	<p>15/05/2018</p> <p>As mentioned in the CRO1 Tendering Specifications "When establishing their uplift for the Principal group, tenderers are free to use (or not) the information and calculation model provided in the Annex 2 tab "CRO1 details"." Hence, there is no obligation to fill in the 'CRO1 details' sheet. This is merely provided to tenderers to give an indication of past purchases, and can voluntarily be used to calculate the uplifts. It is sufficient if cells C7, C8, C10 and C11 of the 'Summary CRO1' sheet are filled in.</p> <p>As for your second question: no, individual uplifts per ISV will not be used during implementation of Group U and Group P. Only the uplifts quoted in cells C7, C8, C10 and C11 of the 'Summary CRO1' sheet will be applied throughout the implementation. During contract implementation, however, new reopening of competition procedures may be done per ISV. In that case, the specifications for that reopening will specify how the uplift will be applied, which may be per ISV.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
3	09/05/2018 09:56	15/05/2018 09:55	Draft Framework Contract and annexes	The Draft Framework Contract and annexes are in some ways not applicable to resellers, which means that amendments would have to be made to make them suitable and agreeable. Is this acceptable to the European Commission? And if so, is this to be done during the RFP stage or following contract award? Please advise how such proposed changes should be advised in the response, e.g. by proposed alternative clauses or simply explanatory comments.	15/05/2018 It is not possible to modify the Framework Contract after the submission deadline for tenders. If you have specific concerns on specific articles, please raise them in a question, and if possible, suggest alternative wording, so the Commission can assess your suggestions. All resulting Framework Contracts from the SIDE II Call for Tenders will be identical, and thus modifications to the already attached draft Framework Contract will apply to all tenderers.

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#	Submission date	Publication date	Question subject	Question	Answer
4	14/05/2018 08:37	15/05/2018 09:56	Clarification questions	<p>1) Are tenderers allowed to only offer one of the two Groups from CRO1 – Annex 2 Financial Model? If yes please explain in detail how it will be determined which tenderers will be awarded a place on the framework contract in case you receive more than 5 offers.</p> <p>2) Are tenderers allowed to offer a negative uplift?</p> <p>3) The financial model foresees to provide uplifts for licenses and services. Could you please confirm that software renewals and software maintenance falls under licenses and that only the Informatics Services (3.3.3 SIDE II Tendering Specifications) are meant with services?</p> <p>4) Is our understanding correct that for criterion F1 in the Tendering Specifications par. 4.3.2., the term “this criterion applies to the tenderer as a whole” means that this criterion can also be fulfilled by taking into account the capacities of a subcontractor?</p> <p>Thank you!</p>	<p>15/05/2018</p> <p>1) No. All tenderers must provide offers for the two groups defined in CRO1, as this is part of the Commission's assessment of tenderers' capability to provide a wide range of software. In future reopening of competition procedures, however, it will also be possible to submit an offer for only one of the groups of interest, or not to participate at all.</p> <p>2) Yes, negative uplifts are possible. However, if your offer includes one or several negative uplifts, tenderers should provide a statement explaining why their offer is not abnormally low, in the sense of Art. 151 of the Commission Delegated Regulation (EU) No. 1268/2012.</p> <p>3) Yes, we confirm your understanding. This is also mentioned in line 13 of the 'Summary CRO1' sheet of Annex 2 to the CRO1 tendering specifications.</p> <p>4) Yes, we confirm your understanding, as also mentioned in Section 4.3 of the Tendering Specifications. Please note that additional documentation is requested from corporate subcontractors if the tenderer relies on its capacity to fulfil selection criteria (see Section 2.3.2.1 of the Tendering Specifications).</p>

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5	14/05/2018 09:51	15/05/2018 09:57	Clarification question	Is our understanding correct that for criterion T1 in the Tendering Specifications par. 4.3.3., an awarding notice from the TED platform can be considered as confirmatory statement proving the reference?	15/05/2018 No. The evidence requires a statement from the tenderer as well as a statement from the client, as described in Section 4.3.3.
6	16/05/2018 13:42	17/05/2018 10:34	Extension	Due to the massive number of suppliers included in this contract, several public holidays in several member states of the European Union reducing working time for this project, the need to organise a confirmatory statement for all references from our clients and the DIGIT/A3/PO/2018/017 DIS tender published in parallel to this SIDE tender and having to be worked on in parallel to this tender by resellers, thus limiting resources, we would kindly ask you for an extension of this tender by 2 weeks.	17/05/2018 No, unfortunately, business continuity constraints do not allow the Commission to extend the submission deadline for SIDE II.
7	16/05/2018 13:43	17/05/2018 10:34	Confirmatory Statement proving a reference	Is our understanding correct that for criterion T1 in the Tendering Specifications par 4.3.3., an e-mail by the customer confirming the purchase / project can be considered as confirmatory statement proving the reference?	17/05/2018 Yes, an email from the client can be considered as a statement for the purposes of fulfilling selection criterion T1.

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#	Submission date	Publication date	Question subject	Question	Answer
8	16/05/2018 13:45	17/05/2018 10:35	T1 Tendering Specifications, par. 4.3.3., references	Is our understanding correct that for criterion T1 in the Tendering Specifications par. 4.3.3., "EU countries served" refers to EU countries where the licenses or services are finally used?	17/05/2018 Yes, we confirm.
9	16/05/2018 13:48	17/05/2018 10:35	CRO 1, Annex 4 & 5 Values for unmanaged group	CRO1 Annex 4 & 5: As we only have the names of the TOP 50 ISVs in the unmanaged group, the calculation of uplifts for this group is impossible. We would therefore kindly ask you to provide the annual value based on past consumption for the TOP 50 ISVs of the unmanaged group.	17/05/2018 Annex 4 to the CRO1 Tendering Specifications has been replaced in the Document Library, now including a separate sheet with the annual average spend, for all EUIs, for the top 50 ISVs. In addition, it includes the overall spend on ISVs in this group, other than the top 50.
10	17/05/2018 06:52	18/05/2018 16:32	questions to the tender	<p>1) We supply of course software licenses and services from top software vendors like RedHat, Microsoft etc. Can you accept our partnership with the named software vendors through their distributors (like you request in TS 4.3.3 T2)?</p> <p>2) What is the purpose of CRO1 - Annex 5 - Catalogue Template?</p> <p>3) Where can I find annexes I and II of FWC?</p> <p>4) Is the uplift in CRO1 – Annex 2 – Financial Model the tenderer's margin in fact?</p>	18/05/2018 <p>1) Tenderers must have direct partnership agreements for the ISVs listed in Section 4.3.3 of the Tendering Specifications, under T2.</p> <p>2) As explained in the CRO1 Tendering Specifications, Annex 5 to CRO1 will serve as a template for the future Annexes I and II to the Framework Contract. It is merely to give tenderers an idea of what these annexes will look like.</p> <p>3) See point 2).</p> <p>4) Yes.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
11	17/05/2018 09:41	18/05/2018 16:32	Five resellers	<p>1) If five resellers are to be contracted, will each order be subject to a competition between the different resellers?</p> <p>2) Or will there be preferred resellers for certain software?</p>	<p>18/05/2018</p> <p>1) No, CRO1 does not foresee a reopening for each Order Form. Please see Section 3.3 of the General SLA.</p> <p>2) There are no 'preferred resellers'. Contractors are either awarded a reopening procedure or not. If they are awarded a reopening, they have the right to resell the products/ISVs/contents of that reopening procedure.</p>
12	17/05/2018 09:41	18/05/2018 16:33	Subcontractors	Should we view software publishers as subcontractors? Some of the requested services will be carried out by the software publishers themselves.	<p>18/05/2018</p> <p>There is no obligation to include software publishers as subcontractors. Tenderers decide for themselves whether and how they collaborate with other entities.</p>

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13	17/05/2018 15:18	18/05/2018 16:33	Criterion T1, "Transactions"	Large software projects are often summarized in multiple licences. Is our understanding therefore correct that for criterion T1 in the Tendering Specifications par. 4.3.3., "transactions" are defined as the number of licences bought?	18/05/2018 No, your understanding is not correct. If a given EUI purchases 100 licenses of a specific product, then that purchase constitutes a single transaction implemented through an order form. Hence, the number of transactions per year in the Tendering Specifications section 4.3.3 refers to the number of order form lines (i.e. product SKUs) or orders for services processed by the reseller, as opposed to the ordering quantity linked to an individual order form line (or SKU).

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14	19/05/2018 17:21	22/05/2018 17:55	<p>1 Annex 3 General Service Agreement GESLA Annex 2 SaaS questionnaire Template.</p> <p>2. References /conformity statement</p> <p>3. SAM services in chapter 3.3.4 and 3.3.5 of the tender specifications</p>	<p>1. Is this document (SaaS Questionnaire part of the documents to be submitted for the 04/06?</p> <p>2.1 References: Evidence T1 in tender specifications: Do you need a specific model?</p> <p>2.2. What do you want to find as information in the conformity statement given by customers?</p> <p>3. Do you want the SAM services (chapter 3.3.4 and 3.3.5 of tender specification) to be priced now in the financial model (annex 2)? As we may not change anything in the table, we don't know where to add it if it is part of the first evaluation</p>	<p>22/05/2018</p> <p>1. No. The SaaS questionnaire is a template which may change over time, to be used during contract implementation, when a quotation for SaaS is requested.</p> <p>2.1 No. There is no imposed template for this.</p> <p>2.2 The evidence for T1 requires that the client confirms the details of the reference regarding amounts, dates, recipients, number of transactions per year, number of ordering entities.</p> <p>3. Nothing should be quoted, beyond what is requested in Annex 2 to the CRO1 Tendering Specifications. Sections 3.3.4 and 3.3.5 of the tendering specifications indicate what is included in the scope of the call for tenders, and what can thus be requested in reopening of competition procedures. If these services are requested, it will be mentioned in the tendering specifications of that reopening of competition procedure. CRO1 includes negotiation support in its scope, as explained in the CRO1 SLA. If an outsourced SAM service is required by an EUI, contractors will be requested to quote this service in a separate reopening of competition procedure.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
15	19/05/2018 17:23	22/05/2018 17:56	Annex5 - CRO1 -Annex 5 - Catalogue template	Do you expect inputs in this xls for the submission?	22/05/2018 No. Annex 5 to CRO1 only serves as a template for the future Annexes I and II to the Framework Contract. It should not be submitted in eSubmission.
16	22/05/2018 12:10	22/05/2018 17:56	Number of orders	Can the EC clarify how many orders are typically placed annually and if these orders are placed online or manually (ie. by phone/email/etc.). Can a split of orders by vendor be provided as well?	22/05/2018 Around 8000 orders (i.e. corresponding to an individual order line in an Order Form (OF)) are placed per year, of which around 3000 are placed by the European Commission itself. The 8000 order lines are included in around 3200 Order Forms. In the beginning of the implementation, orders will be placed largely by e-mail, but an automation solution will likely be implemented throughout the lifetime of the framework contracts. Annexes 3 and 4 to CRO1 are updated with an overview of order lines per ISV for the year 2017, as a rough indicator of the transactional workload to be expected. It does not constitute any form of commitment by the EUIs.
17	22/05/2018 15:30	22/05/2018 17:56	Did you include in your tender the evidence regarding selection criteria, as requested in Section 4.3.2 of the Tendering Specifications? Please name this file "Evidence F1"	Do you agree if we add more than one document that we call them Evidence F1-1, Evidence F1-2,...	22/05/2018 Yes.

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18	23/05/2018 08:30	24/05/2018 09:33	Criterion T1 in the Tendering Specifications	Is criterion T1 of the technical and professional capacity criteria fulfilled in case tenderers provide references that include 1000 transactions per year but do not only focus on software?	24/05/2018 Yes, if the reference includes at least 1000 software transactions the overall reference can also include products other than software.
19	23/05/2018 08:31	24/05/2018 09:34	Criterion T1 in the Tendering Specifications, par. 4.3.3:	Is our understanding correct that a total of 2 references representing at least 1000 transactions per year is sufficient to fulfil the criterium regardless of the total number of references provided?	24/05/2018 At least three references are required, of which two should each represent at least 1000 transactions per year. Hence, it should include at least two references which both have at least 1000 transactions per year, but overall, three references should be submitted. All requirements of Section 4.3.3 of the Tendering Specifications (e.g. minimum one reference pertaining to the public sector) must be fulfilled. If you require more than three references to demonstrate this capacity, that is also fine.
20	23/05/2018 08:32	24/05/2018 09:35	Evidence for Selection Criteria	Is our understanding correct that evidence (e.g. customer confirmation for references) can be provided in one of the official languages of the European Union, regardless of the main language of the tender submission?	24/05/2018 Yes.

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#	Submission date	Publication date	Question subject	Question	Answer
21	24/05/2018 08:50	28/05/2018 08:58	Relying on capacities of other entities	Would the EC accept to only name the mother company as subcontractor in case a tenderer would rely on capacities from a number of different entities all belonging to the same group?	28/05/2018 No. Tenderers can rely on other entities to fulfil selection criteria. However, relying on the capacity of a parent company does not imply relying on the capacity of all affiliates of that parent company. Tenderers must include all legal entities on whose capacity it intends to rely as separate subcontractors, or as members of its consortium.
22	24/05/2018 13:49	28/05/2018 08:59	Document SIDE II: Annex 4 FWC I.13 I.13	Question : I.13.1 Exploitation of the results of the FWC (in annex 4 FWC) As Software reseller we are not allowed to transfer the exploitation of the results of the licenses, this is the ownership of the publisher. Some of the information may only be used internally and are not for publication or distribution, press release(financial results, references, ..). Modifications are generally not allowed. Can you confirm you agree with this ?	28/05/2018 Yes, this is understood. However, the provisions on exploitation of the results apply in case the contractor offers services directly, without reselling them.
23	24/05/2018 13:50	28/05/2018 08:59	Document SIDE II: Annex 4 FWC - II.23	Question : II.23. Intellectual property rights in Annex 4 FWC : As Software reseller we are not allowed to transfer the intellectual property rights of the licenses, this is the ownership of the publisher and part of the End User License Agreement '(EULA). Can you confirm you agree with this ?	28/05/2018 Yes, this is understood for licenses which are merely resold. However, the provisions on exploitation of the results apply in case the contractor offers services directly, without reselling them.

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24	24/05/2018 13:56	28/05/2018 08:59	III. GTCs V.2.1. 2.1.4 2.1.5 2.2.6	<p>Question 1: GTCs V2.1 Chapter 2.1.4 page 18 : Software execution failures : As software reseller we may not guarantee the good working of a software, this is the responsibility of the publisher Could you please confirm ?</p> <p>Question 2: GTCs V2.1 2.1.5 page 19 : execution of the software : As software reseller we may not guarantee the good working of a software, this is the responsibility of the publisher Could you please confirm?</p> <p>Question 3: GTCs V2.1 : 2.2.6 replaced in the FWC :page 22 (I.14.12. Security – Art. III.2.2 GTCs) This clause is subjected to EULA and not owned by the software reseller. Can you agree with this ?</p>	<p>28/05/2018</p> <p>1-2) Yes, we confirm that this does not apply to the products which are merely resold by the Contractor. However, the provision continues to apply for the services and any products the Contractor supplies directly, for example if a Contractor supplies its own custom-built SAM tool. In that case, full responsibility for the quality will apply.</p> <p>3) The contractor must make every effort to ensure that by reselling third-party software to the EUI, it does not introduce any backdoors or other remote control mechanisms, which could be exploited as vectors of attack at a later point in time. When supplying Products it develops itself, the contractor must ensure that the integrity of their Product is fully preserved.</p>

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25	24/05/2018 13:58	28/05/2018 09:00	III- GTCs V.2.1. 2.3.4 2.7.1	<p>Question 1: GTCs V2.1 : 2.3.4 Third party's intellectual property rights : The IPR are owned by the publisher and are part of the EULA. Can you agree with this ?</p> <p>Question 2: I.14.15. Use of Products – Art. III.2.7 GTCs replacing article 2.7.1 of the GTCs This is part of the EULA and not owned by the software reseller. Can you agree with this ?</p>	<p>28/05/2018</p> <p>1) Yes, we confirm that this does not apply to the products which are merely resold by the Contractor. However, the provision continues to apply for the services and any products the Contractor supplies directly.</p> <p>2) The principle of Article I.14.15 of the Framework Contract continues to apply between the contractor and the contracting authorities. However, if specific ISVs exclude this in their licensing terms, such terms will have priority.</p>
26	24/05/2018 13:58	28/05/2018 09:00	declaration of confidentiality	<p>Question : Declaration of confidentiality We do enter NDAs as a company. We do not usually ask our people having to sign such personally. Can you agree with this ?</p>	<p>28/05/2018</p> <p>No. Specific Contracts may require specific confidentiality declarations be signed by the persons involved in the Specific Contract.</p>
27	24/05/2018 13:59	28/05/2018 09:00	submission of signed document	<p>Question : Where do you want us to send the official signed version of the Declaration of honour and the e-report : Montoyer street or Bourget avenue ?</p>	<p>28/05/2018</p> <p>The documentation should be sent to the address of the contracting authority, as mentioned in the Contract Notice.</p>

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28	24/05/2018 14:00	28/05/2018 09:00	scan tender report in e-submission	Question : In the invitation to tender letter page 2 : When the declaration(s) on honour and/or the tender report are signed by hand, a scanned copy must be attached to the tender in e-Submission. What is the process to add the scanned tender report in the e-submission (before submitting)	28/05/2018 The tender report is generated by eSubmission and must only be sent by mail. It should not be uploaded to eSubmission.
29	25/05/2018 09:25	28/05/2018 09:01	Annex IX - Notification document	Please can you clarify what this document is in reference to?	28/05/2018 See Article I.16 and I.17 of the Framework Contract.

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30	25/05/2018 14:41	28/05/2018 09:01	Annex 2 – Financial model	<p>Purchasing prices of software licenses might differ based on the partner status and certification level of the reseller. However the pricing model of Annex 2 with an uplift only, penalizes resellers who manage to maintain cheap purchasing conditions for their customers. E.g. company A buys at 100 € and applies an uplift of 5% (EUI price = 105 €) and company B buys at 110 € but only applies 4% uplift (EUI price = 114,40 €). Still company B wins even though the EUI pay more. Can you please elaborate how this issue will be tackled by DIGIT?"</p>	<p>28/05/2018</p> <p>Via criterion T2 (see Tendering specs §4.3.3), the contracting authority has requested a minimum level of capacity, including information on partnership agreements and awarded vendor accreditations. It is understood that certification levels may differ between tenderers and that they may vary in time.</p> <p>While your point is valid, including the ISV price in the financial model for the call for tenders could also be deceiving, as it would create the impression that the ISV pricing is stable, whereas the ISV pricing and product definitions are very volatile in practice. Therefore, the Commission opted for a dynamic approach, including the possibility to reopen competition, and to conclude enterprise license agreements with the ISVs.</p> <p>Once the contracting authority concludes an enterprise license agreement (ELA) with a particular ISV and reopens to select a reseller for that ISV, the purchase price for EUI are determined by the ELA conditions in combination with the uplifts offered in the context of that reopening.</p> <p>In large Groups like U and P, which are composed of many ISVs, there is an averaging effect, since Company B will typically not have the highest</p>

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					<p>will typically not have the highest buying price and the lowest uplift for every ISV in such large groups, thereby mitigating the concern described above.</p> <p>The contracting authority reserves the right to reopen "Group P" or "Group U" after the initial award, in case it sees a valid business reason to do that.</p> <p>In addition, a SAM tool could create a centralized view on this issue and will allow DIGIT to act accordingly.</p>
31	25/05/2018 14:53	28/05/2018 09:01	3.2.2 GeSLA - Audit Management Assistance	Is the contractor liable for anything regarding audits towards ISVs?	<p>28/05/2018</p> <p>The Contractors shall abide by the requirements of Section 3.2.2 of the GeSLA and are liable to Liquidated Damages in case of failure.</p> <p>Furthermore, general liability articles of the Framework Contract continue to apply. Contractors are presumed to have the authorisation to resell the products that it sells to the EUIs. The Commission is not party to the agreement between the SIDE II Contractors and the ISVs. It can therefore not make any statement on the Contractors' obligations under those agreements.</p>

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32	25/05/2018 14:55	28/05/2018 09:02	3.2.3. Proactive information sharing	<p>We understand that in case certain ISVs apply automatic renewals for their licenses, that the contractor has to proactively notify the EUIs at least 3 months prior to the respective date of an automatic renewal.</p> <p>We assume that this means that in case the EUIs decide to not renew the license we are allowed to cancel the subscription? We also assume that in case the EUIs decide at a later point to continue the subscription and the ISV applies renewal penalty fees, the EUIs will pay that fee.</p> <p>Could you please confirm our understanding or explain in detail?</p>	<p>28/05/2018</p> <p>The Contractor shall notify the EUIs of upcoming expiries, regardless of whether the renewal is automatic or not. If after such notification, the EUI states that the subscription should not be renewed, the ongoing subscription shall run until its expiry, and the contractor is allowed to cancel the subscription. Penalty fees regarding renewals will be borne by the party at fault. This principle will be evaluated on a case-to-case basis.</p> <p>In case EUI opt to resume a subscription, after having failed to renew it in due time, they might be subject to penalty fees for products which do not support a gap in subscription coverage (depending on the case).</p>

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33	25/05/2018 14:56	28/05/2018 09:02	Direct Selling ISVs	Some ISVs will not agree to a sales model via a reseller. What will be the process in case the EUI want to purchase products from such ISVs?	28/05/2018 The Commission considers that this should be handled on a case-to-case basis. As a principle, all tenderers must be able to resell all ISVs listed in Group P. Termination of the award of an ISV by a Contractor is only possible when the redistribution authorisation is lost. In case an ISV does not want to sell its products via a reseller, the SIDE II contract simply cannot be used.
34	28/05/2018 15:35	29/05/2018 15:03	Contract award	How will the contract be awarded to the (maximum) five different resellers, is this based on uplift, partner status, etc.? How will the contract be divided, will this be per manufacturer?	29/05/2018 Please read Section 4.5 of the Tendering Specifications for the award of the Framework Contracts, and the CRO1 Tendering Specifications for the award of the first Commission reopening procedure.
35	29/05/2018 13:35	29/05/2018 15:03	Deadline for questions	On the initiative of the European Commission, tenderers are reminded that the Commission is not bound to reply to requests for additional information received less than six working days before the time-limit for receipt of tenders.	29/05/2018 See Invitation to tender letter.