

Call for tenders' details

Title: NL-Petten: Framework agreement for the provision of temporary staff to the JRC site in Petten

Start date: 26/06/2018

Time limit for receipt of tenders: 17/09/2018

Contracting authority: European Commission, Joint Research Centre - Petten (JRC-PTT)

Status: Closed

Call for tenders question list

#	Submission date	Publication date	Question subject	Question	Answer
1	26/06/2018 12:21	26/06/2018 13:44	Language of the tender documentation.	Would you be so kind as to provide the Bidders with English version of the documentation? Thank you.	26/06/2018 Thank you for your question. We will make the English documents available as soon as possible.

Call for tenders questions summary

#	Submission date	Publication date	Question subject	Question	Answer
2	11/07/2018 15:33	12/07/2018 09:53	Extension of the deadline for submitting offers	Does the JRC-PTT take into consideration extending the tenders submission date, accordingly to the publication of the English version of the documentation?	<p>12/07/2018 Yes, this has been taken into account. A corrigendum with a new deadline and date for opening will be published in the coming days. The contracting authority expects the translated documents to be published next week.</p> <p>16/07/2018 Please note that the English documents have been published today 16/07/2018. The deadline for submitting the offers has been extended from 03/09/2018 to 17/09/2018. (Please see the published corrigendum)</p>
3	16/07/2018 14:48	24/07/2018 09:41	Part 1 - Administrative annex	Is there an intention to migrate temporary agent workers after contract award?	<p>24/07/2018 No.</p> <p>24/07/2018 Correction of the answer. 6 to 10 per month - all in Phase A</p>
4	16/07/2018 14:49	24/07/2018 10:06	Part 1 - Administrative annex	Is there an intention to migrate temporary agent workers after contract award?	<p>24/07/2018 No.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
5	16/07/2018 15:44	24/07/2018 10:30	Part 1 - Administrative annex	<p>What expectations does the JRC Petten have towards a service provider?</p> <p>What personnel developments within JRC Petten do we need to be aware of?</p>	<p>24/07/2018 "Accessibility by phone, e-mail, and in person, professional acting, willingness to advise, accurate and fast delivery, clarity, understanding of multicultural composition, no discrimination against personnel in word, conduct or writing, including internal e -mails of the contractor.</p> <p>Functioning of the European Commission and Knowledge of the JRC.</p> <p>Personnel developments are important for the contractor"</p>
6	16/07/2018 15:45	24/07/2018 10:41	2.5 [Award criteria] Technical quality [TQ]; we have a number of questions thereto:	<p>1. It is unclear for the tenderer what you mean with the term 'robustness of the proposed method'. Could you clarify this?</p> <p>2. Could you also clarify when a proposal is fully explained?</p> <p>3. With regard to TQ, point 1: what is meant by method of mobility?</p> <p>4. With regard to TQ, point 2: what languages do temporary agency workers need to speak?</p> <p>5. With regard to TQ, point 2: what knowledge of IT applications is required?</p>	<p>24/07/2018 1. The technical quality of the proposed methods. 2. If the tenderer formulates its tender sufficiently clearly to enable the Contracting Authority to evaluate its technical quality on the basis of the technical award criteria. 3. Attention: method of mobilizing (attracting); not: mobility. 4. English / Dutch. 5. MS office applications.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
7	16/07/2018 15:50	24/07/2018 13:32	Services Framework Contract. We have a number of questions	<p>1) I.5.1 [Draft] Framework Contract: The Contracting Authority is requested to explain the added value of the first paragraph of this Article (Maximum amount of the framework contract). The tenderer does not understand the added value of this provision or is inclined not to encounter any responsibility not to exceed the indicated amount.</p> <p>2) I.11.1 [Draft] Framework Contract: The Contracting Authority is requested to exclusively stipulate Dutch law as applicable to the framework contract or at least to change the order of Union law and Dutch law in this provision.</p> <p>3) I.13 + II.4.7 [Draft] Framework Contract: Could the Contracting Authority confirm that temporary agency workers are excluded from "contractor's staff"?</p> <p>4) I.13 [Draft] Framework Contract: The Contracting Authority is requested to delete the second paragraph of this provision. The responsibility for requesting the access cards to be returned rests in any case on the Contracting Authority as their owner (and as recipient of temporary agency workers). The tenderer is of course more than willing to make efforts that the access cards are returned to the Contracting Authority. Should the</p>	<p>24/07/2018</p> <p>1) Article I.5.1., para. 1 is a standard clause emphasizing that the maximum amount for the services to be provided cannot exceed the stated amount.</p> <p>2) Article I.11.1 - No.</p> <p>3) Articles I.13 + II.4.7 - No.</p> <p>4) Article I.13 - No.</p>

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				Contracting Authority. Should the Contracting Authority dismiss this request, the tenderer is of the opinion that in this case the scope of that clause is at least to exclude the tenderer's temporary agency workers and that the due amount per day as well as the maximum amount are to be considerably lowered.	
8	16/07/2018 15:51	24/07/2018 13:59	Framework Contract for Services	I.11.1 [Draft] Framework Contract: The Contracting Authority is requested to exclusively stipulate Dutch law as applicable to the framework contract or at least to change the order of Union law and Dutch law in this provision.	24/07/2018 An Article I.11.1 - No.
9	16/07/2018 15:52	24/07/2018 14:06	Framework Contract for Services	I.13 + II.4.7 [Draft] Framework Contract: Could de Contracting Authority confirm that temporary agency workers are excluded from "contractor's staff"?	24/07/2018 I.13 + II.4.7. No.

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#	Submission date	Publication date	Question subject	Question	Answer
10	16/07/2018 15:52	24/07/2018 14:13	Framework Contract for Services	I.13 [Draft] Framework Contract: The Contracting Authority is requested to delete the second paragraph of this provision. The responsibility for requesting the access cards to be returned rests in any case on the Contracting Authority as their owner (and as recipient of temporary agency workers). The tenderer is of course more than willing to make efforts that the access cards are returned to the Contracting Authority. Should the Contracting Authority dismiss this request, the tenderer is of the opinion that in this case the scope of that clause is at least to exclude the tenderer's temporary agency workers and that the due amount per day 25 EUR as well as the maximum amount 100 EUR are to be considerably lowered.	24/07/2018 I.13 No, it will not be updated and not changed.
11	16/07/2018 15:51	24/07/2018 14:18	Framework Contract for Services	I.5.1 [Draft] Framework Contract: The Contracting Authority is requested to explain the added value of the first paragraph of this Article (Maximum amount of the framework contract). The tenderer does not understand the added value of this provision or is inclined not to encounter any responsibility not to exceed the indicated amount.	24/07/2018 I.5.1. the maximum amount for the services to be provided cannot exceed the stated amount

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#	Submission date	Publication date	Question subject	Question	Answer
12	16/07/2018 15:53	24/07/2018 14:26	Framework Contract for Services	I.14.2 [Draft] Framework Contract: When temporary agency workers start to work for the Contracting Authority, their direction and supervision is transferred to the Contracting Authority (as recipient of the temporary agency workers). With this, also the "influence" is transferred to the Contracting Authority (as recipient of the temporary agency workers). This implies that the control and guidance concerning acts on omissions of the temporary agency workers during the implementation of their assignments is the Contracting Authority's responsibility (as recipient of the temporary agency workers). For these reasons, the tenderer is not inclined to contractually accept responsibility for damage to the Contracting Authority's equipment and therefore requests the Contracting Authority to amend the last sentence of that provision (in conformity with what the law stipulates and what is usual in the business) as follows: "The Contracting Authority is responsible and liable for damage caused by the Contractor's temporary agent workers to equipment of the JRC.	24/07/2018 I.14.2 will not be changed.

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#	Submission date	Publication date	Question subject	Question	Answer
13	16/07/2018 15:47	24/07/2018 14:34	Annex 1 part 2 Technical specifications; we have a number of questions	<p>1. Page 1: You indicate to have regular demand of temporary agency workers. How many per year? What was the maximum volume in this regard in EUR or hours in 2017? What are your estimates for the next year?</p> <p>2. Page 4; 6A: In this part, reference is made to 17 collectively fixed as well as other holiday days. How many holiday days remain accordingly? Are there another 25 holiday days (ABU Collective Labour Agreement) to be added on top of this or does this include an exchange between both categories? In short: how many public and other holidays are to be considered for temporary agency workers? And how is this currently implemented?</p> <p>3. Page 5; 8: You describe the following: The Contractor is required to issue a collective invoice concerning all temporary agency workers assigned to JRC Petten in the given period, specifying the hours worked. See in this regard Article I.4 of the [draft] framework contract. The tenderer has two questions thereto: a) is it permissible to issue invoices on a weekly or four-weekly basis? b) is the required specification of hours worked meant to be on a weekly or daily basis?</p>	<p>24/07/2018</p> <p>1. 6-10 workers per month. Expectations for the future will not deviate from the past.</p> <p>2. Collective days are days on which the European Commission is closed. This means that no work can be done on site. Also, no teleworking may be performed by temporary agency workers. If a temporary agent worker cannot work, the person is deemed to take of. In any case nothing will be paid for these days.</p> <p>3. The reference to Article I.4 in the last sentence on that page is to be read a reference to Article I.5 (I.5.5.1) of the draft framework contract which provides clear answers to the questions raised: ad a)+b), No, only monthly (2x).</p> <p>4. NO, with regard to recourse to subcontracting before or after contract award, see point 1.2.2 of Annex I – part 1 – Administrative Annex and Article II.10 of the draft framework contract.</p> <p>30/07/2018</p> <p>.</p>

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				weekly or daily basis? 4. Page 2; 2: The Contracting Authority is requested to amend the definition "temporary agency worker" as follows: every natural person, who has entered into a temporary agency work contract with the Contractor or a third party through the Contractor in accordance with article 7:690 of the Civil Code with the intention of performing work for the Contracting authority under its direction and supervision.	

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#	Submission date	Publication date	Question subject	Question	Answer
14	16/07/2018 15:53	24/07/2018 14:41	Framework Contract for Services	I.14.3 [Draft] Framework Contract: When temporary agency workers start to work for the Contracting Authority, their direction and supervision is transferred to the Contracting Authority (as recipient of the temporary agency workers). With this, also the "influence" is transferred to the Contracting Authority (as recipient of the temporary agency workers). This implies that the control and guidance concerning acts on omissions of the temporary agency workers during the implementation of their assignments is the Contracting Authority's responsibility (as recipient of the temporary agency workers). For these reasons, the tenderer is not inclined to contractually accept responsibility for damage to the Contracting Authority's equipment and therefore requests the Contracting Authority to amend the last sentence of that provision (in conformity with what the law stipulates and what is usual in the business) as follows: "The Contracting Authority is responsible and liable for damage caused by the Contractor's temporary agent workers to equipment of the JRC.	24/07/2018 I.14.3 will not be changed

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#	Submission date	Publication date	Question subject	Question	Answer
15	16/07/2018 15:54	24/07/2018 14:45	Framework Contract for Services	II.15 [Draft] Framework Contract: The tenderer considers this provision (concerning liquidated damages fixed in advance in case contractual obligations are not observed in due time) as unfair for the required provision of services. The Contracting Authority is requested to declare this provision as not applicable.	24/07/2018 II.15. will not be changed
16	16/07/2018 15:55	24/07/2018 14:49	Framework Contract for Services	II.16.1 [Draft] Framework Contract: The tenderer considers this provision as unfair. The Contracting Authority is requested to declare this provision as not applicable.	24/07/2018 II.16.1 will not be changed
17	16/07/2018 15:56	24/07/2018 15:48	Framework Contract for Services	II.19.2 E-invoicing Reception of invoices by standard format (pdf) or email is not accepted. We have 2 questions related thereto: 1. What format do you require for the reception of the invoice[?] 2. Do you make use of a service billing provider or are we required to submit invoices directly?	24/07/2018 This provision is simply to specify what constitutes an invoice in electronic format: an invoice submitted by using a qualified electronic signature or through electronic data interchange (like via e-Prior), but not an invoice received by standard format (pdf) or e-mail, both of which do not fulfil these qualifications. According to Article I.5 (I.5.5.1) invoicing in electronic format is not mandatory but optional.

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#	Submission date	Publication date	Question subject	Question	Answer
18	16/07/2018 15:57	24/07/2018 16:28	Annex IV Safety regulations for third parties	When temporary agency workers start to work for the Contracting Authority, their direction and supervision is transferred to the Contracting Authority (as recipient of the temporary agency workers). With this, also the "influence" is transferred to the Contracting Authority (as recipient of the temporary agency workers). This implies that the control and guidance concerning the observance of safety regulations and, therewith, the responsibility and liability related thereto becomes that of the Contracting Authority (as recipient of the temporary agency workers). The Contracting Authority is requested to confirm that this will be observed and that the Contractor shall not therefore be responsible and liable for the observance of safety regulations by temporary agency workers during the implementation of their assignments at the Contracting Authority.	24/07/2018 Question already answered

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#	Submission date	Publication date	Question subject	Question	Answer
19	19/07/2018 10:50	24/07/2018 16:36	Framework Contract for Services	<p>Description: I.14.4 + II.6.1 + II.6.3 [Draft] Framework Contract: The Contracting Authority is requested to amend the current text of provisions I.14.4, II.6.1 and II.6.3 and replace it by the following proposed text (considered to be fair):</p> <p>"The Contractor is responsible and liable for the provision of temporary agency workers suitably qualified for the required functions.</p> <p>The Contracting Authority is responsible towards the temporary agency workers and the Contractor for the observance of article 7:658 of the Civil Code, the law concerning working conditions and obligations related thereto. The Contracting Authority is liable in this respect holds the Contractor completely harmless.</p> <p>Article 6:170, para. 1 Civil Code is applicable which entails that an employer is liable for any damage to a third party caused by an error of a subordinate person – including temporary agency workers in their relation to the Contracting Authority – if the error has been increased due to instructions to carry out an assignment and that person's employer had an influence,</p>	24/07/2018 No.

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				<p>employer had an influence, according to the respective legal relationship, on the conduct entailing the error. The Contracting Authority holds the Contractor completely harmless in this respect.</p> <p>The Contractor is not liable towards the Contracting Authority for damage and loss sustained by the Contracting Authority, third parties or temporary agency workers which result from negligence of temporary agency workers. The Contractor's liability is limited to an amount of 100.000 EUR per event and (in total) 500.000 EUR per calendar year, it being understood that a series of related events is to be considered as one and the same event. Subject to requests for reimbursement resulting from claims of third parties (including temporary agency workers), the Contracting Authority and the Contractor are not mutually liable towards each other for indirect damage sustained or to be sustained."</p>	

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#	Submission date	Publication date	Question subject	Question	Answer
20	16/07/2018 15:56	24/07/2018 17:01	Framework Contract for Services	I.10 [Draft] Framework Contract: Could the Contracting Authority confirm that the grounds for termination according to Article II.18 are not applicable and both parties can therefore terminate the Contract early at any time? If not, the Contracting Authority is requested to offer the Contractor an equivalently far-reaching contractual basis for early termination as indicated under Article II.18.1	24/07/2018 NO. According to Article I.1, Article I.10 only takes precedence over Article II.18; however, the latter remains applicable for extraordinary circumstances. Article II.18 stipulates different grounds for both parties (under II.18.1 for the Contracting Authority; under II.18.2 for the Contractor), for terminating the framework contract.
21	13/08/2018 11:29	20/08/2018 09:28	Framework contract "I5.5 Interim payment, payment of the balance"; "II.19.1 Invoices and value added tax"	Our organization mentions on the invoice by default: Invoice number & the invoice date / your debtor number and name / address / our name / return address / telephone number / e-mail address / bank account number / Chamber of Commerce number / the VAT number. In terms of content, the organization mentions the following: Your characteristic in the form of a department, project or reference / the week number / name of the flex worker / the number of hours / the rate / the surcharge percentage / possible costs / the VAT percentage / the VAT amount / subtotals and totals of the amount and the hours. Would you agree with this?	20/08/2018 Nee, de voorwaarden zoals beschreven zijn van toepassing.

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#	Submission date	Publication date	Question subject	Question	Answer
22	13/08/2018 11:30	20/08/2018 10:13	Framework contract "II.5.3 Submission of e-documents via e- PRIOR"	Our organization no longer supports messages in EDI format. A link via web services is therefore not feasible for that reason. However, we would be happy to discuss the possibilities of the supplier portal. Are you prepared to further explore this after the award of the contract?	20/08/2018 No, the provisions in reference apply as they are.
23	13/08/2018 11:31	20/08/2018 10:20	Technical specifications 4.a	This article describes the relationship between you, contractor and the temporary worker. Would you confirm that temporary workers who are made available to you by the contractor work under your leadership and supervision? If not, how do you see the responsibility of the parties?	20/08/2018 The question was already answered.

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#	Submission date	Publication date	Question subject	Question	Answer
24	13/08/2018 11:31	20/08/2018 11:13	Technical specifications 4.b	<p>Technical specifications article 4.b regulates the obligation for temporary agency workers to comply with the legislation, disciplinary rules, safety measures, etc. This is understood by the tenderer, although it is important to coordinate which party does 'what' in that context.</p> <p>The contractor is, of course, prepared to inform temporary workers of all rules, guidelines and protocols that you require, provided they have been provided to the contractor in advance.</p> <p>The compliance of the temporary workers falls under your management and supervision. Would you confirm that this interpretation of Article 4.b is correct? If not, how do you see the responsibilities of the parties in this context?</p>	<p>20/08/2018</p> <p>Question already answered with regard to 4. a, Technical Specifications.</p> <p>The Contracting Authority shall provide all necessary information to the Tenderer so that it is given the opportunity to inform the temporary agency worker. Actual compliance is subject to the management and supervision responsibility of the Contracting Authority, which does not however relieve the Contractor from its own responsibilities.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
25	13/08/2018 11:32	20/08/2018 12:08	Technical specifications 4.c	<p>Technical specifications, article 4.c regulates the possibility for you to terminate a posting of a temporary worker if the worker does not "comply" and choose to replace the temporary agency worker. However, no notice periods are mentioned in this article. On the basis of the applicable Collective Employment Agreement for Temporary Employees (ABU), the private employment agency must comply with the following notice periods upon termination of the temporary employment contract with the temporary agency worker:</p> <p>Phase A with an agency clause:</p> <ul style="list-style-type: none"> • 12 to 26 working weeks notice period: 5 calendar days • 26 to 52 working weeks notice period: 10 calendar days • 52 to 78 weeks of notice: 14 calendar days <p>Phase A without agency clause, Phase B and C:</p> <ul style="list-style-type: none"> • duration contract <3 months notice period: 7 calendar days • duration contract 3-6 months notice period: 14 calendar days • duration contract > 6 months notice period: 28 calendar days <p>Are you prepared to coordinate these notice periods applicable between the Contracting authority and the Contractor?</p>	<p>20/08/2018</p> <p>In accordance with law / CAO (see 4. c, para. 3, Technical Specifications).</p>

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				and the Contractor?	
26	13/08/2018 11:32	20/08/2018 12:23	Safety regulations for third parties	<p>Tenderer has taken a note of the annex "Safety regulations for third parties".</p> <p>It states that the tenderer will share this information with all his staff members and all temporary workers who are available to you prior to the work.</p> <p>Do you confirm that compliance with these regulations by temporary workers falls under the scope of your management and supervision? If not, how do you see the responsibility of the parties?</p>	<p>20/08/2018</p> <p>The question was already answered.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
27	13/08/2018 11:33	20/08/2018 14:09	Contract 1.14.2	Article 1.14.2 of the contract regulates the obligation for temporary workers to comply with internal rules and safety regulations. In case of non-compliance with the requirements, you may terminate the posting and all costs resulting from measures referred to above will be charged to the contractor. The Tenderer understands that you would like to intervene in the event of risk and that it is also in your responsibility and supervision with regard to temporary workers. However, passing of 'all costs' that are the result of the termination to the contractor is not reasonable: the contractor has no influence to that, unless there are shortcomings attributable to the contractor in the recruitment and selection process. Are you therefore prepared to adjust Article 1.14.2 accordingly? If not, why not?	20/08/2018 No (in accordance with law / CAO; see 4., Technical Specifications).

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#	Submission date	Publication date	Question subject	Question	Answer
28	13/08/2018 11:32	20/08/2018 15:10	Contract 1.10	Article 1.10, paragraph b) of the Contract states that in case of termination of the contract, the contractor is entitled to payment only for the services that have been provided 'before the termination takes effect'. The Tenderer assumes that this refers to the services that are delivered up to the end date. Do you confirm that this interpretation is correct?	20/08/2018 Only services provided shall be paid for = only services which have been provided by a temporary agency worker during the period for their provision (until termination of the contract in accordance with Article I.10).

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#	Submission date	Publication date	Question subject	Question	Answer
29	13/08/2018 11:34	20/08/2018 15:35	General conditions II.4.7	The definition of 'personnel' from the general terms and conditions chapter 2 and article 2.4.7 of the contract refers to persons with whom the contractor has concluded an agreement with a view to the implementation of the framework contract. In principle, you assume that these personnel work under the responsibility of the contractor. It is therefore important to make a distinction between contractor staff on the one hand who work under the direction and supervision of the contractor himself and temporary workers on the other hand who work under your direction and supervision. For this reason, you still need to add the definition of 'temporary worker' to the contract: 'Flexible worker: Every natural person who has entered into an agreement as referred to in Section 7: 690 of the Dutch Civil Code with the Contractor in order to perform work for the Client under supervision and supervision of that Client. '	20/08/2018 The question was already answered.

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#	Submission date	Publication date	Question subject	Question	Answer
30	13/08/2018 11:33	20/08/2018 16:01	Contract 1.14.3	Article 1.14.3 of the contract stipulates that the contractor is responsible and liable for damage that temporary workers may cause to your business assets. Inherent to the nature of the service, the management and supervision of the temporary workers' activities as well providing access to company resources for temporary workers will be done by the Commission. Contractor is not on site nor is able to intervene. Depending on the nature of the service, you are also responsible for any damage to your assets caused by temporary workers. Are you prepared to cancel article 1.14.3? If not, why not?	20/08/2018 No (in accordance with law / CAO; see 4., Technical Specifications).
31	13/08/2018 11:33	20/08/2018 16:19	Contract 1.14.4	Article 1.14.4 regulates that the tenderer is liable for damage caused by 'incompetent temporary workers'. Do you want to confirm that this refers to temporary workers in which the tenderer has attributable a shortcoming in recruitment and selection? If not, what do you mean by 'incompetent temporary workers'?	20/08/2018 Yes.

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#	Submission date	Publication date	Question subject	Question	Answer
32	13/08/2018 11:37	21/08/2018 11:17	General conditions of the contract II.12	Tenderer wants to be able to finance its working capital. (Internal) Factoring is a part of this and we would like to be able to transfer an invoice to an internal or external factoring company. Our customers never suffer from this because the invoice will continue to be collected by the original operating company on the existing bank account (s). Could you therefore grant us (in writing) the permission to transfer our claims in deviation from article II.12.1 of the agreement? If not, why not?	21/08/2018 No, but in accordance with Article II.12, the Contractor is indeed entitled to request the Contracting Authority's prior approval of Assignment.

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#	Submission date	Publication date	Question subject	Question	Answer
33	13/08/2018 11:37	21/08/2018 11:22	General conditions of contract II.24	<p>Based on the article II.24 (of the contract), the contracting authority is entitled to have audits carried out. As being a part of a listed company, we pay a lot of attention and efforts to the quality of our services, administration and internal control measures, for example, in the form of periodic audits executed by an internally appointed independent auditor.</p> <p>As such controls are (very) burdensome in practice since they take a lot of time, preparation and content and thus (strongly), influence the regular process we would like to propose you to skip Article II.24 until you have made the findings of the internal audit department. This is not the case if there is still a question of reasonable doubt or mutual consultation has led to no results. We would also like to add that such audit, in principle, would be carried out no more often than once per year.</p> <p>The costs of the audit will be covered by the contracting authority, unless the investigation indicates that the invoice was incorrect on certain parts and in case of culpable debt, then the costs shall be borne by the contractor. Would you adjust Article II.24 accordingly?</p>	<p>21/08/2018 No, Article II.24 is mandatory.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
34	13/08/2018 11:37	21/08/2018 12:05	General conditions of contract II.18.1	This article provides additional possibilities for the contracting authority to terminate the framework contract. Tenderer would like to note that the contract is signed for one year period with a general termination period of six months with no purchase obligation for the contracting authority. Additional termination options are not desirable or necessary as far as the tenderer had not anticipated the far-reaching commercial implications/consequences. Therefore, would you remove Article II.18.1 out of the contract? If not, why not?	21/08/2018 No, Article II.18.1 concerns additional mandatory (in relation to Article I.10 additional) reasons for termination of the contract by the Contracting Authority.

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#	Submission date	Publication date	Question subject	Question	Answer
35	13/08/2018 11:34	21/08/2018 16:53	Contract I.14.4	<p>Article I.14.4 regulates liability for any damage caused by 'incompetent temporary workers' with a limitation per incident but without maximum amount per year.</p> <p>In view of the fact that the Tenderer is part of a listed company and is therefore bound by certain risk mitigation measures and procedures, the Tenderer cannot accept unlimited liability.</p> <p>When assessing liability, the Tenderer must consider which liability is proportional in view of the nature and scope of the assignment. In view of the foregoing, we would request that you consider a limitation of liability that is proportional.</p> <p>Are you therefore prepared to include a maximum liability per year of EUR 1,000,000? If not, why not?</p>	<p>21/08/2018 A substantive reply will be provided in due course.</p> <p>22/08/2018 Answer to questions (No. 35-39) All five questions/proposals pertain to the distribution of (liability-) risks between the contracting parties. The combination of provisions in the framework contract and general conditions pertaining to such distribution (including limitation of liabilities), reflects the wishes of the European Commission in this respect and form an integral part of the terms under which it is willing to order services from contractors. Amongst others this entails that the European Commission will expect the contracting party to assume responsibility (and accept liability) for the expertise and behaviour of its "personnel", which includes the temporary agency workers (see the definition in clause II.1 and see clauses II.4.7 and next of the general conditions). Said terms are equal for all interested parties and are non-negotiable according to the applicable law in an open call for tender like the present one.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
36	13/08/2018 11:35	21/08/2018 16:59	General conditions of contract II.6	Article II.6 of the contract regulates liability, in addition to Article I.14.4 and limits the general liability of the tenderer to three times the value of the specific contract. There is no limitation of liability per year in this article. Under the same motivation as the Tenderer's question with regard to Article I.14.4, the Tenderer requests you to include a maximum liability per year of EUR 1,000,000. Are you ready for that? If not, why not?	<p>21/08/2018 A substantive reply will be provided in due course.</p> <p>22/08/2018 Answer to questions (No. 35-39) All five questions/proposals pertain to the distribution of (liability-) risks between the contracting parties. The combination of provisions in the framework contract and general conditions pertaining to such distribution (including limitation of liabilities), reflects the wishes of the European Commission in this respect and form an integral part of the terms under which it is willing to order services from contractors. Amongst others this entails that the European Commission will expect the contracting party to assume responsibility (and accept liability) for the expertise and behaviour of its "personnel", which includes the temporary agency workers (see the definition in clause II.1 and see clauses II.4.7 and next of the general conditions). Said terms are equal for all interested parties and are non-negotiable according to the applicable law in an open call for tender like the present one.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
37	13/08/2018 11:36	21/08/2018 17:02	General conditions of contract II.6	Article II.6 of the contract governs unlimited liability in the event of intent or deliberate negligence of the contractor and his staff. The tenderer accepts the responsibility of the persons in its service over which tenderer is in charge and supervised. It is, however, important that this unlimited liability does not apply to temporary workers who work under your management and supervision, unless there is an attributable shortcoming of the contractor in the recruitment and selection of a temporary agency worker. Would you therefore confirm that article II.6 does not cover damage caused by temporary employees? If not, how do you see the responsibility of the parties?	<p>21/08/2018 A substantive reply will be provided in due course.</p> <p>22/08/2018 Answer to questions (No. 35-39) All five questions/proposals pertain to the distribution of (liability-) risks between the contracting parties. The combination of provisions in the framework contract and general conditions pertaining to such distribution (including limitation of liabilities), reflects the wishes of the European Commission in this respect and form an integral part of the terms under which it is willing to order services from contractors. Amongst others this entails that the European Commission will expect the contracting party to assume responsibility (and accept liability) for the expertise and behaviour of its "personnel", which includes the temporary agency workers (see the definition in clause II.1 and see clauses II.4.7 and next of the general conditions). Said terms are equal for all interested parties and are non-negotiable according to the applicable law in an open call for tender like the present one.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
38	13/08/2018 11:36	21/08/2018 17:05	General conditions of contract II.6.4	<p>Article II.6 paragraph 4 of the contract concerns liability as a result of infringement of the intellectual property rights of third parties. Tenderer accepts that responsibility for the office staff. Do you confirm that this article does not refer to the temporary workers who are available to the contracting authority?</p> <p>Because the temporary workers work under your direction and supervision, it is not reasonable if any infringement of IP rights of third parties is at the risk of the contractor because the contractor cannot influence that at all. The tenderer is, of course, prepared to have the temporary workers signed an IPR declaration. Do you agree? If not, why not?</p>	<p>21/08/2018 A substantive reply will be provided in due course.</p> <p>22/08/2018 Answer to questions (No. 35-39) All five questions/proposals pertain to the distribution of (liability-) risks between the contracting parties. The combination of provisions in the framework contract and general conditions pertaining to such distribution (including limitation of liabilities), reflects the wishes of the European Commission in this respect and form an integral part of the terms under which it is willing to order services from contractors. Amongst others this entails that the European Commission will expect the contracting party to assume responsibility (and accept liability) for the expertise and behaviour of its "personnel", which includes the temporary agency workers (see the definition in clause II.1 and see clauses II.4.7 and next of the general conditions). Said terms are equal for all interested parties and are non-negotiable according to the applicable law in an open call for tender like the present one.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
39	13/08/2018 11:36	21/08/2018 17:07	General conditions of contract II.6.6	Article II.6 paragraph 6 of the contract states that you are not liable for any loss or damage unless the loss or damage was caused by wilful misconduct or gross negligence. The Tenderer notes that there is a big difference between the current liability provisions that apply to the contracting authority and to the contractor. Will you bring this more into balance and delete article II.6.6 of the contract? The tenderer is open for a reasonable proposal for contracting authority's liability as a result of an 'attributable shortcoming' of your obligations under the contract. Would you like to make a proposal for this? If not, why not?	<p>21/08/2018 A substantive reply will be provided in due course.</p> <p>22/08/2018 Answer to questions (No. 35-39) All five questions/proposals pertain to the distribution of (liability-) risks between the contracting parties. The combination of provisions in the framework contract and general conditions pertaining to such distribution (including limitation of liabilities), reflects the wishes of the European Commission in this respect and form an integral part of the terms under which it is willing to order services from contractors. Amongst others this entails that the European Commission will expect the contracting party to assume responsibility (and accept liability) for the expertise and behaviour of its "personnel", which includes the temporary agency workers (see the definition in clause II.1 and see clauses II.4.7 and next of the general conditions). Said terms are equal for all interested parties and are non-negotiable according to the applicable law in an open call for tender like the present one.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
40	27/08/2018 22:49	04/09/2018 15:46	Management and Oversight	The tenderer has an additional question following the updated Nvl. With regard to (amongst others) questions 23 and 24 reference is made to the principle that (by law) temporary agency workers provided to you fall under your guidance and supervision. Your answers to some of the questions are somewhat confusing to us. Could you, for the avoidance of doubt, confirm that temporary agency workers provided to you by the tenderer under the FWC, fall under your guidance and supervision, like is implied in your answer to question 24? Would you be so kind to answer this question with yes or no and not by stating that these questions were answered before? If you should choose to answer this question with "no" than the tenderer requests you to outline your vision with regard to tenderers responsibility in relation to the services.	<p>04/09/2018 You will receive an answer in due time</p> <p>06/09/2018 The contracting authority already responded to questions with regard to its supervision and the responsibilities (and liabilities) of the contracting parties. Further clarification would cause the contracting authority to repeat itself, reason why it suffices to refer to the FWC and the general conditions, as well as its responses to previous questions.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
41	27/08/2018 22:49	04/09/2018 15:48	Liability	You want the tenderer to accept liability for damages caused by the temporary agency workers to "equipment and installations" in Petten (nr 30), that the damages caused by incompetence of temporary agency workers will be limited to EUR 100k per case but not limited to one year (nr 35), that the liability of tenderer in general will be limited to three times the contract value without a limitation per year (nr 36), that liability of tenderer is unlimited in case of wilful misconduct or gross negligence on the part of employees and temporary agency workers (nr 37), that tenderer is liable for breach of third parties intellectual property rights caused by temporary flex workers (nr 38). At the same time you indicate that tenderer is liable for damages caused by incompetent temporary agency workers in case the tenderer is in default with its obligation to recruit and select (nr 31). The answer to nr 31 fits the type of service well, the answers to the other questions don't. The temporary agency workers work under your guidance and supervision. That means that tenderer is responsible for the recruitment and selection of the temporary agency workers and that you are responsible for	04/09/2018 Binnen afzienbare tijd ontvangt u een inhoudelijke reactie op uw vraag. 06/09/2018 The contracting authority already clarified that the combination of provisions in the framework contract and general conditions pertaining to distribution of risks (including limitation of liabilities), reflects its wishes in this respect and form an integral part of the terms under which it is willing to order services from contractors. This will not be deviated from in this open procedure. The contracting authority therefore refers to the FWC and the general conditions, as well as its responses to previous questions.

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#	Submission date	Publication date	Question subject	Question	Answer
				that you are responsible for guidance and supervision and with the accompanying responsibility for damages suffered by temporary agency workers and for damages caused by temporary agency workers in the performance of the services. Therefore also in case of breach of third parties intellectual property rights by temporary agency workers and in case temporary agency workers cause damage as a result of wilful misconduct or gross negligence. Tenderer is not present to prevent the damage-inflicting situation while you (in theory) are. We ask you to reconsider your abovementioned answers in order to achieve a (more) suitable balance of risks and liability. Are you willing to do so? If not, why not?	

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#	Submission date	Publication date	Question subject	Question	Answer
42	27/08/2018 22:50	04/09/2018 15:48	Liability	The contracting authority already clarified that the combination of provisions in the framework contract and general conditions pertaining to distribution of risks (including limitation of liabilities), reflects its wishes in this respect and form an integral part of the terms under which it is willing to order services from contractors. This will not be deviated from in this open procedure. The contracting authority therefore refers to the FWC and the general conditions, as well as its responses to previous questions.	<p>04/09/2018 Binnen afzienbare tijd ontvangt u een inhoudelijke reactie op uw vraag.</p> <p>06/09/2018 The contracting authority already clarified that the combination of provisions in the framework contract and general conditions pertaining to distribution of risks (including limitation of liabilities), reflects its wishes in this respect and form an integral part of the terms under which it is willing to order services from contractors. This will not be deviated from in this open procedure. The contracting authority therefore refers to the FWC and the general conditions, as well as its responses to previous questions.</p>

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#	Submission date	Publication date	Question subject	Question	Answer
43	27/08/2018 22:50	04/09/2018 16:02	Union law/Dutch law	The tenderer needs an additional question on the basis of the Note of Information which you have completed up to this week. Question 8 refers to Article 1.11.1 of the Contract in which you apply "Union law" supplemented, if necessary, by Dutch law. In the question it is suggested that Dutch law should apply. There is a lot to say, particularly now that the contract concerns the provision of services in the Netherlands. Do you wish to reconsider your answer to question 8? If not, why not?	04/09/2018 No, see answer to question 8.

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#	Submission date	Publication date	Question subject	Question	Answer
44	27/08/2018 22:49	04/09/2018 16:15	Interim termination of assignments	The tenderer needs an additional question on the basis of the Note of Information which you have completed up to this week. In question 25 in the Note of Information, you state that you refer to the 'law and collective agreements' for the ending of contracts. You also refer to the third paragraph of Article 4 (c) of the technical specifications. This answer leaves room for uncertainty. The ABU CAO regulates the applicable periods of notice between tenderers and the flexible workforce employed by tenderers. The law provides for periods of notice to be applicable only when the contract between tenderers is included in the contract between tenderers and flexible working arrangements, whereas the technical specifications in paragraph 3 of Article 4 stipulate that contracts may be terminated at any time and that you may require a replacement of a flexible labour force. It is not clear as to what is now the starting point. Therefore, would you confirm that the periods of notice included in the ABU CAO serve as a starting point for terminating contracts? If not, what are the deadlines?	04/09/2018 The layered structure of the applicable law is leading as mentioned in article 4c, paragraph 3 of the technical specifications. (see answer to question 25).

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#	Submission date	Publication date	Question subject	Question	Answer
45	27/08/2018 22:50	04/09/2018 16:16	Invoices	The tenderer needs an additional question on the basis of the Note of Information which you have completed up to this week. In question 32, the tenderer has explained why and for which purposes they wish to be able to carry out invoices without further permission from you. In particular, since in practice you are not affected by this transfer, the tenderer is requesting you to reconsider your answer to question 32 and to give their consent to the transfer only in the context of the tenderer's invoices. Do you agree to this?	04/09/2018 No, see answer to question 32.

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