

Annex IV – Service Level Agreement

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1.Introduction

This Service Level Agreement (SLA) lays down a minimum guaranteed service level. The Service Level Agreement applies to the contracts resulting from procurement procedure PROC/2019/01.

The SLA defines the mechanisms used for the management of the framework contract and the specific contracts based upon it. In addition, it gives the service level metrics and quality parameters related to the service and the applicable liquidated damages in case of non-fulfilment of the required service levels. The SLA forms an integral part of the framework contract.

This SLA is based on the target performance levels, as indicated in the Tender Specifications.

Unconditional acceptance of the SLA by the contractor is mandatory.

The service quality indicators are specific indicators used for the measurement of the quality of the service.

The minimum quality performance levels give the acceptable values for the service quality indicators.

2.Validity and review process

The SLA will be applicable from the signature of the framework contract to its end and the end of all specific contracts/order forms signed under the framework contract.

During the lifetime of the framework contract, the contracting authorities may propose changes in the SLA and the target performance levels as defined in the tender specifications. These changes cannot be in contradiction with the minimum requirements of procurement procedure PROC/2019/01. Their purpose is to clarify or help the execution of the contract. They will need the agreement of the contractor. After approval, a new/amended version of the SLA will be incorporated into the framework contract by way of an amendment.

3.Compensations and liquidated damages

The service quality indicators are specific indicators used for the measurement of the quality of the service. The minimum quality performance levels give the acceptable values for the service quality indicators. Where the minimum quality performance levels are not respected, the contracting authorities can impose compensations / liquidated damages as defined below.

Liquidated damages (LDs) are applicable when the contractor fails to meet its contractual obligations. Any clause of the present SLA that foresees liquidated damages shall prevail over the clauses in the framework contract on liquidated damages. Furthermore, clauses of this SLA that are not associated with a concrete provision on liquidated damages are subject to the application of the clauses on liquidated damages included in the framework

contract. In addition to the above, for any violation of the terms of the contract, the contracting authorities reserve the right to also apply other relevant articles of the framework contract in order to safeguard its legal and contractual rights and interests, for instance on termination, recovery or liability.

4. Service level

4.1 Ordering process

For each conform proposal to the request a specific contract will be signed. For each request that does not result in a signed specific contract, for one or more of the reasons in the exhaustive list below, the contractor will be considered at fault, the cascade will be activated and, under the conditions of the present clause, the payment of a compensation amounting to €500 for each cascaded request can be imposed by the contracting authorities.

Exclusive list of cases in which the contractor will be considered at fault:

- The contractor did not propose any CV matching the service request within 10 working days after the receipt of the request;
- The contractor proposed consultants that fail to reflect the knowledge, experience or skills mentioned in the CVs following objective assessment of the CV on paper or through an interview. Only failures linked to knowledge, experience or skills requested in the service request in compliance with the profile descriptions in the procurement documents can be evoked by the contracting authorities in such cases;
- The contractor proposed a CV but the proposed consultant is not available to start his/her mission at the moment specified in the request (minimum one month after the receipt of the request).

Any of the situations in the list above will be considered as a failure to perform a contractual obligation under the framework contract. In such case, the contractor that failed to supply the required services may be subject to the compensation, at the request of the contracting authorities. This is valid for any contractor in the cascade, including the third contractor. The compensation shall not apply for a request which has gone through the cascade unsuccessfully and is resubmitted for a second time to the cascade.

This compensation will not be applied during the phase-in period of the framework contracts, understood as the first 6 months starting from the date of signature of the framework contract. After the initial period of 6 months, this compensation can be requested for each individual request that does not lead to a signed specific contract.

If a request combines multiple profiles and the contractor only provides suitable candidates for part of the profiles, the contracting authorities can accept part of the proposal and send a request for the remaining profiles to the next in the cascade. In this situation, the contractor will be considered at fault for each profile for which it failed to supply the required services for one or more of the reasons listed above, and the compensation can be requested for each profile that is cascaded.

4.2 Target Service Performance Levels

The target performance levels are key performance indicators used for the measurement of the quality of the service.

As they are defined in this section, they concern the proper follow-up and execution of the framework contract and of the relevant specific contracts and are used in order to assess the overall capacity of the contractor to comply with the required ordering, delivery and reporting processes.

The following table gives the measurements, limit values and weights for the quality indicators and the related actions when an error occurs.

Quality indicator description	Target / description of contractor's fault	Immediate action / Liquidated damages
Failure to replace procedure (including 2 CVs conform with the initial request)	<p>For every consultant for whom replacement was required and notified to the contractor (for example on sick leave or holiday and for cases of the contracting authorities being unsatisfied with the consultant, after escalation to the company has been done) but unsuccessful, the contractor will be considered at fault.</p> <p>E.g.: no CVs provided, none of the candidates corresponds to the request, candidate unavailable at any moment during the replacement procedure.</p>	As soon as the replacement request is refused/cancelled or the proposed consultants does not take his duties, the contracting authorities can claim liquidated damages equal to 20 % of the daily rate for the profile concerned per day without appropriate replacement.
Respect of minimum notice period	The contractor shall give a month's notice (minimum 20 working days) to the contracting authorities if any consultant leaves before the end of a specific contract and it is not replaced by a suitable consultant.	For every non-respected day of the minimum number of 20 working days, the contracting authorities can claim liquidated damages amounting to 20% of the daily rate of the profile, per day of notice not respected.

4.3 Modalities of application of the liquidated damages and compensations of the SLA

Any form of liquidated damages or compensation, which is undisputed between both parties, will be in principle collected in the form of service credits, to be offset against future invoices on a voluntary basis between both parties.

In case a contractor expresses its wish to contest a specific compensation case and refuses to compensate in service credits, or if the above mechanism cannot be applied for any other reason, the contracting authorities shall assess the facts and the possible responsibility of the contractor for the contractual failure. In such case, the contracting authorities must formally notify the contractor of its intention to apply compensation / liquidated damages and the corresponding calculated amount. The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed. If the contractor submits observations, the contracting authorities, taking into account the relevant observations, must notify the contractor:

- (a) of the withdrawal of its intention to apply compensation / liquidated damages; or
- (b) of its final decision to apply compensation / liquidated damages and the corresponding amount.

By participating in the present call for tenders, tenderers expressly accept that any amounts payable under the Service Level Agreement are not a penalty and represent a reasonable estimate of fair compensation for the damage incurred due to failure to provide the requested services within the applicable time limits and declare that they have integrated any related risks into their financial offer.