



S2R.19.OP.01: Railway operators, staff and passengers expertise

QUESTIONS AND ANSWERS

Open Procedure - S2R.19.OP.01

15/07/2019 (version 3)

NB: in order to respect the confidentiality between the interested parties, questions submitted and answers provided must be written down in an anonymous way. Therefore, the S2R JU reserve the right to modify the question submitted by the interested parties or delete the parts are not consider to be written in an anonymous way.

QUESTION	ANSWER
1. As concerns the tender in subject, we kindly ask you whether the participation as partners of RUs and IMs is possible and/or recommended, or not.	The question is understood to refer to Lot 1. In this respect, Lot 1 requires to demonstrate the ability to involve “representatives from entities operating the railway systems”: this means representatives of RUs and/or IMs of different railway segments including urban. This has been left broad to allow tenderers submitting tenders which can combine representatives coming from different entities, though direct tenders or consortia, including making use of subcontracting under the conditions defined in the tender specifications. It is up to the tenderers to decide to involve the RUs and/or IMs or only their representatives or a combination of them.



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<p>2. In section 6.5.1 (Evaluation of the quality of the offer), page 27, the quality criteria are set forth. However, it is not clear to us what the technical proposal should describe. How will the ‘feasibility, relevance and effectiveness of the proposed approach’ be evaluated in quality criteria 1 (Quality and appropriateness of the tender)? Should there not be a hypothetical request for services to respond to, or how should the approach be developed?</p>	<p>Please note that this is a tender for a single framework contract (FWC). The FWC sets out the main elements such as the technical characteristics of the services and the criteria (exclusion, selection and award) for choosing the contractor. When the need will arise, the FWC will be implemented through specific contracts concluded with the same contractor and based on the direct application of the terms of the FWC. Therefore, the same criteria above mentioned will apply during the whole implementation of the FWC. In particular, as stated in the tender specifications (section 5.5.1) , the quality criteria 1 (“Quality and appropriateness of the tender”) will be evaluated on the basis of the feasibility, relevance and effectiveness of the proposed approach to provide expert knowledge to the S2R JU and its Programme (e.g. how strong is the tender regarding the provision of expertise, dealing with problems, covering specific request for services etc.) during the execution of the tasks described in section 3 (technical specifications) the contractor must perform under specific contracts and within a given period.</p> <p>As the framework contract does not entail specific request for services to be provided directly (exact tasks and delivery times cannot be indicated in advance) but rather the basic terms for a series of specific contracts to be concluded over</p>
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		<p>a given period, the technical tender should not describe a specific service but rather the tender's general approach, plan, envisioned procedure etc. to provide the high quality expertise (i.e. personnel with expertise in the area of the respective Lot) according to the tasks indicated in the respective Lot (e.g. project advice, reporting etc.).</p>
3.	<p>On page 13 of the Tender Specifications, paragraph 5.1 "Participation", you state "<i>...Therefore this procurement procedure is not open to economic operators established in GPA countries.</i>" As all member states of the EU are included in the GPA, the above would imply that economic operators based in one of the EU member states would not be allowed to participate. We therefore believe the above phrase to be incorrect. Can you please confirm?</p>	<p>The Agreement on Government Procurement (GPA) is a plurilateral agreement within the framework of the World Trade Organisation (WTO), meaning that not all WTO members are parties to the Agreement. As indicated in the Appendix I to the WTO GPA, any EU institution or body other than the Commission, the EEAS and the Council cannot open their procurement procedures to economic operators established in GPA countries. The S2R JU, as a body of the European Union other than the Commission, the EEAS or the Council can therefore not open this procurement procedure to economic operators established in GPA countries. According to the tender specifications, section 5.1, "participation in this procurement procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties, as well as to international</p>



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	<p>organisations”. This includes all legal entities registered in the EU and all natural persons having their domicile in the EU, i.e. in one of the 28 EU Member States as listed in Art. 52 of the TEU. In addition, the procedure is open to all natural and legal persons established in Overseas Countries and Territories (OCT) as listed in the Annex II of the TFEU and to all natural and legal persons established in Iceland, Norway and Lichtenstein, as per the EEA Agreement.</p> <p>As per the Treaties, the procedure is therefore open to natural and legal persons in the 28 EU Member States, Iceland, Norway and Lichtenstein even if these countries are parties to the GPA. Thus, Appendix I to the WTO GPA shall be understood in the sense that the S2R JU cannot open this procurement procedure to economic operators established in GPA countries other than the 28 EU Member States, Iceland, Norway or Lichtenstein. Summing up, this procurement procedure is open to:</p> <ul style="list-style-type: none">• All legal entities registered in the EU and all natural persons having their domicile in the EU;• international organisations• natural and legal persons established in Overseas Countries and Territories (OCT) and• natural and legal persons established in Iceland, Norway and Lichtenstein.
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<p>4.</p> <ul style="list-style-type: none"> - Are subcontractors entitled to subcontract themselves? - All subcontractors, as well as the tenderer, need to sign several documents. Is it necessary to provide originals of all signed documents for all subcontractors, or can we provide copies? 	<p>1. The principle is that tenderers are free to submit tenders as they see fit to ensure they fulfil the published criteria, meaning that subcontracting is not excluded from the outset and any level of subcontracting is possible.</p> <p>However, consideration must be given to the provisions of the framework contract for services S2R.OP.01 LOT 1 (provision II.10.1.) according to which <u>“The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority”.</u></p> <p>In addition, provision II.10.2 states that <u>“even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the implementation of the FWC”.</u> Accordingly, the contractor cannot avoid liability towards the contracting authority on the grounds that the subcontractor is at fault.</p> <p>Furthermore, the framework contract stipulates that “The contractor must ensure that the subcontract does not affect the rights of the contracting authority</p>
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	<p>under this contract, particularly those under Articles II.8, II.13 and II.24.”; and “The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.”</p> <p>Please note in addition the requirements regarding subcontracting as indicated in section 5.6 of the tender specifications.</p> <p>All subcontracting must be approved by the contracting authority, either by accepting the tender, or, if proposed by the Contractor after Framework Contract signature, by prior agreement of the contracting authority. In the latter case, the modification may be accepted only in exceptional circumstances when the contracting authority considers sub-contracting to be necessary to complete the project and when it does not lead to distortion of competition. Where no sub-contracting is indicated in the tender the work will be assumed to be carried out directly by the tender</p> <p>2. As per the tender specifications (Section 7.1), one signed original version of documents listed 1 to 9 in page 32 must be provided with exception of the declaration of honour on exclusion and selection</p>
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	<p>criteria (Annex II) of the subcontractors, which may be electronic copies. Concretely:</p> <ul style="list-style-type: none">a. The tender submission form (Annex I) is only to be signed by the authorised representative of the tenderer (original version in original tender), not by the subcontractors. Subcontractors are only to be identified here by the tenderer.b. The Legal Entity Form and the Financial Identification Form are only to be signed by the tenderer(s) (original version in original tender).c. The declaration of honour on exclusion and selection criteria (Annex II) of the tenderer must be a signed original. Those of the subcontractors may be electronic copies.d. The Letter of intent for identified subcontractors should be duly signed and dated by each subcontractor. Original version to be provided in the original tender.
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	<ul style="list-style-type: none">e. The declaration on economic and financial capacity (Annex IV.a) is only to be signed by the tenderer (original version in original tender), providing the requested information separately for each subcontractor (supporting documents to be provided only on request).f. The declaration on the tenderer's technical and professional experience in the field of the contract (Annex IV.b) is only to be signed by the tenderer (original version in original tender. Supporting documents to be provided only on request).g. The declaration on the technical and professional experience of the team proposed by the tenderer/delivering the service (Annex IV.c) is only to be signed by the tenderer (original version in original tender), providing the requested information separately for each subcontractor (supporting documents to be provided only on request).
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