

Open Tender Clarification no. 3

European Banking Authority Tender: Supply of Interim Staff for General Administration EBA/2013/003/OPS/SER/OP

Date: 21<sup>st</sup> March 2013

No.	Questions	EBA Response
1	<p>Having fully reviewed your documentation our legal team have highlighted that the terms and conditions do not actively reflect the services XXXXXXXX will be performing and will require substantial re-wording will this be acceptable or would you like to talk to us at a future date to agree appropriate terms.</p>	<p><b>Please see Corrigendum 4.</b> As specified in the Tender Specifications changes to the contract will be accepted. However extensive and substantial redrafting of the model contract will not be allowed. EBA expects to sign the model framework contract included in the tender dossier. EBA does not expect to sign a completely different set of terms and conditions. EBA cannot accept changes to certain articles in the General Conditions e.g. Art II.18. Our standard framework contract is for generic use and covers a variety of situations and incorporates what are currently considered the best possible solutions for the different aspects of contractual relationships. Changes to the contract proposed by the tenderer will be evaluated by the Evaluation Committee as set out in the revised evaluation grid (see <b>Corrigendum 5</b>). Tenderers with minor and few requested changes will receive the highest points.</p>

2	<p>As is standard with tenders there are certain elements that we would seek to comment on the model contract as we would not be able to sign the written statement of acceptance in its present form but we want to submit a compliant bid. Please advise should we include our comments with our submission or send to Aneta Al Hafoudhova before the 19<sup>th</sup> March?</p> <p>You have also stated that you will consider minor modifications in b.2.5 to the contract so I have also included the general areas we would seek to negotiate should we be successful. I will also include in our bid submission. Is this acceptable for you to ensure we submit a compliant bid?</p> <p><b>Minor modifications points to negotiate contract terms</b></p> <p>We acknowledge that you have provided us with your terms, conditions and documents that will form the contract.</p>	Please refer to answer to question no 1.
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3	<p>On examination of costing sheet (Annex IV) could you please provide guidance on how it is to be completed.</p> <p>On the first tab do we only put a price to each cell with an X in the cell?</p> <p>on the 2nd tab used for financial evaluation do we need to complete any of the cells and if so which ones. Also there are no calculations in the cells so I am unsure if column G should be the sum of columns E and F?</p>	<p>Yes.</p> <p>It is expected that the tenderer will provide daily rate in column E multiplied by the number of days per year in column F. The result obtained will give the amount in column G.</p> <p>Column G = column E x column F</p>
4	<p>Also if we do need to complete any cells in the financial evaluation tab some of the profiles are duplicated ie receptionist is listed 3 times so is admin assistant. Is there a difference and if so what is the difference and how does it affect out submission</p>	<p>If all three positions of for example “Receptionist” are marked as level 1 there is no difference between the positions. It is an indication that we might need 3 receptionists during the whole year.</p> <p>However if there is the same position for example “Secretary” in level 1 and in level 2, it means that level 1 will be expected to have experience of up to 7 years and level 2 will be expected to have experience of more than 7 years therefore the rates should be different and reflect the experience length. The same rule applies to “Finance assistant”.</p>

5	<p><b>II.3.3 Liability – Page 9</b></p> <p><i>The Contractor shall be held liable for any loss or damage sustained by the Contracting Authority in performance of the FWC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding the total amount of the relevant order form or specific contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or subcontractors, the Contractor shall have unlimited liability for the amount of the damage or loss.</i></p> <p>This clause above states that we shall have unlimited liability for damage or loss. Our insurers are not able to cover us for an unlimited liability, as our limit is £10million. Is unlimited insurance cover essential to this contract, or will our limit suffice?</p>	<p>It is responsibility of the contractor to determine the level of the insurance cover required for the contract.</p> <p>Please see the answer to question no 1.</p>
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6	<p><b>II.15.4 Invoices and Value Added Tax – Page 16</b></p> <p><b><i>Invoices shall contain the Contractor's identification, the amount, the currency and the date, as well as the FWC reference and reference to the order form or specific contract. Invoices shall indicate the place of taxation of the Contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT. The Contracting Authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.</i></b></p> <p>The above clause states the Contracting Authority is exempt from all taxes and duties, including VAT. We would however apply VAT and taxes as required by HMRC. In relation to temporary workers, the applicable taxes are VAT and National Insurance (NI).</p> <p>Please advise.</p>	<p>According to the Application in the United Kingdom of the Protocol on the Privileges and Immunities of the European Union to the European Banking Agency substantial purchases of goods or services by the Agency for its official use from a trader registered for Value Added Tax (VAT) will be eligible for a refund of the amount of tax paid. No refund will be made in respect of any claim for VAT relief where the value of the goods or services does not amount in the aggregate to £1000 or more including all taxes.</p> <p>In case of UK based tenderer the VAT can be applied directly to the invoice according to the HMRC requirements and it will be then recovered by EBA directly from HMRC.</p> <p>Hourly rates for interim staff must be inclusive of all charges and all applicable taxes.</p>
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<p>7</p>	<p><b>II.15.5 Pre-financing and performance guarantees – Page 17</b></p> <p><i>Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the Contractor. The Contracting Authority shall release the guarantee within the following month.</i></p> <p><i>Performance guarantees shall cover performance of the service in accordance with the terms set out in the request for services until its final acceptance by the Contracting Authority. The amount of the performance guarantee shall not exceed the total price of the order form or specific contract. The guarantee shall provide that it remains in force until final acceptance. The Contracting Authority shall release the guarantee within a month following the date of final acceptance.</i></p> <p><i>Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:</i></p> <p><i>(a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the Contractor and agreement by the Contracting Authority, by a third party;</i></p> <p><i>(b) the guarantor stands as first-call guarantor and does not require the Contracting Authority to have recourse against the principal debtor (the Contractor). The cost of providing such guarantee shall be borne by the Contractor.</i></p> <p>In regards to the above clause we do not issue financial or performance guarantees. Is this essential to the contract?</p>	<p>Financial and performance guarantees are not required for this FWC.</p>
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Having reviewed the response in the second clarification document posted yesterday we require further clarity in respect of the definitive pay rates to be utilised in terms of completing Annex IV - costing Sheet.

Unfortunately, the information provided in answer to question 4 of 'Open Tender Clarification no. 2' does not give bidders the detail required to accurately identify the parity pay rates that we will have to utilise in order to calculate the charge rates you have requested. The document you have referred us to provides multiple bandings within each 'Functional Group' and these rates are provided in EURO not GBP. This reference document is also incredibly complicated and our fear is that with multiple bidders the EBA will end up with a variety of pay rates being assumed for individual roles as there is so much left open to interpretation. Also being quoted in EURO and without providing all bidders with a standardised conversion rate there is an obvious issue with pay rate variance from bid to bid. Put simply, we would suggest that the EBA provides all bidders with a set hourly or daily pay rate for each of the profiles on the costing sheet. This way at least you will be allowing direct comparison and removing the obvious margin for variation and error through assumption. It should also be pointed out that your current sole provider of temporary staff will have this hourly rates information for all profiles and therefore in the interest of fair and open competition we would urge you to share this detail with all bidders.

In order to ensure fair and open competition we provide the following set of hourly rates for each profile that the EBA currently employs or will employ on interim basis.

The hourly rates are based on the monthly basic salary of the contract staff in similar positions employed under the Staff Regulations.

Receptionist Level 1	10 GBP/hour
Event coordinator Level 1	12 GBP/hour
HR Assistant Level 1	12 GBP/hour
Administrative assistant Level 1	12 GBP/hour
Secretary Level 1	12 GBP/hour
Secretary Level 2	14 GBP/hour
Finance assistant Level 1	16 GBP/hour
Finance assistant Level 2	18 GBP/hour
Communications assistant Level 1	16 GBP/hour

9	<p>We have one question at this stage relating to the Framework Service Contract Article 11.3 - Liability.</p> <p>Firstly we were wondering if there was any flexibility on the contract?</p> <p>The reason I ask is XXXXXXXXXXXX do not typically sign unlimited liability contracts and we were wondering if you would accept a marked up version of this contract or even a copy of our preferred supplier contract we use in similar processes for other clients of ours?</p>	<p>Please see answer to question no 1.</p>
10	<p>Could you advise how this project links in with that run last year for the supply of interim IT and General Administration staff (Ref: EBA/2012/018/OPS/IT/RT) please?</p>	<p>The tender for the provision of IT and General Administration interim staff was divided into two lots; Lot 1 was completed successfully however Lot 2 failed and is now re launched as a new open procedure.</p>
11	<p>Does the £2.5m contract value refer to spend per annum or over the lifetime of the contract?</p>	<p>The £2.5m contract value refers to spend over the lifetime of the contract.</p>
12	<p>Are you able to provide indicative volumes as to the number of interim staff required? It is possible to have this broken down by profile?</p>	<p>The indicative number of interim staff required is given in the pricing scenario Annex IV Costing Sheet. In total EBA will require 14 interim staff for various duration of the service per year.</p>
13	<p>Are all interim requirements for your London office? If no, are you able to provide detail on other locations in scope?</p>	<p>Yes, all interim requirements are for EBA's London office.</p>
14	<p>Can you provide any further information on when projected peaks in sourcing activity may be?</p>	<p>For finance assistant role – peak periods are before end of the calendar year and at the beginning of the new year in total about 10 weeks. Receptionists, Secretaries, Event coordinators and Communications assistant are required for the whole year.</p>

15	We have reviewed the specification in Annexes, would the EBA be responsible for all candidate management activity from interview onwards (i.e. on boarding and site orientation), or would the service provider be responsible for this activity (including candidate interview feedback)?	On boarding and site orientation would be the responsibility of the EBA. Candidate interview feedback would be the responsibility of the service provider.
16	How many providers are the EBA looking to engage on to support the delivery of interim staff?	According to Tender Specifications B.2.1. EBA wishes to conclude a framework service contract with a single economic operator for the provision of the services specified in the Section B.1 of the Tender Specifications.
17	One answer to a question raised was that there is no single provider currently, however, how many providers do you use currently?	EBA currently uses one provider.
18	How is the value of the contract distributed between providers currently?	Currently, there is only one provider.
19	Please could you confirm what the average salaries/remuneration levels/pay rates are for each role?	See Q 8.
20	How would the Finance Department support the framework agreement to ensure that no Department can use suppliers outside the provider who has been awarded the contract?	So far the interims have been recruited on an exceptional basis due to the fact that the EBA did not run a proper tender procedure. EBA is obliged to procure services and supplies according to EU public procurement rules. The objective of the current procurement procedure for the supply of interim staff is to ensure correct planning and sourcing of the interim staff and its correct contract management, therefore EBA anticipates using only the selected provider.
21	Is this tender designed to benchmark the pricing and service levels of the current provider(s)?	No.
22	Is this tender to solely identify a single provider?	Yes, this tender will identify a single provider. Please refer to Question 12, Clarifications no 2 issued on 14 <sup>th</sup> March 2013.

23	<p>We notice you are looking for monthly timesheets/invoicing for temporary workers. Please can you advise if you have a prescribed billing table? Are the EBA prescribing the pay day for our workers or can we choose when to pay?</p>	<p>EBA will pay the staff agency based on monthly timesheets. The staff agency may choose the day when they will pay their workers.</p>																												
24	<p>if you could confirm that requested payment terms are 25 days from receipt of invoice as per the table below</p> <p><b>Service invoicing procedure</b></p> <p>The following table describe the service invoicing procedure.</p> <table border="1" data-bbox="277 571 1037 1235"> <thead> <tr> <th>Step</th> <th>Description</th> <th>Actor</th> <th>Deadline 3</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Preparation of timesheet every month for the previous month</td> <td>Interim Staff</td> <td>+2</td> </tr> <tr> <td>2</td> <td>Validation and authorisation of time sheet by EBA</td> <td>supervisor EBA</td> <td>+3</td> </tr> <tr> <td>3</td> <td>Submission of timesheet to Staff Agency / Service Manager</td> <td>Interim Staff</td> <td></td> </tr> <tr> <td>4</td> <td>Preparation of invoice and submission to EBA contact person</td> <td>Service Manager</td> <td>+6</td> </tr> <tr> <td>5</td> <td>Receipt of invoice and validation against time sheet</td> <td>EBA</td> <td>+10</td> </tr> <tr> <td>6</td> <td>Payment</td> <td>EBA</td> <td>+4</td> </tr> </tbody> </table> <p>3 Relative to the first working day of a month in working day</p>	Step	Description	Actor	Deadline 3	1	Preparation of timesheet every month for the previous month	Interim Staff	+2	2	Validation and authorisation of time sheet by EBA	supervisor EBA	+3	3	Submission of timesheet to Staff Agency / Service Manager	Interim Staff		4	Preparation of invoice and submission to EBA contact person	Service Manager	+6	5	Receipt of invoice and validation against time sheet	EBA	+10	6	Payment	EBA	+4	<p>According to the table EBA payment terms are 14 days from receipt of the invoice.</p>
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