

## FREQUENTLY ASKED QUESTIONS

**Invitation to tenders No. ENER/C3/2015-619 for single framework service contracts:**

**Lot 1: Preparatory studies and related technical assistance on specific product groups listed in the Ecodesign Working Plans adopted under the Ecodesign Directive,**

**Lot 2: Review studies and related technical assistance on ecodesign and energy labelling implementing measures,**

**Lot 3: Technical assistance to support the regulatory process**

**Contract notice in OJEU 2015/S 248-450627 of 23.12.2015**

**Last update: 5/02/2016**

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In order to be as transparent as possible, all questions and replies will be assembled and published via this FAQ document.

### **Question n°1:**

Regarding the estimate of the amount of work involved:

According Terms of Reference section 4.1 (p. 17) the indicative maximum amount for Lot 3 is EUR 2.000.000 (up to 4 years).

According Contract notice section II.2.1) Total quantity or scope, the indicative maximum amount for Lot 3 is EUR 1.500.000 (up to 4 years).

Which value for Lot 3 is correct?

### **Answer n°1:**

The correct value for Lot 3 is 2.000.000 EUR. A corrigendum will be published in the Official Journal.

### **Question n°2:**

Regarding the identification of subcontractors whose share of the contract is above 20%: According Terms of Reference section 1.4 (p. 4) "subcontractors whose share of the contract is above 20% need to be identified" (this share of contract is repeated in section 2.2. p. 6, and Annex 1).

According Terms of Reference section 1.6 (p. 4) "subcontractor(s) whose share of the work is expected to represent more than 20% for some specific contracts" need to fill in/sign Annex 1 (this share of specific contract is repeated in section 2.2, p. 5). Does subcontractor 'share' relate to the overall contract or a specific contract? If it relates to a specific contract, how should the tenderer take this into account, knowing that the maximum amount of work of specific contracts is not known beforehand?

**Answer n°2:**

Please refer to sections 1.4-1.6 of the Tender Specifications.

In the case of a framework contract, the subcontractor(s) whose share of the work **is expected to represent equal or more than 20% of any specific contract**, shall be identified and shall complete annex I and II. The latter subcontractors will then be part of the offer for the framework contract.

During contract execution:

- the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.
- subcontractors who are not identified in the framework contract and whose share of the work will represent equal or more than 20% of a specific contract – as identified in the future offer for this specific contract - will have to complete annex I and II and will be subject to the approval of the Contracting Authority.

**Question n°3:**

Regarding the list of relevant services to be provided:

According the Terms of Reference, section 2.3.2. (p. 7) "*A list of relevant services provided in the past three years, with sums, dates and recipients, public or private*" should be provided. Does 'public or private' refer to the 'relevant service' (e.g. a public study or undisclosed study) or to the nature of the 'recipient' (e.g. government or private client)?

**Answer n°3:**

This relates to the nature of the "recipient", e.g. a government / municipality or a private entity.

**Question n°4:**

Regarding the information to be included in CV's:  
According the Terms of Reference, section 2.3.2 (p. 8) "Each CV should indicate the intended function in the delivery of service".

Is it sufficient to declare in the CV the qualification of the person according qualifications on page 7 (being either 'senior staff / project management', 'senior staff / engineering-technical ', or 'junior (qualified) expert'). If not, please elaborate what is meant with 'intended function' (examples?).

**Answer n°4:**

It is indeed sufficient to indicate the intended function following the three categories as specified in section 2.3.2. b) of the tender specifications.

**Question n°5:**

Regarding the scope of Lot 2 - review studies and Lot 3 - technical assistance, the product groups (Lots) involved:

- Are the review studies and/or assistance limited to product group lots developed under DG ENER only? (knowing that DG ENER is the contracting authority).
- Or can studies for product group lots developed under DG GROW (former DG ENTR) be part of the contracted tasks as well? (like review of prof.refrigeration, transformers, etc.).

The latter seems logical as the Terms of Reference only refer to 'Ecodesign and Energy labelling studies' in general, not limited to those developed under a single DG.

**Answer n°5:**

In principle the call for Tender covers all product groups under the ecodesign and energy labelling framework, independent of which DG is the lead service for developing implementing measures.

**Question N°6:**

On page 7, section c, 'Evidence' it says:

*"Each expert not employed by the tenderer has to provide a declaration that she/he is willing to participate in the execution of tasks defined in this Framework Contract in the team of the tenderer".*

Our question is:

What is the difference between an '*expert not employed by the tenderer*' and a *subcontractor* (who is also not employed by the tenderer by definition)? And, if they are the same, does an '*expert not employed by the tenderer*' also need to complete Annex 1 + 2 if its share > 20% of specific contract? And/or vice versa: does a subcontractor need to provide a declaration that she/he is willing to participate?

**Answer N°6:**

An expert is a natural person who can be directly employed by the tenderer or work for his own account or for another legal entity. Tenderers are requested to constitute a team of minimum 10 experts and provide the CVs of the latter experts. If the proposed experts are not employed by the tenderer they are requested to provide a declaration that she/he is willing to participate. A proposed expert who works for his own account is considered as a subcontractor and therefore if his expected share in specific contracts is equal or represents more than 20% he shall complete annex I and II. If the proposed expert is working for another entity than the tenderer, the entity he is working for is considered the subcontractor.

**Question n°7:**

I am contacting you regarding the call for tenders ENER/C3/2015-619 to have clarifications on section 4.6 (page 19 of the ToR) dealing with conflict of interests, especially on the following sentence:

“They must declare in the offer their contractual relations during the last five years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, concluded or subcontracted by the Directorate-General Energy, in relation with the Ecodesign and Energy Labelling Directives, the Tyre Labelling Regulation and the Energy Star programme.”

Our specific questions are:

- a) Who must declare? Only the lead contractor, or also co-contractors and subcontractors?
- b) Do contractual relationships have necessarily to be related to Ecodesign and Energy Labelling Directives, the Tyre Labelling Regulation or the Energy Star programme?
- c) Are you able to provide a list of “stakeholders and/or companies” to enable us to check our current or past contractual relationships, instead of supposing who should be in such list?
- d) What do you mean by “directly involved”? Is a (free) participation at a stakeholder meeting in the context of an Ecodesign preparatory study considered as direct involvement? If yes, how could we have an exhaustive list of all stakeholders and companies who have attended stakeholder meetings, workshops, phone conferences, etc. in the last 5 years in relation with the 4 policy tools concerned by this call for tenders?

**Answer 7 :**

On the specific questions our answers are:

- a) All entities contracted are required to provide this information.
- b) Yes.
- c) Stakeholders and/or companies can be considered to be directly involved, if they are a member of the Ecodesign Consultation Forum, or affiliated with an entity that is a member of the Ecodesign Consultation Forum, e.g. a mother or a daughter company.
- d) Please see answer to c).

**Question 8:**

On page 19 of the Call for tenders under 4.6 Conflict of interests and confidentiality – it says: **“They must declare in the offer their contractual relations during the last five years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, concluded or subcontracted by the Directorate-General Energy, in relation with the Ecodesign and Energy Labelling Directives, the Tyre Labelling Regulation and the Energy Star programme”**

We are not clear what sort of declaration DG ENER requires. Providing details of the contracts we hold with companies in particular is an issue for us in a legal context. Many of our private sector clients require us to sign up to contractual terms and conditions forbidding us from disclosing company names or project descriptions; we must assure their anonymity.

Given this is a framework contract, we do not know the stakeholders who may be involved in individual service requests. We therefore propose that at the time a service request is issued we will require members of our consortium to sign a declaration that they have no conflict of interests. If they do have a conflict of interest we will discuss the point with the affected subcontractor and decide an appropriate course of action. This might entail limiting their input to the study or in the extreme, excluding them from the work. Should a conflict of interest arise, we will notify DG ENER setting out the issue and our proposed course of action.

Please can DG ENER confirm that such a course of action would be acceptable.

**Answer 8:**

The Terms of Reference are clear: all operators who will submit the tender must declare the contractual relations in accordance with the paragraph 4.6. The reason for this requirement is to achieve the aims of the contract in a transparent and unbiased manner.

For the obligation to declare the information, please refer to article 107 (1) (b) of the Financial Regulation:

*"A contract shall not be awarded for a given procedure to an economic operator who/.../ (b) has misrepresented the information required as a condition of participation in the procedure."*

As for the information that the contractors have declared, article 104 of the Implementing Regulation applies: *"A contracting authority may conclude that economic operator does not possess the required professional capacity to perform the contract to an appropriate quality standard where the contracting authority has established that the economic operator has conflicting interests which may negatively affect its performance"*

In the context of article 104, where there is a risk of conflict of interest, because of the existing or previous contracts with the stakeholders and/or companies, the tenderer must describe, in the offer, the nature of possible conflict of interest and the measures he has taken to prevent the conflict of interest to actually occur, e.g. internal segregation of functions, independent quality control, etc. If the Commission can consider the measures taken by the tenderer adequate, there is no ground to apply this article and exclude the tenderer.

In addition, the tenderers might, while declaring the contractual relations with the stakeholders and/or companies, add, that the information should be kept confidential by the Commission, e.g. not to be revealed to third parties (unless under legal obligation).

As for the future contracts with stakeholders and / or companies, the proposal in your question is correct: the Commission should be informed as soon as possible of the risk of conflict of interest, and of the measures taken. It is up to the Commission to assess whether these measures are adequate. It might also be useful for the tenderers to outline a strategy for the cases of possible conflicts of interest in their offers (for the framework contract).

Concerning which stakeholders and/or companies are meant, please see answer to question 7.