

25 January 2024

CALL FOR TENDERS

FOR THE PROVISION OF INTELLECTUAL SERVICES IN THE IMPLEMENTATION OF CEPEJ INTERGOVERNMENTAL ACTIVITIES AND COOPERATION PROGRAMMES

2023/AO/104

Questions and answers regarding the tendering procedure (updated on 25 January 2024)

Question : One of the answers clarified that if the tenderer is a natural person who is employed in parallel to this Contract, they hereby confirm that they have been granted approval from their employer to perform paid services for the Council under this Contract, and/or have been granted leave during the performance of their obligations under this Contract.

Please clarify, does this mean that the mere submission of the Act of Engagement implies that there is consent from another employer, or is it necessary to submit the consent of the employer in a separate act and when (whether when a framework contract or an individual order is accepted or as part of documentation when applying for a tender).

Answer : It is not necessary to submit the consent of the employer in a separate act when the framework contract or an individual order is signed or as part of documentation when applying for a tender.

Please note that by signing the Act of Engagement, the tenderer

- declares that the information provided to the Council under this procedure is complete, correct and truthful, that he/she acknowledges, in signing this document, that he/she have been notified that if any of the statements made or information provided prove to be false, the Council reserves the right to exclude the tender concerned from the procedure or to terminate any existing contractual relations related to the latter; he/she expresses consent to any audit or verification that the Council may initiate by any means on the information provided under this procedure; declare that he/she is not in a situation of a conflict of interests or a potential conflict of interest in relation to this procedure.
- agrees with the Legal conditions and declares that the provisions of art. 3.9 Parallel Activities are met.

Question: Is it a conflict of interest if the tenderer is also a member of one of the CEPEJ working bodies (as a CEPEJ network or CEPEJ WG)?

<p>Tenderers who are also members of CEPEJ networks or working groups can apply to this call.</p> <p>The situation will be analysed on a case-by-case basis and the Council of Europe will ensure that all situation of conflict of interest is avoided.</p> <p>A selected consultant which is also member of a CEPEJ working group will not be chosen to conduct an assignment directly linked to the development of documents/tools or work which falls under the mandate of that working group (intergovernmental activities), however the consultant could be chosen for an assignment that benefits a project partner under cooperation activities.</p>
<p>Question: In what format is it preferable to submit a CV and is free form allowed for a clearer presentation of projects?</p>
<p>The CV can be submitted in free form while providing the requested information.</p>
<p>Question: “In the call for tenders, it is mentioned that natural and legal persons are invited to apply. If the status of the service provider is changed during the contract (from natural to legal person and vice versa), is it possible to change the person by not being dropped out from the tender?</p>
<p>Answer: The Act of Engagement states that the provider must “undertake to update the Council with significant information changes within a reasonable time. Significant information changes include, but are not limited to change of legal status, ownership, name and address, loss of licence of registration, filing bankruptcy, suspension or debarment by any national or local governmental agency or assimilated, inclusion in the lists of persons or entities subject to restrictive measures applied by the European Union (available at www.sanctionsmap.eu)”</p> <p>It means that during the validity of the Framework Contract, the provider are under the obligation to inform the Council of Europe of any changes and that, in case of changes in status, a case-by-case assessment will be carried out in order to determine whether it is possible to continue for the provider – under its new status – to continue being part of the pool of providers.</p>
<p>Question: Does the tenderer need to form a private company (under his/her sole proprietorship, i.e. he/she is the owner and only employee)) or is the tenderer hired” as an employee for a specific assignment?</p> <p>How to approach the issue regarding VAT and tax. If the tenderer submits an invoice as a legal person should it include VAT and as a natural person exclude VAT ? Should the tenderer pay tax from that amount to the tax authorities?</p>
<p>Answer: The choice between natural or legal person is upon the tenderer to be made according to the statutory provisions of their country of incorporation, establishment or residence.</p> <p>Once the Framework Contract has been concluded, experts/consultants will be engaged by the Council of Europe on a need basis. This means an expert can be engaged under individual orders for specific assignments for the intergovernmental activities or cooperation projects in different countries during the validity of the Framework contract. These assignments can last from one day to several days and one expert/consultant can be engaged several times during the calendar year. There is also no guarantee that the consultant will be contracted during a specific year.</p>

Please note that the Framework contract concerns the provision of intellectual services. It is not a full time or part time employment contract with the Council of Europe.

Providers shall comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence.

Act of Engagement – article 4.2 VAT

- 4.2.1. Should the Provider not be subject to VAT, the amount invoiced shall be net fixed amount. Should the Provider be subject to VAT, the amount shall be invoiced as indicated in Articles 4.2.2 to 4.2.4.
- 4.2.2. Should the deliverables be taxable in France, the amount invoiced shall be VAT inclusive. For services physically carried out in France, providers who do not have a French VAT number must register with the French Fiscal Authorities: Directorate for non-resident tax / sie.entreprises-etrangeres@dgfip.finances.gouv.fr / 10, rue du Centre / 93465 Noisy-le-Grand Cedex / + 33 (0)1 57 33 85 00; or, depending on the provider, Providers without a French VAT number are required to register for VAT purposes at the VAT One Stop Shop (VAT OSS) of their choice. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount 'including all taxes'. The invoice shall also stipulate the following statement: "French VAT collected by the Provider and paid to the One-Stop shop in [Address/Country] under the OSS identification number [No. XX]".
- 4.2.3. Should the deliverables be taxable in another EU country, and unless otherwise agreed between the Parties, the Council will provide the Provider with an exemption certificate prior to the signature of the contract. The exemption certificate sent by the Council of Europe should be retained by the Provider and presented to the relevant tax authorities to justify tax-free invoicing. In accordance with Article 2 b) of Council Directive 2001/115/EC, the following should be stated in the invoice: "*Intra-Community sale/service to an exempted organisation: Articles 143 and 151 of Council Directive 2006/112/EC*" and should indicate the final total amount excluding VAT. In case the CoE will not be in a position to provide the said certificate, the Council will pay the invoice with VAT included.
- 4.2.4. Should the deliverables be taxable in a non-EU country, the amount invoiced will not include VAT if the local (national) legislation allows for it, or if the Council of Europe enjoys tax exemption through other means in the country concerned. Otherwise, it shall include VAT.

As the Council of Europe is exempt of taxes/vat, the amount invoiced shall be net fixed amount (indicate the final total amount excluding VAT in cases where the Council will provide the Provider with an exemption certificate prior to the signature of the contract).

Question : What is the nature of contracting under the Framework contract?

<p>Answer: Once the framework contract has been concluded, experts/consultants will be engaged by the Council of Europe on a need basis. This means an expert can be engaged under individual orders for specific assignments for the intergovernmental activities or cooperation projects in different countries during the validity of the Framework contract. These assignments can last from one day to several days and one expert/consultant can be engaged several times during the calendar year.</p> <p>The Framework contract concerns the provision of intellectual services. It is not a full time or part time employment contract with the Council of Europe.</p>
<p>Question: Can the tenderer participate, that is, register as an ordinary natural person without being registered to perform this activity?</p>
<p>Answer: Natural and legal persons are invited to this call for tender.</p>
<p>Question: Can the tenderer have another type of employment with another employer during the duration of the contract?</p>
<p>Answer: The tenderer can have another type of employment during the duration of the Framework contract with the Council of Europe.</p> <p>Where the tenderer is a natural person who is employed in parallel to this Contract, they hereby confirm that they have been granted approval from their employer to perform paid services for the Council under this Contract, and/or have been granted leave during the performance of their obligations under this Contract.</p>
<p>Question: Can the tenderer holding a public function (eg civil servant, judge, ombudsperson, Member of Parliament...) apply to this call ?</p>
<p>Answer : Yes, it is possible to be employed in parallel to this Contract and hold a public function, under this call. However, the tenderers might not be contracted to perform assignments in the country they are employed or holding the public function.</p>
<p>Question: For how many lots can the tenderer apply ?</p>
<p>Answer: The tenderer can apply to all five lots.</p> <p>The tenderers should indicate the lots they are applying for by ticking the boxes on page 3 of the Act of Engagement.</p>
<p>Question: According to the rules, fees are final and not subject to review. Does the indicated fee by the tenderer have any impact on the selection procedure?</p>
<p>Answer: The proposed fees by the service provider are not subject to review.</p> <p>Please note that Tenders proposing fees above the exclusion level indicated in the Table of fees (400EUR) will be entirely and automatically excluded from the tender procedure.</p> <p>Please note that the Tender File indicates the award criteria for each lot. The weighting distribution is as follows Criterion 1 (60%), Criterion 2 (30%), and Financial criterion (10%).</p>

Question: Shall the tenderers provide a copy of graduate or postgraduate diplomas?

Answer: In line with the requirements of the Tender, Tenderers are not required to submit copies of their university degrees (graduate or postgraduate).

Tenderers must submit:

- **One** completed and signed copy of the Act of Engagement;¹
- A list of all owners and executive officers, for legal persons only;
- A CV clearly demonstrating, at the minimum, that the bidder satisfies the eligibility criteria;
- For legal persons only: CVs of the persons proposed to be assigned to the contract demonstrating, at the minimum, that each of them comply with the eligibility criteria;
- A letter of motivation highlighting the bidder's professional experience in carrying out similar activities and possible awareness of the tools of the Council of Europe and the CEPEJ in the field of justice.

¹ The Act of Engagement must be completed, signed and scanned in its entirety (i.e. including all the pages). The scanned Act of Engagement may be sent page by page (attached to a single email) or as a compiled document, although a compiled document would be preferred. For all scanned documents, .pdf files are preferred.