

EUROPEAN INSTITUTE FOR GENDER EQUALITY



Vilnius, 21.05.2012
EIGE/PROC D/2012/ 253

Tender: EIGE/2012/ADM/13
Framework contract: Services to support EIGE's communication activities
Subject: Answers to requests for clarifications regarding the Tender. Nr. 8

Dear Sir/ Madam,

From potential tenderers we received questions that could be of general interest.
Please find herewith the answers to these questions.

Sincerely yours,

Procurement
EIGE

EIGE/2012/ADM/13. Questions & Answers Nr 8

Question 1:

Tender Specification 2.1.4 requires all rights obtained in the performance of the contract, e.g. photos etc., to be solely owned by EIGE. The Contract II.10 states the same but excludes preexisting intellectual property rights. As the Contract is deemed to be higher ranking than the Tender Specifications (Contract Preamble), the Contractor is contractually obliged to transfer full title to all possible results under the framework contract with the exception of preexisting intellectual property rights.

Yet, it is very likely that in specific order forms, as common in software development in general, third parties' frameworks or libraries or other open source software will be used, or in case of websites photographs/icon/graphics of third parties' commercial databases. Certain open source software licences (so called copyleft open source software licenses, e.g. GPL) require even amendments or linkage with other software to be under same licensing conditions (viral effect).

Can we therefore assume that the Contractor is only obliged to transfer the intellectual rights for any third party material (software, photographs/icon/graphics etc.) or any amendments of copyleft open source software (or its linkage with other software) according to the respective applicable licensing conditions?

Answer 1:

The contractor should provide proof of the right to own or at least to use any deliverable in case where intellectual property rights for this deliverable pre-exist. The contractor should transfer the applicable intellectual property rights according to the respective applicable licensing conditions ensuring that deliverable is free of rights or claims from third parties in relation to pre-existing rights, for any use envisaged by EIGE.

Question 2:

...could you please specify the difference between joint offer and subcontracting. Are we right to think that in a joint offer a group of tenderers share responsibility, meanwhile in subcontracting there is just one tenderer responsible for the project implementation and subcontracted parties are just partners that do the work the tenderer is not qualified for?

Answer 2:

A joint tender is a situation where an offer is submitted by a group of tenderers (consortium). If awarded the contract, each member of the consortium will be jointly and severally liable towards EIGE for the performance of the contract.

For further detail see Tender Specifications, page 20

Subcontracting is the situation where the contractor in order to implement the contract, enters into legal commitments with other legal or natural persons for performing part of the service (in particular, any work performed by a person who is not an employee of the tenderer will be considered as subcontracted).

The contractor shall remain bound by his obligations to EIGE and shall bear exclusive liability, sole and fully responsibility for the performance of the contract. EIGE has no direct legal relationship with the subcontractor(s).

Question 3:

... could you please clarify the meaning of "methodology" part (the two first points) in section four, i.e. "an opinion on the key issues related to the implementation..." and "an explanation of the risks and assumptions affecting the execution...". What exactly are "the key issues"? Do these statements mean that a tenderer has to foresee possible problems and explain how they would be solved?

Answer 3:

Section 2.1.4 specifies the requirements to the content of the technical offer. This implies that the tenderer identifies key issues, risks etc. basing on the information available in the Tender Specifications.