QUESTIONS AND ANSWERS OF FEBRUARY 17, 2021
ON TENDER DOCUMENT
CLOUD SERVICES REGIOGROEI
VIA THE COMPETITIVE DIALOGUE PROCEDURE
WITH
TENDERNED-ID: 298934

QUESTION 1

The standard Public Service Contract is based on ARVODI 2018.

a) Is the tenderer correct that in Phase 16 text proposals for the draft agreement can be submitted at that time with the aim of reaching a definitive agreement within 30 days?

b) Are we correct that in phase 1 of the expression of interest it is not the intention to submit text suggestions with regards to Annex B1 to B3? We ask you this because the definitive scope is not known at this stage. If it is wanted that you want to receive text suggestions in phase 1, could you please give us the opportunity to send in these suggestions before February 18? And could you respond to these in the last week of February? We just want to be sure in which phase this possibility is to avoid a misunderstanding.

ANSWER 1

a) No; Regiogroei shall, based on the proposal submitted in Phase 12, modify attachments B1 and B3 to reflect the proposal received. It shall do so in a cooperative manner with the winning tenderer.

b) Tenderer is correct. Text suggestions on the various RFP versions including the attachments is anticipated in Phase 4. Based on this answer the remaining questions are not relevant.

QUESTION 2

Our organization does not have an EMAS participation. To comply to an environmental management system such as ISO 14001 is similar as EMAS. Our organization is ISO 14001 certified. Is it allowed to submit with this certification to submit a complete expression of interest?

ANSWER 2

ISO 14001 has been added to chapter 5 sub 5 and the requirement on the EMAS participation has been modified. The tender document has been modified to reflect this change (marked yellow or ~~red~~).

QUESTION 3

Two selection criteria are rather unclear for us. With this e-mail we would like to share our ambiguity and make a suggestion to expand or reconsider this selection criteria.

a) [Tenderer] currently does not participate in EMAS. However, we are ISO 14001 certified and learned that via this certificate is it a small step to evolve to a EMAS member,

b) Tenderer has numerous certificates and quality assurance documents, for example [deleted to shield the identity of tenderer]. We don't have the ISO 27005:2018 certificate, but we are convinced that our high security standards and relevant external assurance will meet your security requirements sufficiently. Of course, we can give Regiogroei insight in our security measures. We work for numerous organizations in the [….] and [….] sector. They all have high security standards and [Tenderer] is very reliable in meeting them.

If abovementioned criteria are obligated, tenderer is unfortunately not able to make a full registration on this tender.

ANSWER 3

a) See answer 2.

b) The requirement for ISO 27005:2018 had been deleted in the tender document.

QUESTION 4

"Two (2) references, both signed by the referees, have been added to this Expression of interest by different public or private broadcasters in a country that is part of the GPA of the WTO, demonstrating:…." Regiogroei asks for broadcasters references. This makes the demonstration of satisfied customers for the requested service provision very limited. Is it also permitted to provide references that are active in other sectors, such as public and private sectors? We want to show that we provide the requested services to several customers and not just limited to this industry.

ANSWER 4

Yes. The tender document has been modified to reflect this change.

QUESTION 5

In what way will the answers be published? Is that in TenderNed or by email?

ANSWER 5

Both; on TenderNed to foster transparency and by e-mail to get used to the fact that the communication in this tender is primarily via e-mail.

QUESTION 6

Annex D: 3. In view of the size of the Tenderer's business, turnover is not broken down to product level in the annual report. However, all turnover generated by Tenderer's business services has been included in the financial statements. The results of the Tenderer are consolidated in the annual accounts of the parent company. The consolidated financial statements for the past three years all have a positive auditor's report and are based on internationally recognised accounting standards (IFRS). The positive operating result is neither considered by the accountant on a standalone basis nor on a product level and is also highly unusual. After all, it is precisely for this reason that figures are audited at the consolidated level. Depending on whether an accountant is willing to accept such an assignment at all, Tenderer foresees a disproportionate amount of work and costs. From an efficiency point of view and based on what is customary in the market, Tenderer asks whether the submission of the consolidated annual accounts for the years 2017, 2018 and 2019, which all have a positive auditor's report and which show the turnover of the business services at an aggregate level, would be sufficient?

ANSWER 6

No. Regiogroei has limited the administrative efforts necessary in this phase 1 as much as possible. Regiogroei requires a statement that the requirement regarding the annual turnover on the services requested in this tender of 4 million Euro per year has been met in the years **2018**, **2019** and **2020**. Regiogroei does not seek to encumber tenderers with disproportioned amounts of work and costs.

In the event the consolidated financial statements for 2019 and/or 2020 are not available as of yet, other proof to demonstrate the required turnover is allowed for 2019 and/or 2020 (article 2:91 Aanbestedingswet 2012). This can be as simple as a statement made by Tenderer that it will be able to demonstrate that this requirement has been met and that proof will be provided at a later time in 2021. In the unfortunate event such assured proof cannot be provided in 2021, Tenderer shall be liable for all damages Regiogroei is faced with (as a consequence of the fact that Tenderer should not have been allowed Phase 3). Articles 2.87 clause 1 sub h and 2.87 clause 2 sub e Aanbestedingswet might also be applicable in such an unfortunate event.

QUESTION 7

Annex D: 5. In order to comply with EMAS, Tenderer has covered this with an ISO 14001 certificate and CO2 reduction management with ISO 14001 certificate. Is it sufficient to submit an ISO 14001 certificate and the certificate 'CO2 reduction management with ISO 14001'?

ANSWER 7

See answer 2 (ISO 14001 certificate is sufficient).

QUESTION 8

Annex D: A). Our Holding Company has issued a declaration of liability for the Subscribing Subsidiary in accordance with Article 2:403(1)(f) of the Dutch Civil Code. Do you accept this statement as a Holding Statement?

ANSWER 8

Yes.

QUESTION 9

Annex D: A). On the basis of the minimum requirements relating to the requested ratios, the Tenderer is excluded from tendering for this tender. However, the Tenderer is of the opinion that these ratios do not provide a good image of the company's financial situation and therefore requests that it be allowed to demonstrate its financial health by other means, such as a credit rating from Dun & Bradstreet. Does the Contracting Authority agree to this?

ANSWER 9

Any method has its limitations (including ratio's which are being used in tenders issued by the European Commission themselves). To avoid unparallel comparison the suggestion is not adopted. Please be aware that Article 2.92 clause 1 Aanbestedingswet 2012 might provide a solution for Tenderer on this requirement (also in relation to chapter 5 sub 3 (facilities).

QUESTION 10

Annex B1 (art 2.3). The current proposal is not reasonable as a broad sweeping penalty clause. Not only is a percentile of the total value of the contract disproportionate, but a penalty on non-specified breaches of non-specified contractual obligations is not acceptable. Furthermore, we would suggest that, if penalties would be agreed, penalties will always be subtracted from possible damages so that accumulation of penalty and damage cannot take place. We would like to discuss a more specific and more balanced approach to this matter that has service improvement as main goal, not financial pain.

ANSWER 10

Annex B1 and B3 are open for debate during the dialogue. And will be updated to reflect the outcome of the discussion prior to the deadline to submit a proposal.

QUESTION 11

Annex B1 (art 6.9). A more specific exclusion of specific indirect types of damage is reasonable to expect. Please add the following language to the article and therefor art 21 ARVODI. The liability of Supplier regarding derived damage, to include consequential damage, loss of profit, missed savings, loss of data and damage through operational shutdown is excluded.

ANSWER 11

See answer 10. The requested modification to Annex B1 will be discussed during the dialogue in the event Tenderer is allowed to participate.

End of Questions and Answers