



CONTRACTING AUTHORITY'S CLARIFICATIONS No. 3

Project title:

Capacity building for the alignment with the acquis in the areas of agriculture, rural development, food safety, veterinary and phytosanitary policy

Publication reference: EuropeAid/138038/DH/SER/RS

No.	Question	Answer
1.	<p><i>The selection and award criteria, namely the technical capacity criteria (21.3) are defined as follows - The reference period which will be taken into account will be the last five years from submission deadline. The candidate has provided services under at least two (2) contracts (the candidate's portion equal to or greater than 1,000,000 EUR in each contract) which included developing and/or implementing at least one strategy and/or action plan or equivalent document(s) to improve legal harmonization and/or implementation capacity pertaining to any of the two fields (i.e. i - Chapter 11 Agriculture and Rural Development and/or /7 - Chapter 12 Food Safety, Veterinary and Phytosanitary policy) described in item 7 in the context of integration with the EU of candidate or potential candidate countries which was implemented at any moment during the reference period.</i></p> <p>Taking into account that the context of integration with the EU of candidate or potential candidate countries provides a very limited number of projects implemented in the last five years from the submission deadline, thus significantly narrowing the competition, could you please clarify whether the Service Contract Notice will be amended to include the EU Member States experience, thus ensuring the wider competition?</p>	<p>Please refer to Contracting Authority's Corrigendum No 1 due to be published on 20 June 2017.</p> <p>The purpose of the Corrigendum No 1 is to open the technical capacity criterion to ensure wider competition by modifying the respective condition to include contracts carried out in the EU accession context. The Corrigendum will amend Article 21.3 of the Contract Notice to read as follows:</p> <p>"21(3). Technical capacity of candidate (based on items 5 and 6 of the application form). The reference period which will be taken into account will be the last five years from submission deadline.</p> <p><i>The candidate has provided services under at least <u>one (1)</u> contract (the candidate's portion equal to or greater than 1,000,000 EUR in each contract) which included developing and/or implementing at least one strategy and/or action plan to improve legal harmonization and/or implementation capacity <u>pertaining to the alignment with the EU acquis in any of the following areas: agriculture, rural development, food safety, veterinary and phytosanitary policy</u>, which was implemented at any moment during the reference period.</i></p> <p><i>This means that the project the candidate refers to could have been started or completed at any time during the indicated period but it does not necessarily have to be started and completed during that period, nor implemented during the entire period. Candidates/tenderers are allowed to refer either to projects completed within the reference period (although started earlier) or to projects not yet completed. In the first</i></p>

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		<p><i>case the project will be considered in its whole if proper evidence of performance is provided (statement or certificate from the entity which awarded the contract, proof of final payment). In case of projects still on-going only the portion satisfactorily completed during the reference period although started earlier will be taken into consideration. This portion will have to be supported by documentary evidence (similarly to projects completed) also detailing its value. If a candidate/tenderer has implemented the project in a consortium, the percentage that the candidate/tenderer has successfully completed must be clear from the documentary evidence, together with a description of the nature of the services provided if the selection criteria relating to the pertinence of the experience have been used.</i></p> <p><i>If more than 8 eligible candidates meet the above selection criteria, the re-examination criteria shall be as follows:</i></p> <ul style="list-style-type: none"> <i>• the total number of the reference projects found eligible under 21.3 and in case of equality on this criterion, then</i> <i>• the value of the eligible part (the proportion carried out by the candidate) of the projects found eligible under 21.3.</i> <p><i>Previous experience which caused breach of contract and termination by a Contracting Authority shall not be used as reference.</i></p> <p><i>An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing a commitment on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility - notably that of nationality - and must fulfil the same relevant selection criteria as the economic operator. With regard to technical and professional criteria, an economic operator</i></p>

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		<p><i>may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. With regard to economic and financial criteria, the entities upon whose capacity the tenderer relies, become jointly and severally liable for the performance of the contract."</i></p>
2.	<p>Further to our careful reading of the Service Contract Notice and the Clarifications issued on 01/06/2017 for the above mentioned tender, we would like to ask you the following question.</p> <p><i>Under point 21.3 Technical capacity of the candidate, it is stated that "The candidate has provided services under at least two (2) contracts (the candidate's portion equal to or greater than 1,000,000 EUR in each contract) which included developing and/or implementing at least one strategy and/or action plan or equivalent document(s) to improve legal harmonization and/or implementation capacity pertaining to any of the two fields (i.e. i and/or ii) described in item 7 in the context of <u>integration with the EU of candidate or potential candidate countries</u> which was implemented at any moment during the reference <u>period.</u> "</i></p> <p><i>However, under point 2.4.11.1.1. General principles of the PRAG, it is clearly stated that "For the international restricted procedure the contracting authority shall shortlist a maximum of 8 candidates (6 in case of an international restricted procedure for works). The contracting authority will also publish criteria in addition to the financial, professional and technical ones. These additional criteria will only be used to reduce the shortlist to 8 candidates (6 for works). These criteria shall therefore not be drafted in such a way that they</i></p>	<p>Please refer to answer to question no. 1 above.</p>

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	<p>would reduce the shortlist to less than 8 candidates (6 for works) fulfilling that criterion. For example, a criterion such as "experience in the country" could reduce a shortlist to 5 candidates only. This type of criteria should be avoided".</p> <p>It is our understanding that the last sentence of the technical criterion 21.3 runs counter to what is mentioned in the PRAG especially if we take into consideration the fact that it refers to the re-valuation criteria. Having said that, please confirm the validity of the underlined sentence of the technical criterion 21.3.</p>	
3.	<p>With reference to EuropeAid/138038/DH/SER/RS contract notice, we would like to point out the extreme difficulty in meeting the selection criteria, in particular regarding the experience of candidates.</p> <p>Even if the validity period for the references is 5 years, the combination of criteria regarding the amount carried out by the candidate (in excess of 1 M€), the technical scope of the references (Chapter 11 and Chapter 12) and the geographical scope of the references (carried out in the context of integration of candidate countries or potential candidate countries) appear to be very restrictive.</p> <p>With the exception of a few projects that have taken place in Turkey, the contractual amount of similar projects is rarely above 1,5M€; furthermore, as these projects are usually carried out by 2 or 3 entities, the share of the leading applicant rarely reaches the amount of 1M€. If the criteria are strictly applied, over the past 5 years, to our knowledge,</p>	Please refer to answer to question no. 1 above.

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	<p>less than 10 projects can qualify the leading companies/entities (and this provided they had 50-60 % of the respective budgets). In our view, this would significantly limit the competition between tenderers.</p> <p>To this end, we would like to raise the following questions:</p> <ul style="list-style-type: none"> • Can a project carried out in the EU during the past 5 years, and involving Candidate countries, on topics related to Chapter 11 and/or Chapter 12, qualify as “carried out in the context of accession of Candidate countries”? • Can a project carried out in a European Neighborhood or Eastern Partnership country that is in the process of aligning its legislation with that of the EU <i>acquis communautaire</i> be considered as eligible? 	