Clarification Note #8
GSA internal reference: 254794
Procurement procedure: GSA/OP/08/19
Security Monitoring services to the GSA

Question #60
Annex II (draft Framework Contract – FWC’), Article I.13.10 states: “The Contractor must declare Background IPR before the start of performance of tasks and creation of the Results, using Annex IX hereto.” Please confirm our understanding that we shall declare as Background IPR (eg. patents, trademarks, copyrights, etc.) only such IPR, that are expected to be used as part of the delivery of the tendered services.
Answer #60
Confirmed.

Question #61
Annex II (’draft Framework Contract – draft FWC’), Article I.13.13 states: “where implementation of the FWC requires that the Contractor uses IPR belonging to the contracting authority, the contracting authority may request that the Contractor signs an adequate license agreement. Such use by the Contractor will not entail any transfer of rights to the Contractor and is limited to the needs of this FWC.” Can you please confirm that such license agreements will be free of charge?
Answer #61
Confirmed.

Question #62
Annex I to Invitation to Tender (’Tender Specifications (Lot 1 – Lot 3’)), section 1.3 states: “The terms and conditions set out in the Invitation to Tender, Tender Specifications and draft contract shall be binding on the tenderer to whom the contract is awarded for the duration of the contract.”. At the same time, Article I.2.1 of the draft FWC (Annex II) states: “The FWC shall enter into force on the date on which the last party signs it.” We understand that the terms and conditions, tender specifications and draft contract will be binding on the tenderer if the tenderer signs the FWC, and there would be no penalty towards a tenderer who is awarded the FWC, but decided not to sign the FWC. Could you please clarify if our understanding is correct?
Answer #62
If the tenderer submits an offer and it is awarded the contract, it is bound to sign the FWC during the period of validity of the offer. If the tenderer refuses to comply with this obligation and causes damages by this omission, the GSA may claim the damages from the tenderer.

Question #63
Annex I to Invitation to Tender (’Tender Specifications” (Lot 1 – Lot 3’)), section 4.6.1, item (9), states: “all evidence relating to: the minimum requirements in section 3.3.1 and the minimum requirements to each lot” shall be listed under Envelope 1 (i.e. administrative file). On the other hand, section 4.6.2, item (1) states: “all evidence relating to the selection criteria in section 3.2.3 (‘technical and professional capacity’) shall be listed under Envelope 2 (i.e. technical offer). In this regard, could you
please clarify under which folder proposed advisor’s CVs, Certificates etc. shall be presented? In case such documents are listed under one of the folders, is it sufficient to make a proper reference to the location of such information?

**Answer #63**
The evidence of each criterion must be enclosed in the corresponding folder. Please bear in mind that the selection criteria in section 3.2.3 of Annex I (‘Technical and professional capacity’) relate to the capacity of the company and the required evidence is mainly description of projects and no CVs are required for compliance with this criterion. In any event, the tender should not duplicate evidence, it can make a proper reference to the corresponding location where they are enclosed.

**Question #64**
Article I.10.3 of Annex II (‘Draft framework Contract template’) states: “If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the FWC. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the contracting authority.”
Please clarify if, in the case of Consortium, all Members of the Consortium must have insurance policy in line with requirements outlined or whether it is sufficient that at least one of the Consortium members has.

**Answer #64**
The Contractor must take out an insurance policy only if it is required by applicable legislation and it must take supplementary insurance only if it is required by the standard industry practice. It is for the tenderer to verify if this legislation requires that all consortium members have insurance policy or whether it is sufficient that one of the consortium members has it. Without prejudice to compliance with requirements stemming from the applicable law, the GSA does not require that all consortium members have insurance policy and it is sufficient that one of the consortium members has the insurance for the coverage of the liability obligations under the FWC.

**Question #65**
Can you confirm as indicated in Annex I (‘Tender Specifications’), section 4.7, that it is correct to assume that the receipt from the courier is a proof of successful submission as long as the submission deadline date is respected?
Also we understand that straight after the submission the tender, an e-mail should be sent to tenders@gsa.europa.eu as notification of submission. In case of tenders submitted by commercial courier should the receipt be attached to the e-mail?

**Answer #65**
With regard to the first part of the question, GSA confirms the assumption.
With regard to the second part of the question, it is not required that the submission receipt is attached to the notification e-mail.