



## Procurement procedure: GSA/OP/03/17 Legal advice and support to GSA

GSA internal reference: 233103

### Clarification Note #2

**Question #12:** It is our understanding that according to the rules laid down in the procurement documentation (i.e. notably sections 2.3.6 and 2.3.7 of the general tender specifications, Articles II.3.3 and II.7.2 of the draft framework contract) the successful tenderer shall be responsible vis-à-vis the GSA not only for legal services actually provided by such tenderer, but also for legal services provided by the tenderer's subcontractors and, in case of a tender submitted by a consortium, also for legal services provided by other members of the consortium.

Moreover, it is our understanding from section 2.4 of the specific technical terms of reference that the tasks assigned by the GSA to the successful tenderer may involve interpretation and application of national laws of 8 different jurisdictions (namely the Czech Republic, France, UK, Belgium, Spain, Germany, Italy and the Netherlands).

In case of cooperation of multiple law firms operating in these jurisdictions, do the provisions requiring responsibility of the successful tenderer vis-à-vis the GSA for legal services provided by its subcontractors and/or other members of the tenderer's consortium under the laws of different jurisdictions, apply also in a situation, where the tenderer, the tenderer's subcontractors and other members of the tenderer's consortium expressly undertake to be directly responsible vis-à-vis the GSA for legal services actually provided by them under the laws of the respective jurisdiction in which they are authorised to provide legal services, and submit to the GSA certificates of their professional liability insurance?

Answer: The provisions laying down responsibility of the successful tenderer vis-à-vis the GSA apply also in a situation when the legal services are provided by its subcontractors and/or other members of the tenderer's consortium under the laws of different jurisdictions. These provisions are not affected by the fact that the tenderer, the tenderer's subcontractors and other members of the tenderer's consortium expressly undertake to be directly responsible vis-à-vis the GSA for legal services.

In this respect, it must be however pointed out that, according to the specific technical terms of reference, the main focus of the legal services requested under the present procurement procedure will be on the application of EU rules (in particular EU Financial Regulations and its Rules of Application).

The interpretation and application of national laws of the Member States mentioned in section 2.4 of the specific technical terms of reference is expected to be **marginal**. The knowledge of these national laws is not a minimum requirement for the participation in the present procedure and, therefore, tenderers are not required to have expertise in these laws and/or have the capacity to provide legal services related to these laws in order to submit a tender.



Tenderers should indicate whether they can provide legal services related to some or all of these national laws and such a capacity will be assessed under award criterion Q2, bearing in mind that the main focus of assessment of this award criterion will be on experience relevant for the main tasks to be performed by the tenderer [experience – either under EU law or under any national law – in procurement, contract management and grants, as well as experience in application of EU law (see p. 15 of the general tender specifications)].

The tenderer is also not required to indicate already in the tender the exact identity of the subcontractors for possible tasks related to national laws. The tenderer may only describe how it would proceed in case that execution of such tasks is requested by the GSA, bearing in mind that the time-limit for execution of such tasks can be adjusted accordingly.

**If a tenderer does not indicate in its tender the capacity to provide legal services related to the national laws mentioned in section 2.4 (or some of them), it will not be required to provide such services in case the contract is awarded to it.**

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