

Clarification Note #3

GSA internal reference: 244474

Procurement procedure: GSA/OP/06/18 – Integrated Management System and Quality Management Support to GSA

Question #1: According to 2.6 Deliverables of the Tender specifications, the results of the activities performed under the FWC may be published or released by the GSA to third parties. Is our assumption correct that the work products will be generated as documentation of the service under the logo and the name of the client (without any reference to the contractor)? Should our deduction be wrong, are we right in the assumption that any reference to the contractor will be deleted in case of modification and/or transformation of the work products?

Answer: Yes, the assumption is correct; all outputs referred in section 2.6 of Tender specifications will be delivered using GSA templates and/or with GSA logos.

Question #2: Section II.3.3. General conditions for Service Framework Contracts refers that there is no limitation of liability for gross negligence claims against the contractor. Accounting Firms are compelled to limit their liability toward the principal and third parties in an appropriate manner. Liability and insurance cover shall be in an appropriate relation. § 54 a WPO and § 17 section 2 of the Professional Charter for Auditor (BS WP/vBP) take this into account. Is it possible to include the following clause concerning the limitation of liability according to customary trade and referring to § 54a WPO as follows: "The liability of the contractor for claims for damages of any kind, except for damages resulting from injury to life, body and health for a single negligent injury case is limited to 4 million euro."?

Answer: No, the GSA requires full liability of the contractor for the damage or loss caused by the gross negligence or wilful misconduct of the contractor or of its personnel as per Article II.3.3. of the Framework Contract. In contrast, liability of the contractor for any loss or damage sustained by the contracting authority in performance of the FWC is capped at 50 % of value of the FWC.

Question #3: Article II. 18 General conditions for Service Framework Contracts provides for inspection/audit rights of the client. Accounting firms are subject to prior specific legal requirements with respect to the confidentiality of client data. Is our assumption correct, that checks and audits will only be executed in compliance with the specific legal requirements of an accounting firm in Germany?

Answer: Checks and audits referred to in Article II.18 of the Framework Contract would be carried out in compliance with respective EU law, particularly Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996. This Regulation provides that information communicated or acquired in any form thereunder shall be covered by professional secrecy and protected in the same way as similar information is protected by the national legislation of the Member State that received it and by the corresponding provisions applicable to the EU institutions (see Article 8 of the Regulation).

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