

## Clarification Note #1

GSA internal reference: 252502

### Procurement procedure: GSA/CD/09/19

#### EGNOS Service Provider

**Question # 1: According to Section 5.4.2 (Assignment of Contracts) of the Tender Information Package “Tenderers are assumed to undertake all responsibilities and liabilities stemming from the execution of the assigned contracts as of the date of assignment [...] The Agency reserves the right to maintain a certain level of visibility and involvement in the execution of the assigned contracts [...] some of the assigned contracts [...] will have a limited duration. Unless extended by the Agency, at the expiry of the above-mentioned contracts, the Contractor will be required to procure the follow on contracts in order to ensure a seamless continuity of the concerned services.”**

- a/ Could GSA clarify which conditions of visibility and involvement from the Agency are expected?**
- b/ Could GSA confirm that Assigned Contracts will not contain any provisions based on the quality of Contracting Authority? Private operators cannot benefit from this quality.**

**Answer # 1:**

a/ Details on the envisaged conditions of visibility and involvement of the GSA for the contracts after their assignment will be provided in phase II of the procurement procedure and may be further discussed and developed in the course of the dialogue phase.

b/ The contracts to be assigned will be concluded by the GSA under the applicable public procurement rules. They will include a set of rights for the contracting authority that are mandatory for such contracts and shall survive the assignment, subject to specific agreement of the parties and the cooperation of the assignee, without prejudice to the transfer of risks and responsibilities customary to contract assignment. Certain provisions (e.g. VAT exemption, data protection) will be tailored at the time of the assignment to address the difference in rules applicable to the Agency and the NESP.

**Question # 2: According to Section 5.5.2 (Confidentiality and Non-Disclosure Undertaking Procedure) of the TIP, 2<sup>nd</sup> and 4<sup>th</sup> paragraph of the Tender Information Package: “In particular, during the dialogue phase GSA shall ensure equality of treatment among all participants. To that end, GSA shall not provide information in a discriminatory manner which may give some participants an advantage over others. GSA shall not reveal to the other participants solutions proposed or other confidential information communicated by a Candidate or Tenderer participating in the dialogue without its agreement.” “The above is without prejudice to the possibility for the GSA to make use of the information exchanged during the course of the dialogue in order to update the tender documentation. Candidates’ request to participate into the dialogue will stand for specific consent to such use by the GSA and corresponding waiver of any claim related to proprietary rights, whether in connection with intellectual property or otherwise, arising therefrom.” Does it mean that tenderers will be requested first to authorise tender documentation update? Otherwise, could you please describe how Candidates and Tenderer’s information will be processed?**

**Answer # 2:** The right of the GSA to update the tender documentation based on the input received during the dialogue shall not be subject to tenderers' prior authorisation. In using such inputs to refine its tender documents the GSA shall avoid disclosing commercial in confidence information, unless expressly agreed otherwise by the concerned tenderer.

**Question # 3: Section 5.3.1 (Security) bullet d of the Tender Information Package reads "Letters or equivalent evidence from the National Security Authority/Designated Security Authority<sub>3</sub> of the Member State in which Candidates (including any participants in Candidates) are incorporated confirming fulfilment of the above requirements or acknowledging the initiation of the process for achieving compliance as appropriate and as per above requirements." Could GSA clarify the referenced "above requirements" and/or the purpose and scope of the evidences expected from NSA/DSA?**

**Answer # 3:** GSA clarifies that the wording "above requirements" refers to the bullets a, b and c of the item list considered in the clarification request.

End of document