

Question 1

Would it be possible for a US-based company to participate at this tender process?

Answer

The EUI can accept offers from and sign contracts with tenderers from any country which has an international agreement with the EU in the field of public procurement as well as from countries which have ratified the Multilateral Agreement on Government Procurement ("GPA"). The USA is part of the GPA (please check the link: https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm), so the answer is yes.

Question 2

Request for clarification point 30.

"Provide a list of the principal services provided and/or supplies delivered to European academic and research libraries in the past 5 (five) years with the object, duration, and recipients, public or private".

Please specify what exactly is meant by "services" ? Do you mean the service/s which are the specific object of this tender?

Answer

As stated in the Tender Specifications, the subject of the tender is "[...] the provision of a Cloud-based Library Automation and Services Platform [...]".

For this specific question, while we of course expect proposals to include details about implementation and migration projects of this type of platforms (the specific object of this tender), "services" can also refer to projects or works related to them and that you consider of remarkable or outstanding value. Examples of these projects or works could include custom developments, integrations with third-party systems, implementation of additional functionality to existing systems, or data-related projects (this list is non-exhaustive).

Question 3

In Article I.7 of the Special Conditions EUI states as follows:

I.7.1 The contract shall be governed by the EUI's relevant regulatory acts (e.g. the EUI's regulation on Public Procurement & the EUI's Financial Rules), complemented, where necessary by the law of Italy.

We read this provision as meaning that the main rules applicable to the public tender at hand are the ones contained in the EUI's regulation on Public Procurement and, residually, Italian law.

Article 41.2 of the EUI's regulation on Public Procurement provides that "Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2% to 10% of the total value of the contract in question" and "That rate may be increased to 4% to 20% in the event of a repeat infringement within five years from the date on which the infringement is established as confirmed following a contradictory procedure with the candidate, tenderer or contractor".

With reference to Italian law, Legislative Decree 50/2016 (the "Italian Public Procurement Law") provides for a 10% cap for penalties concerning delays. However, Article 16 of the Italian Public Procurement Law provides that the Italian Public Procurement Law does not apply to international organisations, such as EUI.

Question to EUI: Could you confirm that the applicable penalties as stated in the tender documentation are subject to a cap as stated the EUI's regulation on Public Procurement or Italian Public Procurement laws or both?

Answer

Since the EUI is an international organization to which the Italian Procurement Law does not apply, the mechanism of sanctions and penalties, Article I.10 of the Draft contract, shall apply according the EUI's regulation on Public Procurement & the EUI's Financial Rules, complemented, where necessary by the law of Italy.

However, the only penalties that may be applied with regard to this contract are those included in Article 11 of Annex I Tender specifications in accordance with the modalities indicated in the same Article.

Question 4

Further, Article II.13 of the EUI Contract provides for “liquidated damages” in case of delays.

Question to EUI: could you confirm whether liquidated damages in Art. II.13 apply in addition to the penalties set forth in Article 11 of the Tender Specifications, or whether the latter prevail (in line with the interpretation rules contained at pages 1 and 2 of the Contract).

Answer

Since a specific mechanism of sanctions and penalties is foreseen by Article 11 of Annex I Tender specifications as referred to by Article I.10 from the special conditions of the draft contract, then it prevails on Article II.13 – Liquidated damages from the general conditions.

Question 5

Question to EUI: Could you specify the maximum amount or percentage (in relation to the value of the contract), of the penalties and liquidated damages in the aggregate, that is applicable to the provision of services under this tender?

Answer

The only penalties that may apply and their modalities of application are those foreseen by Article 11 of Annex I Tender specifications. No maximum amount or percentage can be foreseen in advance since it depends on the actual cases triggering the application of penalties that may occur during the performance of the contract.

Question 6

Regarding the following clauses of the Special Conditions, please see below the clauses and corresponding questions:

Article I.10 of the Special Conditions - Mechanism of sanctions and penalties The carrying out of the service by non-regular or unsatisfactory means in the opinion of the EUI, shall incur the application of penalties pursuant to Article 11 of the tender specifications.

Question to EUI: Should the non-regularity or unsatisfactory service mentioned in the clause be understood as a ‘material breach’ of the contract? If that is not the case, could you please clarify on the basis of which objective criteria will the non-regularity be

determined, and how much discretion EUI will have in tis determination.

Answer

In case the non-regularity or unsatisfactory service is recurring over the duration of the contract, then it will be deemed to fit letter c of II.16.1 Grounds for termination from the general conditions (“if the contractor does not perform the contract as established in the tender specifications or fails to fulfil any other substantial contractual obligation”).

While, in case non-regularity or unsatisfactory service is occasional then Article 11 of Annex I Tender specifications shall apply taking into consideration the standards set up in Article 7. Description of the technical specifications of Annex I Tender specifications.

Question 7

II.2.9 of the General Conditions Should the contractor fail to perform its obligations under the contract, the EUI may -without prejudice to its right to terminate the contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the EUI may claim compensation or impose liquidated damages in accordance with Article II.13 and/or any penalties indicated in the tender specifications.

Question to EUI: When it comes to reduction or recovery of payments in proportion to the scale of the unperformed obligations. How does this proportion will be determined? How much discretion does EUI have and what means of contesting this decision does a tenderer have.

Answer

Any reduction or recovery of payments will be applied in accordance with Article II.14 – Reduction in price from the general conditions of the draft contract. As indicated in such Article, the reduction or recovery will be determined proportionally to the seriousness of the unperformed obligations or low quality delivery compared to the standards set up in Article 7. Description of the technical specifications and the sanctions and penalties mechanism described in Article 11. Sanctions and penalties mechanism included in the Annex I Tender specifications. As indicated in Article II.14 – Reduction in price, the contractor has 30 (thirty) days to submit observations following the date of receipt of the notification from the EUI of its intention to reduce or recover payment and the corresponding calculated amount.

Question 8

II.4.5 of the General Conditions The contractor shall indemnify and hold the EUI harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the EUI by a third party as a result of damage caused by the contractor during the performance of the contract. In the event of any action brought by a third party against the EUI in connection with the performance of the contract, the contractor shall assist the EUI.

Question to EUI: Does the indemnity specified in Article II.4.5. limited to the same amount as the total liability of II.4.3, specifically three times the total amount of contract? If not, what limitation/cap applies to this indemnity?

Answer

The indemnity specified in Article II.4.5 is limited to the same amount as the total liability of II.4.3, specifically three times the total amount of contract.

Question 9

Article II.14 – Reduction in price II.14.1 Quality standards If the contractor fails to provide the service in accordance with the contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the EUI may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the EUI cannot approve a result, report or deliverable as defined in Article I.4 after the contractor has submitted the required additional information, correction or new version.

Question to EUI: Should the non-regularity or 'unperformed obligations' mentioned in the clause be understood as a 'material breach' of the contract? If that is not the case, could you please clarify on the basis of which objective criteria will the non-regularity be determined, and how much discretion EUI will have in tis determination.

Answer

In case the non-regularity or 'unperformed obligations' is recurring over the duration of the contract, then it will be deemed to fit letter c of II.16.1 Grounds for termination from the general conditions ("if the contractor does not perform the contract as established in the tender specifications or fails to fulfil any other substantial contractual obligation").

While, in case non-regularity or 'unperformed obligations' is occasional then Article II.14 – Reduction in price from the general conditions of the draft contract will apply. As

indicated in such Article, the reduction or recovery will be determined proportionally to the seriousness of the unperformed obligations or low quality delivery compared to the standards set up in Article 7. Description of the technical specifications and the sanctions and penalties mechanism described in Article 11. Sanctions and penalties mechanism included in the Annex I Tender specifications.

Question 10

SaaS/Cloud-based offerings provide only a right to use the SaaS solution for the period of the contract. No transfer of Intellectual Property Rights needs to take place. The Services Contract includes Articles mentioning the transfer of Intellectual Property Rights and ownership of IP-Rights by the EUI. We do not foresee that this will be necessary with a standard SaaS/Cloud-based offering. Can the specific Articles of the General Conditions that deal with the ownership of results and IP-Rights by EUI be declared as not applicable? These articles are II.11.1 and II.11.3 para (a), (h), and (l)..

Answer

In case the successful tenderer is providing a standard Cloud-based offering, then the Articles in the draft contract that deal with ownership of results and IP-Rights by the EUI (II.11.1 and II.11.3 para (a), (h), and (l)) can be considered as not applicable and will be added to Article I.13 (Other special conditions) in the contract.

Question 11

Would the EUI agree to provide a limited license for shared data as required for the provision of the services under this contract?

Answer

In case the successful tenderer is requesting in its tender for the EUI to grant a limited license for shared data for the purposes of the services under this contract, then the EUI will follow up on such request with the successful tenderer before signing the contract.

Question 12

With reference to point f) of “economic and financial capacity” in Annex I – Tender Specifications (having generated a minimum annual turnover in the last 3 (three) financial years for which accounts have been closed (2019-2020-2021) of at least EUR 100,000 (one hundred thousand/00) our request is the following:

Is a self-declaration sufficient? Also, Euro 100.000 amount is the full "company turnover" or does it mean the services required by the tender?

Answer

With regard to the minimum annual turnover, we confirm that it refers to the company's annual turnover as a whole.

With reference to the evidence we asked in the tender specifications for a document attesting the minimum annual turnover generated by the company, since we do not specify what type of document, it can be a self-certification whose validity and reliability will be evaluated in accordance with the financial statements that will have to be provided by the tenderer.

Question 13

We have received the notification of the extension of the deadline 27/02/2023, 12:00 (Italian time). Can I ask whether the Invitation Letter published on the tender website will be updated to reflect this change?.

Answer

The documents already published, including the Invitation Letter, remain unchanged. The notification sent by the EUI on 31/01/2023 and the tender notice in our website (<https://www.eui.eu/About/Tenders>) with the updated dates are valid proof of the extension of the deadline.

Question 14

Please advise on whether any further documentation we wish to include to support our offer to the EUI should be included in the relevant envelope e.g. Envelope 2 - Technical offer or should they be included in a separate envelope e.g. Envelope 4 - Further documentation?

Answer

Supporting documentation shall be included in the relevant envelope. Please be advised that the term envelope is used as a convention and that other containers, such as boxes, may be used instead of envelopes if the size or weight of the tender so requires.

Question 15

Please could we ask for clarification of the following instruction from Section 3. Submission of tenders from the Invitation to Tender letter:

Tenders must be submitted to:

a) either by post or by courier service not later than 12.00 (Italian time) on 20/02/2023, to the address indicated below, in which case the evidence of the date of dispatch shall be constituted by the date of dispatch, the postmark or by the date of the deposit slip;

We understand this to mean that the tender must be either posted or picked up by the courier service by the submission deadline with appropriate evidence being sent to the EUI and not that the tender must be received by EUI by the submission deadline, is this correct?

Answer

That is correct. The deadline applies to the date and time of delivery, not of receipt. Please be advised that Section 4 of the Invitation Letter states that "All tenderers are required to notify the EUI that they have submitted a tender by writing to the e-mail address: LibraryTender@eui.eu."

Question 16

On a related note, the EUI have granted an extension to the submission deadline. The EUI tenders website includes the following information "EXTENDED until 27/02/2023, 12:00 am (Italian Time)". Please can you confirm whether this is 00:00 or 12:00 Italian time.

Answer

The time of the deadlines for submission of proposals and queries in the EUI tenders website included the "am" notation, which was not correct. The correct deadline time in both cases is 12:00 Italian time (that is, 12:00 noon).