



Clarifications to invitation to tender COMP/2016/010

Collection of key qualitative and quantitative information on European Commission's merger decisions

Questions and answers

	<i>Question:</i>	<i>Answer:</i>
1.	"Please could you confirm whether, for the proposal to be eligible, the Project Manager must have proven experience in <u>merger control</u> , or whether it is sufficient for the PM to have more than 8 years' experience <u>in competition policy more generally</u> ? I refer to point (71) of the attached tender specifications."	<i>"In relation to paragraph 71 of the Tender Specifications, Criterion B1 would be satisfied if the Project Manager proves at least eight years of experience in competition policy, including some experience focused on merger control. In other words, some experience in merger control is required, however, not necessarily for the entire period of eight years."</i>
2.	<p>"We intend to include 2 subcontractors. Their share will be less than 20% of the contract and we know that they do not need to provide a declaration of honour. However, we asked them to provide a letter of intent and a legal entity form for private persons, although - as we understand it - this is only necessary if the subcontractors are identified in the tender. We already received the scanned versions of these documents but have not received the hardcopies of the documents, yet.</p> <p>My questions is: In case we do not receive the hardcopies of the letters of intent and the legal entity forms in time (before Friday), is it possible to include the scans into the tender and hand in the originals later?"</p>	<p><i>"If the capacity of the subcontractor is not needed to fulfil the selection criteria and the subcontractor's share of the contract is less than 20%, no evidence is required.</i></p> <p><i>However, if the capacity of the subcontractor is needed in order to meet the selection criteria, an undertaking (e.g. letter of intent) need to be provided in accordance with section 10.2, paragraph (55) of the tender specifications. In that case, a declaration of honour must be signed by the subcontractor in accordance with section 10.2.1, paragraph (57). The original signed declaration should be included in your tender, since the evaluation will be done based on the declarations (paragraph (59)). Please note that the Commission reserves the right to request evidence at any time during the procurement procedure in accordance with paragraph 59 of the tender specifications."</i></p>
3.	"As the metadata are to be retrieved from public documents only, the micro data are all available	<i>"Yes. As explained in II.13.2. of the draft service contract, the Union does not acquire ownership</i>

	<p>from publicly available databases. The collection and classification of most these micro data, however, is not publicly available. Under paragraph 27 of the call, it is submitted that:</p> <p>(27) Tenderers are encouraged to describe in their respective tenders existing databases of merger decisions set up by academics, think tanks or commercial Data providers and explain which information from publicly available databases could be reused for the purposes of the Data collection under this assignment. The European Commission will acquire ownership of the result (the Data). If the collected and delivered Data include Data which are not publicly available, the cost covering full and timeless usage must be included in the tender and licenced to the Commission (see Article I.10 of the draft service contract, Annex II to the invitation to tender). The Commission will not accept engaging in regular or recurrent fee payments.</p> <p>Question 1: Does this mean that any pre-existing intellectual property rights (copyrights and database rights in particular) are exempted from the obligation of transfer (but would of course be part of the licence the Commission seeks to acquire in view of the usage foreseen)?"</p>	<p><i>of pre-existing rights. These should be licensed on a royalty-free, non-exclusive and irrevocable basis to the Union. This applies to copyrights and database rights, as well as both to pre-existing rights owned by the contractor and to these owned by third parties.</i></p> <p><i>Please also note that as per the definition of "pre-existing materials" in Article II.1 of the draft service contract, the term "pre-existing" refers to the moment the contractor uses it for the production of a result in the implementation of the contract – "pre-existing" does not refer to the signature of the service contract. Therefore, any information gathered that does not fall within the scope of the service contract, i.e. not prepared specifically for the Commission, qualifies as "pre-existing materials" for which only a licence is required."</i></p>
4.	<p>"Paragraph 1 and 5 of the tender specifications describe the usage foreseen by the Commission as follows:</p> <p>Purpose of the contract</p> <p>(1) In order to facilitate the review and analysis of the Commission's merger practice, DG Competition would like to extract and collect key qualitative and quantitative information from key merger cases. These data would enable DG Competition to produce statistical reports which could serve as input to DG Competition's decision-making practice in relation to EU merger control, both for operational and for policy purposes. Parts of such data, in aggregated form, could also be published by the Commission and used for communication purposes.</p> <p>(...)</p> <p>(5) Intended users of such data will be DG Competition officials who require this information</p>	<p><i>"Yes, please see the revised draft service contract. The Commission will be still able to use and publish parts of the database as supporting material for communication purposes."</i></p>

	<p>either for operational, policy and/or communication purposes.</p> <p>The draft service contract holds provisions on the exploitation of the results (I.10) and licensing and transfer of pre-existing rights (I.10.2 jo. II.13). These provisions allow for a much broader usage than the usage described in text cited above, and would give the Commission full unlimited exploitation rights of the pre-existing rights, in particular:</p> <p>The contractor licenses the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the pre-existing materials for all the modes of exploitation set out in this contract.</p> <p>Question 2: Can the Commission confirm that it will use the results, so including the data in which pre existing IPR is pertaining, in accordance with the paragraphs 1 and 5 only (as cited above)?"</p>	
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