

Making the railway system
work better for society.

Call for tender n° ERA 2016 10 OP

“Use of data and analytics techniques in railways to support better management of the risk of accidents”

CLARIFICATIONS (updated on 25/01/2017)

Question 1:

I am writing to ask whether the terms of the draft service contract are fixed or whether it is possible to negotiate on these?

In particular, the limit of liability, stated as three times the total amount of the contract in both the special and general conditions (Article I.15a and Article II.3.3), causes an issue for us since, as a UK government agency, we are only allowed to accept liability to the value of the contract. We have agreed such a revised limit with other EU Agencies previous and wondered whether there was a possibility for negotiation in respect of the current ITT contract?

Answer 1:

In an open procedure, as a matter of principle, there is no room for negotiation. Accepting to amend bilaterally the draft contract would be constitutive of a breach of the principles of transparency and equal treatment.

This cannot be envisaged with the sole objective to make the tender accessible to particular tenderers because of their possible internal constraints.

In conclusion, the conditions and documents of the procedure have been set for all potential tenderers, in line with our needs and with respect to our management rules, and consequently that no negotiation can be envisaged.

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Question 2:

1. With reference to cap. C.5 Selection Criteria, par. C.5.2 - point b of the Tender Specifications:

a) As regards the experience required in similar services “on an international level”, please confirm that having several projects each in a different Member State fulfil your requirement. Otherwise, please clarify;

b) As regards the three years’ recent (gained in the past 5 years) experience, please confirm eligibility of a tenderer who has carried out similar services for a minimum of 36-month experience

any time “in the past five years” (e.g. 2015, Project A + Project B + Project C: 24 months; 2016, Project D + Project E: 14 months; 2017, Project F: 1 month. Overall: 39 months).

Answer 2:

1.a) Yes.

1.b) Yes.

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Question 3:

We assume based on the text from C.2.2.1 stating that “The Agency will select and engage between 3 to 7 study participants” that any necessary written agreements with the selected actors will be between The Agency and the actor organisations. Please confirm or amend this understanding. (We note that the tender specification states in other places that the agreements will be between the “study participants and the contractor”. However, we consider that concluding 3 to 7 separate agreements will be a costly and time consuming task that is better performed by The Agency.)

Answer 3:

The ‘written agreements’ to be used to regulate the commitment of the study participants will be agreed between the Agency and participants. The contractor will be required to provide and agree with the Agency the requirements, obligations, including obligations of the contractor to be enforced via the contract, and arrangements to be included in such ‘written agreement’. This is to allow the contractor to identify and exploit all the possible data/information to carry out effectively the study.

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Question 4:

- At C.2.2.1 it is stated that “The Agency will select and engage between 3 to 7 study participants...” Does the Agency have the commitment that their selected actors will participate and engage with this study in a timely manner?

Answer 4:

The Agency is still in the process of engaging with the stakeholders to identify the best candidates possible. According to C.2.2.1 – Task 1, page 20, “The contractor will be invited to contribute to development of the criteria and selection of study participants”. Therefore, time constraints and all the relevant requirements will have to be defined by the contractor and formalised in the written agreement.

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Question 5:

– We envisage that some actors will not wish their detailed datasets to be part of the deliverables – this appears at odds with the contractual requirements. Insistence by the Agency that actors’ datasets form part of the deliverables and that such data may be exploited by the Agency in accordance with the contractual conditions may make agreement to a Memorandum of Understanding (regardless of who this agreement is with) difficult to obtain. Will the Agency

exclude such datasets from the deliverables and related contractual clauses if this is requested by actors?

Answer 5:

The Agency believes that, if necessary and possible, the data sets might be included in the deliverables in a de-identified form. This means removing all the references that might allow third parties to link the data with specific companies. Descriptions of datasets can be done without listing all the data included in them, but also through a description of structure, taxonomy, data volume, data model, etc. This might also include an example of the data granularity, the example does not need to report actual data.

During the selection of the study participants, by agreement with the contractor (see C.2.2.1 – Task 1, page 20), the Agency may choose to prioritise those who have the most open data sharing policy.

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Question 6:

- The ITT talks about accidents in terms of “serious”, “significant”, “non-significant” and “catastrophic”. These are all measures of the scale of the consequence. This appears contradictory with the rest of the ITT which appears to have its focus on precursors to accidents. Please can you clarify that the study is limited to accident precursors (hazards in CSM-RA speak).

Answer 6:

Precursors and accidents (of whatever type and severity) are linked and this study aims at clarifying this link and exploring the possibility of using precursors, as well as non-safety related data (e.g. timetable, delays, weather conditions, rolling stock, etc...), to build a predictive model to help in the prevention of accidents (Serious, significant or catastrophic).

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Question 7:

C.2.2.1, Task 3 states: “The type of serious accident to be modelled will be selected and agreed with the Agency according to data availability established as part of Task 2. The Common Safety Indicators established within the Railway Safety Directive should be referred to as a basis for this selection. The accidents will be modelled using...”

- Regarding our previous question “serious” refers to accident consequences and implies more than just accident precursors. Please can you confirm that the answer to the previous question applies to this text.
- The requirement talks about a “serious accident to be modelled” and then “accidents will be modelled”. Please can you clarify how many accidents are expected to be modelled (one or more than one, and if so how many)? We propose that this project should be restricted to 2 or 3 accident types, of different levels of complexity. Is this proposal acceptable to The Agency?

Answer 7:

Depending on the quantity/quality of the data available, modelling 3 accidents of different level of complexity is acceptable for the Agency. The answer to Question No.4 applies to the mentioned text.

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Question 8:

- The bold text under C.2.4 could be interpreted as stating that no payment will be made until the final report has been accepted. We understand, from statements made elsewhere, that stage payments will be made upon acceptance of each of the 3 required reports (inception, intermediate, final). Please confirm that stage payments will be made on acceptance of each report.

Answer 8:

The Agency confirms that the stage payments will be made on the acceptance of each report

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Question 9:

We note that big data methods still require sufficient data quality assurance to give useful outputs. Data that is collected inconsistently either by actors or between actors, data that contains incorrect data elements, data that is duplicated or omitted and data that is incomplete all introduce uncertainties in the analysis. Thus we consider that The Agency has correctly defined this project as one that performs an “assessment of the capability of big data” (C.2.2.1) and may not yield immediately applicable results. Please confirm that The Agency accepts that this work may not meet all its ambitious objectives if the available data sets are poor.

Answer 9:

The Agency is aware that low volume or poor quality data cannot lead to obtain useful information, therefore the Agency might accept justified conclusions (i.e. supported by evidences) on the non-applicability of big-data techniques in railways. In these circumstances, the Agency expects a description of the obstacles or missing data or other process, technical or organisational elements necessary to make the modelling envisaged possible and practicable.

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Question 10:

Special Conditions: Article I.3 (Specific Quality Standards). We note that the Agency may impose penalties or liquidated damages up to a maximum amount of contract price in the event of the Contractor’s failure to comply with the stated quality standards. We consider this to be a very high penalty and would like to propose that the maximum amount is reduced to 25% of the contract price to apply for all tenderers. We also suggest that Agency should only be able to impose penalties or liquidated damages for quality purposes if the services and deliverables are demonstrably not in compliance with the tender and tender specifications. Would the Agency consider incorporating additional terms to this effect in Article I.3 to apply for all tenderers?

Answer 10:

See Answer 1

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Question 11:

- Special Condition: Article I.15 (Liability of the Contractor). It is the normal contracting principle that the contractor would only be held liable for loss or damage if caused by its fault or negligence. We would therefore like to ask if the Agency would consider an amended interpretation (a) of

Article II.3.3 of the General Conditions to apply for all tenderers as follows: “The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the contract, as a direct result of the contractor’s fault or negligence, including in the event of subcontracting, but only to an amount not exceeding three times the total amount of the contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.”

Answer 11:

See Answer 1

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Question 12 :

- General Conditions Article II.12 (Liquidated damages). We would like to propose that the liquidated damages which may be imposed by the Agency under this article are limited to a maximum amount of 25% of the contract price, to apply for all tenderers. We suggest this is a reasonable amount for liquidated damages and consistent with normal contracting practice.

Please could you clarify why liquidated damages may be imposed by the Agency in the event of the contractor failing to complete its contractual obligations? We agree that liquidated damages would apply in the event of the contractor’s delay in performing its contractual obligations, however, in the event of the contractor’s failure otherwise to complete contractual obligations the normal contractual remedy would be for the Agency to bring a claim against the contractor for breach of contract and we therefore see no need for liquidated damages to apply.

Answer 12:

See Answer 1

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Question 13:

As per task 1, as described in pages 19-20 of the Tender Specifications, we would like to ask the following question:

Does the agency have a preferred list of study participants, or is the contractor free to propose its own complete list of study participants?

Answer 13:

The Agency is currently working to find the ‘study participants’. Nevertheless, suggestions from the contractor can be accepted by the Agency.

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Question 14:

As per task 1, as described in pages 19-20 of the Tender Specifications, we would like to ask the following question: Can the contractor focus on a target geography as per the origin of the study participants’ during their selection or, on the contrary, participants from a variety of countries need to be considered?

Answer 14:

The Agency would prefer participants from a diverse geographical area. Nevertheless, as criteria for selection of participants is to be agreed between the contractor and the Agency (see C.2.2.1 – Task 1, page 20), the Agency may be willing to consider a localized group, sharing the same language as the contractor, for example, if the type and extent of operations and technical equipment of participants are sufficiently varied.

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Question 15:

Section B.7.3 (page 11) of the Tender Specifications indicates that “the offer should be postmarked no later than the date indicated in the timetable...”

Question: Please confirm whether the following interpretation is correct: if we were to send an offer through a courier service, the offer would be acceptable if dispatched from our offices no later than the deadline date specified by the tender, even if it were to be delivered by the courier at the agency’s premises after the deadline.

Answer 15:

Yes

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Question 16:

Are there any constraints regarding the usage of public cloud big data technologies provided that of course data will be securely stored and could also be anonymized if necessary ?

Answer 16:

Data protection, security and confidentiality is a very sensitive topic for the railway industry, therefore the use of **public** cloud infrastructure is **not acceptable**. Further requirements for confidentiality, data protection and security (e.g. non-disclosure agreements, compliance with legal requirements, data encryption, etc.) will be defined in the 'written agreements' together with the Agency and the 'study participants'

..... **end**

25/01/2017