Enabel

Belgian development agency
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CLARIFICATIONS

Contract title: *Framework Contract: Services procurement contract for legal assistance in structuring, monitoring and management of public-private partnerships in the waste, energy and water sectors in Mozambique*

Reference: MOZ22002-10073

N°	Issue / question raised	Response
1.	1. Ongoing contracts. The criterion requires a "completion date within the last three years". Please confirm whether an ongoing contract is acceptable as a reference where the services already performed and invoiced under it amount to at least EUR 75,000 (excluding VAT).	No. The selection criterion expressly requires two similar contracts with a completion date within the last three years. Ongoing contracts that have not yet been completed cannot be counted towards this requirement.
2.	2. Type of client. Please confirm whether "international organizations" includes international and development finance institutions, such as the International Finance Corporation (World Bank Group).	Yes, as it's considered as an international organization
3.	3. Scope. Please confirm whether legal advisory services on the structuring, tendering and negotiation of PPPs qualify as a similar contract, or whether each reference must also cover contract management, dispute resolution and mediation.	Yes. Legal advisory services on the structuring, tendering and/or negotiation of PPPs qualify as similar contracts within the meaning of selection criterion 1. The reference to "contract management, dispute resolution, and mediation" indicates matters falling within the area of PPPs; it does not require each reference to cover all of these matters. Each reference must nevertheless meet the other requirements of the criterion: legal advisory services in the area of PPPs, provided to a Mozambican public institution or an international organization, with a value of at least EUR 75,000 (excluding VAT), completed within the last three years.
4.	4. Groups of economic operators. Please confirm that, in a tender submitted by a group of economic operators, the two references may be provided by different members of the group.	Yes. Tenderers may rely on the capacities of consortium members ensuring that the consortium as a whole satisfies the selection criterion.
5.	5. Mode of submission. Clause 10 of chapter 3 requires submission in hard copy and on a USB stick delivered by hand in Maputo, while clauses 11.1 and 12.2 refer to an electronic platform. Please confirm the applicable mode of submission and, if in hard copy, the number of copies required. Please also	Tenders shall be submitted in hard copy, with the Technical Proposal and Financial Proposal prepared as separate documents, each enclosed in a separate sealed envelope. Both sealed envelopes shall then be placed inside a single sealed outer envelope.

	confirm that the correct reference to be mentioned on the envelope is MOZ22002-10073 (clause 10 refers to MOZ22005-10073).	The hard copy submission shall be accompanied by a USB flash drive containing an electronic copy of the complete tender. Both shall be delivered by hand to the address specified in Clause 10. The outer envelope must clearly indicate the contract reference number **MOZ22002-10073**.
6.	6. Price form. The ToR require a Field rate and a Home rate for each profile, while the Tender form – Prices refers to a "unit price with overnight" and a "unit price without overnight". Please confirm that these correspond, respectively, to the Field rate and the Home rate.	Confirmed. For the purposes of this tender, "Unit price with overnight" corresponds to the Field rate, while "Unit price without overnight" corresponds to the home rate.
7.	1. The Integrity Statement requires a declaration that board members, staff members or their partners have no financial or other interests in "the businesses, organisations, etc. that have a direct or indirect link with Enabel". Could you clarify the scope of this wording and whether it covers private operators, bidders, lenders or other counterparties involved in PPP projects supported or financed by Enabel?	The provision aims to identify and prevent conflicts of interest. Tenderers should declare any financial or other interests that could affect, or be perceived to affect, their independence and impartiality in relation to the assignment. Normal professional relationships with PPP stakeholders do not need to be declared unless they create an actual or potential conflict of interest.
8.	2. During the term of the framework contract, may a framework contractor advise private operators in the waste, energy or water sectors in Mozambique? We would appreciate an answer both for projects outside Enabel's programmes and for projects within those programmes that do not overlap with any assignment ordered from that contractor.	Yes. The framework contract does not grant Enabel exclusivity over the contractor's services, and the contractor remains free to provide advisory services to private operators in the waste, energy or water sectors in Mozambique, both outside and within Enabel's programmes. This freedom is subject to the rules on conflicts of interest. The contractor shall declare, when responding to each order request, any current or past engagement that creates, or could reasonably be perceived to create, a conflict of interest with the assignment concerned. This duty continues throughout the term of the framework contract. Any situation arising during the execution of an ongoing assignment shall be notified to Enabel without delay.
9.	3. The cascade mechanism allows a contractor to decline a purchase order. Can a contractor decline a specific order	A contractor may decline a purchase order where a conflict of interest exists. Such refusal will not automatically affect the contractor's

	on conflict-of-interest grounds and, if so, would this have any bearing on its ranking or position under the framework contract?	ranking under the framework contract, provided the conflict is legitimate and properly justified.
10.	We understand that Enabel has previously contracted legal support for the waste-sector model contracts and the pre-contractual phase. Would a tenderer's prior involvement in that work, or that of an undertaking related to it, prevent it from taking part, or would disclosure in Part III.C of the ESPD suffice?	Prior involvement does not automatically prevent participation in the tender. Tenderers must disclose any relevant prior involvement that may give rise to conflict of interest, which will be assessed in accordance with the applicable procurement rules.
11.	The Tender Specifications set the deadline at 20 November 2026, 12:00 Central African Time (UTC+2). The TED notice states 20/11/2026, 12:00 (UTC+01:00). Which of the two applies?	The applicable deadline is 20 November 2026 at 12:00 PM Central African Time (UTC+2), as stated in the tender specifications
12.	Clause 10 of chapter 3 requires tenders in hard copy and on a USB stick, delivered by hand in Maputo. However, clause 11 refers to uploading documents to an electronic platform and signing a "submission report", and clause 12.2 states that tenders are opened via the e-Procurement platform. The TED notice also indicates non-electronic submission. Could you confirm whether electronic submission is required or permitted, how many hard copies are required, what the USB stick should contain, and how the hard-copy tender and its annexes are to be signed?	Electronic submission is neither required nor permitted for this procedure. Tenders must be submitted in hard copy, accompanied by a USB flash drive, as specified in Clause 10. One original hard copy of the tender shall be submitted, comprising the Technical Proposal and the Financial Proposal, prepared as separate documents and each enclosed in a separate sealed envelope. Both sealed envelopes shall then be placed inside a single sealed outer envelope. The USB flash drive must contain a complete electronic copy of the tender. All documents must be duly signed by the tenderer's authorised representative(s). A corrigendum will be issued to amend Clauses 11 and 12.2 accordingly.
13.	8. The delivery address in clause 10 refers to contract reference "MOZ22005-10073". We assume the envelope should show MOZ22002-10073; please let us know if that is not the case.	The correct contract reference is MOZ22002-10073. A corrigendum will be issued to amend it.
14.	9. Several cross-references in the Tender Specifications display "Error! Reference source not found", including those to the forms in chapter 8. We would be grateful for a corrected version.	The Contracting Authority acknowledges that the PDF version of the tender documents contains certain formatting and cross-reference errors. Tenderers are therefore requested to refer to the relevant sections and forms as set out in the Tender Specifications. A Word version of the tender documents will also be made available on the Enabel website.

15.	10. The Tender Specifications provide for up to three operators ranked in a cascade. The Terms of Reference refer to service orders issued to "one pre-qualified provider (or consortium)". How many framework contractors will be appointed?	Up to three framework contractors may be appointed and ranked in a cascade system, as specified in the Tender Specifications.
16.	11. The Terms of Reference also state that the contract is awarded to the "regular Best and Final Offer (BAFO)". Is a negotiation or BAFO stage foreseen and, if so, how will it be conducted?	No BAFO/Negotiation is foreseen in the award of the Framework contract as this is an open procedure, but the subsequent orders may require a negotiation/BAFO. Enabel reserves the right to negotiate at that moment where deemed necessary.
17.	12. Clause 17.3 of chapter 4 allows Enabel to negotiate the financial offer submitted for each assignment. The financial proposal is based on the person-day rates set in the framework contract, and price revisions are not allowed. What is the intended scope of that negotiation? Is it limited, for instance, to the number of person-days and the profiles proposed?	Negotiations may concern any component of the bid, including the financial proposal. However, the resulting total price may only be reduced and shall under no circumstances exceed the initial financial offer submitted for the assignment.
18.	13. Tenders must be drawn up in English. May corporate documents, registration, tax and social security certificates, criminal record extracts and client reference letters be submitted in their original Portuguese? If a translation is required, would a simple (non-certified) translation be acceptable?	The tender must be drawn up in English. However, supporting documents issued in Portuguese by local entities, including corporate documents, registration certificates, tax and social security certificates, criminal record extracts and client reference letters, may be submitted in their original language. In such cases, an English translation is not required.
19.	14. We understand that the members of a consortium may combine their capacities to meet the selection criteria. Could you confirm that this applies both to the two similar contracts of at least EUR 75,000 each performed in the past three years and to the minimum average annual turnover of EUR 150,000?	Confirmed. Consortium members may combine their capacities to meet the selection requirements, including references and turnover requirements.
20.	15. As regards similar contracts, could you also confirm: • whether contracts performed as a subcontractor or as a consortium member qualify; • whether the EUR 75,000 threshold applies to the value of the tenderer's own engagement or to the overall contract value;	a) Only references performed as a consortium member may be accepted. b) The EUR 75,000 threshold applies to the value of the services actually performed by the tenderer. c) The three-year period is assessed based on the completion date of the assignment.

	• whether the three-year period is counted from the completion date or from the date of the services.	
21.	16. Is a consortium required to adopt a specific legal form, either at submission or before award? Or is the signed association agreement designating the representative sufficient?	No specific legal form is required at the tender submission stage. Where a tender is submitted by a group of economic operators, the association agreement must be signed by all consortium members and clearly identify the lead member and the authorised representative of the group.
22.	17. Sub-criterion 1.4 values "*genuine complementarity and co-lead roles rather than subcontracting*" where a consortium or local partnership is proposed. How will this be assessed, and does it make any difference which member acts as the consortium representative?	Part of that sub-criterion will be assessed based on how potential partnerships will work on practice. The choice of consortium representative is not, in itself, a scoring factor. The assessment will look how partners will collaborate and share roles, based on complementarity of expertise and presence, substance of each partner's role, their involvement in decision-making and implementation.
23.	18. As regards the Key Experts, could you confirm: • whether the minimum requirements for each Key Expert profile are eliminatory; and • whether one expert may be proposed for more than one profile.	Yes. The requirements listed for each Specialist profile are minimum requirements and must be met by the expert proposed for that profile. Only experience exceeding these minimum requirements is assessed under the award criteria (criterion 2 – CVs). A profile for which the proposed expert does not meet the minimum requirements will not be considered as covered and will not be scored under the corresponding award sub-criterion. The tender documents do not prohibit proposing the same expert for more than one Specialist profile. In that case, the expert must meet the minimum requirements of each profile for which he/she is proposed, and the tenderer shall submit a separate annex for each profile. Each profile is evaluated separately. Through the signed statement of availability and priority commitment, the tenderer remains responsible for ensuring the expert's availability for all profiles concerned throughout the framework contract, including where several assignments are executed simultaneously.
24.	19. Clause 13.9 states that only the "*Global indication for all selection criteria*" section of Part IV of the ESPD needs to be completed. The ESPD form provided also	In line with Clause 13.6, tender submitted by a group of economic operators, it must include a European Single Procurement Document (ESPD) for each of the participants in the group.

	contains the turnover and service-specific sections. We assume that only the global indication is required. Should each consortium member submit a separate ESPD, or is an integrated ESPD acceptable?	
25.	20. The price form asks for a unit price per person-day "with overnight" and "without overnight" for each profile. The award criteria refer to a price per day of fieldwork ("Field") and per day of remote work ("Home"). Does "with overnight" correspond to "Field" and "without overnight" to "Home"? We would also be grateful for an explanation of how the "*overall average daily price*" in the financial score formula is calculated, including any weighting between profiles and between field and home rates.	Confirmed. "With overnight" corresponds to Field Rate and "Without overnight" corresponds to Home Rate. The overall average daily price will be calculated from the rates submitted in the financial proposal form. No additional weighting beyond that specified in the Tender Specifications will be applied.
26.	21. We understand that the 20% (or 32% or 10%) non-resident income tax withheld at source applies only to invoices issued by non-resident consortium members, and not to members resident in Mozambique. Could you confirm this, together with the VAT treatment of the services, given that they are deemed to be supplied to Enabel's permanent establishment in Mozambique?	Applicable tax treatment will follow the legislation of Mozambique. Any withholding taxes applicable to non-resident entities remain the responsibility of the contractor. Tenderers should seek independent tax advice regarding their specific circumstances.
27.	22. Enabel covers international air travel and local transport in Mozambique outside Maputo city. Should transport within Maputo city be included in the daily rates?	Yes. Local transportation within Mozambique, international air travel, and travel outside the city of Maputo will be covered by Enabel.
28.	25.The service provider assumes "*full responsibility for any mistakes or deficiencies*" and must indemnify Enabel against third-party liability, with no cap. Would Enabel accept a cap on the service provider's total aggregate liability for all events occurring in the same year,	The liability provisions set out in Clause 20 of the Special Contractual Provisions shall remain unchanged. As per Clause 20.1, the service provider assumes full responsibility for any mistakes or deficiencies in the services delivered and the Clause 20.2. The service provider shall indemnify the contracting authority against any

	set at the lower of (i) twice the fees actually received, excluding taxes and expenses, for the matter or matters to which the relevant event relates, and (ii) the cover actually available under the applicable professional indemnity insurance policy? We would also ask whether Enabel would accept the exclusion of indirect and consequential loss and, for consortia, each member's liability being limited to the services it performs	damages it may incur as a result of liability towards third parties arising from delays in the performance of the services or any failure by the service provider to fulfil its obligations. Furthermore, pursuant to Clause 11.2 of the Tender Specifications, participants submitting a tender as a consortium are jointly liable.
29.	26. Is professional indemnity insurance required and, if so, what is the minimum amount of cover?	The Tender Specifications do not establish a specific requirement for professional indemnity insurance or prescribe a minimum amount of professional indemnity cover. For clarity, the performance bond required under Clause 8.1 of the Special Contractual Provisions, amounting to 5% of the total contract value excluding VAT, is a separate contractual guarantee and does not constitute professional indemnity insurance.
30.	27. The contracting authority acquires the intellectual property rights "*created, developed, or used*" during performance. We assume this does not extend to the service provider's pre-existing materials, templates and know-how, which would be licensed to Enabel to the extent necessary to use the deliverables.	Confirmed, subject to the following. Pre-existing materials, templates and general know-how of the service provider, developed independently of this framework contract, remain the property of the service provider. Where such pre-existing materials are incorporated into deliverables, the service provider grants Enabel a non-exclusive, royalty-free, perpetual and irrevocable licence to use, reproduce, adapt, translate, publish and distribute them as part of the deliverables, and to transfer or sublicense these rights to the partner institutions and beneficiaries concerned. This includes adopting deliverables as public normative or contractual instruments. The service provider shall identify any pre-existing materials incorporated into a deliverable and guarantees that their use does not infringe third-party rights. All rights in deliverables and in materials specifically created for Enabel under the framework contract are acquired by Enabel.
31.	28. We would also ask you to confirm that the audits, on-the-spot checks and requests for supporting documents	Any audit or verification activities shall be conducted in accordance with applicable law and professional obligations.

	provided for in the Tender Specifications are subject to the legal professional secrecy obligations of lawyers, including the protection of other clients' information.	
32.	29. Will a separate data processing agreement under Article 28 of the GDPR be concluded? If so, may consortium members and approved subcontractors act as (sub-)processors?	Clause 6.2 of the Special Contractual Provisions establishes that Enabel acts as the data controller and the service provider as the data processor, in accordance with Article 28 of the GDPR. Although the Tender Specifications do not expressly provide for a separate Data Processing Agreement, any processing of personal data must be governed by a binding contractual arrangement in accordance with Article 28(3) of the GDPR. Consortium members and approved subcontractors involved in such processing must be subject to the relevant GDPR obligations, including confidentiality, data security and compliance with Enabel's instructions.
33.	30. Are fines for delay calculated on the value of the relevant purchase order or on the value of the framework contract? Do they also apply to the seven-day period for responding to a request for services?	Any contractual penalties for delay will be applied in accordance with the Contract Conditions and assignment-specific provisions. The seven-day response period relates to framework contract administration and is not considered a service delivery deadline.
34.	31. Payment is made in one instalment upon acceptance of the services. For longer assignments, could payment be made in instalments against approved deliverables?	This can be negotiated for each subsequent order