

EUROPEAN INSTITUTE FOR GENDER EQUALITY



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Tender: EIGE/2015/OPER/20

Study on the Economic Benefits of Gender Equality in the European Union

Subject: Answer to request for clarifications regarding the Tender

From a potential tenderer we received questions that might be of general interest. Please find herewith the answers to these questions.

Procurement
EIGE

EIGE/2015/OPER/20. Questions & Answers Nr 1

Question 1:

We would like to ask for your clarification regarding the participation of individuals and legal persons from United States of America both as partners and as subcontractors within the present contract. According to subchapter 2.1 of the Tender Specifications:

Participation in tendering procedures is open on equal terms to all natural and legal persons falling within the scope of the Treaties (this includes all economic operators registered in the EU and all EU citizens). Participation is also open to all natural and legal persons in any non-EU country which has an agreement with the European Union in the field of public procurement on the conditions laid down in that agreement.

Being launched by an EU Agency, this procurement procedure is not opened to the countries parties to GPA (except those mentioned in the previous paragraph).

We've tried to clarify which are the countries covered within the sentence highlighted above. According to the website <http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>

At regional and bilateral level, provisions covering public procurement have already been included in Free Trade Agreements (FTAs) with: Mexico, Chile, Colombia, Peru, Central America region (Panama, Guatemala, Costa Rica, El Salvador, Honduras, Nicaragua), Iraq, Korea.

In the same page, the plurilateral level is mentioned, with reference to the WTO GPA, where the following countries are included: *Armenia, Canada, Hong Kong and China, Iceland, Israel, Japan, Liechtenstein, Aruba, Norway, Singapore, Switzerland, Chinese Taipei and USA.* (http://ec.europa.eu/growth/single-market/public-procurement/rules/gpa-wto/index_en.htm)

We are led to believe that the participation of citizens and/or organisations from the USA are not allowed under the present contract. Can you please confirm this? If so, can you also confirm if this rule applies both to partners and subcontracted organisations/individuals from the USA?

Answer 1:

Appendix I to the GPA indicates that only the Commission, the EEAS and the Council are concerned. Thus, neither the "traditional" Agencies nor the executive Agencies nor any other institution or body other than the Commission, the EEAS and the Council should open their procurement procedures to tenderers from GPA countries.

Pursuant to Article 119(1) FR "Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement under the conditions laid down in that agreement." This provision implies that suppliers established in third countries have the right to participate in tendering procedures if an international agreement in the field of public procurement grants them the right to do so. In case there is no such agreement, or the agreement does not apply to the kind of contracts put out to tender, suppliers of third countries are, in principle, not entitled to participate.

No special or bilateral international agreement in the field of public procurement has been signed between the European Community and the United States, therefore this tender is not open for a tenderer / partner in consortium from the USA.

As contracting authorities cannot limit subcontracting, tenderers are free to choose their subcontractors from both eligible and non-eligible countries. Thus, in principle all economic operators can act as subcontractors of eligible tenderers.

Question 2:

We will submit a joint offer, where the lead consortium is a partner. All 3 Tenderers will sign one Power of Attorney according to Model A of the standard submission forms. However, we are not sure about who should sign the Tender Identification Form, because:

a) According to the Tender Specifications, subchapter 2.2.1, page 32, The tenderer identification form is to be provided in original, signed by a representative of the Tenderer authorised to sign contracts with the third parties. Here we interpret that, in case we provide a Power of Attorney, the Tender Identification Form only needs to be signed by the legal representative of the Group Leader.

b) In the checklist provided on the last page of the standard submission forms, the first row "Original tender identification Form" has the mark for Coordinator or group leader in joint bid + All partners in joint bid + Single or main contractor. Does this mean that all partners' legal representatives need to sign this form, even if a Power of Attorney is provided (granting to the Group Leader all the necessary powers to act on their behalf)?

Answer 2:

Identification of the Tenderer form shall be submitted by each party of the consortium signed by a representative of the Tenderer authorised to sign contracts with the third parties.