

The Ministry of Finance received the following questions in regard to the procedure for conclusion of framework agreements for procedural representation and legal advice.

1. May two law firms cooperate to submit a single, joint tender (still putting forward no more than a total of 3 partners) to meet the requirements of Section II.1.2?
2. If yes, would we be correct to proceed on the basis that (a) the law firms must both separately fulfill the requirements of Sections II.1.1, II.2, III.2.6, and III.2.8, but (b) the law firms could work jointly to, or have only one of them, complete the requirements of Sections II.1.3, III.1, III.2.1-2.5, III.2.7, and III.2.9-2.11?
3. Due to impending inclement weather on the U.S. East Coast among other difficulties securing originals of all of the documents requested in the Instructions, our law firm – and we imagine others as well – faces the prospect of not being able to dispatch its Tender by express delivery (FedEx/DHL) in time to reach the Ministry by the specified deadline of 5pm on Monday, 26 March.

Accordingly, we make the following request for clarification and/or accommodations: Would the Ministry consider either (i) permitting email delivery of the Tender documents (with, for example, a password to secure the Price Offer to ensure that it could not be opened prematurely) by the deadline, with hard copy originals of the same documents to be delivered within 4 business days thereafter, or (ii) extending the deadline for the submission of Tenders by 8 days, to Tuesday, 3 April? Of course, any such accommodations should apply to all potential bidders in the procurement procedure.

4. The instructions to the tender procedure provide in paragraph III(2) that the “price of the services offered must be specified in euro (EUR) and include any and all direct and indirect taxes and levies, including but not limited to VAT”. Can you kindly confirm whether the Ministry of Finance is registered for VAT? The purpose of this question is to determine whether the EU reverse charge mechanism could be applied and, therefore, whether our price offer must include VAT.

5. According to the definition of “lead counsel” given in the clarifications sent to us on 16 March 2018, more than one partner could qualify as lead counsel on a particular case (“a partner who had significant responsibility for the preparation of the submissions in the case and did pleadings at oral hearings”). Can you kindly confirm whether this is the case, or whether it is expected that there be only one lead counsel per case?

The Ministry of Finance provides the following answers to the questions posed.

1. The requirements that each law firm must meet in order to be eligible to participate in the procedure are set forth in Section II of the Instructions.

Section II.1 of the Instructions provides that a law firm may participate if it meets "each and all" of the following requirements:

It has been duly registered as a law firm under its national legislation, it can put forward 3 of its partners who meet the experience requirements, and it has a valid professional liability insurance for at least EUR 20 (twenty) million.

In other words, only a law firm that meets individually all the requirements may participate in the procedure. Consequently, two or more law firms cannot cooperate to submit a joint tender to meet the requirements in Section II.

2. Provided that the answer to the first question is no, the Ministry of Finance does not consider it necessary to answer the second question.

3. The participants in the procedure have to submit the required documents on the date and in the manner provided in the rules of the procedure. However, if some participant is hindered by weather conditions which are not simply bad weather but amount to force majeure, it could send the documents by email followed by the hard copy when the weather permits. Since the Ministry of Finance does not monitor the weather conditions all over the world, the participant which avails itself of this option has to provide some proof and explanation about the severity of the weather conditions and their impact on its ability to send the documents in the manner provided in the rules.

4. The Ministry of Finance is registered for VAT.

5. In the file Questions_2_Clarifications published on the Ministry's website, the Ministry of Finance provided clarification to all participants in regard to the question who could be considered a lead counsel. The participants are free to determine who falls within the scope of the definition and if they consider that two or more persons meet the required criteria, they are free to designate all of them as lead counsel. However, the Ministry of Finance reserves the right to check whether the designation was made in good faith and on reasonable grounds.

In view of the fact that the participants had 30 days to ask for clarifications, which the Ministry considers to be sufficient time, and that there are only 5 days left to the deadline, the Ministry of Finance will no longer accept and respond to questions related to the procedure for conclusion of framework agreements with the following subject matter:

“Procedural Representation and Legal Advice in International Arbitration Cases and in Proceedings before Foreign Jurisdictions, as well as Legal Advice and Representation in Negotiations and Mediation related to Resolution of Legal Disputes”.