

CLARIFICATION TO TENDER: N° 02

“Analysing the European testing capabilities of ICS-SCADA Systems”

ENISA P/26/12/TCD

Questions & Answers

Q1:	We request to clarify, whether the winning bidder will be asked to set up and establish an ICS-SCADA testing lab as part of a continuous project?
A1:	No testing lab set up is foreseen for this tender.
Q2:	“Part 2, Article 2 - Objectives and tasks”, States that the tenderer needs to identify gaps between different Member States (MSs), we request to clarify in which areas ENISA seeks to examine and identify the differences and gaps between MSs?
A2:	The candidate contractor needs to identify the gaps (if any), at least in the areas described in the task 2 list and any other areas he might consider appropriate.
Q3:	“Part 3, Article 1.3 - Identification of the Tenderer”, states that the tenderer must fill in and sign on a Financial Identification Form, we request to clarify if there is a need to attach to the mentioned form only the VAT number or also VAT registration document.
A3:	The Tender specification document states, in ‘Part 3 Article 1.3a Identification of the Tenderer – for private entities’ on page 20 that “If the above documents do not show the VAT number, (then supply) a copy of the VAT registration document, where applicable.” In other words, if any of the formal documents you provide for the Legal Entity form clearly show the VAT number, then there is no need to provide a VAT registration document. Otherwise you will need to provide it.

Q4:	<p>In relation to section 3.2 (page 24) of the Tender Specifications can the Agency please confirm or clarify the following:</p> <ol style="list-style-type: none"> 1. a tenderer providing proof of financial and economic standing through (a), or (b), or both, is not required to provide an undertaking by an affiliated entity it uses resources or competences from; 2. a tenderer using resources or competences from an affiliated entity is not considered as subcontracting (regardless of the degree such affiliated entity resources and competences are used by the tenderer)
A4:	<ol style="list-style-type: none"> 1. Correct, unless in the case of a subcontractor, using the requisite form provided in Annex to the Tender specification. 2. It depends on the relationship of the affiliated entity. It would be more prudent to present in a transparent way any other entities which will be actively engaged in providing services as part of this tender
Q5:	<p>Annex V - Draft Service Contract, section 5. I.4. Can ENISA please confirm that no performance guarantee will be required?</p>
A5:	<p>We confirm that no guarantee is required.</p>
Q6:	<p>Annex V - Draft Service Contract. Under reference to II.10.9, can ENISA confirm that contractor remains free to use the results, in whole or in part, for whatever purpose and create derivative works from these independent from and for a purpose other than the contract? If not, can ENISA detail contractor's usage rights with regard to the results and, if any, applicable limitations.</p>
A6:	<p>No use of the results by the contractor is possible. The contractor undertakes to hand over the results and the related intellectual property right of the deliverable. Please refer to ARTICLE II.9 – ASSIGNMENT and ARTICLE II.10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS in the Draft Service contract.</p>
Q7:	<p>Annex V - Draft Service Contract. Under reference to article II.14.3 of the contract, where it says ENISA may recover amounts paid, it seems to imply that ENISA can do so even in circumstances of force majeure or termination for convenience, which would be unreasonable</p>
A7:	<p>ENISA does not recover amounts in case of such termination or force majeure in accordance with the general principles of Law.</p>
Q8:	<p>Can ENISA clarify that, where it says ENISA may recover amounts paid, this concerns only amounts pre-paid and that contractor will be entitled to payment for the period until effective date of termination.</p>

A8:	In case of termination, both parties would agree on a amount to be paid which would be commensurate with the services delivered.
Q9:	Can ENISA further clarify that ENISA may engage another contractor only where termination occurs as a result of and on the grounds of contracting defaulting its obligations?
A9:	In case of termination, ENISA may not engage another contractor. The Agency would have to launch a new call for tenders and start the procedure from the start.