

**CLARIFICATION TO TENDER: N° 01**

**“Good practice for CERTs in addressing NIS aspects of  
cybercrime”**

**ENISA P/02/11/TCD**

**Questions & Answers**

<b>Q1:</b>	<p>Part 3 Administrative Details, 3. Selection Criteria, 3.2 Financial and Economic capacity states “Proof of financial and economic standing may be furnished by one or more of the following references:</p> <ol style="list-style-type: none"> <li>1. Annual accounts, balance sheet or extracts there from where publication of the balance sheet is required under company law in the country of establishment;</li> <li>2. Statement of the undertaking’s overall turnover and its turnover in respect of the services to which the contract relates for the previous two financial years.”</li> </ol> <p>In addition, Part 3 Administrative Details, 1. Formal Requirements, Part 1.4 Participation of Consortia states “In addition, each member of the consortium must provide the required evidence for the exclusion and selection criteria (Articles 2 and 3 below). Concerning the selection criteria “technical and professional capacity”, the evidence provided by each member of the consortium will be checked to ensure that the consortium as a whole fulfils the criteria. The participation of an ineligible person will result in the automatic exclusion of that person. In particular, if that ineligible person belongs to a consortium, the whole consortium will be excluded.”</p> <p><b>Question: Does the combination of these two statements imply that any consortia including an organization less than two (financial) years old will be excluded? Are there any conditions under which an organization less than two years old can participate in a consortium with other organizations more than two years old?</b></p>
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<p><b>A1:</b></p>	<p>Part 3 Administrative Details, Article 1.4 Participation of Consortia states that in the case of a consortium, all members are jointly and severally liable for the execution of the ensuing contract. Regarding the financial viability of the consortium, each member of the consortium must provide one or more of the documents outlined in Part 3 Administrative; Article 3.2 Financial and Economic capacity.</p> <p>In this particular tender procedure, the first bullet point of the abovementioned article asks for “<i>Annual accounts, balance sheet or extracts...</i>” but <u>does not mention a minimum period</u>. The second bullet point asks for: “<i>Statement of the undertaking’s overall turnover and its turnover in respect of the services to which the contract relates for the <u>previous two financial years</u></i>”</p> <p>Therefore in the context of this particular tender procedure, a lead contractor/consortium member/subcontractor may either choose to provide documentation for bullet point one alone or for bullet point two alone, or a combination of both in order to prove its financial viability and capability to undertake the contracted services.</p> <p>Following on from the above, no company can therefore be automatically excluded purely based on not being in existence for at least 2 years. In the circumstance where a company may not be able to provide at least 2 years of Annual accounts or balance sheets etc (‘bullet point one’), then it is strongly recommended that documentation in respect to ‘bullet point two’ is also provided in order to provide a more comprehensive financial picture of the legal entity.</p> <p>The Evaluation Committee will formally decide based on the documents actually provided in a tender offer, whether they are satisfied that this tenderer is sufficiently resourced and financially stable to undertake the services as described.</p>
<p><b>Q2:</b></p>	<p>Part 3 Administrative Details, 1. Formal Requirements, 1.5 Subcontracting states “Contractors must state in their offers what parts of the work, if any, they intend to subcontract, and to what extent (% of the total contract value), specifying the names, addresses and legal status of the subcontractors.”</p> <p><b>Question: Is there any restriction regarding the maximum % of the total contract value that can be allocated to subcontractors?</b></p>
<p><b>A2:</b></p>	<p>In the absence of any specific percentage of subcontracting declared in the Tender specification for this particular tender procedure, no such restriction applies.</p> <p>However, in cases where a tenderer intends to subcontract a significant proportion (greater than 25%) of the contracted work to a subcontractor, the tenderer must provide clear and detailed documentation on the technical capacity and background of the subcontractor, as well as its financial capacity in accordance with the details given in our answer to question one above.</p>