



EUROPEAN COMMISSION
CONSUMERS, HEALTH, AGRICULTURE AND FOOD EXECUTIVE AGENCY
Health and Food Safety Unit
Head of Unit

Luxembourg,
Chafea DM/GM/MV/cd
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For the attention of
Aisha DOWN

Registered letter sent by email to: Aisha DOWN (ask+request-7377-125c6824@asktheeu.org)

Subject: Questions concerning the “Submissions for Track and Trace Everis tender”

Dear Ms Down,

We revert to your email of 20/11/2019 concerning the “Submissions for Track and Trace Everis tender” (Chafea’s reference for the specific contract being SC 2015 71 05).

The questions were as follows:

- First, were there other parties that submitted tenders for this contract?
If not, why?
- Secondly, the European Parliament flagged this contract as containing a conflict of interest: http://www.europarl.europa.eu/doceo/document/E-8-2016-009343_EN.html.
In this release, you have not provided data that could clarify, one way or another, if this concern was well founded.

However, this was a sizeable contract. (1.3 million Euros), and one that had significant impact on a European law.

Please release any further due diligence that was done on the contractors, on PwC, or on Everis for this contract including relationships between PwC and the tobacco industry, and any communication with third parties on the subject of this contract.

On your first question, please note the following:

- There were no other parties that submitted a tender for this contract. The Specific contract SC 2015 71 05¹ was awarded to the first contractor of Framework Contract (FWC) DIGIT/R2/PO/2013/004 ABC III Lot 2 (*"High level consultancy and studies"*).
- This was a FWC in cascade, which means that every request for services under that type of contract is sent to the first contractor, i.e. the consortium led by PWC-Everis.
- It is only in the case that the first contractor declines to submit an offer, or that the offer fails the evaluation process, that the request is then sent to the next contractor in the cascade.
- The other contractors in the cascade are the following:
 - KPMG Advisory S.p.A. in consortium with TRASY S.A and KURT SALMON France SAS;
 - CGI Belgium NV in consortium with ACCENTURE;
 - Deloitte Consulting CVBA/SCRL in consortium with Capgemini Nederland B.V;
 - Ernst & Young Special Business Services in consortium with Unisys Belgium.

On your second question, please note the following:

As mentioned in the answer given by Mr Andriukaitis on behalf of the Commission, both the consortium companies and the individual members of the project team have signed declarations of no conflict of interest (http://www.europarl.europa.eu/doceo/document/E-8-2016-009343-ASW_EN.html).

In the case of this request for services, due to its sensitivity and the potential conflicts of interest *vis-à-vis* the tobacco industry, the Executive Agency included in the “Technical specifications” specific, additional conditions and requirements to be met both by the tenderer and by the individual members of the project team.

The “Technical Specifications” attached to the Request for Offer [29/04/2016, Ares(2016)2051274], were partially disclosed to you (after redaction of the personal data) in our reply [Ares(2019)7066234] of 15/11/2019 following your initial requests for access to documents. These criteria are included again in the Annex of this reply for your convenience (see below).

According to the “Technical Specifications”, the offer submitted by the tenderer should in addition have clearly indicated the match between the composition of the contractor's team and the expertise required under the contract (in a tabular form).

Therefore, the tenderer provided a summary table of the main expertise and experience of the persons responsible for providing the services with, for each team member, the areas

¹ The SC contract was launched as a request for service with the following title: “Request for services Chafea/2015/health/40 for the implementation of Framework Contract FWC DIGIT/R2/PO/2013/004 ABC III Lot 2 concerning the implementation analysis regarding the technical specifications and other key elements for a future EU system for traceability and security features in the field of tobacco products.

of expertise and a CV in Europass format. The Executive Agency checked the compliance of the proposed team concerning the requirements set out in the tender specifications based on all the documents and information provided in the offer, in particular the evidence for the selection criteria.

Yours sincerely,

Donata MERONI
e-signed

Annex – Extract from “Section 8. Requirement as to the contractor of the TECHNICAL SPECIFICATIONS ATTACHED TO THE REQUEST FOR OFFER”

“Professional conflict of interest criteria

Article II.3 of the Framework Contract applies. In addition, the following will be added and apply for any specific contract resulting from this offer.

*The verification of professional **conflict of interest** refers both to contractors (including all consortium members) and subcontractors (as legal entities) including their staff members and additional experts (hereafter jointly referred to as contractors and subcontractors in this section) to be engaged in the provision of the service covered by the present procurement procedure.*

*A **conflict of interest** will be assumed:*

- *if the contractor and/or the subcontractor is a stakeholder directly active in the tobacco sector (e.g. manufacturing or distribution);*
- *if the contractor and/or subcontractor is a stakeholder with vested interests in the area of the tender (in particular because they are a provider of tracking and tracing solutions or of security features);*
- *if the contractor and/or the subcontractor provide (or used to provide during the last two years) goods (e.g. equipment) or services (e.g. consultancy) to a stakeholder active in the tobacco sector (e.g. manufacturing or distribution) and achieved the cumulated net income of more than EUR 10 million in the financial years 2010 to 2014 in the area of combating illicit trade, including tracking and tracing or security features.*

*In addition, a **conflict of interest** will be assumed, if the contractor and/or the subcontractor provide (or used to provide during the last two years) goods (e.g. equipment) or services (e.g. consultancy) outside the area of combating illicit trade to a stakeholder active in the tobacco sector (e.g. manufacturing or distribution), when the contractor or subcontractor is not independent from the stakeholder;*

- *if the contractor and/or subcontractor provide (or used to provide during the last two years) goods (e.g. equipment) or services (e.g. consultancy) to a stakeholder with vested interests in the area of the tender (in particular because they are a provider of tracking and tracing solutions or of security features), when the contractor or subcontractor is not independent from the stakeholder.*
- *If the contractor and/or subcontractor fail to present their CV with a signed declaration of absence of **conflicts of interest** (Annexe C).*

The criterion "independent from stakeholders" refers in particular to two requirements, which have to be met by the contractor and the subcontractor:

- *Legal independence:*

Two legal entities shall be regarded as independent of each other where neither of them is under the direct or indirect control of the other nor under the same direct or indirect control of a third entity as the other.

Control may in particular take either of the following forms:

- (a) The direct or indirect holding of more than 50 % of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that entity;*
- (b) The direct or indirect holding of decision-making powers, in fact or in law, in the legal entity concerned.*

For the purpose of the verification of a conflict of interest, the contractor and/or subcontractor may also be required to provide additional information, including its shareholding structure and the composition of management board.

- Financial independence:

A contractor or subcontractor will be considered to be financially dependent on a stakeholder, if the turnover generated by the contractor or subcontractor with this stakeholder is equal to or higher than 20% of the annual overall turnover of the contractor or subcontractor (taking the financial years 2010 to 2014 as reference – this information has to be certified by an independent auditor).

If the turnover generated with a stakeholder by the contractor or subcontractor is less than 20% of the annual overall turnover of the contractor or subcontractor (taking the same reference as above), the financial dependence will not be assumed. However, the contractor or subcontractor shall present safety measures, e.g. Chinese walls, which have been undertaken to isolate the project team involved in the contract from any other staff members who are (or used to be during the last two years) involved in the work carried out for the stakeholder in question.

- Measures with regard to the tender's or subcontractor's conflicted staff members:

For avoidance of doubt, any staff members who are (or used to be during the last two years) involved in the work carried out for a stakeholder cannot be a part of the project team and should be subject to safety measures, e.g. Chinese walls, preventing them from accessing the project team as well as the information and data passed on to the project team under the present contract and any preparatory, intermediate and final effects of the project team's work, unless the latter are made public by the Commission.

Evidence:

*Any natural person who is proposed in the offer will provide a signed declaration of absence of **conflicts of personal interest** using the template in Annexe C.*

The assessment of the above criteria will be carried out based on all the documents and information provided in the offer, in particular the evidence for the selection criteria. If necessary (e.g. in case of doubt), the Executive Agency will ask for clarifications regarding the issue.

*The contractors shall note that if it is found that the contractor itself, and/or one or more consortium member(s), and/or one or more subcontractor(s) are in **conflict of interest**, the offer will not be further evaluated and will be rejected.*

*The contractors and/or the subcontractor are obliged to report to the contracting authority any change in their situation related to the absence of **conflict of interest** throughout the implementation of the contract.”*