113812 European Commission DPS 1 for CLOUD Services (CLOUD II DIGIT A3 PR 2018 035)

Question status	ID	Question title	Related to	Last modified on	Posed during
✓	1.	Date for the first DPS 1 mini-competition	Schedule	14 Aug 2019 11:33	Offer phase

Question: We noticed 378801-2019: Belgium-Brussels: European Commission DPS 1 for CLOUD Services (CLOUD II DIGIT A3 PR 2018 035) with Publication date:12/08/2019. The DPS documentation mentions: "1.4.1 Timeline of DPS: In order to allow interested economic operators a sufficient amount of time to apply for participation in the DPS, the first Mini-Competition is held at least 32 days after the launch of the DPS." While the "Schedule" mentions: "Mini-Competition #1 : publication: 1 Sep 2019 with deadline 30 Sep 2019 (29 days)". Can you please confirm that the date of the first mini competition will be at earliest 14/09/19?

Answer on 14 Aug 2019 11:33 :

The time limit of 32 days refers to the period between the publication of the DPS and the first Mini-Competition. As noted in the DPS Specifications, the purpose of this time limit is to allow sufficient time for Candidates to apply for participation in the DPS before the first Mini-Competition is launched. This period begins from the day following the dispatch of the contract notice, in this case 13/08/2019, and ends 32 days later. Therefore the first Mini-Competition in DPS 1 will be held no earlier than 14/09/2019.

The Schedule module on the Negometrix website offers a proposed timeline for DPS 1. The timeframe contained in this module is approximate and is provided for information only. The Schedule has been adjusted in order to reflect the official day of publication of the DPS. The information it contains is subject to change without notice and does not commit the European Commission.

✓	2.	Calendar or working days?	General	14 Aug 2019 11:35	Offer phase

Question: When interpreting and calculating days mentioned in the DPS Specifications - should we use the same definition of 'days' as used in Art. 5.2.2. of the Direct Contract: "All periods specified in the Contract are calculated in calendar days, unless otherwise specified."?

Answer on 14 Aug 2019 11:35 :

Yes, in the DPS Specifications where a period is specified in days, it refers to calendar days.

✓	3.	Due date response	Schedule	14 Aug 2019 11:39	Offer phase

Question: For DPS Stage n°1, we need to answer a list of questions which are part of the application and apply some documents (legal, financial and technical), Cloud you please confirm the **Time limit for receipt of tenders**

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Answer on 14 Aug 2019 11:39 :

In stage 1, any economic operator, through the period of validity of the DPS, has the possibility to apply to participate in the DPS. Therefore the time limit for the receipt of an application to the DPS coincides with the duration of the DPS.

Once admitted, a successful Candidate becomes a Participant to the DPS. The Participant has access to the Mini-Competitions which are organised in the DPS after its admission. Past and on-going Mini-Competitions are not available to a new Participant.

Candidates that submit a request to participate less than ten (10) working days preceding the launch of a Mini-Competition may not be allowed to participate in this Mini-Competition.

In stage 2, the time limit for receipt of a tender in a specific Mini-Competition is defined by the Tender Specifications of that Mini-Competition.

4.	Commitment letter	General	16 Aug 2019 11:33	Offer phase

Question: If we plan to rely on resources of a Subcontractor, should it provide one or two Commitment Letters: one as a Subcontractor or two as a Subcontractor and as a ENTITY FOR RELIANCE?

Answer From [redacted] (European Commission) on 16 Aug 2019 11:33 :

If you rely on a subcontractor to actively deliver part of the Cloud Services and you rely on the subcontractor's resources to fulfil the selection criteria, you only need to submit one commitment letter for this subcontractor following the commitment letter template for a subcontractor.

5.	Groups of economic operators	General	22 Aug 2019 14:02	Offer phase

Question: form: 1. DPS Specifications v1(14664292) - 2.1.3 Groups of economic operators: how can economic operators organize themselves?

"Whether applying solely or **within_a_group**, an economic operator is allowed to be present only once in the DPS. If an economic operator already admitted in the DPS submits another Application either on its own or within a group, the latter Application will be rejected."

Questions:

- Can you clarify what is meant with "**within_a_group**"? Does this apply to "Joint Application" and/or "Subcontractors" and/or "Reliance on entities"?
- Is a subcontractor also seen as part of a group or can a subcontractor appear is several DPS registrations ?

Answer From [redacted] (European Commission) on 22 Aug 2019 14:02 :

The clause "an economic operator is allowed to be present only once in the DPS" is to be understood without regard to the form of the involvement of said economic operator, i.e. including subcontracting.

Strictly speaking, "within a group" refers to joint requests to participate submitted by groups of economic operators (see Section 2.1.3.1 of the DPS Specifications). While subcontractors are not considered part of a joint request to participate (i.e. of a group), they are nevertheless not allowed to be present in more than one DPS registrations under this specific DPS.

Please refer to section 2.1.3.2 of the DPS Specification and section 9 of the Draft Direct Contract for the detailed definition of subcontracting.

This limitation is necessary in order to maintain fair and undistorted competition throughout the highly dynamic system of recurring reopenings of competition in the DPS. Participation of the same economic operator within several DPS registrations, be it as Candidate or subcontractor, would create a significant risk of limitation of competition, since such economic operator would be familiar with the details of several offers.

For the avoidance of doubt, this limitation does not create any prejudice on possible future DPS.

Candidates are invited to submit further observations regarding this topic by using the Submit Question function.

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6. New procedure — General — 22 Aug 2019 14:09 — Offer phase

Question: According to the TS, this FwC (DPS I) covers the acquisition of Cloud Services in the field of multi-tenant Infrastructure as a Service (IaaS) and Platform as a Service (PaaS). Can you please confirm whereas a new procedure will be launched to cover services like Public SaaS, Private IaaS and Professional Services? If not, coulc you please provide further explanation on the procedure process?

Answer From [redacted] (European Commission) on 22 Aug 2019 14:09 :

We confirm that, as detailed in the market consultation, the Commission is planning to launch three other procedures for or related to cloud services. When a new procedure is launched, economic operators will be notified through a Contract Notice published on the supplement to the Official Journal of the EU (TED). We suggest that you consult the TED database (https://ted.europa.eu/TED/browse/browseByBS.do) regularly where all Contract Notices are published and, if you consider it appropriate, to create a profile that would allow you to receive all relevant notices.

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7. Security and Security Incident Management — General — 22 Aug 2019 14:11 — Offer phase

Question: Following Cloud Terms and Conditions, section 1.9.2.2, In the event a Security Incident occurs or has occurred, the Contractor shall, irrespective of the level of risk, Notify the Contracting Authority thereof without undue delay and **"not later than 48 hours"** after becoming aware of the Incident, except in the event the Contractor is made aware by the Contracting Authority.

Question: Can DIGIT confirm that the delay should be **"not later than 72 hours"** to be in line with GDPR and 2018/1725?

Answer From [redacted] (European Commission) on 22 Aug 2019 14:11 :

The contracting authority confirms that the statement "no later than 48 hours" is indeed correct in its current form.

Regulation (EU) 2018/1725 requires the Data Controller to notify the European Data Protection Supervisor (EDPS) of such incidents within 72 hours. Considering the cloud provider acts as a Processor, it should leave enough time to the Data Controller (i.e. the customer) to notify the EDPS. The delay of notification of 48 hours leaves 24 hours for the controller to notify the EDPS.

For the sake of coherence, and since a Security Incident is likely to also constitute a Data Protection Incident, the Contracting Authority has decided to align both notification deadlines, considering processes of providers are similar on that matter.

	8.	Security and Security Incident Management	General	22 Aug 2019 14:12	Offer phase

Question: Following Cloud Terms and Conditions, section 1.9.1.5, if the Contractor needs remote access to any communication and information systems, the Parties shall conclude a specific agreement for remote intervention.

question: Can DIGIT confirm that the communication and information systems referenced shall be interpreted to mean any such systems, which the Contracting Authority runs, which are not the cloud services or part thereof tendered for the Contract?

Answer From [redacted] (European Commission) on 22 Aug 2019 14:12 :

The communication and information systems referenced in Cloud Terms and Conditions, section 1.9.1.5 are communication and information systems operated in the Contracting authority's premises. Therefore, provided the cloud services are operated outside the Contracting authority's premises, they are not subject to that clause.
However, hybrid services such as Cloud appliances deployed on the Contracting's authority premises are subject to that clause: their usage will be subject to a specific agreement before customers can use such services.

	9.	Data Protection	General	22 Aug 2019 14:14	Offer phase

Question: Following Cloud Terms and Conditions, section 1.8 ("Data Protection") the Contractor acting as a data processor or subprocessor shall, inter alia, not have or exercise any control over […..] the essential elements of the means of the processing.

question: Can DIGIT confirm that the reference to "means of processing" doesn't refer to the processor's or subprocessor's IT-infrastructure, or physical or logical IT-assets, and that the intent of this language isn't to restrict the processor/subprocessor in making any usual decisions on architecting the IT-infrastructure for the cloud services?

Answer From [redacted] (European Commission) on 22 Aug 2019 14:14 :

The Commission clarifies that this particular provision in section 1.8 of the Cloud Terms and Conditions should be understood in such way that the data processor or subprocessor does not have any control over the determination of purposes or means of the processing, not control over the actual means of processing themselves (see art. 3 number 8 Reg. (EU) 2018/1725). Accordingly, the provision is not intended to restrict the Contractor in making decisions on its IT-infrastructure.

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10. Groups of economic operators: | General | 22 Aug 2019 14:15 | Offer phase

Question: Please confirm whether it would be permissible for a supplier to:

i. submit a tender in its own rights but also participate in another tender (or other tenders) as sub-contractor; and/or
ii. participate in more than one tender as sub-contractor,

and, if so, (for either or both of (i) and (ii)), please confirm whether this is only permissible under any specific conditions.

Answer From [redacted] (European Commission) on 22 Aug 2019 14:15 :

Please see answer to Question 5.

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11. Participant Identification Code (PIC) for subcontractors | 1.4.3. | 22 Aug 2019 14:31 | Offer phase

Question: When reading Question 1.4.3 of the Application Questionnaire, we understand that a subcontractor or an entity on which we rely must not have a unique Participant Identification Code (PIC). Is our understanding correct?

Answer From [redacted] (European Commission) on 22 Aug 2019 14:31 :

We confirm your understanding.

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12. Presence in DPS 1 | 1.4.5. | 22 Aug 2019 14:32 | Offer phase

Question: In Question 1.4.5 of the Application Questionnaire, it is mentioned that an economic operator is allowed to be present only once in DPS 1.

1. Does this mean that an economic operator, with or without a unique Participant Identification Code (PIC), can only apply once to the DPS, would this be as sole candidate, in a joint application, as subcontractor or as an entity on which we rely?

2. Or may we understand that a subcontractor (e.g. delivering a particular cloud service) will be allowed to be subcontractor of multiple main contractors (would these main contractors be sole candidates or joint applicants)?

Answer From [redacted] (European Commission) on 22 Aug 2019 14:32 :

Please see answer to Question 5.

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13. Suggestions to terms | 1.2.1. | 26 Aug 2019 11:13 | Offer phase

Question: Can we suggest our suggestions to some of these terms for discussion? If so, do we need to do it along with this submission?

Answer on 26 Aug 2019 11:13 :

Applicants may submit any observations regarding the procedure and its documents, including terms, by using the "Question & Answer" function. In that case, please refer to a concrete document, page or article and specify your observation in detail. Change requests should be soundly justified.

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14. NDA — 1.5.1. — 26 Aug 2019 11:27 — Offer phase

Question: Based on your questionnaire, you are requesting for some financial information and/or documents to check our financial strength. In line with our policy covering any financial communication to third parties, an NDA needs to be signed. Could Contracting Authority sign an NDA with the Candidates?

Answer on 26 Aug 2019 11:15 :

The Contracting Authority treats all submitted applications with confidentiality. We invite you to consult section 2.2.3 of the DPS Tender Specifications that lays down the detailed rules applicable to the confidentiality of the application.

The Contracting Authority does not sign any additional Non-Disclosure Agreements or similar agreements with Candidates.

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15. Security Framework — General — 26 Aug 2019 11:31 — Offer phase

Question: Security Assertion Markup Language, OAuth 2.0 & OpenID, are open-standard data formats and protocols for authentication and authorization.

Question: Can you provide us with the details on how you see the relationship with the SECURITY OBJECTIVES, EFFECTIVENESS ASSURANCE LEVELS and the DEMONSTRATION OF SECURITY OBJECTIVES' EFFECTIVENESS with those above mentioned open-standards, in relationship to the requested Cloud Services in Cloud II DPS 1?

Answer on 26 Aug 2019 11:31 :

The Security Framework refers in its matrix of compatibility to Security Assertion Markup Language (SAML), OAuth 2.0 & OpenID. The matrix shows that these protocols partially serve the purpose of Security Objective 4 (Identity and Access Management), i.e. SO4.

In practical terms it means that:

- Cloud Services supporting SAML, OAuth 2.0 or OpenID will be considered having an EAL-2 level for SO4.
- Cloud Services supporting SAML, OAuth 2.0 or OpenID will be considered having an EAL-3 level for SO4, if documentation from an internal audit department is provided in the context of the answers.
- It will not not be sufficient for Cloud Services to support SAML, OAuth 2.0 or OpenID to be considered having an EAL-3, EAL-4 or EAL-5.

However, this answer covers the relation of these standards towards SECURITY OBJECTIVES, EFFECTIVENESS ASSURANCE LEVELS and the DEMONSTRATION OF SECURITY OBJECTIVES' EFFECTIVENESS. It does not prevent the Contracting Authority to request the support of such protocols as a technical feature if the Contracting Authority consider it relevant for a Mini-Competition.

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16. Security Framework — General — 26 Aug 2019 11:34 — Offer phase

Question: Can you detail in what scenario you would require "LEET Security" for Public Hyperscale Cloud Providers in relationship to the requested Cloud Services in Cloud II DPS 1?

Answer on 26 Aug 2019 11:34 :

The Contracting Authority will not make explicit reference to "LEET Security" for Public Hyperscale Cloud Providers in relationship to the requested Cloud Services in Cloud II DPS 1. "LEET Security"is not referenced in the Security Framework.

But it is possible that providers make reference to "LEET Security" in their answers to a specific Mini-Competition to justify the compliance of their offer in terms of Effective Assurance Level. Such providers will have to justify to what extend "LEET Security" covers the security objectives mentioned in the Security Framework.

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17. Confidentiality of tender | 1.1.2. | 26 Aug 2019 11:37 | Offer phase

Question: In sections 2.2.3 and 3.4. of the DPS Specifications it is mentioned that the Contracting Authority may disclose a submitted application or tender in the context of a request for public access to documents. Could you clarify what the context of this request might be, who could initiate that request and on what grounds?

Answer on 26 Aug 2019 11:37 :

Regulation(EC) No 1049/2001 defines the principles, conditions and limits regarding public access to European Parliament, Council and Commission documents.

Article 2 of the said Regulation defines the beneficiaries to which the Regulation applies:

"1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State."

Article 6 (1) specifies that *"[…]The applicant is not obliged to state reasons for the application […]".*

Exceptions that can justify institutions' refusal to provide access to certain documents are detailed in Article 4 of the said Regulation. Some of these exceptions are reflected in Section 2.2.3 of the DPS Tender Specifications: *"Unless there is an overriding public interest in disclosure, the Contracting Authority may refuse to provide full access to the submitted application, redacting where applicable parts that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the Candidate, including intellectual property."*

We invite you to consult Section 2.2.3 of the DPS Tender Specifications and the full text of the Regulation 1049/2001 for more details regarding the applicable principles and conditions of public access to documents.

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18. Definition of Entity | General | 29 Aug 2019 15:47 | Offer phase

Question: Can you please further specify the meaning of "Entity" as mentioned in the the "Basis for assessment", e.g. "Each Entity shall demonstrate the minimum level of capacity on its own."

Answer on 28 Aug 2019 11:28 :

The term "entity" refers to the term "Involved Entity" earlier defined in the DPS Specifications. Depending on the specific circumstances of an application, an Involved Entity can be the Sole Candidate, a Group Member, the Group Leader, an Identified Subcontractor or an entity on whose capacities the Candidate relies to fulfil the selection criteria.

To further clarify the notion of entity, where the basis for assessment for criteria T1, T2 and T3 listed in section 2.1.5.2 of the DPS Specifications was:

"This criterion applies to each individual Entity proposed by the Candidate, which would be delivering Cloud Services. Each Entity shall demonstrate the minimum level of capacity on its own.",

it now reads:

"This criterion applies to the Candidate as a whole, i.e. a consolidated assessment of the combined capacities of all Involved Entities will be carried out."

Following this change, and in order to maintain consistency in the requirements for technical and professional capacity, in the same section referred to above, where the minimum level of capacity for Criterion T1 was:

"- Application Programming Interfaces (APIs), secured, compatible with the HTTPs protocol and supporting HTTPs proxies which provide access to service primitives of the Cloud Services;
- Command-line interfaces, secured, compatible with the HTTPs protocol and supporting HTTPs proxies, which provides access to service primitives of the Cloud Services.",

it now reads:

"- A single and consistent set of Application Programming Interfaces (APIs), secured, compatible with the HTTPs protocol and supporting HTTPs proxies which provide access to service primitives of the Cloud Services;
- A single and consistent set of command-line interfaces, secured, compatible with the HTTPs protocol and supporting HTTPs proxies, which provides access to service primitives of the Cloud Services.";

and for the minimum level of capacity for Criterion T2 the following was added:

"The Candidate must provide from these locations a single and consistent web-based administrative portal, a single and consistent set of Application Programming Interfaces (APIs), and a single and consistent set of command-line interfaces to its customers."

The document DPS Specifications was modified to reflect these changes and updated on the website to its version 2.

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19. Specification of Entity — 1.6.1. — 29 Aug 2019 15:48 — Offer phase

Question: May we kindly ask you to further specify the meaning of the term "Entity" with regards to the "Basis for assessment" of the technical and professional capacity requirements.

Answer on 29 Aug 2019 15:46 :

Please see answer to question 18.

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21. Draft direct Contract: read only or read and comment — 1.2.1. — 2 Sep 2019 9:37 — Offer phase

Question: At stage 1, do we only have to read the current draft of Direct Contract or do you expect us to add some comments/proposals? If yes, how to proceed? Is it possible to get a Word version in order to provide our comments as tracked changes? If no, will we have the opportunity to do our comments/proposals at stage 2?

Answer on 30 Aug 2019 9:39 :

The template of the Direct Contract is provided for information purposes. It is based on this template that the Direct Contracts will be drafted for each Mini-Competition.

Applicants may submit any observations regarding the procedure and its documents, including terms, by using the "Question & Answer" function. In that case, please refer to a concrete document, page or article and specify your observation in detail. Change requests should be soundly justified.

Please note that you will also have the opportunity to do so for each Mini-Competition.

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22. Ordering Process | 1.1.2. | 5 Sep 2019 15:34 | Offer phase

Question: Could you clarify the following regarding the ordering process after a direct contract award?

- In section 3.5.3. of the DPS Specifications, it says that once a Direct Contract is signed, that it can be implemented directly without any further contract procedures (e.g. order forms or specific contracts). In the Draft Direct Contract however, there is still mention of "specific contract" and "ordering form" (i.e. in the definition of 'Contract'). Are specific contracts still part of the ordering process (also for expansions or renewals)? If yes, what will this ordering process look like?
- If a Direct Contract in a mini-competition is awarded by multiple contracting authorities, will a single environment be ordered and provisioned for all the contracting authorities?
- Our company intends to answer as a sole candidate. For tax reasons it can be that other entities of our corporate group have to either contract or invoice the requested services. Is this possible?

Answer on 30 Aug 2019 9:41 :

Section 3.5.3 of the DPS Specifications is correct, Direct Contracts can be implemented directly without order forms or specific contracts. In the Cloud Terms and Conditions, the mention of specific contract or order form is made in relation to framework contracts. The notions of framework contract, specific contract and order form are not applicable to Direct Contracts in this DPS and can be ignored. These references will be removed and the Draft Direct Contract revised. A new version of the Draft Direct Contract will be published as soon as it is ready and a notification will be posted in this Question and Answer section. As for the ordering process, it is detailed in Annex 4 of the Direct Contract, Section 4.

Concerning the provisioning of environments, and considering that offers from economical operators vary, the Contracting Authority will operate at the optimal capacity of the awarded offer i.e. multiple environments per customers will be provisioned if the offer allows, or only one if the offer does not allow a better service. Such specific provisioning requirements will be evaluated in the Mini-Competitions, where based on the award criteria, the Contracting Authority may give a higher quality score to offers allowing a fine level of granularity of the environments.

Invoices for services must respect the mechanisms described in the Direct Contract and its annexes. According to the terms of the Direct Contract, "payments must be made to the Contractor's bank account denominated in euro, identified" in the contract. The bank account is also used by the EU Validation Services to verify the existence and status of a legal entity. If multiple bank accounts are used, their respective details must be included in the contract. Additionally, the Direct Contract stipulates that "invoices must contain the Contractor's identification data, the amount, the currency and the date, as well as the Contract reference". Consequently, the Direct Contract should stipulate information on the invoicing entities and the respective bank accounts to be used towards payments of the invoices. If a specific situation is not foreseen by this explanation, such situation can be detailed in a subsequent question for further review. Upon request, the details of this question can be kept confidential.

23.	Declaration of Honour	General	2 Sep 2019 9:38	Offer phase

Question: Please confirm that its is necessary to submit a Declaration of Honour in case the company has submitted it to DIGIT within last 6 months in relation to another public procurement procedure. Maybe those previous Declarations could be treated as valid?

Answer on 30 Aug 2019 9:48 :

If the following conditions are fulfilled: (1) the same declaration has already been submitted for the purposes of another award procedure of DIGIT, (2) the situation has not changed, and (3) the time elapsed since the issuing date of the declaration does not exceed one year, an Involved Entity does not need to resubmit a Declaration on Honour. In those cases, the Involved Entity must identify the DIGIT procurement procedure in which the declaration was already provided and the date of issuance of the declaration.

24.	Electronic signature	General	2 Sep 2019 9:39	Offer phase

Question: Could you please explain the reason for using the electronic signature for signing of the document? Why "ink" signing would not be treated as valid, as in majority of previous procedures? Would you agree to the suggestion for modifying the procedure and requiring the electronic signature at a later stage - for signing of the future Direct Contract?

The reasoning behind the question - in some cases, especially during the summer period, it is difficult to acquire an electronic signature certificate for as many as 6 authorised persons signing the Cover Letter within the period of 32 days between announcing Cloud II DPS 1 and its first mini-competitions. Therefore such new administrative requirement may exclude an economic entity from timely bidding in this specific procedure, thus influencing the competitive process.

Answer on 30 Aug 2019 9:49 :

According to the provisions of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (the Financial Regulation, "FR"), a DPS is a completely electronic process. Accordingly, where a document needs to be signed, the signature must be a qualified electronic signature or an advanced electronic signature based on a qualified certificate as defined in Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation). For the purpose of FR Article 137 regarding the declaration and evidence of absence of an exclusion situation, an economic operator must submit a declaration on honour signed and dated. Therefore the signature requirements are applicable in stage 1 of the procedure.

The period of 32 days refers to the initial time between the official publication of the DPS and the potential launch of the first Mini-Competition. This period is foreseen by the FR. Several Mini-Competitions are foreseen to take place over the four-year span of this DPS. It is important to note that economic operators can submit their application throughout the entire duration of the DPS therefore increasing competition and making it easier for economic operators to participate at any moment.

25.	Submission of relevant documentation in the mini-competition process	General	2 Sep 2019 9:40	Offer phase

Question: The draft Direct Contract, section 11.3, specifies that the Contracting Authority shall be able to ensure that its data remains at rest and in transit in the territory of the EEA, but that the Contracting Authority may provide exceptions where the Contractor can document that adequate measures protect the confidentiality of the data. In the draft Direct Contract, Cloud Terms and Conditions, section 1.8.1, there are multiple references to data protection issues to be agreed in writing or in a data processing agreement. In the draft Direct Contract, Cloud Terms and Conditions, section 1.8.5, the Contractor may not transfer any personal data out of the EEA, unless the Controller or the Contracting Authority has given its prior written authorization to such transfer and the transfer complies with EU Regulations 2016/697 and 2018/1725. The aforementioned sections along with other sections in the draft Direct Contract clearly suggest that the Contractor will have a need to provide additional contractual documents to satisfy relevant and compliant documentation needs. However, from the draft Direct Contract, section 3.1, it follows that all documents issued by the Contractor are held inapplicable, unless explicitly mentioned in this Contract.

Can the EU confirm that the Contractor as part of its tender (Annex III) besides the Contractor's SLA can include such additional documentation and contractual material as required to support and document exceptions, approvals, and written agreements as relevant in connection with a mini-competition, all respecting the contractual order of precedence and principles of conflict and contradiction? An example of this could be the EU Standard Contractual Clauses for transfer of personal data out of the EU to be entered into between the Contractor (or processor) and the Contracting Authority or controller as prior approval of a data transfer, as the case may be but also additional similar agreement documents.

Answer on 30 Aug 2019 9:50 :

The tender specifications published in each Mini-Competition include technical specifications. These technical specifications describe what the Contracting Authority intends to buy in the scope of a Mini-Competition. A tender submitted in a Mini-Competition must meet minimum requirements in order to comply with the technical specifications. Where the award method of a Mini-Competition is best price-quality ratio, the tender specifications also include detailed award criteria to determine quality. Submitted tenders are evaluated in terms of price and quality according to the ranking formula setup in the Mini-Competition.

In practice, a tender that does not meet the minimum requirements will be rejected. Otherwise, the tender and the additional documents it contains will be evaluated for price and quality. Where the tender and the additional documents it contains provide evidence of a higher quality, they will receive a higher score. If this quality is conditional to the acceptance of further agreements such as may be the case with data protection, these agreements may be considered admissible at the level of each mini-competition on a case by case basis and provided that the terms of such further agreements are included in the tender.

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26. Amount of general liability cap | General | 9 Sep 2019 10:02 | Offer phase

Question: As per Article 21.3 of the Draft Direct Contract, the Contractor is liable for any loss or damage caused to the Contracting Authority during or as a consequence of Performance of the Contract, including in the event of subcontracting, but only up to the amount determined in the Contracting Authority's SLA. However, so far, the amount of the liability has not been completed in article 6 of the Service Level Agreement (SLA) for Cloud Services. Can you communicate what the amount of the general liability cap under the Draft Direct Contract will be?

Answer on 5 Sep 2019 15:37 :

Several mini-competitions are foreseen in DPS 1. Each Mini-Competition will have a specific scope detailed in its Tendering Specifications. These documents will set the liability cap per Mini-Competition. Accordingly the liability cap will be based on the scope of the Mini-Competition, reflecting the individual risk level of the planned service performance, and will vary between Mini-Competitions. No general amount can be communicated at this time.

It is important to note that Candidates admitted to participate in the DPS (the Participants), will be invited to tender in the Mini-Competitions. When a Mini-Competition is published in the DPS, Participants will be able to review the Tender Specifications specific to this Mini-Competition and determine whether or not they want to submit an offer.

27. Liability in Draft Direct Contract | General | 9 Sep 2019 10:03 | Offer phase

Question: Request to modify the terms of article 21.3 of the Draft Direct Contract.

Answer on 5 Sep 2019 15:38 :

The Direct Contract published with the DPS Specifications is a template presented here for information purposes. It is the model on which the Direct Contract for each Mini-Competition will be drafted. The Contracting Authority reserves the right to revise the Direct Contract to best suit the scope of a specific Mini-Competition. At this time, article 21.3 of the Draft Direct Contract remains unchanged.

28. Definitions in Draft Direct Contract | General | 9 Sep 2019 10:04 | Offer phase

Question: Request to modify the terms of article 29 of the Draft Direct Contract.

Answer on 5 Sep 2019 15:39 :

The Direct Contract published with the DPS Specifications is a template presented here for information purposes. It is the model on which the Direct Contract for each Mini-Competition will be drafted. The Contracting Authority reserves the right to revise the Direct Contract to best suit the scope of a specific Mini-Competition. At this time, article 29 of the Draft Direct Contract remains unchanged.

29. Compliance in Cloud Terms and Conditions | General | 9 Sep 2019 10:05 | Offer phase

Question: Request to modify the terms of article 1.2 of the Cloud Terms and Conditions.

Answer on 5 Sep 2019 15:39 :

The Direct Contract published with the DPS Specifications is a template presented here for information purposes. It is the model on which the Direct Contract for each Mini-Competition will be drafted. The Contracting Authority reserves the right to revise the Direct Contract to best suit the scope of a specific Mini-Competition. At this time, article 1.2 of the Cloud Terms and Conditions remains unchanged.

30. Compliance and design in Cloud Terms and Conditions | General | 9 Sep 2019 10:07 | Offer phase

Question: Request to modify the terms of article 1.2.4 of the Cloud Terms and Conditions.

Answer on 5 Sep 2019 15:40 :

The Direct Contract published with the DPS Specifications is a template presented here for information purposes. It is the model on which the Direct Contract for each Mini-Competition will be drafted. The Contracting Authority reserves the right to revise the Direct Contract to best suit the scope of a specific Mini-Competition. At this time, article 1.2.4 of the Cloud Terms and Conditions remains unchanged.

31. Change and replacement management in Cloud Terms and Conditions | General | 9 Sep 2019 10:08 | Offer phase

Question: Request to modify the terms of article 1.7.3 of the Cloud Terms and Conditions.

Answer on 5 Sep 2019 15:41 :

The Direct Contract published with the DPS Specifications is a template presented here for information purposes. It is the model on which the Direct Contract for each Mini-Competition will be drafted. The Contracting Authority reserves the right to revise the Direct Contract to best suit the scope of a specific Mini-Competition. At this time, article 1.7.3 of the Cloud Terms and Conditions remains unchanged.

32.	DPS Registration	General	9 Sep 2019 10:10	Offer phase

Question: Is it possible for two different companies to be registered independently and decide in a second moment or in the case of a mini-competition to collaborate providing a joint offer?

If yes, is it correct to assume that both the companies cannot collaborate with different actors for different mini-competitions?

If a Company is already registered can the Company become a subcontractor of another Entity also if this Entity will be always the same during the DPS duration?

Answer on 5 Sep 2019 15:41 :

A Candidate applies to the DPS and in its application it declares how it is organised: Sole Candidate, Joint Candidate, Candidate relying on the capacity of subcontractors or other entities. If a Candidate is admitted, it becomes a Participant and its composition is set.

Section 2.1.3 of the DPS Specifications sets the requirement for economic operators to be present only once inside DPS 1. Additionally, section 2.1.3.2 of the same document stipulates that the Contracting Authority will reject the request to add a new subcontractor where the terms of a tender are altered substantially. Consequently, if two or more Participants admitted separately in the DPS want to provide a joint offer, they would need to leave the DPS and re-apply together as a new Candidate. Moreover, an economic operator already participating in the DPS cannot become part of a subsequent application or become a subcontractor of another participant.

Other DPSs published in CLOUD II may function differently according to their scope.

33.	Complementary services along with DPS 1 Cloud services	General	12 Sep 2019 14:52	Offer phase

Question: Could the Contracting Authority clarify what complementary services are expected to be procured/delivered along with the Cloud services of DPS 1 ?

Answer on 12 Sep 2019 14:52 :

In DPS 1, if any complementary services are required, they will be directly related to the provision of the Cloud Services (e.g. enterprise-grade level of support, event management, always in direct relation to the execution of a Cloud Service). Extended professional services related to Cloud Services are in scope of DPS 2.

34.	1.3.3 Scope of mini-competitions services	General	12 Sep 2019 14:54	Offer phase

Question: In the DPS Specifications section 1.3.3 Scope of the Mini-Competitions, references to Integration services, Development Life-cycle support, Hybrid and Portability Support, Monitoring and Management, Identity and Access Management, … could be interpreted in different ways: either as cloud platform services features for enabling this type of services, or as the provision of the professional services itself as complement to the platform. Please clarify the type of services requested.

Answer on 12 Sep 2019 14:54 :

In DPS 1, the scope of the contracts listed in Section 1.3.3 of the DPS Specifications refer to features of Cloud Services, and not to the provision of professional services.

35.	Link to consultancies in 3.5.2.2 Quality	General	12 Sep 2019 14:58	Offer phase

Question: In the section 3.5.2.2 Quality, a reference is made to Consultancies. Is the contracting authority looking to have complementary consultancy services through this DPS 1?

Answer on 12 Sep 2019 14:58 :

Please see answer to question 33.

36.	Applicable laws	General	17 Sep 2019 16:53	Offer phase

Question: Hyperscale, multitenant public cloud services are typically built and run to comply with laws, which are generally applicable to running such services and meeting generalized obligations common to a multitude of customer industries. In the Direct Contract, Cloud Terms and Conditions, clause 1.2.3, the Contractor undertakes to perform its obligations to enable the Contracting Authority to comply with the laws applicable to it and clause 1.2.4 similarly makes reference to applicable laws. Besides EU Regulation 2018/1725 and GDPR and other laws specifically called out in the Direct Contract, the EU Commission is kindly requested to specify how the Contractor would be aware of which laws apply to the Contracting Authority, and confirm that information on such laws will be part of the mini-competition specifications.

Answer on 17 Sep 2019 16:53 :

The main purpose of article 1.2.3 of the Cloud Terms and Conditions is to ensure that the Contractor is aware of the importance of EU Regulation 2018/1725 and is able to assist the Contracting Authority in fulfilling the obligations arising from this regulation. Where the Contracting Authority wants to similarly highlight other laws or regulations, it may indeed list them in the Draft Direct Contract provided in the DPS.

37.	Supervision of the Controller	General	17 Sep 2019 16:56	Offer phase

Question: Can the EU Commission confirm that the language on supervision of the Controller in the Direct Contract, clause 12.2.6, shall not be understood so that it refers to any ongoing physical or virtual actual supervision of the processing besides what would follow from standard use and supervision of the cloud services, including for example through an administrator or developer portal?

Answer on 17 Sep 2019 16:56 :

The purpose of article 12.2.6 of the Draft Direct Contract is to ensure compliance of the processing of personal data with article 29 of EU Regulation 2018/1725, and specifically its point 3. Further implementation of article 29 can also be found in Annex 7 of the Direct Contract which lists the controllers in scope of article 12.2 of the Direct Contract, the subject matter and purpose of the processing, the type of personal data processed and categories of data subjects. As such, article 12.2.6 does not set the requirements for a continuous supervision, nor does it preclude potential data protection impact assessments, request for evidence of compliance and audit rights foreseen in article 12.2.

38.	Regime of change and replacement management.	General	18 Sep 2019 17:28	Offer phase

Question: Hyperscale, multitenant public cloud services are typically subject to continued changes and modifications to meet market expectations and improve and enhance functionality and user experience. Being hyperscale, such incremental changes are rolled out across all of the impacted cloud instances simultaneously and therefore impact and provide benefits to all customers alike. A cloud provider will typically provide such advance notices as required for customers to diligently make allowance for the changes. The Direct Contract, Cloud Terms and Conditions, clause 1.7. details a regime of change and replacement management.

Can the EU Commission confirm that a Contractor is entitled to make such changes and adjustments to its Hyperscale, multitenant public cloud services as it would ordinarily do as part of its development and refinement of the Hyperscale, multitenant public cloud services without a prior explicit approval from the Contracting Authority and use its standard communication mechanisms to communicate about this?

Answer on 18 Sep 2019 17:13 :

In order to clarify the mechanisms through which the Contractor can inform the Contracting Authority of potential changes in its provision of Cloud Services, the following clause was added to the Draft Direct Contract:

8.28.3 By way of derogation, article 1.7.1 of the Cloud Terms and Conditions shall read: "Either Party may, at any time during the duration of the Contract, Notify the other Party of a request to change Products and/or Services originally provided under the Contract, or to replace them with products or services of similar nature. The Contractor shall Notify the Contracting Authority of such request at least 12 months prior to a change or replacement."

The document Draft Direct Contract was modified to reflect these changes and updated on the website to its version 2.

Answer on 18 Sep 2019 17:28 :

In order to clarify the mechanisms through which the Contractor can inform the Contracting Authority of potential changes in its provision of Cloud Services, the following clause was added to the Draft Direct Contract:

8.28.3 By way of derogation, article 1.7.1 of the Cloud Terms and Conditions shall read: "Either Party may, at any time during the duration of the Contract, Notify the other Party of a request to change Products and/or Services originally provided under the Contract, or of a request to replace them with products or services of similar nature. The Contractor shall Notify the Contracting Authority of such request at least 12 months prior to a change or replacement."

The document Draft Direct Contract was modified to reflect these changes and updated on the website to its version 2.

✓	39.	VAT exemption	General	27 Sep 2019 14:30	Offer phase

Question: In respect of the VAT exemption for the EU institutions and agencies, certain countries require that VAT is first invoiced and paid, and afterwards the EU institution or agency must request reimbursement of paid VAT from the local authority ('the reimbursement model').

In order to comply with the VAT exemption rule in countries using the reimbursement model, is our understanding correct that it allows a sole candidate/contractor either (i) to use a group affiliate in another EU member state as invoicing agent for a transaction between the sole candidate and an EU agency or institution in such member state (meaning that such foreign affiliate will invoice the EU agency in the same country for services contracted with the sole candidate located in another member state) and/or (ii) to assign the specific contract to such group affiliate in another EU member state? If so, would there be any additional conditions?

Answer on 19 Sep 2019 11:34 :

For VAT purposes, the place of the provision of cloud services to persons who are not liable to VAT is the place where the customer is established, regardless of the place of establishment of the provider.

Mini-Competitions will be organized by DIGIT as the cloud broker for the Commission and the Participating Entities. In these instances, the customer will be DIGIT and the place of delivery Belgium.

In the unlikely event in which DIGIT is no longer used as the cloud broker by some Participating Entities, these Participating Entities have the possibility to launch a Mini-Competition in DPS 1 for their own specific needs. Participating Entities are established in and outside of Belgium (see details of place of establishment in DPS Specifications - section 1.2). In this case, the Participating Entities involved in a Mini-Competition will be determined in the Tender Specifications of the Mini-Competition. If a Participating Entity is set up in a member state other than Belgium, your understanding is correct that a Candidate could use a group affiliate in another EU member state (proposal labelled (i.) in your question) as long as this group affiliate is clearly identified in the offer (e.g. as a subcontractor) and as long as the Candidate remains compliant with the selection criteria, in particular criteria T4 and T5.

40.	Invoicing entity	1.6.5.	27 Sep 2019 14:36	Offer phase

Question: Criterion T5 states *"The candidate must prove its technical capacity to allow customer to retrieve invoices through electronic means"*. This procedure is inter-institutional, meaning that different EU institutions, agencies and bodies can participate as contracting authorities. When a contract is awarded, (1) is the contractor invoicing directly to each of the entities participating in the DPS or (2) is the contractor invoicing to DIGIT, regardless the entity participating in the DPS?

Answer on 19 Sep 2019 11:35 :

Please review the details of our answer to question 39. Accordingly, a contractor will invoice DIGIT.

In the unlikely event in which a contractor needs to invoice the Participating Entities directly, this exceptional situation will be established in the Tender Specifications of a Mini-Competition.

41.	Invoicing	1.6.5.	27 Sep 2019 14:38	Offer phase

Question: Criterion T5 states: "*The candidate must prove its technical capacity to allow customer to retrieve invoices through electronic means*". When talking about "*invoices*" is the Contracting Authority referring to: (1) invoices including the value of the final payment (this is, including costs such as but VAT and adapted to the different possible payment conditions of each contracting authority) or (2) invoices including only the costs incurred for the services used until the date?

Answer on 19 Sep 2019 11:43 :

In the invoices, the Contracting Authority expects to be able to clearly identify the value of the payment for the invoiced period (i.e. one month). Further details which a Contractor must include in its invoices depend on the main location of the customer. In almost all cases, and according to our detailed answers to questions 39 and 40, this location will be Belgium.

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42. Selection Criteria | General | 26 Sep 2019 16:31 | Offer phase

Question: Could you please provide more information on how DIGIT is going to score Criteria T1 to T5? Is there any specific weight assigned to each criterion and a minimum score to be obtained in each of the questions?

Answer on 19 Sep 2019 11:43 :

Selection criteria are "pass" or "fail". A Candidate's application must pass all selection criteria as one of the conditions for success. Beyond this, selection criteria are neither scored nor weighted.

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43. Applicable minimum requirements | General | 26 Sep 2019 16:32 | Offer phase

Question: In reference to section 3.5.1 in the DPS Specifications, can the EU specify which will be the minimum requirements for each mini-competition? Clarity is requested as to whether only the minimum requirements listed in the SPA specifications will apply or if there'll be additional minimum requirements.

Answer on 19 Sep 2019 11:44 :

Beyond compliance with the Directive and Regulations listed in the DPS Specifications, additional minimum requirements may apply at the level of a Mini-Competition. These additional minimum requirements are specific to each Mini-Competition and as such will be detailed in the Tender Specifications published with their respective Mini-Competition.

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44. Commission Decision 2015/444 | General | 27 Sep 2019 14:39 | Offer phase

Question: Cloud Terms and Conditions, article 1.9.1.1, states that when performing the tasks, the Contractor shall comply with the Contracting Authority's applicable security framework, as may be further defined in the Contract. Where applicable, this may include inter alia the Commission Decision 2015/444 for the protection of EU Classified Information (EUCI). To accommodate EUCI, a Communication and Information System (CIS) must be formally accredited by the Security Accreditation Authority (SAA), which includes an accreditation statement to determine the maximum classification level of the EUCI that may be handled in the CIS as well as the corresponding terms and conditions for operation. The DPS 1 covers public cloud services platforms for IaaS and PaaS, which typically won't have accreditations for handling EUCI.

Can the EU Commission confirm that the reference to Commission Decision 2015/444 (and other like security decisions) only will be included as a requirements in the Contract for mini-competitions, where such Decisions are strictly required, and thus shall not be understood to be generally applicable for all mini-competitions?

Answer on 19 Sep 2019 11:45 :

The purpose of Commission Decision 2015/444 is the protection of EU classified information (EUCI). This Decision is not generally applicable to all Mini-Competitions.

When it is applicable, it will be reflected in the Tendering Specifications of a Mini-Competition which will explicitly state that the infrastructure subject of the Mini-Competition aims at managing EUCI. In that case 2015/444 will apply, and specific Effectiveness Assurance Levels (EAL) will be required.

45.	Visibility of details of each mini-competition	General	26 Sep 2019 16:34	Offer phase

Question: We understand that even without completed/accepted registration for DPS 1, each company/consortium registered in Negometrix platform will have access to the requirements and other details of each published mini-competition.

We would appreciate to receive confirmation if our understanding is correct.

Answer on 19 Sep 2019 11:45 :

A DPS is a restricted procedure in two stages. In Stage 1, Candidates request to participate in the DPS. Only Candidates whose application in Stage 1 is successful will be invited to tender in the Mini-Competitions published after their admission in Stage 2.

In order to access the Tender Specifications published in the Mini-Competitions in Stage 2, one must receive an invitation to tender. An account in Negometrix is not sufficient.

46.	DPS Registration	General	26 Sep 2019 16:45	Offer phase

Question: Due to the answer of the question 32 *"...if two or more Participants admitted separately in the DPS want to provide a joint offer, they would need to leave the DPS and re-apply together as a new Candidate..."* because it is permitted for a supplier to register in the DPS and in a second moment exit from the registration, the same Public Cloud Service Provider can apply to the DPS in different moments together with different resellers (i.e. one for mini-competition) and potentially be awarded direct contracts. The result is that during the lifetime of the Cloud II procedure, the Commission may have to potentially manage several resellers of the same Public Cloud Service Provider. Is this correct?

Answer on 19 Sep 2019 11:49 :

According to section 2.4.3 of the DPS Specifications, a Participant in the DPS can request to withdraw from the DPS at any time. Withdrawal does not impact existing contracts awarded in the DPS.

If an economic operator who withdrew from the DPS applies again as a sole Candidate or in a group, the subsequent application will be considered a new application and all conditions for admission will be reviewed. If the new subsequent application is successful, the economic operator may once again become a Participant in the DPS.

It follows that an economic operator could theoretically be awarded subsequent contracts in DPS 1 while being part of different groups of economic operators.

It is however important to note that if a new application is successful, and according to section 2.4.1 of the DPS Specifications, a new Participant will only be invited to Mini-Competitions which are published in the DPS after its admission. Past and on-going Mini-Competitions are not available to a new Participant. In practice, an economic operator cannot leave the DPS and return with a subsequent application for the purpose of an on-going Mini-Competition.

47.	Evidence for Criteria T1	1.6.1.	2 Oct 2019 9:48	Offer phase

Question: In reference to DPS specifications section 2.1.5.2, does the self-service documentation have to be available through the web-based administrative portal or is it possible to propose to download it through a specific URL?

Answer on 2 Oct 2019 9:48 :

The self-service documentation does not have to be available through the web-based administrative portal, it can be proposed through a specific public URL. However, it must be a self-service documentation available for online browsing. Bulk documentation which needs to be downloaded as a whole (e.g. one large PDF file) will not be considered as self-service documentation.

48.	Cloud Services List	General	2 Oct 2019 10:16	Offer phase

Question: In addition to information given in DPS specifications section 3.5.2.2, can the EU Commission give more details regarding PaaS services expected by the participating entities ? As example, what kind of databases are expected in the cloud service catalogue (MySQL, PostGreSQL, Oracle ...) ? Is it possible to have a more exhaustive list of the expected PaaS catalog ?

Answer on 2 Oct 2019 10:16 :

The needs for PaaS services will vary between Mini-Competitions. For the time being, the Contracting Authority cannot provide more details. These needs will be detailed in the Tendering Specifications for each Mini-Competition.

49.	Sample Documents	1.3.3.	2 Oct 2019 10:19	Offer phase

Question: Could you please share samples of the documents you are referring to?

e.g.
1. LEAR (Legal Entity Authorised Representative) appointment letter - completed, dated and signed (handwritten blue-ink original signature) by the legal representative and the LEAR
2. Declaration of Consent to the Participant Portal Terms & Conditions - completed, dated and signed (handwritten blue-ink original signature) by the legal representative of the organization

Answer on 2 Oct 2019 10:19 :

The documents listed in question 1.3.3 relate to the registration process detailed in the DPS Specifications section 2.1.2 "*Identification of the Candidate*". In case the Candidate's Participant Identification Code (PIC, 9-digit number) is not yet validated, the EU Validation Services may request these documents. The documents that may be requested are listed in *the EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment* guide available at:

http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/lev/h2020-rules-lev-lear-fvc_en.pdf

Point II. 1.2 *List of documents* (page 14) lists the documents and provides links to forms and samples.

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50. Security Incident | General | 14 Oct 2019 8:36 | Offer phase

Question: In the Cloud Terms and Conditions, a Security Incident is defined as an event having or threatening to have an adverse effect on the security. The Cloud T&Cs, section 1.9.2.2 requires the Contractor to Notify the Contracting Authority without undue delay and no later than 48 hours after becoming aware of the Incident, which therefore includes an obligation to Notify also about threatening events. In terms of security and security incident management, public cloud necessarily entails a concept of shared responsibility for IaaS and PaaS cloud service modalities. The cloud provider is responsible for the infrastructure and platform, while the customer always will be responsible for the security of their applications and data in the cloud. A cloud provider will typically not inspect or monitor a customer's applications running on a PaaS service, but will expect a customer to monitor, detect, and defend against security threats to the application itself. In addition, any cloud provider is likely experiencing threats to the infrastructure and platform and dealing with such on a daily basis, and any such threats will typically risk impacting a multitude of customers. The standard solution offered by responsible public cloud providers is to make available to customer organizations relevant security tools and online offerings, thereby enabling the customer itself to monitor, detect, and defend against security threats. Can the Commission confirm that by making such relevant security tools and online offerings available to the Contracting Authority, a Contractor will meet its obligation to Notify of an event threatening to have an adverse impact, provided the Contractor Notifies of events the Contractor's is aware of which have an adverse effect on security? Can the Commission also confirm that the Contractor's obligation to Notify applies to actual events happening at the IaaS and PaaS level, not the application level?

Answer on 14 Oct 2019 8:36 :

Notification is defined in Article 1.1 of the Cloud Terms and Conditions as "any form of communication between the Parties made in writing, including by electronic means". If the security tools and online offerings provided by the Contractor satisfy this definition, then this requirement is met.

If the incident takes place at the application level and the Contractor becomes aware of it, notification requirements would apply. However, if the security incident at the application level is not attributable to the Contractor, Article 1.9.2.5 on corrective and mitigating measures does not apply.

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51. Version control of the Draft Direct Contract template | General | 14 Oct 2019 8:38 | Offer phase

Question: We have noted the updated Draft Direct Contract template with the addition of a new clause 8.3. The only other change, which we can see is made is the document subject line, which now reads "2. Draft Direct Contract v2(15101058)". The document subject line is unfortunately one which is modifiable when saving the PDF document locally and this way of signalling version changes risks causing significant issues for the DPS participants with respect to version control. No other changes to the title page (page 1), the header or the footer of the document are visible. Considering the Commission will wish to make additional changes to the Draft Direct Contract over time, can the Commission kindly confirm that it'll make any such changes clearly visible for the DPS participants? One suggestion could be to introduce a new text section in connection with the table of content to the Draft Direct Contract, which specifies any consecutive changes against the Draft Direct Contract v1, together with a clearly marked version identifier in the header or footer of the document.

Answer on 14 Oct 2019 8:38 :

Please note that modifications of the procurement documents are reported in detail in the Questions and Answers module in Negometrix. Additionally, versions of the documents are clearly indicated in Negometrix. When a new version replaces a previous document, the previous version labelled as 'Revoked' is displayed with its title stricken-through and remains available for download. The new version is listed underneath. In any case, your suggestion is appreciated. We will consider additional information regarding subsequent modifications of the documents.

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52. Audits | General | 15 Oct 2019 15:42 | Offer phase

Question: Under the Direct Contract, sections 12.2.18, and in the Cloud T&Cs, sections 1.8.9, 1.8.10, and 1.8.11, the Contractor shall allow for audits by the Controller, the Contracting Authority, or the EDPS during the contract and in connection with termination obligations.

Can the EU Commission confirm that the scope of any audit by a Controller or Contracting Authority, as indicated in section 12.2.18, i) will be for the Contractor's obligations with respect to the cloud services provided under the relevant Direct Contract, and ii) with respect to the EDPS, for all the cloud services provided under any Direct Contract to an EU Institution, and not for all cloud services marketed by the Contractor?

Answer on 15 Oct 2019 15:42 :

In the exceptional case of an audit on the basis of Article 12.2.18, the purpose of such an audit is to ensure that the processor and its sub-processor(s) comply with data protection rules when processing the personal data of the controller in correlation with the Performance of the Contract. As defined in the Direct Contract, Performance of the Contract is the execution of tasks and delivery of the purchased services by the Contractor to the Contracting Authority.

The exact mission, tasks and powers of European Data Protection Supervisor are established in Chapter VI of Regulation (EU) 2018/1725.

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53. Audits | General | 15 Oct 2019 15:43 | Offer phase

Question: Under the Direct Contract, sections 12.2.18, and in the Cloud T&Cs, sections 1.8.9, 1.8.10, and 1.8.11, the Contractor shall allow for audits by the Controller, the Contracting Authority, or the EDPS during the contract and in connection with termination obligations.

During audits or inspections, the Contractor will likely disclose, demonstrate, and otherwise share highly sensitive information, the broader publication of which potentially presents serious security concerns and/or may be detrimental to the Contractor's business. Can the EU Commission confirm that the audit reports and any additional material generated by the Contractor, the Controller, Contracting Authority, or a third party representative as a result of such audits will stay confidential as between those parties, and that any publication will require the Contractor's consent?

Answer on 15 Oct 2019 15:43 :

In the exceptional case of an audit, as specified in Article 17.8 of the Direct Contract, this process is carried out on a confidential basis. As a general rule, audit reports are for internal use and only circulated on a need-to-know basis. They are not destined to be broadly published.

The Contracting Authority, as a public administration, is still subject to transparency rules described in Article 1.14.2 of the Cloud Terms and Conditions. Covered by this article, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 establishes the conditions for public access to European Parliament, Council and Commission documents. However, Article 4 of this regulation sets a list of exceptions to the right of public access which encompasses ongoing audits, commercially sensitive information and security. Therefore, where commercially sensitive information or security details concerning the Contractor may be part of an audit report, the Contractor should ensure to label it as such for the understanding of all parties concerned by the audit.

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54. Demonstration of Security Objectives | General | 24 Oct 2019 15:32 | Offer phase

Question: How are the CSPs expected to demonstrate compliance of the Security Objectives with the relevant Effectiveness Assurance Levels? What kind of evidence is required? Does this need to be provided at the time of signing up to Cloud II framework or required only for the mini-competitions?

Answer on 24 Oct 2019 15:32 :

Tenderers answer questions regarding security in the Mini-Competitions held in Stage 2 of the DPS. These questions include yes/no questions, multiple-choice questions, open-ended questions, and document submissions. The Contracting Authority evaluates the compliance of an offer with the relevant EALs based on the tenderer's answers to these questions.

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55. Amount of time to prepare Mini-Competitions | General | 24 Oct 2019 15:34 | Offer phase

Question: In the DPS Specifications section 1.4.1., it is established that when a mini-competition is launched, the participants admitted in the system are invited to submit a tender for this Mini-Competition within a reasonable amount of time. Could DIGIT clarify the estimated number of days that the Contracting Authority will provide to the participants in order to prepare the Mini-Competitions? Would this timeframe depend on the complexity of the offers?

Answer on 24 Oct 2019 15:34 :

The Financial Regulation foresees a minimum of 10 days to allow tenderers to submit offers within a Mini-Competition. However, as you noted, this time limit for receipt of tenders varies based on the complexity of the scope of the Mini-Competition. The more complex a Mini-Competition, the longer the time for submission.

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56. SLAs | General | 24 Oct 2019 15:40 | Offer phase

Question: In the Draft Direct Contract, it is established that the responsibility is limited and the SLAs will be indicated in the document "SLA from the Contracting Authority". However there is no information provided regarding the limits or the definition of the SLAs. Will the Contracting Authority provide the non-specified SLAs for each contract?

Answer on 24 Oct 2019 15:40 :

The formula used to determine the liability cap is specific for each Mini-Competition. It is based on the scope of the Mini-Competition. It is provided in the documents published at the onset of a Mini-Competition. The SLA from the Contracting Authority will contain the formula, and will be attached as an annex to the Direct Contract. Please also see our correlated answer to question 26.

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57. SLAs formula | General | 24 Oct 2019 15:42 | Offer phase

Question: In the SLA from the Contracting Authority article 6, it is mentioned that a formula will be applied for the compensations. Could the Contracting Authority provide the formula that will be applied or an illustrative example?

Answer on 24 Oct 2019 15:42 :

Please refer to our answer in question 56. The formula applicable in a Mini-Competition is provided with the documents published at the launch of the Mini-Competition.

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58. Changes in: 1.1 and 1.2 | 1.1.2. | 11 Nov 2019 15:02 | Offer phase

Question: The documents in *1.1 DPS Specifications* and *1.2 Direct Contract Template* have been updated. Changes are listed in Release Notes 2019.11.11.

Answer on 11 Nov 2019 15:02 :

Revoked documents
1. DPS Specifications v2.pdf
2. Draft Direct Contract v2.pdf

Added documents
Release notes 2019.11.11.pdf
1. DPS Specifications v3.pdf
2. Direct Contract (template) v3.pdf

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59. Status of the Q&As | General | 13 Jan 2020 10:15 | Offer phase

Question: Can it be assumed that the clarifications that were provided by DIGIT in a previous mini-competition, and specifically those for the Direct Contract Template, remain applicable, and that the clarifications from the Q&As have precedence over the language in the Direct Contract Template?

Answer on 13 Jan 2020 10:15 :

The purpose of the answers to the questions posed by tenderers is to provide clarifications on the procurement documents. In order to maintain equal treatment of all current and future participants in the DPS, answers provided by the Contracting Authority in a mini-competition are only applicable in the context of that specific mini-competition. However, the Contracting Authority reserves the right to publish answers which may also be relevant for future mini-competitions in the 'Questions and Answers' section at the level of the DPS. In particular, additional information provided on the legal sections of the procurement documents may be published at the DPS level with the appropriate content in reference.

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60. Questions from MC1 | General | 20 Mar 2020 17:32 | Offer phase

Question: These are the questions that were asked in Mini-Competition MC1 for which answers are relevant in Stage 1 of the DPS. When references are made to a document, the specific version of this document is listed. A new version of the document may render the clarifications provided in the answers published here obsolete.

Answer on 20 Mar 2020 17:32 :

See attachment.

MC1 - Questions and answers.pdf *36 Kb*	Download	| Preview

61. Questions from MC2 — General — 20 Mar 2020 17:34 — Offer phase

Question: These are the questions that were asked in Mini-Competition MC2 for which answers are relevant in Stage 1 of the DPS. When references are made to a document, the specific version of this document is listed. A new version of the document may render the clarifications provided in the answers published here obsolete.

Answer on 20 Mar 2020 17:34 :

See attachment.

MC2 - Questions and answers.pdf *83 Kb*	Download	| Preview

62. Use of Electronic Signature / Seal — 1.1.2. — 28 May 2020 14:23 — Offer phase

Question: DPS Specifications mention in section 4.5:
"*Where a document needs to be signed, the signature must be a qualified electronic signature or an advanced electronic signature based on a qualified certificate as defined in Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation).*"
We understand that the specifications refer to qualified signatures created from a qualified certificate created for a natural person and not to a qualified seal issued to a legal entity. Is this correct, are all documents mentioned to be signed via a qualified certificate created for a natural person?

Answer on 28 May 2020 14:23 :

We confirm your understanding. As indicated in section 4.6 of the DPS Specifications:
"*All documents must be signed by the signatories (when they are individuals) or by their duly authorised representatives.*"
Consequently, all documents must be signed by a natural person who applies their qualified electronic signature or advanced electronic signature based on a qualified certificate to a document.

Additionally, representatives of a legal person must provide evidence for the delegation of the authorisation to sign as stipulated in the subsequent paragraphs of section 4.6.

63. Eligible Countries to Participate — General — 28 May 2020 14:24 — Offer phase

Question: Could you please share a country list whose companies are eligible to participate?
For example: As a Dutch company , can we use a Turkish company as a subcontractor?

Answer on 28 May 2020 14:24 :

The list of countries with access to procurement is too long to reproduce here, but it is, according to section 2.1.1 of the DPS Specifications:
"Application to the DPS is open throughout the duration of the DPS on equal terms to all natural and legal persons coming within the geographical scope of the Treaties, as well as to international organisations.

It is also open to all natural and legal persons established in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement.

Where the Agreement on Government Procurement (the "GPA") concluded within the World Trade Organisation applies, the participation to this DPS is open to all natural and legal persons established in the countries that have ratified the GPA, on the conditions laid down therein."
Section 2.1.1 further states:
"The rules on access to procurement do not apply to subcontractors. Subcontracting may not be used with the intent to circumvent the rules on access to procurement."
Therefore, the fact that a company is established in Turkey does not exclude them from participating in the DPS as a subcontractor.

However, be aware that additional provisions regarding location can be found in the DPS Specifications and the draft Contract (e.g. article 11.2 of the Contract which states the principle that data must remain at rest and in transit in the territory of the European Economic Area) which may be applicable to a subcontractor.

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64. Questions from MC3 | General | 11 Jun 2020 17:07 | Offer phase

Question: These are the questions that were asked in Mini-Competition MC3 for which answers are relevant in Stage 1 of the DPS. When references are made to a document, the specific version of this document is listed. A new version of the document may render the clarifications provided in the answers published here obsolete.

Answer on 11 Jun 2020 17:07 :

See attachment.

MC3 - Questions and answers.pdf *48 Kb*	Download	Preview