



## CONTRACTING AUTHORITY'S CLARIFICATIONS No. 2

### Project title:

**Capacity building for the alignment with the acquis in the areas of agriculture, rural development, food safety, veterinary and phytosanitary policy**

**Publication reference: EuropeAid/138038/DH/SER/RS**

No.	Question	Answer
1.	<p>With reference to the above mentioned project, we think that the selection criterion 21.3):</p> <p><i>"The candidate has provided services under at least two (2) contracts (the candidate's portion equal to or greater than 1,000,000 EUR in each contract) which included developing and/or implementing at least one strategy and/or action plan or equivalent document(s) to improve legal harmonization and/or implementation capacity pertaining to any of the two fields (i.e. i and/or ii) described in item 7 in the context of integration with the EU of candidate or potential candidate countries which was implemented at any moment during the reference period",</i></p> <p>doesn't respect the principle of the "widest possible participation" set out by article 3.3.1 of the PRAG for Service Contracts as well as that it is against the General Principles of the Selection Criteria set out by the PRAG in article 2.4.11.1.1., concerning the obligation to the Contracting Authorities "to draw up clear and non-discriminatory selection criteria".</p> <p>In fact, article 2.4.11.1.1 shows several "examples of criteria not to be used" among which the following:</p> <ol style="list-style-type: none"><li>1. <i>Requesting technical experience relating to EU projects only, as this may in general be regarded as discriminatory;</i></li></ol>	<p>Please refer to Contracting Authority's Corrigendum No 1 due to be published on 20 June 2017.</p> <p>The purpose of the Corrigendum No 1 is to amend Article 21.3 of the Contract Notice to read as follows:</p> <p><b>"21(3). <i>Technical capacity of candidate (based on items 5 and 6 of the application form).</i></b> <i>The reference period which will be taken into account will be the last five years from submission deadline.</i></p> <p><i>The candidate has provided services under at least <u>one (1)</u> contract (the candidate's portion equal to or greater than 1,000,000 EUR in each contract) which included developing and/or implementing at least one strategy and/or action plan to improve legal harmonization and/or implementation capacity <u>pertaining to the alignment with the EU acquis in any of the following areas: agriculture, rural development, food safety, veterinary and phytosanitary policy,</u> which was implemented at any moment during the reference period.</i></p> <p><i>This means that the project the candidate refers to could have been started or completed at any time during the indicated period but it does not necessarily have to be started and completed during that period, nor implemented during the entire period. Candidates/tenderers are allowed to refer either to projects completed within the reference period (although started earlier) or to projects not yet completed. In the first case the project will be considered in its whole if proper evidence of performance is provided (statement or certificate from the entity which awarded the contract, proof of</i></p>

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	<p>2. <i>Requesting prior experience in the partner country, unless specific justification is provided, as this could in general be regarded as discriminatory;</i></p> <p>3. <i>Requesting technical experience in an overly prescriptive manner which effectively restricts the number of eligible candidates to one or a few firms,</i></p> <p>seems to us to describe criterion 21.3) for this procedure.</p> <p>In our opinion, the above <b>case n. 1</b> is applicable because only EU funded contracts, particularly in the IPA framework, could have provided the requested experience to consultants. Then, <b>case n. 2</b> is applicable because criterion 21.3) stipulates a discriminatory boundary, that is the IPA framework (and particularly the Balkans), limiting the eligible experiences at a regional level where the related territory can be comparable to a single country: saying that the experience must be gained in "<i>EU candidate or potential candidate countries</i>" covered by the same implementation framework is just the same as "<i>requesting prior experience in the partner country</i>".</p> <p>Eventually, <b>case n. 3</b> is applicable because during the years, and particularly during the last five years, only a few number of EuropeAid contractors could have been awarded of such eligible contracts.</p> <p>According to this, we ask you to kindly change selection criterion 21.3), allowing also the experiences in the relevant fields in EU Member States to be considered eligible for this qualification, enabling the participation of a much larger number of European companies and organizations that could apply their significant best practices for the best implementation of the contract.</p>	<p><i>final payment). In case of projects still ongoing only the portion satisfactorily completed during the reference period although started earlier will be taken into consideration. This portion will have to be supported by documentary evidence (similarly to projects completed) also detailing its value. If a candidate/tenderer has implemented the project in a consortium, the percentage that the candidate/tenderer has successfully completed must be clear from the documentary evidence, together with a description of the nature of the services provided if the selection criteria relating to the pertinence of the experience have been used.</i></p> <p><i>If more than 8 eligible candidates meet the above selection criteria, the re-examination criteria shall be as follows:</i></p> <ul style="list-style-type: none"> <li>• <i>the total number of the reference projects found eligible under 21.3 and in case of equality on this criterion, then</i></li> <li>• <i>the value of the eligible part (the proportion carried out by the candidate) of the projects found eligible under 21.3.</i></li> </ul> <p><i>Previous experience which caused breach of contract and termination by a Contracting Authority shall not be used as reference.</i></p> <p><i>An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing a commitment on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility - notably that of nationality – and must fulfil the same relevant selection criteria as the economic operator. With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities</i></p>

<b>No.</b>	<b>Question</b>	<b>Answer</b>
		<i>are required. With regard to economic and financial criteria, the entities upon whose capacity the tenderer relies, become jointly and severally liable for the performance of the contract."</i>