



Publications Office

Directorate Resources  
Calls for tenders and Contracts Unit

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Luxembourg,  
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Ref.: LF - AO 10352 clarification 9

## E-MAIL

**Subject:** Invitation To Tender n° 10352 : "PROCESSING OF NOTICES FOR PUBLICATION IN THE OJ S "  
**Additional information n° 9** (Ref. 1302833, 1395949 and 1322823)

Dear Madam, Sir,

Please note the following information:

Tenderers are reminded that the draft contract foresees no penalties but only liquidated damages that correspond to *"a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations"*. Should the term *"penalty(ies)"* be used in a request for clarification in the framework of the draft contract, it will be changed to *"liquidated damages"* in the transcription of the question.

In Article I.11.1.2 of the draft contract:

instead of:

*"...for each concerned notice, to 30 % of the total price of the delayed documents per calendar day of delay after the first 24 clocking hours of delay."*

please read:

*"...for each concerned notice, to 30 % of the total price of the delayed document per calendar day of delay after the first 24 clocking hours of delay."*

Following our receipt of questions from a tenderer concerning the above-mentioned Invitation to Tender, please note the following:

**Q1** *When we read together Article I.11.1.3 of the draft contract that concerns delays in alternative scenarios with standard letters and paragraph 2 of Article I.11.1, we understand that the liquidated damages mentioned in point I.11.1.3 only apply for notices meeting the two following conditions:*  
*a. delay in delivering the notice (>= 24h),*  
*b. delay in sending the standard letters (> 48h after reception).*  
*Do you confirm our understanding?*



A1 Your understanding is not correct. According to Article I.11.1.3 of the draft contract, liquidated damages will apply, *"if more than 2% of treated alternative scenarios with standard letters delivered in one calendar month are delivered within more than 48 clocking hours (excluding weekend) since reception by the Contractor of the related document."* According to Article I.11.1 of the draft contract, this rule does not apply *"if the delay has not led to a delay in publication."* According to section 4.9.2 of the specifications, *"a notice shall be considered to have been delivered with a delay if it is delivered after the latest possible export date."* Thus condition a. of your question should have read:

*"a. delay in delivering the notice".*

Q2 Concerning liquidated damages for delays in delivery, and with respect to the cases listed in Articles I.11.1.1 to I.11.1.3 of the draft contract, we understand that the maximum amount of liquidated damages for a notice is as follows:

- a. for a delay in delivery below or equal to 24 hours: the liquidated damages are equal to 15% of the price of the notice,*
- b for a delay in delivery above 24 hours: the liquidated damages correspond to twice the price of the notice,*
- c for delays in delivering alternative scenarios (with standard letters) the liquidated damages are equal to the price of the notice.*

*The maximum amount of liquidated damages that a delayed notice may incur is thus equal to 3.15 times the price of the notice.*

*Is our analysis correct?*

A2 Should the liquidated damages specified in Articles I.11.1.1 to I.11.1.3 of the draft contract have to be applied, the liquidated damages amount to:

- a) Delay up to 24h: 15% of the total price of the notice.*
- b) Delay above 24h: 15% of the total price of the notice plus (30% of the total price of the notice per calendar day after the first 24 clocking hours of delay). Depending on the duration of the delay, this may be: 15%, 45%, 75%, 105%, and so on.*

However, the liquidated damages may not exceed twice the price of the notice concerned (i.e. 200%).

Article I.11.1.3 of the draft contract is in relation with a different situation, namely the late delivery of the request for standard letters. Late request for standard letters leading to late delivery of a notice will result in liquidated damages for both, late request of standard letter (100%) plus late delivery of the notice (between 15% and 200%).

Q3 *The second paragraph of Article I.11.2 of the draft contract, mentions that liquidated damages will apply if the system for data exchange is out of operation for more than 4 consecutive hours during office hours (9:00–17:00) and this has an impact on the possibility to send and receive documents between the Contractor and the Commission.*

*Could you clarify the notion of "impact on the possibility to send and receive documents between the Contractor and the Commission"?*

*Will the liquidated damages apply if all notices are delivered and published without delay?*

**A3** "Impact on the possibility to send and receive documents between the Contractor and the Commission" means that documents cannot be sent to the contractor from the Publications Office OJ S production system (see point 4.3 of the specifications) or received from the contractor in the Publications Office OJ S production system without having to modify how this latter system works or is operated and/or without incurring delays.

**Q4** *Our understanding of what "each period of four consecutive hours" (point I.11.2 of the draft contract) is as follows:*

Scenario for month M consecutive hours "out of operation"	Number of periods of 4 consecutive hours
6 h on day D1 - 3 h on day D2	1
9 h on day D1 - 5 h on day D2	3
3 h on day D1 - 3 h on day D2	0
3 h on day D1 - 3 h on day D1, but not consecutive to the first three ones	0

*Could you confirm our understanding?*

**A4** Your understanding is not correct. "Consecutive" means 4 consecutive hours excluding hours not counted as office hours (17:00-9:00). Example: the time between 15:00 on day 1 and 11:00 on day 2 counts as 4 consecutive hours (15:00-17:00 plus 9:00-11:00).

**Q5** *Following Additional Information No 3 sent on 25/11/2011, point 4.9.3.2.1 of the specifications, mentions: «Otherwise, if the number of documents delivered by the contractor for publication for one language and for one month is between 23 and 900, the Publications Office will select 9 documents for sample one and 13 more documents for sample two.» However in the summary table given below, the size of the sample two is increased to 22.*

Number of documents delivered by the contractor for publication (NPD) for one language and for one month	Size of sample one	Size of sample two
$NPD > 2200$	$NPD \times 0.01$	No second stage check
$2200 \geq NPD > 900$	$NPD \times 0.01$	$22 - (NPD \times 0.01)$
$900 \geq NPD > 22$	9	<u>22</u>
$22 \geq NPD > 9$	9	$NPD - 9$
$9 \geq NPD$	NPD	No second stage check

*Could you confirm that this figure should read "13" instead of "22"?*

**A5** Your understanding is correct.  
The summary table in point 4.9.3.2.1 of the specifications is replaced by the following one:

Number of documents delivered by the contractor for publication (NPD) for one language and for one month	Size of sample one	Size of sample two
$\text{NPD} > 2200$	$\text{NPD} \times 0.01$	No second stage check
$2200 \geq \text{NPD} > 900$	$\text{NPD} \times 0.01$	$22 - (\text{NPD} \times 0.01)$
$900 \geq \text{NPD} > 22$	9	<u>13</u>
$22 \geq \text{NPD} > 9$	9	$\text{NPD} - 9$
$9 \geq \text{NPD}$	NPD	No second stage check

**Q6** *Answer A3 of Additional Information No 3 sent on 25/11/2011, mentions that the percentage of errors found in the sample checked will be multiplied by the total value of the notices delivered in that month.  
Could you specify the number of decimal places that will be considered for the value of the percentage used in the liquidated damages calculation?*

**A6** The percentage calculated will not be rounded (MS-Excel standard precision) and the calculated liquidated damages will be rounded to two (2) decimals.

**Q7** If we apply the sampling criteria to the volumes mentioned in Technical Annexe TS02.c, the maximum sizes of the resulting samples that will be checked are the following (sample one + sample 2):

Total sample	DA	DE	EL	EN	ES	FI	FR	IT	NL	PT	SV	CS	ET	HU	LT	LV	MT	PL	SK	SL	GA	BG	RO
January	22	48	22	32	22	22	104	22	22	22	22	22	22	22	22	22	0	57	22	22	0	22	22
February	22	48	22	31	22	22	94	22	22	22	22	22	22	22	22	22	0	49	22	22	0	22	22
March	22	52	22	35	24	22	102	22	22	22	22	22	22	22	22	22	0	51	22	22	0	22	22
April	22	47	22	32	22	22	96	22	22	22	22	22	22	22	22	22	0	46	22	22	0	22	22
May	22	52	22	33	22	22	101	22	22	22	22	22	22	22	22	22	0	48	22	22	0	22	22
June	22	47	22	32	22	22	91	22	22	22	22	22	22	22	22	22	0	50	22	22	0	22	22

Should one error for one linguistic version for a given month be detected, we then have the following:

Total sample	DA	DE	EL	EN	ES	FI	FR	IT	NL	PT	SV	CS	ET	HU	LT	LV	MT	PL	SK	SL	GA	BG	RO
January	4.55%	2.08%	4.55%	3.13%	4.55%	4.55%	0.96	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%		1.75%	4.55%	4.55%		4.55%	4.55%
February	4.55%	2.08%	4.55%	3.26%	4.55%	4.55%	1.06%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%		2.04%	4.55%	4.55%		4.55%	4.55%
March	4.55%	1.92%	4.55%	2.86%	4.17	4.55%	0.98%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%		1.96%	4.55%	4.55%		4.55%	4.55%
April	4.55%	2.13%	4.55%	3.13%	4.55%	4.55%	1.04%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%		2.17%	4.55%	4.55%		4.55%	4.55%
May	4.55%	1.92%	4.55%	3.03%	4.55%	4.55%	0.99%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%		2.08%	4.55%	4.55%		4.55%	4.55%
June	4.55%	2.13%	4.55%	3.13%	4.55%	4.55%	1.10%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%	4.55%		2.00%	4.55%	4.55%		4.55%	4.55%

Given the average monthly volumes per language, we understand that:

- the error tolerance for the categories mentioned in the second indent of Article I.11.2 of the draft contract is zero (0) for most languages. Thus every case of anomaly detected will lead to a major error and the application of liquidated damages.
  - the error tolerance for the categories mentioned in the third indent of Article I.11.2 of the draft contract is one (1) for low volume languages and up to four (4) for the most used languages.
- Is our understanding correct?

**Q7** Your understanding is correct subject to the provisions of answer A1 of Additional Information No 8 sent on 08/12/2011. This means that in most cases or may be all cases the liquidated damages will not be actually calculated.

**Q8.1** Answer A3 of Additional Information No 3 sent on 25/11/2011, mentions :  
*"If 5 % or more of notices checked (see point 4.9.3.2 of the Specifications) for one month and one language contain an average of more than 5 (five) grammatical errors, punctuation errors, syntax errors, orthography errors, spelling errors, derogations from the Interinstitutional Style Guide or internal agreements or formatting errors per page as generated by TED, the amount of the liquidated damages will be calculated as:*

- (i) for lot 1: the given percentage identified as containing the above mentioned error(s) multiplied by the total value of the notices delivered in that month for the language concerned;*
- (ii) for lot 2: the given percentage identified as containing the above mentioned error(s) multiplied by the total value of the notices delivered in that month and divided by twenty-three (23);"*

*How should we understand this notion of "an average of more than 5 (five)" used in order to qualify an invalidated notice?*

**A8.1** Please note in the same paragraph the statement "per page as generated by TED." This means that the total number of errors of the kind mentioned in the paragraph will be divided by the number of pages as generated by TED.

**Q8.2** *Could you specify how the percentage of invalid notices would be calculated in the case of the 10-notice sample below:*

Notice in the sample	Number of errors identified in the notice
Notice 1	0
Notice 2	0
Notice 3	1
Notice 4	6
Notice 5	6
Notice 6	0
Notice 7	1
Notice 8	1
Notice 9	0
Notice 10	0

**A8.2** We assume that the table in question Q8.2 can be corrected as follows:

Notice in the sample	Average number of errors per page identified in the notice
Notice 1	0
Notice 2	0
Notice 3	1
Notice 4	6
Notice 5	6
Notice 6	0
Notice 7	1
Notice 8	1
Notice 9	0
Notice 10	0

In this case 2 notices with an average of more than 5 errors per page out of 10 represent 20% of the total number of notices in the table.

**Q9** In Article I.11.2 (Liquidated damages for quality) of the draft contract, we identify as "major" the errors mentioned in the second indent (impact on meaning of the notice) and as "minor" the errors mentioned in the third indent (spelling or grammatical mistakes):

- a. for "major" errors, the tolerance is nearly zero,
- b. for "minor" errors, an average of five mistakes per page per notice is tolerated and the error threshold is higher (5%).

However the formula used for the calculation of the liquidated damages is the same in both cases: (percentage of errors detected) \* (total price of the notices for the month and for the linguistic version).

This leads us to understand that in the case of "major" errors the minimum amount for the liquidated damages will be 1%, when for "minor" errors, this minimum amount will be 5%.

Could you confirm that our understanding of these points is correct?

**A9** The concept of "minor" errors is used neither in the specifications nor in the draft contract. However your understanding of the calculations is correct.

**Q10** In point 3.1.1. "Joint bid" of the specifications we read:

"It is not allowed for a tenderer who bids alone or as part of a consortium, to bid again for the same lot, alone or as part of a consortium."

In this context we do not understand answer A5 of Additional Information No 3 sent on 25/11/2011

"Q5 Is it allowed for a company to submit an offer for the same lot both as a sole tenderer and at the same time as a member of a grouping of companies?

A5 This is acceptable provided it does not lead to a situation of conflict of interest or cause distortion of fair competition."


Could you please clarify?

**A10** The last paragraph of point 3.1.1 "It is not allowed for a tenderer who bids alone or as part of a consortium, to bid again for the same lot, alone or as part of a consortium." is deleted.

**Q11** In Annex 7, c) Questionnaire concerning the tenderer's staff, for profile translator it is mentioned that "The translators must have at least a three year university degree in translation../' knowing that there are Member States where a specific translation degree does not exist. Is our understanding correct that in these cases a university degree in languages is equivalent?

**A11** In this case, your understanding is correct. The equivalence will have to be demonstrated in the offer.

Yours faithfully,

  
Maria Manuela CRUZ  
Head of Unit