

Questions & Answers 6 – Ref. No.: BSPM/09/CP/AG/24 for provision of Consultancy Services – DPS

14/01/2025

Question n°1	Section 5. "Authorisation and suitability" of Annex 1, DPS Response Template, requires embedding the enrolment of the tenderer in a professional register. In the case of a Consortium, we understand we should embed the relevant certificates for each partner. However, the template does not allow us to do this. Can you please confirm if we should only upload the document only for the leader or clarify how to proceed?
Answer n°1	Please note that it is sufficient to upload the certificate only for the leader.
Question n°2	We kindly ask if, in case of award, you are willing to accommodate some proposed changes to the “Appendix B ESM Terms and Conditions Framework Agreements for the Provision of Services to the European Stability Mechanism”. Below is our proposed to amendment/addition to the contract clauses: 15 Intellectual property rights [...] 15 .3 With respect to any Pre-Existing Work Product, to the extent any such Pre-Existing Work Product is embodied in any New Work Product, the Parties agree that the ESM will have the non-exclusive, transferable and irrevocable right to use for the ESM’s business purposes and all other ways and forms of use without any restrictions in terms of time and place of use. This right of use includes, but is not limited to, the right to copy, modify, distribute, display and make available to the public, transfer and access, combine (including combinations with any other Work Products developed, made, conceived, compiled, created or customised by the Service Provider for the ESM), further develop and otherwise use, exploit and dispose of any such Pre-Existing Work Product embodied in any New Work Product at the sole discretion of the ESM. In such case the ESM will have the unlimited right of use as described above also regarding all unknown future ways of use, if any. [...] 16 Termination [...] The ESM may terminate the Framework Agreement or the Implementing Contract immediately by notice in writing to the Service Provider if: i. the Service Provider is in material breach of articles n. under the Framework Agreement or the Implementing Contract; ii. [...] The Service Provider may terminate the Framework Agreement or the Implementing Contract upon written notice to the ESM if the ESM fails to pay an undisputed amount in accordance with the Framework Agreement or the Implementing Contract and the ESM fails to cure such default within sixty (60) days thirty (30) days of receipt of written notice sent by the Service Provider identifying the default and requiring its remedy.

	19 Inspection and audit [...] Any Third Parties eventually indicated shall not be direct competitors of the supplier;
Answer n°2	We refer to clause 2.7 Contract Terms and Conditions of the DPS document. Candidates who submit an Application accept the ESM Agreement without reservation. As this procedure is a DPS, the contract cannot change for the duration of the DPS to ensure all Candidates pre-qualified will sign the same contract template. (1) Clause 15 guarantees a consistent approach to the New Work Products within the ESM. This licence refers only to Pre-Exisiting Work Products which are embodied in the New Work Products (a narrow group of deliverables). It does not limit your rights to use the Pre-Exisiting Work Products (it is not an exclusive licence). The use of Pre-Exisiting Work Product by the supplier is not mandatory (if you do not want to grant the ESM licence on these terms and conditions, you can resign from embodying your Pre-Exisiting Work Products in the New Work Products). (2) Clause 16 refers to any material breach under the Framework Agreement and the time for curing the failure shall be the same for all the suppliers. These are the standard ESM terms and conditions applicable to provision of any services. (3) This concern has been already addressed in the contract. According to Clause 19 the ESM has to obtain the consent of the supplier in the event third party experts will be used to conduct any audit.
Question n°3	With reference to the project expenses, could you please clarify the concept of “accommodation expenses” (ref. 5.10.c of the framework agreement)? Does it, and the related cap amount, include all the expenses, apart from travel (ie hotel, meals, internal transportation etc.)? To simplify the process, would you be willing to establish a fix amount for accommodation expenses, for each day abroad?
Answer n°3	Article 5.10.c relates to the accommodation expenses. The cap of €266 per night is for accommodation only. As per article 5.10, the ESM will only reimburse transport and accommodation costs if applicable.

	Travel and accommodation expenses are not requested at this stage. They may be relevant for some Mini-Competition, according to the conditions foreseen in article 5.10. During a Mini-Competition, if Service Providers propose consultants entitled to the reimbursement of travel and accommodation expenses according to article 5.10, such Service Providers will need to provide a maximum amount for travel and accommodation expenses as per 5.10.a.iii. It is up to Service Providers to estimate such maximum amount based on the onsite presence requirements provided by the ESM in the Mini-Competition. The ESM does not want to establish a fixed amount for accommodation expenses per day. Please note that the maximum amount for travel and accommodation expenses, if applicable, will be factored in the financial assessment of the Mini-Competition.
Question n°4	We understand that the daily rates included in the Commercial Response Template are not evaluated as part of our application and only serve as maximum thresholds throughout the contract's duration. Could you please confirm our understanding or clarify?
Answer n°4	It is correct, at this stage the rates will not be evaluated. The rates will be assessed during the mini competition stage.
Question n°5	Please confirm that the document “Subcontractor Commitment Letter” must be uploaded only in the Annex 1 template and not to be included again as answer to point b in Appendix 2.
Answer n°5	Yes. The subcontractor commitment letter should be uploaded in the Annex 1. Appendix 2 should be completed and uploaded in the procurement tool (but not embedded in Annex 1).
Question n°6	Please confirm that in the Annex 3: Section 3.1. – COVER CERTIFICATION, if the document is signed by more than one representative it is accepted to change the text from “I, the undersigned, acting as a duly appointed representative...” to “We, the undersigned, acting as duly appointed representatives...” and in general that is accepted to replace “I” with “We” when applicable.
Answer n°6	If you propose to have multiple people as representatives of the Candidate to sign this Application (see last line of the table in the Cover Certification form), you can make the changes from ‘I’ to ‘We’. However, please note that if you are responding as part of a consortium, only the consortium Leader is requested to sign the Cover Certification form. The Consortium Declaration (Annex 3.2) gives power of attorney to the consortium Leader.
Question n°7	Please confirm that where a document needs to be signed, the signature must be a qualified electronic signature (QES) as defined in Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS Regulation).

Answer n°7	The ESM is an international organization and is not legally bound by the eIDAS Regulation. We require all documents which need to be signed to be submitted in PDF format. You are free to use the most effective method to sign the PDF documents.
Question n°8	When you describe the scope of each example in the Annex 1, there is not a 500 characters but 250 characters limit. Could you please confirm this is indeed a CHARACTER limit and not a WORD limit? If is it a character limit, does this include spaces?
Answer n°8	<i>Correction to the Answer 3 provided in the 1. QandA published on 17.12.24. and to the answer 9 provided in the 5. QandA published on 09.01.25</i> When you describe the scope of each example in the Annex 1, there is not 500 characters <u>but 250 words limit excluding the space.</u>
Question n°9	In section “My Tender Return” of the ESM Procurement Tool, there are two options in the “Envelope” box to choose from, “Technical Proposal” and “Commercial Proposal”. Please clarify if the “Annex 1” and Appendixes 1 and/or 2 (if applicable), must be uploaded only to the “Technical Proposal” envelope and the “Commercial Proposal” envelope could be remain empty.
Answer n°9	Please note that the "Commercial Proposal" envelope is not visible. You are required to upload the Commercial Proposal in Annex 1 and submit it under the "Technical Proposal" envelope.
Question n°10	For the signatures on the declarations does this have to be a wet signature or can we submit a DocuSign version?
Answer n°10	See the Answer 7
Question n°10	We understand that the daily rates included in the Commercial Response Template are not evaluated as part of our application and only serve as maximum thresholds throughout the contract's duration. Could you please confirm our understanding or clarify?
Answer n°10	This is correct.

If you are encountering issues populating Annex 1, please contact us via the ESM procurement tool under the Communication tab and explain the issues.

You can still prepare your application: the eligibility criteria can be found in Annex 3 and the selection criteria in Annex 4.

