

Clarification Update 8: 14/09/2026

PBF144F Multi Supplier Framework Agreement for the Provision of Accounting, Audit and Financial Advisory Services to the Irish Public Sector.

Message Ref No	Question	Contracting Authority Response
785384	Services Contract, Framework Agreement & Supplementary Request for Tenders (SRFT) 1. Liability Cap There is a Liability Cap provided for at clause 5(E) which is to be specified in the SRFT, however, no liability cap has been specified in the SRFT. As we require a liability cap in all our client agreements where legally permissible, which is reasonable and in proportion to the fees, we propose the following wording to be included in Clause 5(E) of the Services Contract: <i>“Save in respect of fraud, personal injury or death (for which no limit applies), the limit of the Contractor’s aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed 100% of the contract value, regardless of the number of claims. “</i> 2. Indemnities – No Conditions Precedent We note that clauses 1(H), 5(A), and 6(G) of the Services Contract and clause 2.11.2 of the SRFT__ contain indemnities in favour of the Client. Can the Client please clarify/consider whether standard conditions precedent language can be agreed to provide contractual clarity as to the role and responsibilities of each party should such an indemnity claim arise?	<u>OGP response to all questions; It is the position that Standard OGP template documents are not amended.</u> Section 2.3.3 of the published RFT states that “tenderers may not amend the Framework Agreement or Services Contract”. Furthermore Regulation 33 of the 2016 Regulations (the Regulation about frameworks) states “contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in the Framework agreement”. Tenderers are reminded of the requirement at section 2.4 of the published RFT that tenderers must accept the terms and conditions of the framework agreement and services contract and submit a signed Tenderers Statement (Appendix 3) as part of their submission.

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	By way of example, we propose that the following wording be included at the end of clause 1(H), 5(A), and 6(G) of the Services Contract and and clause 2.11.2 of the SRFT: <i>“The Contractor's liability to indemnify the Client under this clause is subject to the liability cap set out in Clause 5(E) and the following conditions precedent:</i> • <i>The Client shall notify the Contractor on becoming aware of any claim which might give rise to any liability to indemnify the Client under this clause and shall give to the Contractor such assistance and cooperation as the Contractor may reasonably require in contesting any such claim;</i> • <i>The Client does not incur any avoidable costs;</i> • <i>The Client allows the Contractor to input on the conduct of the defence of any such claim and any settlement negotiation; and</i> • <i>Solely for the indemnity at 6(G)) Client allows the Contractor at the Contractor’s discretion to alter, replace or withdraw any deliverable so that nay offending element is removed.”</i> 3. IP Indemnity – No Liability Cap We note as per clause 5(E) that the indemnity for IP related third-party claims contained in clause 6(G) is not subject to the general liability cap. Can the Client please clarify/consider including that indemnity under the general liability cap and therefore the reference to clause 6(G) in clause 5(E) deleted, or a higher reasonable liability cap if necessary?	

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	4. Protection for XXX Intellectual Property Given that the Contractor will generally bring considerable intellectual capital to this Framework, can the Client please confirm that the wording of Clause 6(C) can be considered further. In particular, this Contractor wishes to propose a non-material variation be made to Clause 6(C) which acknowledges that the Client shall be entitled to and own the final product of the Services on payment of the Charges, however the copyright and any other intellectual property rights shall belong to the Contractor. Furthermore, the Contractor may use any such material as part of its internal, confidential know-how system (as is already reflected in Clause 6(F)). For the avoidance of doubt, this Contractor would grant to the Client a royalty-free, paid-up, non-exclusive, perpetual license to use any Contractor intellectual property, excluding any third-party intellectual property contained therein, in connection with Client's use of the final products as intended in the Services Contract to the extent required. 5. Return or Destroy Information Clause 6(H) of the Services Contract and Clause 6.3 of the Confidentiality Agreement require the immediate return by the Contractor of all Materials (as such term has been broadly defined in Clause 6(C)) or Confidential Information upon termination, and/or the return or destruction of all Confidential Information. Please can the Client clarify that the Contractor shall not be required to return or destroy any Materials or Confidential Information it is legally obliged to retain, provided always that such Materials and	

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	Confidential Information be kept confidential and retained subject otherwise to the terms of the Agreement. 6. Confidentiality – FOI Request During the provision of the Services the Contractor may be required to disclose highly confidential or commercially sensitive information to the Client. Please can the Client consider varying Clause 7(D) of the Services Contract, Clause 18 (Freedom of Information) of the Framework Agreement and Part 2.16 of the SRFT to include the concept that any disclosure by the Client of information pursuant to the above referenced clauses, where the Contractor has identified the information as confidential and commercially sensitive, shall solely be to the extent the Client is legally required to do so. This is a reasonable yet important clarification, given the release of confidential and commercially sensitive Contractor information may have detrimental consequences. This clarification should be contracted for by including the following additional sentence at the end of Clause 7(D) of the Services Contract, Clause 18 (Freedom of Information) of the Framework Agreement and Part 2.16 of the SRFT as follows: <i>“Any disclosure of confidential or commercially sensitive information by the Client pursuant to this clause shall only be to the extent legally required.”</i> 7. Right to Terminate for Conflicts We note Clause 9 of the Services Contract and Clause 17 of the Framework Agreement does not contain a right for the Contractor to terminate in the event of a conflict of	

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	interest which cannot be managed. This Contractor has a regulatory obligation to ensure such a right is contained in all of its contractual arrangements, pursuant to its regulatory independence requirements as an auditor. Can the Client please clarify/consider whether such a right to terminate can be included in this Clause? This regulatory right to terminate could be contracted for by inserting the following wording as an additional sub-clause: <i>"Should a conflict of interest arise which is contrary to the Contractor's policies and regulatory independence requirements, the Contractor shall be entitled to terminate this Agreement and shall do so on notice taking effect immediately on delivery, but the Contractor shall consult the Client before taking that step."</i> 8. Right to Inspect/Right to Access The Services Contract permits the Client to: (1) inspect our premises as reasonably required to ensure compliance with the terms of the Services Contract, including access to Personnel and Records (Clause 10(C)); and (2) a general right to access our premises)). We request that the Client varies this clause to clarify that any such inspection will be limited to records of fees and expenses in connection with the Services and will not include access to Contractor's working papers or internal systems. 9. Where Designated a Data Controller Clause 25(C) of the Services Contract and Clause 11(C) of the Confidentiality Agreement specify that the Contractor will act as a Data Processor on behalf of the Client. In light of the proposed scope of services, the roles of the Parties	

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	do not appear to align with the definition of a Controller-Processor relationship. Given the Contractor would in the ordinary course determine the means and purposes of any collection, handling and/or processing of any personal data, or at a minimum require the ability to independently determine same, for this reason the Contractor would more correctly be defined as an independent Data Controller rather than a Data Processor who performs activities on behalf of another party. Can this please be considered and discussed in the event of a successful bid so that the correct legal definitions and requirements are contracted for? To assist your understanding, we propose that the following compromise hybrid wording replace the current wording: <i>“In respect of Personal Data provided to or received by the Contractor in the course of providing the Services, where the Contractor determines the purposes and means of the Processing of such Personal Data, the Contractor is a Data Controller of any such Data. It is the responsibility of the Contractor to ensure its compliance with the Data Protection Laws with respect to any such Personal Data. Where Contractor is acting as Data Processor, it shall Process all Personal Data that it Processes on behalf of the Client in accordance with this Agreement.”</i> 10. Right to Audit We note that Clauses 25(I) and 25(K) of the Services Contract and Clauses 11(I) and 11(K) of the Confidentiality Agreement permit audits in respect to data protection. Please clarify that any such audit shall solely be to the	

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	extent required by applicable law and regulatory requirement and that the Client shall provide reasonable prior written notice where legally permissible to do so? We request that this clarification be included at the end of these clauses for contractual clarity, i.e. the insertion of the words: “, <i>solely to the extent required by Data Protection Laws and on reasonable prior written notice to the Contractor (where legally permissible).</i>” 11. Confidentiality – Term Clause 9 of the Confidentiality Agreement provides that XXX agrees that this Confidentiality Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason. We request that the term of the Confidentiality Agreement be amended to correspond with the term of the Services Contract by replacing the words “<i>will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason</i>” with the following language: “<i>will commence on the Effective Date and will continue in effect for the duration of the Contract.</i>”	