

**Question:**

In the first instance, we bring your attention to the fact that following the merger of [REDACTED] and the [REDACTED] consultancy activities are managed through [REDACTED] and we are a wholly owned subsidiary of [REDACTED]. In the event that the [REDACTED] bid is successful, please advise if you will accept [REDACTED] to be the co-contracting party to the contract?

**Answer:**

As a principle, a change in the composition of the group at the request of the tenderer should not be accepted and should lead to the rejection of the corresponding tender. The only cases where a change in composition of a group may be accepted by the contracting authority are, amongst others, where there is a merger or takeover of one member of the group (universal succession). In this case, the contracting authority must verify that several conditions are met, namely that the new entity has access to the market, is not in an exclusion situation, whether the selection criteria are still fulfilled and whether the change in the composition of the group does not entail any substantial change in the tender as originally submitted. In this case, the tender must be evaluated as it was submitted and the effect of the change should be analysed. If all the conditions are fulfilled, the contracting authority can accept the change in the composition of the group and can accept that the new entity signs the contract (become a contractor) or, alternatively, commits itself to execute the contract jointly and severally with the contractor by providing a letter or intent to that effect.

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**Question:**

We would also ask whether the following amendments to the contract can be considered:

Special Conditions

1. Article 4.5 Performance Guarantee:
  - a. Please advise if the performance guarantee will be called upon? We kindly request that it be recognised that we are a subsidiary of a higher education institution and that this requirement is removed from the contract.
  - b. Otherwise, please advise if [REDACTED] is an approved credit institution, or provide a list of approved credit institutions.
  - c. In accordance with Article 15.5 of the General Conditions, we request the bank guarantee is released within one (1) month of the final acceptance.
  - d. Accordingly, we request to add into the contract a one (1) month duration for contracting authority's final acceptance of co-contractor's completion of services.

General Conditions

2. Article 3.3 Liability: We request that our liability is limited to an amount not exceeding the total amount of this contract only.
3. Article 3.4 Liability: We request that the indemnity in this article is removed.
4. Article 12 Liquidated Damages: Please clarify the calculation method used for the liquidated damages (if possible provide an example calculation). We request that these liquidated damages here and the reference at Article 1.9 are all removed from the contract.

5. Article 13.2 Suspension by the contracting authority: We should not be at loss if the suspected errors, irregularities or fraud are on the part of the contracting authority, and therefore should not be prohibited from compensation on the account of suspension of the contract in such event.
6. Article 14.2 Procedure for Termination: This clause needs clarification. It states that except in the case of force majeure, if the contract is terminated according to Article 14.1 then the subsequent provisions apply. However, 14.1 itself is wholly about force majeure. Therefore, please clarify or delete this article.
7. Article 14.4 Procedure for Termination: We cannot agree to the second and third sentence of this article therefore please remove these sentences (“The contracting authority may...under the contract”).
8. Article 15.7 Reporting and Payments: We cannot accept the suspension of payment on these terms.
9. Article 17 Checks and Audits: We will need a period of notice prior to audits.
  
10. Notwithstanding the requests for further clarification as described above, we kindly request that it be recognised that we are a subsidiary of a higher education institution and accordingly that the Articles discussed above are removed or amended as requested.

**Answer:**

As indicated in the invitation to tender, “Submission of a tender implies acceptance of all the terms and conditions set out in the procurement documents and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. The submitted tender is binding on the tenderer to whom the contract is awarded for the duration of the contract”. Therefore, any request made by a tenderer to amend the special or general conditions of the contract should not be accepted and should lead to the rejection of the corresponding tender.