**CLARIFICATION TO TEN490 DATED 30 NOVEMBER 2020**

Question 1: Section 5.1 includes a reference to “complete applications for…… patent box applications”.  As completing an application for patent box tax relief is an accountancy function, rather than a legal one, please would you confirm what is required here.  Is it that you require legal support in connection with patents such that those patents may later be used in connection with a patent box application, such application to be filed by the relevant specialists outside the scope of this tender?

Answer 1: Correct

Question 2: There may be circumstances in which a provider cannot support a particular business, e.g. because of a conflict of interest, especially where the provider is in a regulated profession. Will the contract account for this eventuality as this is not currently provided for under the proposed terms and conditions for the services?

Answer 2: In the case where the successful tenderer cannot provide the services due to professional constraints an alternative will be procured by separate contract.

Question 3: Is it the intention that the support be provided in the form of showing a business how to complete, for example, a collaboration agreement, rather than the provider simply drafting the relevant agreement?

Answer 3: Correct

Question 4: Is it the intention that the funding provide support on how, for example, the patent registration system works and how businesses should interact with it or, that the funding covers the cost of making an application?

Answer 4: Both, assuming the costs for latter are not prohibitive.

Question 5: Section 6 – expenses.  Can you confirm that disbursement costs, such as trade mark official filing fees are excluded from the budget.

Answer 5: Confirmed

Question 6: 9.11 – content ownership.  Is it the intention that CDC own bespoke legal content created for end service users (e.g. the businesses supported through the program)? If so has consideration been given to how this may have an impact where the provider is in a regulated profession, for example, will service users be asked to waive legal privilege / client confidentiality ?

Answer 6: CDC will not own any content and there is no requirement for CDC to see the detail of any discussion held with the businesses.

Question 7: With reference to the requirement for face to face service provision, will exceptions be made as required in light of the ongoing pandemic and/or at the service users discretion?

Answer 7: Exceptions may be made, but face to face meetings should be assumed for the purposes of costing the tender.

Question 8: In providing services to end users, is it envisaged that the provider will have a direct contractual relationship with the service user?

Answer 8: Not for the purposes of this tender. A contractual relationship with the service user may result e.g. related to final drafting of agreements etc. rather than the knowledge transfer which is the focus of this tender.

Question 9: Are Aerospace Cornwall content to receive bids from law firms and patent attorneys working in collaboration (and not necessarily with one as the sub-contractor of the other), with clearly defined allocations of responsibility and liability?

Answer 9: Yes

Question 10: There are two ways to read the first paragraph of section 5.1 of the ITT; either (a) that up to 15 businesses will be provided to with up to 30 hours of time, all of which must be provided on a face-to-face basis, or (b) that up to 30 hours of the 450 hours will need to be provided on a face-to-face basis.  Please can we confirm it is the latter, given that the services listed in section 5.1 do not normally require the client to always be present (e.g. undertaking IP searches).

Answer 10: For the purposes of costing, please assume (a) that up to 15 businesses will be provided with up to 30 hours of time which is delivered on a face-to-face basis. The relevant proportion of face-to-face v. desk based activity will be agreed on a case by case basis for each business.

Question 11: The services set out in 5.1 comprise the traditional forms of service provided by lawyers and patent attorneys. Are we correct in understanding that the knowledge transfer referred to in in section 5.2 is envisaged to take the form on general training on intellectual property and the legal aspects of R&D and technology collaboration, and that this will form a sub-set of the 450 hours?

Answer 11: Correct

Question 12: The Solicitors Regulatory Authority does not permit law firms to cap their liability to their clients below the level of the Authority's minimum PI insurance cover requirement of £3m. The T&Cs cap the Supplier's liability at the level of PI insurance required by CDC which you have specified as £1m. Please could you advise whether you would be prepared to amend this clause, if requested by the successful bidder, to increase the Supplier's liability cap to £3m

Answer 12: As per section 9.3 of the ITT the PI insurance liability should be not less than £1m, therefore the minimum £3m cover required by the regulator satisfies this requirement.

Question 13: The definition of the 'Contract Standard' with which the Supplier is required to comply specifies that to the extent no criteria are set out in the agreement, that standard that must be achieved is "…the entire satisfaction of the Company’s Representative. Would you consider replacing the word 'entire' with 'reasonable' in that provision, to avoid the Supplier being held to a standard set by the subjective assessment of an individual?

Answer 13: No.

Question 14: The data protection provisions in the T&Cs state that the Supplier will be a data processor on behalf of CDC (Clause 15.2.2). It is generally accepted that a firm of solicitors will be acting in the capacity of an independent data controller when providing legal advice to a client. Would you be willing to amend the T&Cs to reflect that?

Answer 14: No.

Question 15: Please could you advise whether this is intended to refer to the Supplier's own information standards meeting the requirements of Clause 1.5 of that Agreement, as we cannot see a definition of the term 'Information Standards'?

Question 15: This question refers to ‘Information Standards’ and Clause 1.5 however this term is not referenced in the Agreement.

Question 16: In section 5.1 of the ITT, we note the requirement to provide 30 hours of time with the businesses on a face to face basis. We assume that while the government's COVID-19 restrictions are in place you will permit the support to be provided remotely to ensure compliance with the relevant restrictions, but please confirm.

Answer 16: Exceptions may be made, but face to face meetings should be assumed for the purposes of costing the tender.

Question 17: Can you please confirm if you have already selected the 15 businesses that will require legal support and provide details of the type of businesses these are? For example, how many of these businesses provide services as opposed to products and vice versa?  From your knowledge and experience of supporting these businesses what do you anticipate will be the most common requirements?

Answer 17: Some, but not all, of the businesses have already been identified and none of them have received similar support in the past. Therefore, we are not able to comment on the requirements in any detail.

Question 18: In relation to the 15 businesses, if these are new businesses, at what stage of their development are they? Are they all early stage start-ups?

Answer 18: This varies and starts ups are included, although not the majority.

Question 19: Where patent application support is required, can you please advise if the businesses have already started any patent applications or will they require support throughout the whole process?

Answer 19: Assume support will be require throughout the whole process.

Question 20: From a diversity point of view, how many of the businesses have been founded or are owned by women and/or ethnic minorities?

Answer 20: This is not relevant to the provision of services.

Question 21: In section 8.3 of the ITT, the budget table has a column for "Activity"; could you please advise what specific details you would like us to include here. We suggest that we can provide generic information around anticipated activity (based on your responses to questions 2, 3 and 4 above) and we can then provide further detailed information to you once we have had our initial discussions with the businesses.

Answer 21: The activity should reflect the requirements in section 5. The table gives visibility of different activities being carried out by different members of the team with different fees structures.

Question 22: Would you like to see CVs of team members included in our response?

Answer 22: This is not necessary, although this may form part of the evidence for section 8.2.1