



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL COMPETITION

Directorate A - Policy and Strategy  
Unit A2 - Mergers case support and policy

## **CALL FOR TENDERS** **COMP/2016/010**

Collection of key qualitative and quantitative information on European  
Commission's merger decisions

# **TENDER SPECIFICATIONS**

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## 1. PURPOSE OF THE CONTRACT

- (1) In order to facilitate the review and analysis of the Commission's merger practice, DG Competition would like to extract and collect key qualitative and quantitative information from key merger cases. These data would enable DG Competition to produce statistical reports which could serve as input to DG Competition's decision-making practice in relation to EU merger control, both for operational and for policy purposes. Parts of such data, in aggregated form, could also be published by the Commission and used for communication purposes.
- (2) More specifically, this project intends to examine the scope of geographic market definitions used in past decisions with a view to identifying to what extent globalisation and EU integration have affected the Commission's geographic market definitions.
- (3) Another area of focus is the Commission's decisional practice in remedies cases according to the type of merger, theory of harm and/or degree of overlap, market shares and concentration levels.
- (4) The Contractor shall extract key information from all non-simplified past Commission merger decisions of Council Regulation (EC) No 139/2004, (the "Merger Regulation") of the last 10-25 years according to criteria detailed in section 2 below. Upon completion, the Contractor will deliver these data to DG Competition in format and structure previously agreed between the Contractor and DG Competition, as per paragraphs (34)-(37).
- (5) Intended users of such data will be DG Competition officials who require this information either for operational, policy and/or communication purposes.

## 2. TASK DESCRIPTION

- (6) The Contractor shall extract, collect, classify and deliver the requested data (the "Data") in a pre-determined format and populate a database created by the Commission.<sup>1</sup>
- (7) The Data shall contain comprehensive information about each non-simplified Commission merger decision.<sup>2</sup> Information whose scope goes beyond non-simplified Commission merger decisions (e.g. based on Articles 9, 4(4), 22 of the Merger Regulation) will award additional points, as per section 10 below. The absence of information based on Commission merger decisions other than non-simplified shall not disqualify a candidate contractor. The Contractor will review the public versions of each of these decisions of the last 10-25 years and deliver the relevant Data.
- (8) Language skills required are English, French, German, Italian and Spanish. The collected Data shall be delivered in English.
- (9) As part of its offer, the Contractor may propose to produce and deliver to DG Competition a report of statistical nature, summarising the Data collected, as described in section 5 below. The scope of the report and the final product shall

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<sup>1</sup> Importing of the project deliverables into the Commission' databases and IT systems is excluded from the scope of this tender.

<sup>2</sup> Commission decisions based on Articles 6 and 8 of the Merger Regulation.

be approved by DG Competition. This report is optional, absence of which would not disqualify a candidate contractor, but would award additional points, as per section 10 below.

## 2.1. Core elements (including minimum requirements)

- (10) Non-confidential Data that will be collected from the decisions listed in paragraph (7) above and will be delivered by the Contractor shall include all of the following items:<sup>3</sup>
- (11) **Basic information about the decision.** Date of decision, date of notification, case number, type of decision (according e.g. to Articles 6(1)(b), 6(2), 8(1), 8(2) or 8(3) of the Merger Regulation), name and nationality of acquirer and target company.
- (a) Items that would not disqualify a candidate contractor if not present, but would award additional points, as per section 10 below, include:
- (i) turnover of parties (when available);
  - (ii) thresholds fulfilled for notification (whether pursuant to Article 1(2) or 1(3) of the Merger Regulation), referrals (Yes or No and which type of referral).
- (12) **Type of merger.** Horizontal, vertical or conglomerate.
- (13) **Theory of harm assessed.** For merger cases where the Commission assessed and maintained concerns (i.e. Commission decisions according to Articles 6(2), 8(2) and 8(3) of the Merger Regulation), for merger cases where the Commission assessed but eventually dismissed all concerns (i.e. Commission decisions according to Article 8(1)), as well as for merger cases where the Commission assessed but eventually dismissed some of the concerns (i.e. Commission decisions according to Articles 8(2) and 8(3)), the classification of theory of harm into (a) unilateral; (b) coordinated; (c) vertical; or (d) conglomerate effects.
- (a) Items that would not disqualify a candidate contractor if not present, but would award additional points, as per section 10 below, include:
- (i) classification of theory of harm into (a) unilateral; (b) coordinated; (c) vertical; or (d) conglomerate effects for non-simplified merger cases where the Commission dismissed concerns (i.e. Commission decisions according to Article 6(1)(b));
  - (ii) additional classification of theory of harm into "gap" and "non-gap" cases.<sup>4</sup>
- (14) **Product market definition.** Name of the product market definition identified (textual from the Decision);

<sup>3</sup> The final data collection scope and hence the definitive structure for delivery of the data will be re-fined and agreed upon between DG Competition and the Contractor within 4 weeks after signing the contract.

<sup>4</sup> Horizontal unilateral concerns below the level of dominance.

- (a) Items that would not disqualify a candidate contractor if not present, but would award additional points, as per section 10 below, include: "standardised" product market definition. The Contractor shall develop a table of "standardised product market definitions" that will enable association of textual product market definition with standardised product market definition, grouping together product markets which are the same in substance, but have been given a different title in the text of the decision.
- (15) **Geographic market definition.** Geographic markets shall, first, be classified as being (I) Defined or (II) Left open. (I) Defined geographic markets shall be categorised according to the following classification of geographic market definition: (i) Narrower than national (ii) National; (iii) At least national; (iv) Cross-border/regional; (v) EEA; (vi) At least EEA; (vii) Worldwide; (viii) Other (specify).<sup>5</sup> (II) Markets left open shall be those geographic markets that were not defined according to the previous categories.
- (a) Items that would not disqualify a candidate contractor if not present, but would award additional points, as per section 10 below, include classification of geographic market definition of affected markets, into (I) Defined, as per paragraph (15) above, (II) Considered likely to be (for cases where the market was not defined but where the Commission, in the text of the Decision, indicated that it was likely to be one of the categories identified in the previous point) or (III) Left open, as per paragraph (15) above.
- (16) **Classification of remedies, into**
- no remedies;
  - divestitures (including carve-outs, divestiture of brands and licences, re-branding and removal of links with competitors); and
  - non-divestitures (including access remedies and change of long-term exclusive contracts).
- (a) Items that would not disqualify a candidate contractor if not present, but would award additional points, as per section 10 below, include the following categories:
- (i) stand-alone divestiture;
  - (ii) carve-outs;
  - (iii) re-branding;
  - (iv) divestment of IPRs;
  - (v) removal of links with competitors;
  - (vi) access remedies;

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<sup>5</sup> For instance a market that was found to be "At least EEA" or a market that was considered to be either EEA or wider should be considered to be defined as "At least EEA".

- (vii) slot divestitures;
  - (viii) elimination of exclusive supply links or other; and
  - (ix) for all divestiture remedies, whether the divestiture is to take place within a fixed time-limit after the decision without any impact on the timing of the closing of the main transaction, with an up-front buyer or as a "fix-it-first".
- (17) **Sector information.** The decision classified according to a meaningful sector. The NACE 4-digit classification shall be identified.

## 2.2. Other, non-core elements

- (18) Additional items that would not disqualify a candidate contractor if not present, but would award additional points, as per section 10 below, include:
- (19) **Size of market(s) affected**, in terms of turnover
- (20) **Sales of each of the merging parties** in the relevant market, in terms of output, revenue and capacity, where available.
- (21) **Market shares of each of the merging parties** in the relevant market, in terms of output, revenue and capacity, where available.
- (22) **Concentration measures and increase**, where available. Herfindahl–Hirschman Index (HHI), CR4, increase in the HHI ( $\Delta$ HHI).
- (23) **Market shares of each of the competitors**, where available (and where each competitor has more than 5% market share).
- (24) **Indicate whenever the final decision reaches a conclusion that is different from the merging parties' claims on:** (a) Scope of geographic market definition or (b) The presence and importance of imports.
- (25) **Indicate whether the product/geographic market definition changed.** The information of whether (a) the product or (b) the geographic market definition of a relevant market changed since the last time the Commission assessed this market, in the form of binary information (Y/N).
- (26) **From the following elements of competitive assessment identify as many as possible that the Commission considered in its Decision, in the form of binary information (Y/N). For each element identified (in case of Y), indicate whether it was decisive in the final Decision, in the form of binary information (Y/N).**
- (a) size and importance of market shares, market shares increase;
  - (b) size and importance of concentration levels and concentration levels increase;
  - (c) creation and/or strengthening of a dominant position;
  - (d) closeness of competition;

- (e) switching costs;
- (f) barriers to expansion and/or entry;
- (g) removal of an important competitive force;
- (h) conditions for coordinated effects;
- (i) buyer power;
- (j) elimination of potential competition;
- (k) constraint from imports outside the relevant market;
- (l) efficiencies;
- (m) failing firm defence;
- (n) input foreclosure; and
- (o) customer foreclosure.

### **3. RELATIONSHIP WITH EXISTING DATABASES**

- (27) Tenderers are encouraged to describe in their respective tenders existing databases of merger decisions set up by academics, think tanks or commercial Data providers and explain which information from publicly available databases could be reused for the purposes of the Data collection under this assignment. The European Commission will acquire ownership of the result (the Data). If the collected and delivered Data include Data which are not publicly available, the cost covering full and timeless usage must be included in the tender and licenced to the Commission (see Article I.10 of the draft service contract, Annex II to the invitation to tender). The Commission will not accept engaging in regular or recurrent fee payments.

### **4. TECHNICAL REQUIREMENTS OF THE FINAL DELIVERABLE**

- (28) The Contractor shall deliver the collected Data in XML format in a structure agreed upon with DG Competition. The definitive XML structure for delivery of the Data will be re-fined and agreed upon between DG Competition and the Contractor within 4 weeks from signing the contract.

### **5. OPTIONAL REPORT OF STATISTICAL NATURE**

- (29) As part of its offer, the Contractor may propose to produce and deliver to DG Competition a report of statistical nature, summarising the Data collected. The scope of the report and the final product shall be approved by DG Competition.
- (30) The Contractor within the total duration of the contract, as described in section 6 below, shall propose to the DG Competition three alternative topics for the Statistical Report, among which DG Competition will approve one.
- (31) This report is optional, absence of which would not disqualify a candidate contractor, but would award additional points, as per section 10 below.

## 6. TIMETABLE

- (32) The delivery of services required by the present contract starts upon the signature of the contract by the last contracting party. The total duration of the contract until delivery of the Data cannot exceed 9 months from the signature of the contract by the last party.
- (33) In total, **three** meetings in DG Competition's premises in Brussels shall be held during the performance of the contract.
- (34) A kick-off meeting will be held after a maximum of 2 weeks from contract signature. The Contractor will meet with DG Competition in Brussels to discuss ideas and concepts regarding the Data to be collected.
- (35) A second meeting will be held within 4 weeks after signing the contract, where the final Data collection scope and hence the definitive structure for delivery of the Data will be re-fined and agreed upon between DG Competition and the Contractor.
- (36) According to the agreed structure, as amended and finalised in the second meeting, the Contractor shall complete a test-pilot phase of the assignment covering a full year period but never less than 6 months' worth of Data. Upon submission of the test-pilot phase Data to DG Competition, a third meeting shall be held within 3 months after signing the contract where the Contractor shall give a presentation and practical demonstration of the test pilot Data to DG Competition staff in Brussels. Any comments for improvements by the Commission must be taken into account for the further collection of Data and the final version of the Data delivery.
- (37) The Contractor will deliver the final Data in the pre-defined and agreed format and structure and give a presentation and practical demonstration to DG Competition staff in Brussels within 9 months after signing the contract.

## 7. PLACE OF PERFORMANCE

- (38) The place of performance of the tasks shall be the Contractor's premises or any other place indicated in the tender. Meetings with DG Competition staff will take place at DG Competition premises in Brussels.

## 8. VOLUME

- (39) The total budget of the contract, including all costs (inclusive, but not limited to: travel and incidental expenses, acquisition of software if necessary, acquisition of Data use rights if applicable) cannot exceed Euro 145,000 for its total duration. Travel and subsistence will not be reimbursed separately.
- (40) The tenderer shall be aware that the contract will be awarded to the tender offering the best value for money.

## 9. TERMS OF PAYMENT

- (41) Payments shall be made in accordance with Articles I.5 and II.21 of the draft service contract (annex II to the invitation to tender).

- (42) The Commission would like to draw the attention to its rights under the service contract, Article II.16: "If the contractor fails to provide the service in accordance with the contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a result, report or deliverable as defined in Article I.5 after the contractor has submitted the required additional information, correction or new version."

## **10. EVALUATION OF TENDERS AND AWARD**

- (43) The evaluation is based solely on the information provided in the submitted tender. It involves the following:
- (a) Verification of non-exclusion of tenderers on the basis of the exclusion criteria
  - (b) Selection of tenderers on the basis of selection criteria
  - (c) Verification of compliance with the minimum requirements set out in section 2.1 of these tender specifications
  - (d) Evaluation of tenders on the basis of the award criteria
- (44) The contracting authority may reject abnormally low tenders, in particular if it established that the tenderer or a subcontractor does not comply with applicable obligations in the fields of environmental, social and labour law.
- (45) The tenders will be assessed in the order indicated above. Only tenders meeting the requirements of one step will pass on to the next step.

### **10.1. Verification of non-exclusion**

- (46) All tenderers must provide a declaration on honour (see Annex III to the invitation to tender), signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in that declaration on honour.
- (47) In case of joint tender, each member of the group must provide a declaration on honour signed by an authorised representative.
- (48) In case of subcontracting, subcontractors whose share of the contract is above 20 % must provide a declaration on honour signed by an authorised representative.
- (49) The Contracting Authority reserves the right to verify whether the successful tenderer is in one of the situations of exclusion by requiring the supporting documents listed in the declaration of honour.
- (50) The successful tenderer must provide the documents mentioned as supporting evidence in the declaration on honour before signature of the contract and within a deadline given by the contracting authority. This requirement applies to each

member of the group in case of joint tender and to subcontractors whose share of the contract is above 20 %.

- (51) The obligation to submit supporting evidence does not apply to international organisations.
- (52) A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year before the date of their request by the contracting authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that that there has been no change in its situation.
- (53) A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit a specific document if the contracting authority can access the document in question on a national database free of charge.

## **10.2. Selection criteria**

- (54) Tenderers must prove their legal, regulatory, economic, financial, technical and professional capacity to carry out the work subject to this procurement procedure.
- (55) The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.
- (56) The tender must include the proportion of the contract that the tenderer intends to subcontract.

### *10.2.1. Declaration of evidence*

- (57) The tenderers (and each member of the group in case of joint tender) and subcontractors whose capacity is necessary to fulfil the selection criteria must provide the declaration on honour (see Annex III to the invitation to tender), signed and dated by an authorised representative, stating that they fulfil the selection criteria applicable to them. In case of joint tender or subcontracting, the criteria applicable to the tenderer as a whole will be verified by combining the various declarations for a consolidated assessment.
- (58) This declaration is part of the declaration used for exclusion criteria (see section 10.1) so only one declaration covering both aspects should be provided by each concerned entity.
- (59) The Contracting Authority will evaluate selection criteria on the basis of the declarations on honour. Nevertheless, it reserves the right to require evidence of the legal and regulatory, financial and economic and technical and professional capacity of the tenderers at any time during the procurement procedure and contract performance. In such case the tenderer must provide the requested evidence without delay. The Contracting Authority may reject the tender if the requested evidence is not provided in due time.

- (60) After contract award, the successful tenderer will be required to provide the evidence mentioned below before signature of the contract and within a deadline given by the Contracting Authority. This requirement applies to each member of the group in case of joint tender and to subcontractors whose capacity is necessary to fulfil the selection criteria.
- (61) A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year before the date of their request by the Contracting Authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that that there has been no change in its situation.
- (62) A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit a specific document if the Contracting Authority can access the document in question on a national database free of charge.

#### *10.2.2. Legal and regulatory capacity*

- (63) Tenderers must prove that they are allowed to pursue the professional activity necessary to carry out the work subject to this call for tenders. The tenderer (including each member of the group in case of joint tender) must provide the following information if it has not been provided with the Legal Entity Form:
- For legal persons, a legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation applicable to the legal person requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
  - For natural persons, if required under applicable law, a proof of registration on a professional or trade register or any other official document showing the registration number.

#### *10.2.3. Economic and financial capacity criteria*

- (64) The tenderer must have the necessary economic and financial capacity to perform this contract until its end. In order to prove their capacity, the tenderer must comply with the following selection criteria.
- **Criterion F1:** Turnover of the last two financial years above EUR 50.000; this criterion applies to the tenderer as a whole, i.e. the combined capacity of all members of a group in case of a joint tender. On request from the contracting authority, the tenderer should be able to provide the following evidence at short notice appropriate statements from banks;
- (65) **Evidence (to be provided on request):**
- Copy of profit and loss account for the last two years for which accounts have been closed from each concerned legal entity;

- Failing that, appropriate statements from banks.
- (66) If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, it may prove its economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

#### 10.2.4. *Technical and professional capacity criteria and evidence*

##### A. Criteria relating to the tenderer:

- (67) Tenderers (in case of a joint tender the combined capacity of all members of the group and identified subcontractors) must comply with the criteria listed below. The evidence must be provided only on request.
- (68) The project references indicated below consist in a list of relevant services provided in the past three years, with the sums, dates and clients, public or private, accompanied by statements issued by the clients.

- **Criterion A1:** The tenderer must prove experience in the field of competition policy as well as in data collection.

**Evidence A1:** the tenderer must provide references for 2 projects delivered in these fields in the last three years.

- **Criterion A2:** The tenderer must prove capacity to work in English.

**Evidence A2:** the tenderer must provide references for 2 projects (including published books, reports) delivered in the last three years showing the necessary language coverage.

##### B. Criteria relating to the team delivering the service:

- (69) The team delivering the service shall include, as a minimum, the profiles indicated below.
- (70) Evidence will consist in CVs of the team responsible to deliver the service. Each CV should indicate the intended function in the delivery of the service.
- (71) **Criterion B1 - Project Manager:** At least 8 years' experience in competition policy, with a particular focus on merger control. The project manager must have proven experience in project management, including overseeing project delivery and quality control of delivered service in projects of similar nature. The project manager must have at least C1 level in the Common European Framework for Reference for Languages<sup>6</sup> in English.
- (72) **Evidence B1:** CV and a language certificate or past relevant experience.
- (73) **Criterion B2 - Team for Data collection/analysis/synthesis:** the team leader (who can also be the Project Manager) must have professional knowledge of the

<sup>6</sup> See [http://www.coe.int/t/dg4/linguistic/Cadre1\\_en.asp](http://www.coe.int/t/dg4/linguistic/Cadre1_en.asp)

English language (having already authored reports in the English language) and at least someone in the team must have solid knowledge of French, German, Italian and Spanish, and proven experience in Data collection techniques. Collectively the team of at least 2 people must have knowledge of the following EU languages: English, French, German, Italian and Spanish, and proven experience of 2 years in data collection techniques. Finally, at least one member of the team must also demonstrate IT expertise in the field of Data collection.

(74) **Evidence B2:** CV and a language certificate or past relevant experience.

### 10.3. Award criteria

(75) The contract will be awarded based on the best value for money. Selected tenderers will be evaluated according to the following criteria and points will be scored against each quality criterion. The total number of points is one hundred.

No	Award criteria	Quality points
1.	<p><b>Proposed Data collection methodology</b></p> <p>The quality of the chosen methodology for Data collection and analysis methods will be assessed as well as the reasoning why a specific methodology has been chosen.</p>	<p><b>10 points – minimum threshold 5 points</b></p>
2.	<p><b>Proposed Data delivery approach</b></p> <p>The approach taken to deliver the collected Data in the predefined format and structure will be assessed in light of their implications for the exploitation of the Data by DG Competition.</p>	<p><b>10 points – minimum threshold 5 points</b></p>
3.	<p><b>Time scope of database</b></p> <p>The time scope of database will be an important criterion in selecting a tender. Tenderers must be able to provide all Data described in section 2.1, excluding paragraphs (11)(a), (13)(a), (14)(a), (15)(a), and (16)(a) for a minimum period of 10 years. A time period coverage of 10 years will be granted 15 points; each additional year will give 1 extra point up to maximum of 30 points.</p>	<p><b>30 points – minimum threshold 15 points</b></p>
4.	<p><b>Data scope of the database</b></p> <p>Tenderers must be able to provide all Data described in section 2.1, excluding paragraphs (11)(a), (13)(a), (14)(a), (15)(a), and (16)(a). A tender proposal that covers all the Data described in section 2.1, excluding paragraphs (11)(a), (13)(a), (14)(a), (15)(a), and (16)(a) will be granted 10 points. A tender proposal that covers Data described in paragraphs (11)(a), (15)(a), and (16)(a), and section 2.2, will give an extra 0,5 points per item. A tender proposal that covers Data described in paragraph (13)(a) will give an extra 2 points per item, while a tender proposal that covers Data described in paragraph (14)(a) will give an extra 3 points, up</p>	<p><b>35 points – minimum threshold 10 points</b></p>

	to a maximum of 35 points.	
<b>5.</b>	<b>Optional report of statistical nature</b> A tender proposal that foresees the production and delivery to DG Competition of a report of statistical nature, summarising the Data collected, as described in section 5, will give an extra 5 points. Since the report is not obligatory, there is no minimum threshold for this criterion.	<b>5 points</b>
<b>6.</b>	<b>Organisation of the work</b> This criterion will assess how the roles and responsibilities of the proposed team and of the different economic operators (in case of joint tenders, including subcontractors if applicable) are distributed for each task. It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work. The tender should provide details on the allocation of time and human resources and the rationale behind the choice of this allocation. Details should be provided as part of the technical offer. It is not a budget requested as part of the financial offer.	<b>5 points – minimum threshold 2,5 points</b>
<b>7.</b>	<b>Quality control measures</b> This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the language quality check, and continuity of the service in case of absence of the member of the team. The quality system should be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a low score.	<b>5 points – minimum threshold 2,5 points</b>
<b>Total points:</b>		<b>100</b>

- (76) Tenders that score below the indicated minimum threshold under any of the award criteria 1-7 above, with the exception of criterion 5, will be rejected.

#### 10.4. Ranking of tenders

- (77) The contract will be awarded to the most economically advantageous tender, i.e. the tender offering the best price-quality ratio determined in accordance with the formula below. A weight of 70/30 is given to quality and price.

$$\text{Score for tender } x = \frac{\text{cheapest price}}{\text{price of tender } x} * 100 * 30\% + \frac{\text{Total quality score (out of 100)}}{\text{for all award criteria of tender } x} * 70\%$$

## 11. INFORMATION ON TENDERING

### 11.1. Participation

- (78) Participation in this procurement procedure is open on equal terms to all natural and legal persons coming from one of the EU Member States, as well as to international organisations.

It is also open to all natural and legal persons established in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the plurilateral Agreement on Government Procurement<sup>7</sup> concluded within the World Trade Organisation applies, the participation to this procedure is also open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions it lays down.

### **11.2. Contractual conditions**

- (79) The tenderer shall bear in mind the provisions of the draft contract which specifies the rights and obligations of the Contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

### **11.3. Compliance with applicable law**

- (80) The tender must comply with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU<sup>8</sup>.

### **11.4. Joint tenders**

- (81) A joint tender is a situation where a tender is submitted by a group of economic operators (natural or legal persons). Joint tenders may include sub-contractors in addition to the members of the group.
- (82) In case of joint tender, all members of the group assume joint and several liabilities towards the Contracting Authority for the performance of the contract as a whole, i.e. both financial and operational liability. Nevertheless, tenderers must designate one of the economic operators as a single point of contact (the leader) for the Contracting Authority for administrative and financial aspects as well as operational management of the contract.
- (83) After the award, the Contracting Authority will sign the contract either with all members of the group, or with the leader on behalf of all members of the group, authorised by the other members via a power of attorney.

### **11.5. Subcontracting**

- (84) Subcontracting is permitted but the Contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole.
- (85) Tenderers are required to identify sub-contractors whose share of the contract is above 20%.
- (86) During contract performance, the change of any sub-contractor identified in the tender or additional sub-contracting will be subject to prior written approval of the Contracting Authority.

<sup>7</sup> See [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).

<sup>8</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

## 11.6. Structure and content of the tender

(87) The tenders must be presented as follows:

- Part A: Identification of the tenderer (see section 11.7 below)
- Part B: Non-exclusion (see section 10.1 above)
- Part C: Selection (see section 10.2 above)
- Part D: Technical offer

The technical offer must cover all aspects and tasks required in the technical specifications and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be rejected on the basis of non-compliance with the tender specifications and will not be evaluated.

- Part E: Financial offer

The price for the tender must be quoted in euro. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the effects deriving from any variation.

Prices must be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately.

In order to facilitate the assessment of the price, the tenderer should specify for each category of staff to be involved in the project: the total labour costs; the daily rates and total number of days (man-days) each member of staff will contribute to the project; other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity.

Costs incurred in preparing and submitting tenders are borne by the tenderers and cannot be reimbursed.

## 11.7. Identification of the tenderer

(88) The tender must include a cover letter signed by an authorised representative presenting the name of the tenderer (including all entities in case of joint tender) and identified subcontractors if applicable, and the name of the single contact point (leader) in relation to this procedure.

(89) In case of joint tender, the cover letter must be signed either by an authorised representative for each member, or by the leader authorised by the other members with powers of attorney. The signed powers of attorney must be included in the tender as well. Subcontractors that are identified in the tender must provide a letter of intent signed by an authorised representative stating their willingness to

provide the services presented in the tender and in line with the present tender specifications.

- (90) All tenderers (including all members of the group in case of joint tender) must provide a signed Legal Entity Form with its supporting evidence. The form is available on:  
[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)
- (91) Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.
- (92) The tenderer (or the leader in case of joint tender) must provide a Financial Identification Form with its supporting documents. Only one form per tender should be submitted. No form is needed for subcontractors and other members of the group in case of joint tender. The form is available on:  
[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm)
- (93) The tenderer (and each member of the group in case of joint tender) must declare whether it is a Small or Medium Size Enterprise in accordance with [Commission Recommendation 2003/361/EC](#). This information is used for statistical purposes only.