



## Clarifications to invitation to tender COMP/2015/011

### Study on the passing-on of overcharges

#### Questions and answers

	<i>Question:</i>	<i>Answer:</i>
1.	<p>I request you to provide us the following details:</p> <ul style="list-style-type: none"><li>1) List of Items, Schedule of Requirements, Scope of Work, Terms of Reference, Bill of Materials required.</li><li>2) Soft Copy of the Tender Document through email.</li><li>3) Names of countries that will be eligible to participate in this tender.</li><li>4) Information about the Tendering Procedure and Guidelines</li><li>5) Estimated Budget for this Purchase</li><li>6) Any Extension of Bidding Deadline?</li><li>7) Any Addendum or Pre Bid meeting Minutes?</li></ul>	<p><i>As mentioned in the contract notice, please consult the tender documents at the following address:</i></p> <p><a href="http://ec.europa.eu/competition/calls/tenders_open.html">http://ec.europa.eu/competition/calls/tenders_open.html</a>.</p>
2.	<p>I refer to your contract notice 2015/S 077-135331 “Study on the passing-on of overcharges” from 21.April 2015 posted on the tender portal TED. Could you say me, where I can obtain the tender documents?</p>	<p><i>As mentioned in the contract notice, please consult the tender documents at the following address:</i></p> <p><a href="http://ec.europa.eu/competition/calls/tenders_open.html">http://ec.europa.eu/competition/calls/tenders_open.html</a>.</p>
3.	<p>Section 9.3.2 B of the "Tender specifications" document specifies that:</p> <p>"At least one member of the team must be a top level economic expert (with postgraduate degree) in the field of theoretical/applied competition policy."</p>	<p><i>The first bullet in Section 9.3.2.C. refers to a list and short description of the main services – relevant for the subject matter of the study - provided in the past three years. This is one of five types of evidence, listed in that Section, which is required to prove that the criteria set out in Sections 9.3.2.A.</i></p>

	<p>and that:</p> <p>"The Commission refers to a "top level economic expert" as someone who has demonstrable experience, including in real cases, of at least 5 years in the above fields and publishes in peer reviewed journals."</p> <p>Section 9.3.2 C of the "Tender specifications" document then states that:</p> <p>"C. The following evidence must be provided to prove the above criteria have been met:  - a list and short description of the main services - relevant for the subject matter of the study - provided in the past three years,"</p> <p>QUESTION 1: What is the "three years" in the last statement meant to specify and to whom does it refer or apply? Would an economist qualify as a "top level economic expert" for the purposes of this tender ONLY if he or she has worked on relevant assignments in theoretical or applied competition policy during the past three years? Is experience that is older than three years not considered relevant for the assessment of an economist's qualifications and his or her suitability for the study?</p> <p>Could you please clarify this issue with respect to all experts included in a tender, i.e. legal experts and experts in the field of econometric/statistical methods.</p>	<p><i>and 9.3.2.B. Thus, it refers to services provided in the past three years either by the tenderer (Section 9.3.2.A.) or by the project team (Section 9.3.2.B.).</i></p> <p><i>As regards all categories of experts listed in Section 9.3.2.B., at least five years of experience in the relevant fields are required. Thus, it does not matter whether the experience was gathered in the past three years or earlier.</i></p>
4.	<p>QUESTION 2: How is the experience of the team proposed in a tender to be evaluated? In Section 9.4 of the "Tender specifications" document, the table only refers to team members in Part 6: "Composition of the team and organisation of the work proposed by the tenderer (division of tasks, work schedule, coordination)."</p> <p>Does this imply that a maximum of ten points are available for the quality and experience of the team proposed to carry out the study?</p>	<p><i>Part 6 of Section 9.4. stipulates that a maximum of ten points are available for the criterion defined as "Composition of the team and organisation of the work proposed by the tenderer (division of tasks, work schedule, coordination)". Thus, this criterion does not directly refer to the experience of individual team members. Rather, the overall composition of the team, plus the proposed organisation of work, will be assessed under this criterion.</i></p>

5.	QUESTION 3: Is there an indicative budget for this study or a maximum price bid, or financial offer, that will be accepted?	<i>As Section 7 stipulates: The contract will be awarded to the tender offering the best value for money. The Commission reserves the right not to award any contract.</i>
6.	Can a US company apply for this study?	<p><i>Section 10.1 of the tender specifications stipulates that</i></p> <p><i>"Participation in this tender procedure is open on equal terms to all natural and legal persons from one of the EU Member States and to all natural and legal persons 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 Multilateral Agreement on Government Procurement<sup>23</sup> concluded within the WTO applies, the participation to the call for tender is also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down.</i></p> <p><small><sup>23</sup> See <a href="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</a></small></p> <p><i>The US has signed the GPA agreement and companies established in the US may submit a tender for this study.</i></p>
7.	When the Commission refers to "experience in tort actions in complex economic matters" at Tender specification section 9.3.2 B is it looking for experience with torts which deal intentional interference with economic interests such as procurement of a breach of contract (sometimes known as economic torts) or for broader experience with torts such as	<i>The phrase is formulated broadly and encompasses tort actions in whatever field, as long as a complex economic matter is involved.</i>

	misrepresentation, passing-off and professional negligence in circumstances where economic issues have proved complex?	
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