

**TENDER SPECIFICATIONS**

**STUDY ON THE APPLICATION OF MEASURES  
CONCERNING THE PROMOTION OF THE DISTRIBUTION AND PRODUCTION OF  
EUROPEAN WORKS IN AUDIOVISUAL MEDIA SERVICES  
(I.E INCLUDING TELEVISION PROGRAMMES AND NON LINEAR SERVICES),  
SMART 2007/0001**

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## PART 1: TECHNICAL DESCRIPTION

### 1. CONTEXT

This study concerns the provisions in Chapter III (notably Art 4 and 5) of Council Directive 89/552/EEC of 3 October 1989<sup>1</sup>, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997<sup>2</sup> (hereafter referred to as 'the TVWF Directive') which aim at promoting the distribution and production of European television programmes. A report on the application of these provisions is published every second year, the last report being the Seventh Communication on the application of Articles 4 and 5<sup>3</sup>.

In addition, Article 25(a) of the Directive provides for a further review of Article 4(4), which takes into account an independent study on the impact of the measures in question at both the national and Community levels. According to the above mentioned articles, a Commission report shall be drafted on the application of these measures. In this context, a "Study on the impact of measures concerning the promotion of the distribution and production of TV programmes (national and Community) provided for under Article 25 (a) of the TVWF Directive<sup>4</sup>" was delivered to the Commission on 24 May 2005 by an independent consultant. This study covered the Community with 15 Member States.

In the meantime, the Commission has adopted a legislative proposal amending the TVWF Directive, notably with the aim to cover non-linear services<sup>5</sup>. The amended proposal (hereafter referred to as 'AVMS' proposal') contains a provision by which Member States ensure that on-demand services promote, where applicable and by appropriate means, production and access to European works. The proposal foresees also that the Commission reports on the application of this provision, notably on the basis of an independent study.

In this context, the study, building on the findings of the 2005 study and extending its scope in order to cover the present 27 Member States of the European Union, shall identify and analyse the likely impact of the measures taken at the national or Community level to implement the TVWF Directive, or those measures in line with the AVMS proposal, in order to promote European audiovisual works in the sectors of linear broadcasting services as well as on-demand services.

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<sup>1</sup> OJ L 298, 17.10.1989.

<sup>2</sup> OJ L 202, 30.07.1997

<sup>3</sup> COM/2006/0459 final

<sup>4</sup> rf DG EAC/27/03  
<http://ec.europa.eu/comm/avpolicy/docs/library/studies/finalised/4-5/27-03-finalreport.pdf>

<sup>5</sup> See the amending proposal for an Audiovisual media services Directive and all related developments of the legislative progress on the page:  
[http://ec.europa.eu/comm/avpolicy/reg/tvwf/modernisation/proposal\\_2005/index\\_en.htm](http://ec.europa.eu/comm/avpolicy/reg/tvwf/modernisation/proposal_2005/index_en.htm)

## 2. OBJECTIVES OF THE STUDY

### 2.1 General objectives

- The aim of the study is to provide the Commission with the elements required for the monitoring and evaluation at periodical intervals (as foreseen by the TVWF Directive as well as the AVMS Proposal) of the impact of the measures, taken at Community and national levels for the promotion and distribution of European audiovisual works.
- The study will build on the results of the independent study of 2005 mentioned above.
- The geographical coverage of this study will be the EU and EEA Member States as of 01/01/2007.

### 2.2 Specific objectives<sup>6</sup>

It is the intention of the Commission to evaluate periodically the impact on the audiovisual sector in the EU and EEA Member States of:

- The national legislations implementing the above mentioned articles of Chapter III of the TVWF directive as well as
- The national legislations already introduced which are in line with provisions in the AVMS proposal covering on-demand services and being similar to those of Chapter III of the TVWF directive

in terms of:

a) **Programming** (with details on number of titles, genres, duration) and **related audience** for linear broadcasting of:

i) Recent European audiovisual works or works older than 5 years created by independent producers or by producers linked to broadcasters

and

ii) Non-European audiovisual works

This refers to the kinds of works that are covered by the provisions of Articles 4 and 5 of the Directive, in order to identify the proportions and certain features of the supply and viewers consumption of broadcasted European and non-European audiovisual works.

b) **Composition of Catalogues** (number of titles offered, their genre and overall duration) and **Consumer's demand** (quantities acquired or rented and values) of on-demand services grouping:

i) European audiovisual works

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<sup>6</sup> The definitions for: "television broadcasting", "broadcasters", "European", "audiovisual work", "on-demand services", "on-demand services provider", etc. are those set in the AVMS Directive

## ii) Non-European audiovisual works

This refers to the kinds of works that are covered by the provisions of Articles 4 and 5 of the Directive, in order to identify the proportions and certain features of the supply and viewers consumption of European and non-European audiovisual works distributed on-demand.

c) **Overall upstream demand** (quantities and values) of recent European works or works older than 5 years, for audiovisual works produced by independent producers or by producers linked to broadcasters or to on-demand service providers.

d) **Impact on cultural diversity**, notably concerning the presence of national audiovisual works or, in general of European non-national works in programming schedules and audience for television broadcasting as well as catalogues and consumer demand for on-demand services.

In view of the periodical evaluation mentioned above, the contractor shall identify the analytical elements, the evaluation criteria and the procedures to be applied. Analysis, evaluation criteria and procedures should cover, at least (**outputs**):

2.2.1. A **description and analysis of the implementing measures** taken by the EU and EEA Member States pursuant to Articles 4 and 5 of the Directive as of the end 2007. With respect to on-demand services and pending the adoption and entry into force of the proposed AVMS Directive, the study should cover the measures, which may have already been adopted by some Member States in respect of on-demand services.

2.2.2. For each EU and EEA Member State

An **analysis and description of the market for audiovisual works** as of the end 2007 covering, at least:

- Broadcasters, on-demand services providers
- TV audience, consumers' demand of on-demand services

and

An **analysis and description of the production industry** as of end 2007 covering, at least:

- Independent producers
- Producers linked to broadcasters

This analysis is to refer to the kinds of audiovisual works covered by the provisions of Article 4 and 5 of the TVWF Directive specifying:

- Number of titles;
- Genres;
- Duration;

The analysis will contain an **elaboration of overall business models** as of end 2007 with a specific focus on the audiovisual works' production sector, with reference to:

- Independent producers;
- Producers linked to broadcasters

All analysis should, in particular, look at the broadcasters listed in the most recent national reports on the application of Article 4 and 5 of the Directive (for the period covering 2003-2004, a summary of the Member States' reports can be found in the Annex to the Seventh Communication from the Commission to the Council of the European Economic and Social Committee and the Committee of the Regions<sup>7</sup>).

In line with the relevant provisions of the proposed AVMS directive, the main providers of on-demand content should also be identified and covered by the analysis.

### 2.2.3 A definition of:

- A set of **performance indicators** for the measures referred to in point 2.2.1. in order to assess their impact on the topics covered under point 2.2.2;
- A set of **operational procedures** in view of carrying out monitoring and assessment activities at periodical intervals.

### 2.2.4 Application of procedures and indicators

The contractor shall apply **procedures and indicators** as referred to in point 2.2.3 to the situations in the EU and EEA Member States in 2007 in order to provide a basis for further analysis.

## 3. DURATION

The duration of the execution of the tasks shall be 13 months and subject to the provisions of Art. I.2.3 of the contract.

## 4. DELIVERABLES, MEETINGS AND TIME TABLE

### 4.1 Deliverables

For each of the listed deliverables, one original and four (4) paper copies in English must be submitted to the Commission official responsible (whose name will be communicated by the Contracting Authority). In addition, the files must be submitted in electronic format (MS Word compatible) to the same Commission official.

- **A first interim study report (legal aspects)**, which will cover all issues as described in point 2.2.1. This interim report shall be submitted no later than 2 months after the contract is signed by both parties.

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<sup>7</sup> [Seventh Communication from the Commission](#) to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Articles 4 and 5 of Directive 89:552/EEC "Television without Frontiers", as amended by Directive 97/36/EC, for the period 2003-2004 (COM(2006)459)

- **A second interim study report (economic aspects)**, which will cover all sections as described in 2.2.2 as well as those described in point 2.2.3 and 2.2.4 for 3 representative countries. This interim report shall be submitted no later than 5 months after the contract is signed by both parties.

- **A draft final study report**, including the following sections:

- General approach followed, a summary of the interim reports and a full report covering all issues as described at point 2.2.3 and 2.2.4;
- Overall conclusions and suggestions;

The draft final report will be submitted no later than 9 months after the contract is signed by both parties.

#### **- Workshop**

The Commission intends to host a one-day workshop in Brussels, to be organised by the contractor, in order to present the preliminary results of the study to industry representatives, representatives of the countries covered by the study and stakeholders in general. It will be designed to stimulate a discussion among interested parties in order to validate the findings of the study contained in the preliminary draft final report.

The workshop will take place in the Commission's premises in Brussels. The Commission undertakes to provide and bear the relevant costs of the necessary Conference room facilities, coffee-breaks and interpretation. All other operational aspects and costs (i.e. preparation of agenda, participants list, distribution of invitations, etc.) will be of the responsibility of the contractor. The Commission shall reserve itself the right to approve the invitation list. The estimated number of participants to the Workshop is 350 people.

This workshop will take place between 10 and 11 months after the contract is signed by both parties and after the acceptance by the Commission of the draft final study report.

- **A final study report**, including the following sections:

- Executive summary;
- General approach followed, a summary of the interim reports and a full report covering all issues as described at point 2.2.3 and 2.2.4;
- Overall conclusions taking into account the application of procedures and indicators as foreseen under 2.2.3 and 2.2.4 and suggestions

This final report shall be submitted within 12 months after the contract is signed by both parties. It will take into account the outcomes of the workshop as well as the comments transmitted to the contractor by the participants within 2 weeks.

The final report approved by the Commission shall be provided in 10 bound paper copies together with annexes and electronic Word and "PDF" formats suitable for publication by the Commission's services on the Commission website. The executive summary and the conclusions shall also be provided in French and German along with a electronic slide presentation set suitable for the general public (PowerPoint compatible).

## **4.2 Meetings**

### **Kick-off meeting**

A first meeting will be organised by the Commission's services at the Commission's premises in Brussels during the week following the signature of the contract by both parties and before the contractor starts the study. Minutes of the meeting will be drafted by the contractor and agreed upon by the parties within 3 weeks.

**First report meeting**

A second meeting during which the contractor will present the first interim study report (legal aspects) shall be held within 3 weeks following the submission of the first interim study report. It will be organised by the Commission's services at the Commission's premises in Brussels. Minutes of the meeting will be drafted by the contractor and agreed upon by the parties within 3 weeks.

**Second report meeting**

A third meeting during which the contractor will present the second interim study report (economic aspects) shall be held within 3 weeks following the submission of the second interim study report. It will be organised by the Commission's services at the Commission's premises in Brussels. Minutes of the meeting will be drafted by the contractor and agreed upon by the parties within 3 weeks.

**Draft final report meeting**

A fourth meeting will be held within 3 weeks following the submission of the draft final report during which the contractor will present the draft final report and the organisation of the workshop will also be discussed. The meeting will be organised by the Commission's services at the Commission's premises in Brussels. Minutes of the meeting will be drafted by the contractor and agreed upon by the parties within 3 weeks.

**Final report meeting**

A fifth meeting will be held within 3 weeks following the submission of the final report during which the contractor will present the final report. The meeting will be organised by the Commission's services at the Commission's premises in Brussels. Minutes of the meeting will be drafted by the contractor and agreed upon by the parties within 3 weeks.

Other steering meetings will be organised by the Commission's services at the Commission's premises in Brussels should the need arise.

### 4.3 Timetable

Deliverable ↓	Meeting ↓	Week/ Month →											
	Kick-off meeting	1 week											
First interim study report			2 months										
	Meeting to present interim report			+3 weeks									
Second interim study report						5 months							
	Meeting to present second interim report						+3 weeks						
Draft final study report										9 months			
	Meeting to present draft final report										+ 3 weeks		
Workshop												10/11 months	
Final study report													12 months
	Meeting to present final report												+ 3 weeks

### 5. TERMS OF APPROVAL OF REPORTS

Upon reception of each study report, the Commission will have 30 calendar days in order to:

- Approve the report, with or without comments or reservations
- Or
- Reject the report and request a new report.

In the absence of observations from the Commission within the deadline, all reports will be considered as having been approved.

Within 30 calendar days of receiving the Commission's observations, the Contractor will submit new draft reports taking full account of these observations, either by following them precisely, or by explaining clearly why he did not. The new report shall likewise be subject to the above provisions.

## **PART 2: ADMINISTRATIVE DETAILS**

### **1. ELIGIBILITY REQUIREMENTS**

All **requirements** related to the **submission of a tender**, as below listed, are detailed in the invitation to tender (see sections 2, 4 and 8 of the invitation to tender):

- *Address and deadline for submission of the tender*
- *Presentation of the offer and Packaging*
- *Opening of the Tenders*

### **2. ADMINISTRATIVE REQUIREMENTS**

A service provider may consider submitting an offer as a single entity or decide to collaborate with other service providers to present a bid: either by submitting a joint offer or through subcontracting. Offers may also combine both approaches.

#### **2.1 Different ways to submit an offer**

**Please pay particular attention to options 1 to 4 below, which describe the different ways of submitting an offer and make sure that ALL documents and proofs required with regard to YOUR offer are submitted.**

**Option 1:** Submission by **one tenderer: Private / Public entities / Individual.**

**Option 2:** Submission by **partners** as defined under section 2.2 below.  
One must be designated as **Lead contractor**.

**Option 3:** Submission by one tenderer with subcontractors as defined under section 2.2 below

**Option 4:** Submission by partners (one must be designated as Lead contractor) **with subcontractors** as defined under section 2.2 below

#### **2.2 Joint Offers and Subcontracting**

##### **Joint offers**

A joint offer is a situation where an offer is submitted by a group of tenderers. Tenderers of the group will be regarded as **partners**.

Tenderers of the group, if awarded the contract, will have an equal standing towards the contracting authority in executing the contract.

The partnership may take the form of:

- a *new legal entity*. In that case, the new entity shall contract with the Commission
- or
- a *power of attorney signed by authorised representatives of all partners* designating one of the partners as Lead Contractor (Annex 5 – Power of attorney). The Lead Contractor of the partnership (if awarded the contract) shall sign the contract with the Commission.

In both cases, all partners shall be considered as tenderers and shall **assume joint and several liability towards the European Commission for the performance of the contract as a whole**.

### **Subcontracting**

Subcontracting is a situation where a contract is to be established between the Commission and a service provider and where this service provider, in order to carry out the contract, enters into legal commitments with other legal entities for performing part of the tasks foreseen in the contract.

The tenderer submitting the offer, if awarded the contract, shall become the sole contractor and shall assume **full liability towards the European Commission for the performance of the contract as a whole**. The other service providers will be regarded as subcontractors.

Subcontracting is subject to the provisions of Article II.13 of the model contract annexed to the invitation.

## **2.3 Identification of the tenderer – List of Forms & Evidences Required**

### **Options 1/2/3/4 – documents to be provided by the tenderer(s) only:**

- **Annex 1:** Administrative identification form (filled in and signed by an authorised representative)
- **Annex 2:** 'Legal entity' form (filled in and signed by an authorised representative) supported by **relevant evidences** according to the entity concerned (i.e. private/public/individual).

*Standard forms in each EU language are available at:*  
[http://europa.eu.int/comm/budget/execution/legal\\_entities\\_fr.htm](http://europa.eu.int/comm/budget/execution/legal_entities_fr.htm)

- **Annex 3:** Bank identification form (filled in and signed by an authorised representative of the tenderer and his banker)

*Standard forms in each EU language are available at:*  
[http://europa.eu.int/comm/budget/execution/ftiers\\_fr.htm](http://europa.eu.int/comm/budget/execution/ftiers_fr.htm)

- **Annex 4:** Exclusion criteria and **non conflict of interest form** (filled in and signed by an authorised representative)
- **Legible copy of the statutes of the company for public/private entities**
- **Legible copy of the notice of appointment of the person authorised to represent the tenderer in dealing with third parties.**

### **Options 2 and 4 – ADDITIONAL documents to be provided by all partners**

- **Annex 5:** Power of attorney (filled in and signed by an authorised representative)

### **Options 3 and 4 : documents to be provided by Subcontractors**

- **Annex 1:** as described above.

- **Annex 4:** Exclusion criteria and **non conflict of interest form** (filled in and signed by an authorised representative)
- **Annex 6:** Letter of intent from each subcontractor (signed by an authorised representative) to confirm their willingness, availability and capacity to perform the assigned tasks.

### **3. SIGNATURE OF THE TENDER**

**Tenders must be signed** by the tenderer's authorised representative or representatives (preferably in blue ink)

### **4. OFFER PRESENTATION**

All tenders must be clear, complete and consistent with all the requirements laid down in the tendering documents and **presented in 3 sections** as follows:

#### **4.1 Administrative Section**

All **requirements** related to the **submission of a tender**, as below listed, are detailed in the invitation to tender:

- *Address and deadline for submission of the tender*
- *Presentation of the offer and Packaging*
- *Opening of the Tenders*

Please note that the absence of the information required in this section, as well as evidence or documents requested in the tender documents (invitation, tender specifications and model contract) may disqualify the offer.

#### **4.2 Technical Section**

This section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract.

Attention is also drawn to the award criteria, which define those parts of the technical offer to which the tenderers should pay particular attention. The technical offer should address all matters laid down in the specifications and should include models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender. Tenderers must include in their bids the technical specifications set out in Part 1 above, giving an answer to each of the points mentioned with regard to methodology, deadlines and organisation.

It must meet the technical specifications set out above and provide, as a minimum, all the information needed for the purpose of awarding the contract.

#### **4.3 Financial Section**

The price offer shall fulfil all below requirements:

- A **total** fixed price expressed **in euro** must be included in the tender.
- The contract prices shall **be firm and not subject to revision**.
- Prices should be quoted **free of all duties, taxes and other charges**, i.e. also free of VAT, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965

(OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

- The price of the contract shall be subject to the terms set in Article I.3 of the model contract attached.
- The type of costs included in the price offer must fall within the scope of these Tender specifications
- The price **must be** broken down (showing clearly unit prices and quantities) into the following categories<sup>8</sup>:

(a) Professional fees: must cover all expenditure incurred in the performance of the contract with the exception of those under (b) and (c) below. The labour cost for each category of staff engaged in the project must be specified. The daily rate for labour of each member of staff and the total number of days each member of staff will contribute to the work should be provided.

(b) Travel and Subsistence Costs: broken down by category.

(c) Other Costs (if applicable): broken down by category.

The part that the tenderer intends to subcontract shall be precisely indicated and detailed.

The estimated budget for this contract is EUR 290000

The Financial offer shall be submitted in a **separate envelope**, upon which shall be written the reference of the call for tender as indicated in the Invitation, and with the clear **mention “Financial Bid”**

## **5. EVALUATION OF TENDERS**

The evaluation of tenders will be done in accordance with the following subsequent steps:

Once the Commission has verified that the tenderer is not in one of the situations covered by the exclusion criteria (first step, see point 5.1 below) and that he has the appropriate capacity to perform the contract on the grounds of the selection criteria (second step, see point 5.2 below), it will assess the offer on the basis of the award criteria (third step, see point 5.3 below).

### **5.1 Exclusion Criteria / Grounds for exclusion of Tenderers**

**5.1.1** Pursuant to Article 45(2) of Council Directive 2004/18/EC and to Article 93(1) of the Financial Regulation, the Commission will exclude tenderers from participation in the procurement procedure if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any

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<sup>8</sup> Where several service providers (including subcontractors) are involved, clear **subdivision by service providers must be provided**

- analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
  - (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
  - (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
  - (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
  - (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation .

Points (a) to (d) of the first subparagraph shall not apply in the case of purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

For the purpose of the correct application of the above paragraph, the candidate or tenderer, whenever requested by the contracting authority, must:

- a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity,
- b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1 of Article 93 of the Financial Regulation.

**5.1.2.** Pursuant to Article 45(2) of Council Directive 2004/18/EC and Article 94 of the Financial Regulation, contracts may not be awarded to tenderers who, during the procurement procedure:

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information;
- (c) find themselves in one of the situations of exclusion, referred to in Article 93(1) of the Financial Regulation, for this procurement procedure.

**5.1.3. Tenderers – including partners and sub-contractors if any - shall provide a declaration** on their honour (see Annex 4), duly signed and dated, stating that they are not in one of the situations referred to in Article 93 or 94 of the Financial Regulation. The tenderers must undertake to inform the Commission, without delay, of any changes with regard to these situations after the date of submission of the tender.

**5.1.4. In addition, ONLY the tenderer to whom the contract is to be awarded shall confirm the declaration by providing, within a time-limit defined by the contracting**

authority and preceding the signature of the contract, the following evidences (if the tender is proposed by partners, these evidences must be submitted by each partner):

- 1) The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.
- 2) Where the document or certificate referred to in the first subparagraph is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

Depending on the national legislation of the country in which the tenderer is established, the documents referred to in paragraphs 2.3 and 2.4 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

In case of doubt on the declaration on the honour provided by the subcontractor(s) in accordance with the indications of point 5.1.3 above, the contracting authority shall request the evidence referred to in **points 1) and 2) above from the subcontractor(s)**.

#### **5.1.5. Administrative and financial penalties**

1. By returning the form in **Annex 4**, duly signed, tenderers confirm that they have been notified of the following points:

Each institution has a central database containing information on tenderers who have been in one of the situations described under 5.1.1 and 5.1.2 above. The sole purpose of this database is to ensure, in compliance with Community rules on the processing of personal data, that the above-mentioned cases of exclusion are applied correctly. Each institution has access to the databases of the other institutions.

2. In accordance with Article 96 of the Financial Regulation the contracting authority may impose administrative or financial penalties on the following:
  - (a) candidates or tenderers in the cases referred to in point (b) of Article 94 of the Financial Regulation;
  - (b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

In all cases, however, the contracting authority must first give the person concerned an opportunity to present his observations.

3. The penalties referred to in paragraph **2** shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:

- (a) exclusion of the candidate or tenderer or contractor from the contracts and grants financed by the Community budget for a maximum period of ten years; and/or
- (b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.

4. In accordance with Article 133 of the Regulation laying down the rules for the implementation of the Financial Regulation, the cases referred to in point e) of 5.1.1. above shall be the following:

- (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by Council Act of 26 July 1995 (OJ C 316, 27.11.1995, p. 48);
- (b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997 (OJ C 195, 25.6.1997, p. 1);
- (c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ L 351, 29.12.1998, p. 1);
- (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ L 166 of 28 June 1991, p. 77).

5. Pursuant to article 133a of the Regulation laying down the rules for the implementation of the Financial Regulation, in order to determine duration of exclusion and to ensure compliance with the principle of proportionality, **the institution responsible** shall take into account in particular the seriousness of the facts, including their impact on the Communities' financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express their views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 95(2) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 93(3) of the Financial Regulation.

6. The period referred to in Article 93(3) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:

- (a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b) and (e) of Article 93(1) of the Financial Regulation;
- (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 93(1)(c) of the Financial Regulation.

That period of exclusion may be extended to ten years in the event of a repeated offence within five years of the date referred to in points (a) and (b), subject to paragraph 5.

7. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 93(1) of the Financial Regulation.

8. Pursuant to article 134b of the Regulation laying down the rules for the implementation of the Financial Regulation, without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Community budget for a maximum of five years from the date on which the infringement is established as confirmed following an adversarial procedure with the contractor.

That period may be extended to ten years in the event of a repeated offence within five years of the date referred to in the first subparagraph.

9. Tenderers or candidates who have made false declarations, have committed substantial errors, irregularities or fraud, may also be subject to financial penalties representing 2% to 10% of the total estimated value of the contract being awarded.

Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2% to 10% of the total value of the contract in question.

That rate may be increased to 4% to 20% in the event of a repeat infringement within five years of the date referred to in the first subparagraph of paragraph 8.

- i. The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in [Article 133a\(1\)](#) of the Regulation laying down the rules for the implementation of the Financial Regulation.

## 5.2 Selection criteria

The following criteria will be used to select the tenderers.

If the tender is submitted by partners (as defined under section 2.2 above) these criteria must be fulfilled by each partner.

Documentary evidence of the tenderers' claims in respect of the below-mentioned criteria is required. The tender should also contain any other document that the tenderer(s) wish(es) to include by way of clarification.

### 1. Professional Information

The tenderer must provide evidence of enrolment (declaration or certificates) in one of the professional or trade registers, in country of establishment.

### 2. Financial and Economic capacity

Proof of financial and economic standing may be furnished by one or more of the following references:

- annual accounts, balance sheet or extracts there from where publication of the balance sheet is required under company law in the country of establishment;
- statement of the undertaking's overall turnover and its turnover in respect of the services to which the contract relates for the previous three financial years;

If, for some exceptional reason which the Commission considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Commission considers appropriate. In any case, the Commission must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity

### 3. Technical Background

All tenderers must provide evidence of their technical background:

1. Knowledge of the tenderer, partners and subcontractors of the audiovisual sector and expertise in economic and legal and analysis and, in particular, in the European regulatory measures to promote audiovisual works (during the last 3 years).
2. Experience of proposed team members in the specific domain of this study: concise but informative curricula vitae of all professional team members, showing relevant experience in the audiovisual sector for the last 3 years, must be included with the tender. A staff chart of the organisation should also be included.
3. Geographical coverage provided by the staff expertise.

Documentary evidence of the tenderers' claims in respect of the above-mentioned criteria may include, for example: lists of studies, researchs, previous projects and contracts etc.

### 5.3 Award criteria

Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under **Articles 93, 94 and 96(2)(a)** of the Financial Regulation, has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders.

#### 5.3.1 Technical criteria

The tenders will be evaluated following the award criteria outlined below producing a total score out of 100 points.

<p>(a) Understanding of the tasks required in relation to the tender</p> <ul style="list-style-type: none"> <li>• Understanding of the context (Part 1, point 1)</li> <li>• Understanding of the objectives of the study (Part 1, point 2)</li> <li>• Outline of the way in which the tenderer intends to present the application of procedures and indicators (Part 1, point 2.2.4)</li> </ul> <p><b><u>(All the above sub-criteria are of equal relative importance)</u></b></p>	<p>(Max. 30 points)</p>
<p>(b) Technical content of the tender</p> <ul style="list-style-type: none"> <li>• Effectiveness of the methodology and tools to collect economic and legal information (Part 1, points 2.2.1 and 2.2.2).</li> <li>• Soundness and appropriateness of the proposed analysis tools (Part 1, points 2.2.1 and 2.2.2).</li> <li>• Effectiveness of the indicators and monitoring procedures (Part 1, point 2.2.3) to achieve the "specific objectives" of the study (Part 1, point 2.2).</li> </ul> <p><b><u>(All the above sub-criteria are of equal relative importance)</u></b></p>	<p>(Max. 60 points)</p>
<p>(c) Appropriate allocation of human and budgetary resources</p>	<p>(Max. 10 points)</p>

**Minimum attainment per criterion :**

Offers scoring less than 50% for any criterion will be deemed to be of insufficient quality and eliminated from further consideration.

**Minimum attainment overall:**

Offers scoring less than 60% after the evaluation process will be considered to be of insufficient quality and eliminated from the following phase.

#### 5.3.2 Price

Price offers must comply with all requirements set under Part II – section 4.3 above.

## **6 AWARD OF THE CONTRACT**

The Contract shall be awarded to the tenderer offering the best value for money, which will be the one with the best quality-price ratio, taking into account the awarding criteria

listed in point 5.3. The qualitative score obtained for the technical criteria will be divided by the total price of the tender.

## **7. PAYMENT AND STANDARD CONTRACT**

Payments under the contract shall be made in accordance with articles I.4 and II.4 of the model contract attached.

Depending on the financial solidity of the tenderer, payment of the pre-financing may be made conditional upon the furnishing by the Contractor of a financial guarantee.

In any case, a financial guarantee shall be required for the payment of pre-financing exceeding EUR 150 000. The guarantee shall be supplied by a bank or an authorised financial institution. The guarantee shall be denominated in Euro. The guarantee shall be released as and when the pre-financing is deducted from interim payments (if any to be selected by the unit) or payments of balances to the contractor in accordance with the terms of the contract.

## **8. VALIDITY OF THE OFFER**

Period of validity of the tender shall be **9** months from the closing date given above.

## **9. ADDITIONAL PROVISIONS**

- Changes to tenders will be accepted only if they are received on or before the final date set for the receipt of tenders.
- Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.
- No information of any kind will be given on the state of progress with regard to the evaluation of tenders.
- All documents submitted by tenderers will become property of the Commission and will be regarded as confidential.

## **10. LIQUIDATED DAMAGES**

See article II.16 of the model contract

## **11. NO OBLIGATION TO AWARD THE CONTRACT**

Initiation of a tendering procedure imposes no obligation on the Commission to award the contract. Should the invitation to tender cover several items or lots, the Commission reserves the right to award a contract for only some of them. The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the contract.

## **12. RESULTS**

The results of the service must be forwarded to the Commission of the European Communities in Brussels. **The copyright will belong to the Commission;** the Commission will in particular have the right to publish the results.

### **13. DISCLAIMER**

The following sentence is to be prominently displayed on the cover of each working paper and the final report of the study. The disclaimer should also be incorporated into the introduction of each working paper and final report.

**The opinions expressed in this study are those of the authors and do not necessarily reflect the views of the European Commission.**

**PART 3: ANNEXES**

**ANNEX 1: ADMINISTRATIVE IDENTIFICATION FORM**

<b><u>IDENTIFICATION OF THE TENDERER</u></b> <i>(TO BE COMPLETED BY THE TENDERER)</i>	
<b><u>IDENTITY</u></b>	
Name of tenderer	.....
Legal form of tenderer	.....
Date of registration	.....
Country of registration	.....
Registration number	.....
VAT number	.....
<b><u>ADDRESS</u></b>	
Address of Registered Office of the tenderer	..... .....
When appropriate, administrative address of tenderer for the purposes of this invitation to tender	..... .....
<b><u>CONTACT PERSON</u></b>	
Name	.....
Forename	.....
Title (e.g. Dr, Mr, Mrs)	
Position (e.g. Manager)	
Telephone number	
Fax number	
e-mail address	
Internet address	
Other	
<b><u>NAMES OF LEGAL REPRESENTATIVES</u></b>	
And of other representatives of the tenderer who are authorised to sign contracts with third parties	..... .....

DECLARATION BY THE **AUTHORISED REPRESENTATIVE** OF THE ORGANISATION<sup>9</sup>:

*I, THE UNDERSIGNED, CERTIFY THAT THE INFORMATION GIVEN IN THIS TENDER IS CORRECT AND THAT THE TENDER IS VALID.*

Name	.....
Forename	.....
Title (e.g. Dr, Mr, Mrs)	.....
Position (e.g. Manager)	.....
Telephone number	.....
Fax number	.....
e-mail address	.....
Internet address	.....
Other	.....

Date of signature:

.....

Signature and Name (in capital letters):

.....

---

<sup>9</sup> This individual must be included on the list of legal representatives; otherwise the signature on the tender will not be valid.

## **ANNEX 2: LEGAL ENTITY FORM**

**As required in PART II under section 2.3 of the tender specifications**

Standard Documents may be found at:

[http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)

### **ANNEX 3: BANK IDENTIFICATION FORM**

**As required in PART II under section 2.3 of the tender specifications**

Standard Documents may be found at:

[http://europa.eu.int/comm/budget/execution/ftiers\\_fr/htm](http://europa.eu.int/comm/budget/execution/ftiers_fr/htm)

**ANNEX 4: EXCLUSION CRITERIA AND NON CONFLICT OF INTEREST FORM**

**EXCLUSION CRITERIA AND NON CONFLICT OF INTEREST FORM**

*SMART 2007/0001*

The undersigned: .....

Name of the company/organisation: .....

Legal address: .....

.....

Registration number: .....

VAT Number: .....

Name of the signatory of this form (authorised to represent the tenderer vis-à-vis third parties and acting on behalf of the aforementioned company or organisation)

.....

.....

Declares on his honour that the company or organisation that he represents:

- is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- has not been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;

- has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;

- has fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

- has not been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

- is not currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation..

**In addition**, the undersigned declares on his honour:

- that on the date of submission of the tender, the company or organisation he represents and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; he undertakes to inform the Commission without delay of any change in this situation which might occur after the date of submission of the tender;
  
- that the information provided to the Commission within the context of this invitation to tender is accurate, truthful and complete.
  
- By signing this form, the undersigned acknowledges that he is aware of the administrative and financial penalties described under 5.1.5 of the specifications.

**Full name**

**Date**

**Signature**

.....

**ANNEX 5: POWER OF ATTORNEY / AGREEMENT BETWEEN PARTNERS**

**(DESIGNATING ONE OF THE PARTNERS IN A JOINT OFFER AS LEAD CONTRACTOR AND GIVING A MANDATE TO IT)**

We the undersigned :

- Signatory 1 (Name, Function, Company, Registered address, VAT Number)
- Signatory 2 (Name, Function, Company, Registered address, VAT Number)
- .....
- Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company,

HEREBY AGREE AS FOLLOWS:

(1) The European Commission has awarded « **the Contract** » to Company 1, Company 2, ..., Company N (« **the consortium – if relevant**»), based on the joint offer submitted by them on ... .. for the provision of services for ...

(2) As co-signatories of the Contract, all partners :

(a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.

(b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(3) To this effect, the partners designate Company X as **Lead contractor**.

*[N.B.: The Lead contractor has to be one of the partners]*

(4) Payments by the European Commission related to the Supplies or the Services shall be made through the Lead contractor's bank account .*[Provide details on bank, address, account number, etc.]*.

(5) The partners grants to the Lead contractor all the necessary powers to act on their behalf in connection with the Services. This mandate involves in particular the following tasks :

(a) The Lead contractor shall sign any contractual documents—including the Contract, and Amendments thereto—

and issue any invoices related to the Services on behalf of the partners.

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(b) The Lead contractor shall act as single point of contact for the European Commission in connection with the Services to be provided under the Contract. It shall co-ordinate the provision of the Supplies and/or the Services by the partners to the European Commission, and shall see to a proper administration of the Contract. Any modification to the present agreement / power of attorney shall be subject to the European Commission's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the partners towards the European Commission in connection with the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in ..... on .....

Name  
Function  
Company

Name  
Function  
Company

Name  
Function  
Company

**ANNEX 6: SUBCONTRACTOR / LETTER OF INTENT**

*SMART 2007/0001*

The undersigned:

.....

Name of the company/organisation:

.....

Address:

.....

Declares hereby the intention to collaborate in the execution of the tasks subject to the above call for tender, in accordance with the terms of the offer to which the present form is annexed, if the contract is awarded to ... .... (*name of the tenderer*)

**Full name**

**Date**

**Signature**

.....