



EUROPEAN COMMISSION
Directorate-General for Education and Culture
Directorate Culture, Audiovisual policy and Sport
Audiovisual policy

Public open tender DG EAC 03/04: Study on co-regulation measures in the media sector

Contracting Authority: European Commission

Specifications

1. ELIGIBILITY

This invitation to tender is open to Tenderers from the Member States of the European Union and the European Economic Area, as well as states covered by the Public Procurement Agreement concluded within the World Trade Organisation, in accordance with the principle of reciprocity.

2. COSTS

The costs of dispatching the tender shall be borne by the Tenderer.

3. PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES

The Communities are exempt from customs duties, indirect taxes and sales taxes under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ No 152, 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 immediate exemption. The successful Tenderer shall be given the necessary instructions by the Contracting Authority.

4. VARIANTS

Tenderers may not submit bids for only part of the services required. Variants are not allowed.

5. LOTS

Not Applicable.

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6. SUB-CONTRACTING

Sub-contracting is permitted, provided that the value of the services to be sub-contracted do not exceed 50% of the value of the contract. All subcontracting must be approved by the Contracting Authority, either by accepting the Contractor's offer, or, if proposed by the Contractor after contract signature, by an addendum to the contract. Such an addendum will only be agreed, exceptionally, where such sub-contracting is judged by the Contracting Authority to be necessary to complete the project, and does not lead to distortion of competition.

The Tenderer must indicate clearly in their methodology, which parts of the work will be sub-contracted, and the identity of all subcontractors undertaking more than 10% of the work by value. Full details of such subcontractors must also be given, in accordance with point 6, below.

7. IDENTITY OF THE TENDERER

The Tenderers must complete Annex 3, Information Concerning the Tenderer. This form must be signed by the Tenderer or a person duly authorised by them.

A completed and signed Annex 3 must also be provided for each sub-Contractor proposed to undertake more than 10% of the work, by value.

In Annex 3, Tenderers must indicate in which state they have their headquarters or domicile. In addition, they must present the supporting evidence which is normally acceptable under their own law to demonstrate their registration at this address. Supporting evidence is not necessary for sub-Contractors. For natural persons: a copy of a birth certificate, identity card, passport or driving licence must be produced.

All Tenders must be submitted by a clearly identified Tenderer with a legal existence. Tenders from consortia are possible, but if the consortium does not have a legal existence, the leader of the consortium must be clearly identified and will be regarded as the Tenderer. If the Tenderer is awarded the contract, the Contracting Authority will sign a contract with them, and only with them. The other members of the consortium will be regarded as sub-contractors for the purposes of the Tender and the Contract.

8. EXCLUSION CRITERIA

(1) Tenderers shall be excluded from participation in a 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 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 judgment 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 judgment 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) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

(2) Tenderers must certify that they are not in one of the situations listed above, by completing and signing the form in Annex 4, Certification with respect to the Exclusion Criteria.

(3) Tenderers must **also** provide **evidence** that the Tenderer is not in any of the situations described in points **(a), (b), (d) and (e)** above. This evidence must be in one of the forms described in (4), (5) and (6), below.

(4) For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

(5) For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

(6) For any of the situations (a), (b), (d) or (e), where any document described in (4) or (5) above is not issued in the country concerned, 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.

(7) Contracts may not be awarded to candidates or 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 tender procedure or fail to supply this information.

(8) Administrative or financial penalties may be imposed by the Contracting Authority on Tenderers who are in one of the cases of exclusion provided for above, in accordance with Articles 93, 94 & 96 of the Financial Regulation (Council Regulation 1605/2002 of 25/6/02) and Article 133 of the Implementing Regulation (Commission Regulation 2342/2002 of 23/12/02)]

9. SELECTION CRITERIA

Tenderers must provide evidence of economic, financial, technical and professional capacity. Tenderers who do not provide the documentation specified, or who are judged, on the basis of the documentation provided, not to have fulfilled the criteria specified below, will be excluded.

9.1. Economic & Financial capacity

- 9.1.1. The Tenderer must demonstrate sufficient economic and financial resources to be able to execute the tasks within the time schedule specified in the Terms of Reference and according to the payment schedule specified in the Draft Contract in Annex 2.
- 9.1.2. Where the Tenderer wishes to sub-contract or otherwise rely on the capacities of other entities, it must in that case prove 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.
- 9.1.3. The following additional documents must also be provided in evidence of economic and financial capacity:
 - 9.1.3.1. appropriate statements from banks or evidence of professional risk indemnity insurance;
 - 9.1.3.2. the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the balance sheet is required under the company law of the country in which the economic operator is established;
 - 9.1.3.3. a statement of overall turnover and turnover concerning the services covered by the contract during a period which may be no more than the last three financial years.

9.2. Technical and Professional capacity

- 9.2.1. The Tenderer must comply with the following criteria:
 - 9.2.1.1. Adequate experience in the legal and empirical research, especially in relation to media as described at point 5.1 of annex 1 “Terms of Reference”.
 - 9.2.1.2. Proved ability to create a team capable of carrying out the work required in the foreseen countries.
- 9.2.2. The Contracting Authority shall accept the following as evidence of compliance with the above criteria:
 - 9.2.2.1. the educational and professional qualifications of the Tenderer and/or those of the firm's managerial staff and, in particular, those of persons responsible for providing the services
 - 9.2.2.2. a list of the principal services provided in the past three years, with the sums, dates and recipients, public or private
 - 9.2.2.3. a description of the technical equipment to be employed by the firm for performing the contract
 - 9.2.2.4. a description of the measures employed to ensure the quality of services, and a description of the firm's study and research facilities
 - 9.2.2.5. an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control
 - 9.2.2.6. a statement of the average annual manpower and the number of managerial staff of the service provider or Contractor in the last three years
 - 9.2.2.7. proof that the Tenderer is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

10. AWARD CRITERIA

The contract will be awarded to the Tenderer submitting the bid offering the best value for money, on the basis of the following criteria:

10.1. Qualitative criteria (100 points)

- 10.1.1. Adequacy of the proposed methodology, work-plan and human resources to carry out in the legal analysis (45 points)
- 10.1.2. Adequacy of the proposed methodology, work-plan and human resources to carry out in the empirical research (50 points)
- 10.1.3. Quality of the representative sample proposed for the empirical research (5 points) – see “Terms of reference”, point 2.3, question 4.

The above criteria will be assessed on the basis of:

- (a) a methodology which the Tenderer must provide, which will set out how the Tenderer intends to achieve the objective and results set out in the Terms of Reference, covering such points as: time schedule, organisation of work, allocation of staff to different tasks, preliminary assessment of likely difficulties and likely results, understanding of the purpose and nature of the tasks to be undertaken;
- (b) the CVs of the staff proposed by the Tenderer, together with the specification of the role to be performed by each member of staff;
- (c) the coherence of the completed form in Annex 5, Price and Estimated Budget Breakdown, with the proposed methodology in the “Terms of Reference”.
- (d) the outcomes of an interview (if held) concerning the proposed methodology.

Each criteria will be evaluated according to the following scale:

- Excellent = 5/5 of the points corresponding to the relevant criterion,
- Good = 4/5 of the points corresponding to the relevant criterion,
- Sufficient = 3/5 of the points corresponding to the relevant criterion,
- Insufficient = 2/5 of the points corresponding to the relevant criterion,
- Poor = 1/5 of the points corresponding to the relevant criterion.

Tenderers who score a total of fewer than 65 points for the qualitative criteria will be rejected. In addition, any Tenderer who scores below 50% of the maximum number of points available for any one criterion will be rejected

10.2. The price (50 points)

The lowest acceptable offer will receive the maximum number of points. The remaining offers will receive a number of points proportionate to the difference between their offer and the lowest acceptable offer.

11. NO OBLIGATION TO AWARD A CONTRACT

Initiation of a tendering procedure imposes no obligation on the Contracting Authority to award the contract. The Contracting Authority 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. CONTRACT

Tenders must be drawn up in accordance with the model contract attached to these Specifications (Annex 2). The Tenderer accepts the terms set out in the model contract.

13. GUARANTEE FOR PRE-FINANCING

The Contracting Authority will require the Contractor to provide a guarantee to cover the full amount of the pre-financing if this exceeds €50,000. The guarantee shall be supplied by a bank or an authorised financial institution. It may be replaced by a joint and several guarantee by a third party. The guarantee shall be denominated in Euro. It shall have the effect of making the bank or financial institution or the third party stand as irrevocable collateral security, or first-call guarantor of the Contractor's obligations.

The guarantee shall be released at the time of the interim payment, in accordance with the terms of the contract.

14. RENEWAL OR EXTENSION

The contract may not be renewed. Amendments may be made to the contract (for example, extension in time) only where the amendment is judged by the Contracting Authority to be necessary for the completion of the project, and where the reason for the amendment is beyond the control of the Contractor.

15. PUBLICATION

Rights concerning the reports and those relating to their reproduction and publication will remain the property of the European Commission. No document based, in whole or in part, upon the work undertaken in the context of this contract may be published except with the prior formal written approval of the European Commission.

16. ANNEXES

The following documents are annexed to these Specifications and form an integral part of them:

Annex 1: Terms of Reference

Annex 2: Draft Contract (for information)

Annex 3: Information concerning the Tenderer/Sub-contractor (one copy to be filled in and signed by the Tenderer and one copy for each Sub-contractor)

Annex 4: Certification with respect to the Exclusion Criteria (to be filled and signed by the Tenderer)

Annex 5: Price and Estimated Budget Breakdown (to be filled in and signed by the Tenderer)