

**Contract notice: OJEU S 98-159745**

**Invitation to tender No. ENER/C1/463-2011 concerning**

**"Support activities for assessment of progress in renewable energy and sustainability of biofuels, and the transposition of the RES Directive"**

*Time-limit for receipt of tenders: 15/07/2011*

**FREQUENTLY ASKED QUESTIONS**

**Updated 11/07/2011**

**Question 1.** We are considering to apply for **Lot 2** of tender ENER/C1/463-2011 on progress of renewable energy and sustainability of biofuels.

We have the following question:

In the tender specifications, reference is made to the 'Final report on the development of baseline data and methodology for reporting requirements for biofuels [Biofuels 2008 Baseline study]'. It is mentioned that this report will be available in Summer 2011.

As the **methodology** developed in the Baseline study is crucial in task 2 of Lot 2 (to determine the impact of increased use of biofuels), we were wondering if a **draft report of the Biofuels 2008 Baseline study** could already be made available to consortia willing to apply for this tender.

**Answer 1.** The tender specifications indeed refer to the final report of the Biofuels 2008 Baseline study that should be published in Summer 2011. This study is still being finalised and until it has been approved by the European Commission, it is unfortunately not possible to release it into the public domain. The tenderers should nevertheless note that the methodology description for task 2 included in the Tender specifications for Invitation to tender No. ENER/C1/463-2011 has already been drawn up to list all essential requirements for this reporting and it contains essential methodological guidance, considering among others, the Biofuels 2008 Baseline study, to facilitate the preparation of the methodology for task 2 of Lot 2.

- For data on quantities, types and origins of biofuels and bioliquids consumed in the EU, the methodological notes for task 2 of Lot 2 already specify the data sources to be used.

- For assessment of national measures in the EU Member States to respect the EU sustainability criteria for biofuels methodological notes for task 2

of Lot 2 also specify the data sources to be used for collection of this information.

- For assessment of national measures in the main third countries of supply (for full list of third countries to be considered refer to the last bullet point of the methodology notes for task 2 of Lot 2 on p. 15 of the Tender specifications) data sources are also suggested. For data collection in third countries the Contractors are invited to use local experts or travel to third countries to do fieldwork there, as referred to in article I.6 of the Tender Specifications.

- For assessment of the impacts on social sustainability in the EU and in third countries methodology description for task 2 of Lot 2 included in the Tender specifications already contains essential methodological guidance. The contractor will, among others, be required to compare the evolution and developments since 2008 in the EU and in third countries (for full list of third countries to be considered refer to the last bullet point of the methodology notes for task 2 of Lot 2 on p. 15 of the Tender specifications).

- For assessment of impacts from increased consumption of biofuels in the EU (listed on page 14 of the Tender specifications): some of these impacts have been quantified for 2008, for others – only qualitative assessment has been possible. As already noted in the methodology description on page 14 of the Tender specifications data on land use will be of key importance and these shall be sourced from the data sources listed in the methodology description on page 14. In absence of such reports for 2008, land use data for 2008 are based on estimates from various sources. Land use related and other data from the Biofuels 2008 Baseline study will become available once the final report of this is published by the European Commission.

**Question 2.** The procurement notice related to the above tender estimates a number of 200 man-days for **lot 1**. According to the tender specifications, the tasks of this contract will cover detailed conformity assessment of the Member States' national legal frameworks transposing the RES Directive and in addition to this, there will be need to provide technical, scientific and legal support in the context of complaints or infringed procedures.

Regarding technical assessments, the specifications mention that it is estimated to receive 15 to 30 requests and that each technical assessment will involve between 3 to 5 person-days. Based on this, these technical assessments will involve between 45-75 man/days (in case of 15 requests) to 90-150 man/day, in case of 30 requests. This means that the number of days left for the conformity assessment will be quite low. If as average the number of days consumed in these technical assessments will be 100 days there will be only 100 days for the conformity assessments for the whole 27 Member States. We believe this is not realistic and would appreciate to receive further information on how these numbers have been calculated or if it would be possible to increase the estimated number of days.

**Answer 2.** The number of requests (i.e. 15 to 30) is indicative and it should be treated as an estimation. As for the number of man days for each request, this is also an average estimation. The estimative character of this task is determined by the fact that the exact number of complaints/infringements where the consultants legal, scientific, technical input may be needed is unknown at this stage, hence can not be determined precisely.

**Question 3.** Can the budget for this work be disclosed (total and divided between Lots 1 and 2)?

**Answer 3.** Point I.7 of the Tender Specifications 'estimate of the amount of work involved' gives an estimation of the budget.

**Question 4.** In respect of Lot 1 (paragraph I.3 of Tender Specification): can the Financial Proposal be made by giving a fixed price on the assumption of the Task 1 conformity assessment studies being required on 15 Member States, and then a formula for calculating the increased fee applicable for every additional required Member State for which that conformity assessment needs to be carried out?

**Answer 4.** Section III.2.3 of the Tender Specifications clearly states that: "*Prices shall be fixed and not subject to revision during the performance of the contract.*" Therefore, including in the Financial Proposal a formula for calculating any part of the price is not acceptable.

**Question 5.** Paragraph I.3 of the Tender Specification notes in respect of Lot 1, Task 1: "... assessment studies will cover only legislation not included in the work carried out under [Contract ENER/C1/504-2009]." For the purposes of pricing a tender bid, how can we understand the amount of work required given that Contract ENER/C1/504-2009 appears to cover more or less the whole of Task 1 in the current contract.

**Answer 5.** An indication of the amount of work to be covered under this contract - namely approximately 15 Member States - is provided by Section I.3 of the Tender Specifications, more particularly under Description of Task 1.

**Question 6.** Will:  
a. (i) requests for technical notes regarding complaints and infringement proceedings (in Task 1, Lot 1), and  
b. (ii) Task 2  
only be required in respect of those Member States for which the approximately 15 Member states referred to in question 4 above.

**Answer 6.** Requests for technical notes regarding complaints and infringement proceedings may be asked for all 27 Member States. Task 2 will cover approximately 15 Member States; the tenderer should nevertheless bare in mind that, they may be asked, in exceptional cases, to provide translations of pieces of legislation adopted in one or few other Member States (those not included in the aforementioned 15 Member States).

**Question 7.** How many hours has the Commission considered to be included in a "man day" (III.2.3 of Tender Specifications)?

**Answer 7.** Point III.2.3 of Tender Specifications, requests the daily rates and total number of days (man/days), regardless of the number of hours per day.

**Question 8.** Please clarify what a "pre-financing" is.

**Answer 8.** **Please refer to Section II.2 of Tender Specifications and Article II.4.1 and I.4.1 of the Draft Contract for Lot 1. Please note that a pre-financing is not allowed under Lot 1 - as specified in the documents aforementioned; payments will be done by means of an interim payment and a balance payment.**

**Question 9.** Paragraph IV.2.2 of the Tender Specification Lot 1, sub-paragraph 3:  
a. Are 3 examples of previous work required per Member State or in total?  
b. What types of pieces of work will the Commission accept as examples (e.g. advice to clients / client briefings / articles).  
c. Is it necessary to submit a copy of the work product or simply a description of the work carried out?

**Answer 9.** a.) **The 3 samples of previous work are required in total.**  
b.) **Samples of pieces of previous work may be in the form of articles, studies, client briefings, etc. Please note this enumeration is not exhaustive.** c.) **A copy of the work product must be submitted.**

**Question 10.** Could you please confirm that the tender document should be one full bound document with no separately bound sections (for example the financial proposal)

**Answer 10.** **Please refer to Section III "Form and content of the Tender" of the Tender Specifications. There are no particular requirements with regard to the number of bound and/or stapled etc. documents which make up the tender. General requirements on the form of the tender refer to the fact that "a tender must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc...)" - Section III.1 of the Tender Specifications.**

**Question 11** Paragraph II.4. of the Tender Specifications: We (a law firm) and a technical consultancy (XYZ) plan to make a bid as informal consortium partners. We would head the project for Lot 1 (and sign the contract) using XYZ, where needed, as sub-contractors. XYZ would head the project for Lot 2 (and sign the contract) using our firm, where needed, as sub-contractors. Does the Commission consider this as an acceptable arrangement complying with Paragraph II.4?

**Answer 11.** **Yes, an arrangement such as the one described in your question is acceptable under the provisions of the Tender Specifications. In the**

**respective situation there will be 2 separate contracts signed with each head of the consortia: a contract for Lot 1, signed with the head of the winning consortia under Lot 1 and another contract for Lot 2, signed with the head of the winning consortia under Lot 2.**

**Question 12** Paragraph IV.2.2 of the Tender Specification Lot 1, sub-paragraph 1: Does the requirement for 5 years' experience in the field of European and National Energy apply to (i) the contractor as a whole; or (ii) the team in any Member State as a whole; or (iii) does each of the 2 legal analysts in each Member State need to have 5 years' such experience?

**Answer 12** According to Section IV.2.2 of the Tender Specifications, for Lot 1, the requirements for 5 years' experience included in point (1) refers to the project teams for each Member State; considering that the contractor's team must include at minimum 2 legal analysts for each Member State with sound legal expertise in renewable energy law, the 5 years' experience requirement is applicable to the respective legal analysts as well.

**Question 13** Paragraph I.3 1), Task 1 states as follows: "*The assessment studies will address approximately 15 Member States; this number is indicative. Member States to be covered by this contract will be communicated to the contractor at the kick-off meeting. It should be noted that the work under this contract will continue the work done under Contract ENER/C1/504-2009 (tender specifications referred to in Section I.1). .... It should also be noted that the assessment studies will cover only legislation not included in the work carried out under the aforementioned contract.*" Can the Commission please confirm the criteria for choosing the 15 Member States for which an assessment study will be required? Is there any reason why relevant national legislation to be assessed was not included in work carried out under Contract ENER/C1/504-2009, other than the timing of its adoption.

**Answer 13** The assessment studies under Task 1 will cover only the legislation not included in the work carried out under contract ENER/C1/504-2009. The late adoption of the legislation transposing the Renewable Energy Directive in Member States' legislation and/or late notification to the Commission of the respective adopted legislation are the reasons for not including the relevant national legislation in the work carried out under the aforementioned contract.

**Question 14** Paragraph I.3 of the Tender Specification Lot 1: Please can you confirm if the Task 1 conformity assessment (and corresponding translation of measures into English in Task 2) relates to the whole of the Renewable Energy Directive, or only to the provisions set out in the Introduction (Paragraph I.1): i.e. Articles 4, 17, 22 and 23.

**Answer 14** Both Task 1 and Task 2 relate to the whole of the Renewable Energy Directive, more precisely to those provisions that require transposition in the Member States' legislation (e.g. Article 23 of the Renewable Energy

**Directive refers to Commission's reporting obligation, therefore, the transposition of this article is not mandatory).**

**Question 15** Section IV.2.1. states that "For Lots 1 and 2, all tenderers must provide proof of their financial and economic capacity by means of the following documents: the balance sheets or extracts from balance sheets for the last three financial years, and a statement of overall turnover and turnover relating to the relevant services for the last three financial years." Could you please clarify "turnover relating to the relevant services"? For a law firm would that simply constitute "legal services"?

**Answer 15** **Yes, in the case of a law firm, "turnover relating to the relevant services" would refer to "legal services".**

**Question 16** According to the specification, page 29, the team should consist of at least two legal analysts per Member State. We would like to present an energy lawyer with broad experience in UK and Spain, is that possible? We would present two lawyers per country but one person would be allocated to Spain and UK.

The assessment will be done in relation to 15 Member States. Do we have to present the team for the 27 Member States?

**Answer 16** **Yes, the team presented by each tenderer must be able to cover 27 Member States as the names of the 15 Member States that will make the object of the conformity assessment will be communicated to the contractor later on, at the kick-off meeting. Additionally, the technical, scientific and legal support required under Task 1 in the situation of complaints or infringements may relate to any of the 27 Member States.**

**As for the first question, yes, the same lawyer can be member of several teams covering several Member States, provided he/she demonstrates by curricula vitae the fulfilment of the requirements in Section IV.2.2 point 1.**

**Question 17** Please could you advise if a subcontractor could proceed with a minor amendment-clarification in the declaration or is it a fixed text and must be signed as such?

An additional query with Annex 4 – would it be possible to change the wording in paragraph (a) as follows:

"are not subject to a conflict of interests **under applicable professional rules** in the context of this invitation to tender"?

**Answer 17** **No amendments are allowed to the text of the Annexes to the Tender Specifications. Please note that the Annexes must be completed and signed before submission to the Commission as part of the bid.**

**Question 18** You replied to my previous question (question 1 in FAQ) that no draft results will be released on the Biofuels 2008 Baseline study. In the tender specifications (TREN/D1/458-2009) it is specifically mentioned that this study should be working on methodologies to quantify e.g. social sustainability, impacts on commodity prices, impact on security of supply, impacts on other biomass using sectors.

Our concern is that we will not have a level-playing field with competitors who developed the methodology in the Baseline Study, and will now most likely also submit a proposal for this tender. As ‘approach and methodology’ is weighted very high in the award criteria (40/100), I would like to know if it is sufficient for us to refer to the Baseline study methodology to describe the methodology on the items covered in their work. Or do you expect us to propose a methodology ourselves, which may not be in line with the one elaborated in the Baseline study?

**Answer 18** **The scope of current tender in Lot 2 is much wider than the Biofuels 2008 Baseline study (TREN/D1/458-2009) and it does not only involve assessing the impacts of the EU biofuel consumption. Therefore the proposed methodology should cover all tasks outlined in the tender specifications for Lot 2 of the tender ENER/C1/463-2011. Assessment and evaluation of bids will also take place on the basis of detailed methodological proposal covering all requirements in each of the tasks specified in the tender specifications for Lot 2 of tender ENER/C1/463-2011.**

**The tenderers should also note that discussions, studies and work performed by various scientific and international bodies in the area related to assessment of impacts from biofuel policies (e.g. FAO, GBEP etc.), as well as indicators and methodologies for assessing these impacts has evolved quite significantly since 2008. Therefore the assessment of impacts listed in Task 2 of tender specifications for Lot 2 of the tender ENER/C1/463-2011 may consider the methodology used in Biofuels 2008 Baseline Study but it should not be limited to that methodology. The tenderers are therefore strongly encouraged to familiarise themselves with the latest international research, including relevant indicators for assessing the impacts from the biofuel/bioenergy production and to consider this work when elaborating their proposal for methodology.**

**Question 19** Is it already clear which impacts should be measured in a qualitative way (see also your reply to question 1 in FAQ “Some of the impacts have been quantified for 2008, for others – only qualitative assessment has been possible”)?

**Answer 19** **Articles 17 and 23 of Directive 2009/28/EC list various impacts that should be monitored and reported. The Commission would like to see as many as possible of these impacts quantified. The same methodology and indicators should be applied to all countries and regions assessed in the current study.**

- Question 20** Could you explain what is meant by “wider development issues”? (see tender specifications, p13, under impact on social sustainability.)
- Answer 20** **Article 17.7 of Directive 2009/28/EC already mentions some of the impacts that are specific for developing countries. The Commission would like to see that methodologies proposed by the tenderers adequately consider wide range of possible socio-economic impacts (positive and negative) resulting from production of biofuels or their feedstock in the EU and in main third countries of supply, some of which are developing countries. Such assessments should not only look at macro level impacts, but also consider local impacts.**
- Question 21** Tender specs, p 14, (e): “impact of increased demand on biomass using sectors”. Does this imply ALL non-energy biomass using sectors, excluding food, since this is covered in ‘availability of foodstuffs’?
- Answer 21** **In line with the methodology used in the National Renewable Energy Action plans (Commission Decision C (2009) 5174 point 4.6) the impact on and the interaction with other non-energy sectors (as food and feed industry, pulp and paper industry, construction industry, furniture industry etc.) should be analysed.**
- Question 22** What is the difference between a) impact on availability of foodstuffs at affordable prices ... (see p 13, under impact on social sustainability) and b) displacement, commodity price changes, impact on food security (see p 14, assessment of impact, under (a)) ?
- Answer 22** **The consultants are invited to approach these two reporting requirements addressed in Article 17.7 and Article 23.1 of Renewable Energy Directive (Directive 2009/28/EC) in an integrated and structured manner and to work out detailed methodology and assessment criteria that would address full range of issues and impacts referred to in these two articles.**
- Question 23** “Identifying geographical areas of high biodiversity not covered in Art 17(3)” (p14, (d)). This seems to be linked to the outcome of the on-going Framework contract n° ENER/C1/438-2010 TASK 4. Is this completely executed since this was a framework contract? If so, is the outcome of this TASK 4 available?
- Answer 23** The outcome of Task 4 under Framework Contract ENER/C1/438-2010 consists in the development of a methodology for assessing the lists of areas for protection of rare, threatened or endangered ecosystems or species submitted to the Commission, with a view to the purposes of Article 17(3)(b)(ii). Since such lists have not been submitted yet to the Commission for recognition purposes, the respective task has not been completed.
- Question 24** Would the current FAFA ( Financial Administrative Framework Agreement – available here: <http://www.fao.org/fileadmin/templates/europeanunion/documents/fafa.pdf>) supersede other provisions related to administrative matters of the tender – in particular the need for auditing financial operations I relation to the

implementation of activities ? For your information FAFA actually supersedes such provisions in many of the collaborative initiatives between FAO and the EU (for instance with DG DEV)

**Answer 24** Indeed, the EC and the United Nations have signed a FAFA (Financial Administrative Framework Agreement). However, point 6 of this Framework Agreement states that rules and procedures adopted by the United Nations apply for the procurement of any goods, works or services by the United Nations in the context of an *Action financed or co-financed by the Commission*.

In the case at hand, tender ENER/C1/463-2011, the Commission launched a call for tender within an open procedure, it is not an action financed or co-financed by the Commission. Therefore, it does not fall within the scope of the FAFA and the United Nations rules are not applicable.

The Commission will not audit the implementation by FAO of the execution of the project. The Commission will ask for services that will be reimbursed at the stipulated price by FAO, should this contractor be the winner of the tender, in the submitted tender application.

**Question 25** What would be the disbursement schedule of funds related to this tender?

**Answer 25** In accordance with Articles I.4.1 and I.4.2 of the tender specifications and Articles II.4.2 and II.4.3 of the Draft Service Contract for the above mentioned tender the disbursement schedule for Lot II is foreseen as follows: 1 interim payment following the approval of interim report at the latest 4 months after the signature of the contract and final payment corresponding to the remaining balance will be disbursed following approval of the final report which shall be presented at the latest 9 months after the signature of the contract.

**Question 26** According to the tender the analysis in lot 2, task 1 should be mainly based on the 2011 Member State reports submitted to the Commission. Should the analysis be based on the original reports submitted in the various community languages or on the English translations by the EC (or courtesy MS translations were available)?

**Answer 26** Translations of the Member State reports will be done by the Commission services and translations in English will be available depending on the date of submission of the report and translation deadlines. Meanwhile, wherever the tenderer has the capacity to work on the original language version of the Member State report, this should be done to gain more time for the analysis of these reports. As it is usually the case with national reports received from the Member States, only the original language versions are considered to be authentic ones and translations are only considered as a tool to facilitate the work.

**Question 27** We would like to engage an international body/organisation in our consortium. Would this be considered as a potential conflict of interest, given their international position on the topic?

**Answer 27** A position or work of an organisation on a subject related to the current tender does not *per se* constitute a conflict of interest. It is however important that all parties applying for this tender, including their sub-contractors, comply with the specific conditions set out in Article IV.1. of the Tender Specifications and II.3 of the Draft Service contract and sign the Declaration by the Tenderer provided in Annex 4 to the Tender Specifications.

**Question 28** Task 2 in Lot 2 of the tender specifications requires assessment of environmental, economic, and social impacts from increased use of biofuels in the EU. Does this impact assessment refer to realised impacts in 2009 and 2010 or more general to impacts that may take place e.g. by 2020 due to increased use of biofuels in the EU? I didn't find answer to this question from the Tender Specification or Frequently Asked Questions documents. I would be grateful for any specification related to this issue, as I find it highly relevant as regards to the approach to be proposed.

**Answer 28** The timescope for assessment of biofuels related impacts in this tender is 2009 and 2010, and 2011 if and where such information is available. This is clearly specified in the methodology part for task 2 of Lot 2 (see footnote 11 on p.14 and 15) of the tender specifications.

**Question 29** We are currently preparing a tender response to the ITT ENER/C1/463-2011 and have a question regarding the contract terms. We understand from the ITT that pre-financing is not an option under Lot 2, but can the Commission please confirm the % payments with regard to interim and final, as these do not appear to be correct in the draft Lot 2 Contract.

**Answer 29** In the case when pre-financing is not applicable (usually up to 30% of the contract value), the interim payment of up to 40% and the remaining balance to be disbursed at the end of contract corresponds to the remaining value of the contract. In this case the balance would be up to 60%, and not 30% as indicated in I.4.3. of the draft contract for Lot 2 of tender ENER/C1/463-2011. The same correction applies to the draft contract for Lot 1.

**Question 30** According to the Contract Notice, tenderers have to show “extensive and detailed knowledge and understanding about current EU and all Member States' policies related to the European renewable energy policy, proven by 3 samples of previous works carried out, that are relevant for the assessment studies and reports to be delivered within the tasks of this contract”.

Is it necessary to send these 3 samples as documents with the three proposals or would it suffice to provide a link to samples in the proposal, provided they are available in the internet?

**Answer 30** Short extract samples (1-2 pages) would still be appreciated with the proposal, but samples of previous work can be proved by providing the internet weblink to the respective articles/studies etc in the proposal.

**Question 31** As regards the national experts for each Member State in Lot 1, in case they are subcontracted to (on an "if needed basis") rather than being partners in the consortium, we were wondering whether it would be a problem if they are on two different proposals from two different consortiums?  
Since they are not consortium partners, but rather subcontractors, and not yet "involved" at the time the proposal is submitted, but rather would be called in case "their" MS would be among the countries to be assessed, and since we have not so far heard of any case in which this would have been a problem, we thought it would not.  
However, to be sure, could you please clarify this?

**Answer 31** According to Section IV.2.2., bullet point (1) of Tender Specifications, tenderers must confirm and demonstrate that their teams have the skills and experience to carry out the work under Lot 1, more specifically, the teams must have excellent skills and proven legal experience of at least 5 years in the field of European and national energy, particularly renewable energy, law [...]. The teams must consist of at least 2 legal analysts for each Member State. The Tender Specifications provisions do not make distinction between legal analysts being partners in the bidding consortium or sub-contractors; the position of the respective legal analysts in the consortium is left with the bidder.

**Question 32** In the general overview, reference is made to Art 23(4), which is about reporting of the EC on GHG emission savings and an estimation of how the result would change if co-products were accounted for using the substitution approach. When looking at the methodology described for Task 2 (p13-14), I understand that the GHG savings can be covered in the 'relative environmental benefits' mentioned in point b on p14. However on p14 (where all Art 23 requirements are listed) I don't see a reference to testing the substitution approach. Does this need to be included in the study?

**Answer 32** The assessment of GHG savings is required and it shall be performed as specified under Article 23.4. of the RES directive. These specifications are clearly elaborated in the description of tasks and methodology notes for Lot 2 on p.12-15 of the above tender specifications. The Commission has already included GHG savings analysis in its Renewable energy progress reports since 2009 (prepared in accordance with Directive 2003/30/EC). These reports are available on DG ENERGY website.  
[http://ec.europa.eu/energy/renewables/reports/reports\\_en.htm](http://ec.europa.eu/energy/renewables/reports/reports_en.htm)

**Question 33** On page 15 (2<sup>nd</sup> paragraph) a list of countries is mentioned which need to be included for the analysis. This seems to be broader than the 'main countries of supply' as a few of those hardly have any export of biofuels or biofuel feedstocks to the EU. Can we propose a methodology to select the main countries of supply, which may mean that some of the listed countries may fall off, and others will come in?

**Answer 33** This list is established on the basis of current official EU biofuel trade statistics. Therefore consultants are required to perform analysis exactly for these regions and countries that are specified in the above tender

**specifications. However, in addition consultants are also invited to consider other countries that have started to export biofuels to the EU from 2009 or potential exporters in the near future.**