EUROPEAN COMMISSION
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

CALL FOR TENDERS
No ENTR/09/015

Study on the interplay between standards and intellectual property rights (IPRs)

OJEU – S136 of 18/07/2009

SPECIFICATIONS

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1. PRELIMINARY INFORMATION CONCERNING THE INVITATION TO TENDER

These specifications follow the publication of:

- the prior information notice in OJ S 31-044537 of 14/02/2009
- the contract notice in OJ S 136-198070 of 18/07/2009

1.1. NATURE OF THE CONTRACT

Service contract: **Study on the interplay between standards and intellectual property rights (IPRs)**

1.2. BACKGROUND

Standardisation and the protection of intellectual property rights are important elements of Community policies for the internal market, including competition issues, but also for the promotion of innovation and for trade.

Both intellectual property rights and standardisation encourage innovation and facilitate the dissemination of technology. However, as they contribute to these common objectives by different means, there are sometimes tensions among IPRs and standardisation[1]. The Commission monitors developments relating IPR and standards in the market and in the standards organisations.

COM(2008)133 on Standardisation and Innovation of 11th March 2008 announced the preparation of a "fact-finding study to analyse the interplay of IPR and standards". This announcement was supported by the Conclusions of the Competitiveness Council of 25th September 09.

The study which is the object of this call for tender is conceived as a key contribution to the continuation of the monitoring effort of the Commission in this area. The study shall thus provide the Commission with a quantified up to date description of the situation regarding the inclusion of IPRs in standards, of its economic impact, and the related disputes. This is the main objective of the study.

The study shall also propose an explanation for variations in the type and recurrence of the disputes according to differences in legal and business practice and business models in different sectors/sub-sectors or economic areas. Finally, on the basis of the observed issues and practice, the study shall point to the main issues to be addressed in the interplay of IPRs and standards, and identify a number of observed solutions.

More detail on the tasks to be performed is included in section 4 of these specifications.

The legal basis for this action is Article 6 of the Decision of the Parliament and the Council 1673/2006/EC of 24/10/2006 relating to the financing of European Standardisation.

[1] COM(2008)133 "Towards an increased contribution from standardisation to innovation in Europe"

1.3. STARTING DATE OF THE CONTRACT AND DURATION OF THE TASKS

The contract shall enter into force on the date on which it is signed by the last contracting party (if it has already been signed by both contracting parties).

It is expected to be signed in 11/09.

The duration of the tasks shall not exceed 14 months.

The execution of the tasks may not start before the contract has been signed. The period of execution of the tasks may be extended, only with the written agreement of the contracting parties, before the end of the period originally stated in the contract.

1.4. PERIOD OF VALIDITY OF THE TENDER

The offer must remain valid for a period of 9 months following the final date for submitting tenders (see point 3 of the invitation to tender). During this period, the tenderer may not modify the terms of his tender in any respect.

1.5. DATE AND PLACE OF OPENING OF THE TENDERS

Tenders will be opened at **14.30** on **02.10.2009** at the following location:

Office address:

European Commission
Enterprise and Industry Directorate-General
Unit ENTR I3 – Standardisation
Rue Belliard 100 - Office B100 06/SDR
B-1040 Brussels

An **authorised representative** of each tenderer may attend the opening of the bids. Companies wishing to attend are requested to notify their intention by sending a fax or e-mail at least 48 hours in advance to the address given under 1.6. This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will attend the opening of the bids on the tenderer's behalf.

1.6. CONTACT BETWEEN THE TENDERER AND THE COMMISSION

Contacts between the contracting authority and tenderers are prohibited throughout the procedure save in **exceptional circumstances** and under the following conditions only:

- Before the final date for submission of tenders:

  * At the request of the tenderer, the contracting authority may provide additional information solely for the purpose of clarifying the nature of the contract.

  * The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or other clerical error in the text of the call for tenders.

- After the opening of tenders :

  If clarification is requested or if obvious clerical errors in the tender need to be corrected, the contracting authority may contact the tenderer provided the terms of the tender are not modified as a result.

The requests for additional information may be made **to the address below by letter, fax or e-mail**.

European Commission Enterprise Directorate-General Invitation to tender No: ENTR/09/015 Unit ENTR I3 – Standardisation B100 04/26 B-1049 Brussels - BELGIUM Fax Fax: (+32-2)-299.80.08 - e-mail: entr-0915-standards-ipr@ec.europa.eu

Insofar as it has been requested in good time, the additional information will be made available to all economic operators who requested specifications or showed interest in submitting a bid no later than six calendar days before the final date for the receipt of bids or, in the case of requests for information received less than eight calendar days before the final date for the receipt of bids, as soon as possible after the request for information has been received.

Potential tenderers are encouraged to formulate, at least six days before the time limit to submit tenders, any remark, complaint or objection they would have in relation to all aspects of this call for tender in order that the Commission can evaluate the need for corrective measures and implement them before the submission of tenders.

The answers to the requests for additional information can also be found at the following Internet address: http://ec.europa.eu/enterprise/calls/calls.html)

1.7. TERMS OF PAYMENT

Payments shall be made in accordance with Articles I.3, I.4 & II.4 of the draft service contract (Annex 5.2).

The payment scheme will consist of one pre-financing of 15 %, 1 interim payment of 35 % and the balance.

The schedule and the procedure for the approval of payments and the documents to be submitted are described in Articles I.4, II.4, II.5 and II.7 and in Annex I to the draft service contract referred to above.

1.8. GUARANTEES

Not applicable

1.9. GENERAL TERMS AND CONDITIONS FOR THE SUBMISSION OF TENDERS

The present tender documents are drawn up in respect of the Financial Regulation applicable to the general budget of the European Communities (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 as amended by Council Regulation (EC, Euratom) N° 1995/2006 of 13 December 2006), as well as its implementing rules (Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 as amended by i) Commission Regulation 1261/2005 of 20 July 2005, ii) Commission Regulation 1248/2006 of 7 August 2006 and iii) Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007), hereinafter referred to as the Financial Regulation.

Participation in tendering procedures is open on equal terms to all natural and legal persons from one of the EU Member States and to all natural and legal persons in a third country which has a special agreement with the Communities in the field of public procurement on the conditions laid down in that agreement.

Where the Plurilateral Agreement on Government Procurement concluded within the WTO applies, the contracts are also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down. In that connection, it should be noted that the services under Annex IIB to Directive 2004/18/EC and the R&D services listed in category 8 of Annex IIA to that Directive are not caught by the Agreement.

Operators in third countries which have signed a bilateral or multilateral agreement with the Communities in the field of public procurement must be allowed to take part in the tendering procedure on the conditions laid down in this agreement. The Commission refuses tenders submitted by operators in third countries which have not signed such agreements for the present call for tender.

Submission of a tender implies acceptance of the terms and conditions set out in this invitation to tender, in the tendering specifications and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. It is binding on the tenderer to whom the contract is awarded for the duration of the contract.

Once the Commission has accepted the tender, it shall become the property of the Commission and the Commission shall treat it confidentially.

The Commission shall not reimburse expenses incurred in preparing and submitting tenders.

The Protocol on the Privileges and Immunities or, where appropriate, the Vienna Convention of 24 April 1963 on Consular Relations shall apply to this invitation to tender.

Variants are not allowed.

1.10. NO OBLIGATION TO AWARD THE CONTRACT

This invitation to tender is in no way binding on the Commission. The Commission’s contractual obligation commences only upon signature of the contract with the successful tenderer.

Up to the point of signature, the contracting authority may either abandon the procurement or cancel the award procedure. This decision must be substantiated and the candidates or tenderers notified.

No compensation may be claimed by tenderers whose tender has not been accepted, including when the Commission decides not to award the contract.

1.11. PLACE OF PERFORMANCE

The place of performance of the tasks shall be the Contractor's premises or any other place indicated in the tender, with the exception of the Commission's premises.

1.12. SUBCONTRACTING

Subcontracting is defined as the situation where a contract has been or is to be established between the Commission and a contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other legal entities for performing part of the service. However, the **Commission has no direct legal commitment with the subcontractor(s)**.

At the level of the liability towards the Commission, tasks provided for in the contract may be entrusted to subcontractors, but **the contractor retains full liability towards the Commission for performance of the contract as a whole**.

Accordingly:

- The Commission will treat all contractual matters (e.g. payments) exclusively with the contractor, whether or not the tasks are performed by a subcontractor;
- The Commission will privilege direct contacts with the contractor, who is responsible for executing the contract;
- Under no circumstances can the contractor avoid liability towards the Commission on the grounds that the subcontractor is at fault.

A contract which includes subcontracting is subject to certain general conditions in particular the provisions on subcontracting, checks and audits, and confidentiality. Where justified by the subject matter of the contract, a statement of confidentiality may be required to be submitted to the Commission. **The subcontracting arrangement between the contractor and his subcontractor is supposed to render directly applicable all those contractual obligations with regard to the Commission to the subcontractor**.

Consequently, the bid must clearly identify the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set out in 1.9 above, in particular article II.17 of the standard service contract by returning the form in annex 5.5, filled in and signed.

Tenderers must inform the subcontractor(s) and include in their sub-contracting documents that Article II.17 of the standard service contract (Annex 5.2) may be applied to sub-contractors.

Once the contract has been signed, Article II.13 of the above-mentioned service contract shall govern the subcontracting.

1.13. JOINT OFFERS

A joint offer is a situation where an offer is submitted by a group of tenderers. If awarded the contract, the tenderers of the group will have an equal standing towards the Commission in executing a supply, service or works contract.

The Commission will not request consortia to have a given legal form in order to be allowed to submit a tender, but reserves the right to require a consortium to adopt a given legal form **before the contract is signed** if this change is necessary for proper performance of the contract. This can take the form of an entity with or without legal personality but offering sufficient protection of the Commission's contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

Grouping of firms must nominate one party to be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration, and for coordination. The documents required and listed in the present specifications must be supplied by every member of the grouping, the checklist in annex 5.7 will help verifying the level of information to be provided according to the role of each entity in the tender.

Each member of the grouping assumes a joint and several liability towards the Commission.

The offer has to be signed by all members of the group. However, if the members of the group so desire they may grant an authorisation to one of the members of the grouping. In this case they should attach to the offer a power of attorney (see model in annex 5.6). For groupings not having formed a common legal entity, model 1 should be used, and for groupings with a legal entity in place (model 2).

The contract will have to be signed by all members of the group. If the members of the group so desire, they may grant authorisation to one of the members of the grouping by signing a power of attorney. The same model as above duly signed and returned together with the offer (see annex 5.6) is valid also for signature of the contract.

Partners in a joint offer assume joint and several liability towards the Commission for the performance of the contract as a whole.

Statements, saying for instance: "that one of the partners of the joint offer will be responsible for part of the contract and another one for the rest", or "that more than one contract should be signed if the joint offer is successful", are thus incompatible with the principle of joint and several liability. The Commission will disregard any such statement contained in a joint offer, and reserves the right to reject such offers without

further evaluation, on the grounds that they do not comply with the tendering specifications.

2. FORM AND CONTENT OF THE TENDER

2.1. GENERAL

Tenders must be **signed** by the tenderer or his duly authorised representative. Tenders must be **perfectly legible** so that there can be **no doubt as to words and figures**.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc.).

Tenders must be written in one of the official languages of the European Union.

Tenders **must include** the following information:

- all the **information and documents requested by the Commission** in order to assess the tender. In order to help tenderers presenting a complete tender, **a checklist of the documents to submit is provided in annex 5.7**. This checklist does not need to be included in the tender but we encourage to use it in order to ease the assessment of the tenders;
- the **price in euros**;
- one **specimen signature of an authorised representative** on the legal entity form (http://europa.eu/comm/budget/execution/legal_entities_fr.htm), and a statement confirming the validity of the tender (preferably in blue ink), the tender must provide evidence of the authorisation to sign in name of the tenderer;
- the **name of a contact person** in relation to the submission of the bid.

2.2. HOW TO SUBMIT A TENDER

Tenderers shall observe precisely the indications in point 3 and 4 of the invitation to tender in order to ensure their tenders are admissible.

Evidence of timely submission by post or courier service will be constituted by the date of dispatch, the postmark or the date of the deposit slip. In the case of hand-delivery, the signed and dated receipt will serve as evidence.

Late delivery will lead to the non admissibility of the tender and its rejection from the award procedure for this contract. Offers sent by e-mail or by fax will also be non admissible. Envelopes found open at the opening session will also lead to non admissibility of the tender. Consequently, tenderers must ensure that their bids are packed in such a way as to prevent any accidental opening during its mailing.

2.3. STRUCTURE OF THE TENDER

All tenders must be presented in five sections:

Section one: Administrative information – Presentation of the tender (see 2.1 & 2.3.1)

Section two: Evidence relating to the exclusion criteria (see 3.1)

Section three: Evidence relating to the selection criteria (see 3.2.2 & 3.2.3)

Section four: Technical Proposal – Addressing technical specifications and award criteria (see 2.3.2, 3.3 and 4)

Section five: Financial Proposal (see 2.3.3)

2.3.1. Section One: Administrative proposal

a) **Tenderers** may choose between presenting a **joint bid** (see 1.13) and introducing a bid as a **sole contractor,** in both cases with the possibility of having one or several subcontractors (see 1.12).

Whichever type of bid is chosen, the tender must stipulate the legal status and role of each legal entity in the tender proposed and the monitoring arrangements that exist between them and, failing this, the arrangement they foresee to establish if they are awarded the contract (see 1.12 and 1.13).

b) To identify himself the tenderer must fill in a Legal Entity Form and a Financial Identification Form:

- The **Legal Entity Form** is to be signed by a representative of the tenderer authorised to sign contracts with third parties. There is one form for individuals, one for private entities and one for public entities. Specific forms in each Member State language are available at :

http://europa.eu/comm/budget/execution/legal_entities_en.htm

- The **Financial identification form** shall be duly filled in and signed by an authorised representative of the tenderer and his or her banker. A specific form for each Member State is available at the following Internet address:

http://europa.eu/comm/budget/execution/ftiers_en.htm.

The Legal Entity Form **must be accompanied by all the information** indicated in the form. When neither this form nor the evidence to be attached to them includes the following information, the tender must include:

For private and public entities:

- a legible copy of the notice of **appointment of the persons authorised to represent the tenderer** in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such

publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

For Individuals:

- Where applicable, a proof of **registration,** as prescribed in their country of establishment, on one of the **professional or trade registers** or any other official document showing the registration number.

All tenderers must provide their legal entity files as well as the necessary evidence. Only subcontractors are requested to provide solely the legal entity file without evidence.

Economic operators already registered as a legal entity in the Commission's files (i.e. they are or have been contractors of the Commission) are not obliged to provide the evidence requested in the form, on condition they indicate in their offer the references of the procedure and the Commission's department for which this evidence was already provided.

In case of a joint bid or a bid presenting subcontracting, only the co-ordinator is obliged to return the financial identification form.

2.3.2. Section Four: Technical proposal

Tenderers must include in their bids the technical proposal addressing all aspects detailed in the specifications set out in section 4 below.

The technical proposal must respond to these technical specifications and provide, as a minimum, all the information needed for the purpose of awarding the contract.

Please note that, to grant equal treatment of all tenders**, it is not possible to modify offers after their submission in relation to the technical and financial proposals**. As a consequence, **incompleteness in this section can only result in negative impact for the evaluation of award criteria**. Please note also, that proposals deviating from the technical specifications may be rejected for non-conformity.

The technical specifications and the tenderer's bid shall be integral parts of the contract and will constitute annexes to the contract.

2.3.3. Section Five: Financial proposal

The tenderer's attention is drawn to the following points:

- **prices must be expressed in euros;**

- **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.

  For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Community is exempt from VAT;

- **Prices shall not be conditional and be directly applicable by following the technical specifications.**

- **Prices shall be fixed and not subject to revision.**

- **The reference price for the award of the contract shall consist of one amount, the amount in payment of the tasks executed**, as stated in Article I.3.1 of the contract.

For each category of staff to be involved in the project, the tenderer must specify:

- the total labour costs;
- the **daily rates** and **total number of days** (man-days) each member of staff will contribute to the project;
- other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity. Flat-rate amounts should be avoided. If, exceptionally, they are used, specimen quotations for the flat-rate amounts must be provided;

The following information is intended to help tenderers to estimate the maximum amount of expenses (only travel and subsistence and related costs are to be foreseen here):

Meetings with the Commission services (all in Brussels)

- A kick-off meeting
- A meeting to discuss the roadmap proposed
- A meeting to discuss the Interim Report
- A meeting to discuss the draft Final Report

Travel expenses within the above framework should be incorporated within the financial proposal submitted by the Contractor.

Bids involving more than one legal entity must specify the amounts above for each legal entity.

Tenderers must use the following format to formulate their financial proposal:

Price component	*Unit price*	*Quantity*	*Total*
Human resources			
Person X (role)			
Person Y (role)			
…..			
Subtotal (1)			
Other			
Item X			
Item Y			
…..			
Subtotal (2)			
TOTAL (1+2)			

The Commission will reject tenders where no technical offers or financial offers are proposed.

Non-conformity with the technical specifications in section 4 will also result in rejection from award.

The Commission reserves the right, however, to request clarification or additional evidence in relation to the exclusion and selection stages after the opening within a time-limit stipulated in its request and in the conditions explained in section 1.6.

3. ASSESSMENT AND AWARD OF CONTRACT

The assessment will be based on the information provided in the tender. The Commission reserves the right to use any other information from public or specialist sources.

This assessment will be performed by applying the criteria set out in these specifications. To award of the contract, the assessment of admissible bids (see 2.2) will

be carried out in three successive stages. Only bids meeting the requirements of one stage will be examined in the next stage.

The aim of each of these stages is:

1) to check, in the first stage (exclusion criteria), whether tenderers can take part in the tendering procedure and, where applicable, be awarded the contract;

2) to check, in the second stage (selection criteria), the technical and professional capacity and economic and financial capacity of each tenderer who has passed the exclusion stage;

3) to assess on the basis of the award criteria the technical and financial offers and establish a ranking list, by order of merit, of all tenders having passed the exclusion and selection stages, as well as the quality thresholds set for the assessment of the award criteria.

3.1. STAGE 1 – APPLICATION OF EXCLUSION CRITERIA AND EXCLUSION OF TENDERERS

3.1.1. Declaration

Tenderers or their representatives shall provide a declaration on their honour, duly signed and dated in which they:

- state whether or not they are in one or more of the situations referred to in Articles 93 and 94 of the Financial Regulation and detailed in the form;

- undertake to submit to the Commission any additional document relating to the exclusion criteria, that the Commission considers necessary to perform its checks, within seven calendar days following the receipt of the Commission's request.

To this end, tenderers must fill in and sign the form in Annex 5.1 to these specifications.

Where the bid involves more than one legal entity (including subcontractors), each entity must provide the form.

Any total or partial omission for which one or more legal entities involved in the tender are responsible may lead the Commission to exclude the tender from the procedure, in accordance with Articles 93 and 94 of the Financial Regulation.

3.1.2. Grounds for disqualification

In accordance with Articles 93 and 94 of the Financial Regulation, tenderers shall be excluded from the selection and award procedures if they do not satisfy criteria a) to f) specified in the standard form in annex 5.1.

In addition, contracts may not be awarded to tenderers who, during the procurement procedure are subject to a conflict of interest (criteria g) or 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 (criteria h) or fall into one of the situations as specified under criteria a) to f).

If a member of a consortium is subject to exclusion, the rest of the consortium shall be excluded.

If a subcontractor is subject to exclusion, the tender shall be excluded.

3.1.3. Evidence

The tenderer to whom the contract is to be awarded shall provide, within the 15 days following the receipt of the letter informing him of the proposed award of the contract and preceding the signature of the contract, the following evidence confirming the declaration referred to in paragraph 3.1.1:

1. The Commission shall accept as satisfactory evidence that the 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;

2. The Commission shall accept, as satisfactory evidence that the 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.

3. Where the document or certificate referred to in paragraph 1 & 2 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.

4. Depending on the national legislation of the country in which the tenderer is established, the documents referred to in paragraphs 1, 2, 3 and 3.1.1 shall relate to legal persons and/or natural persons including, where necessary, company directors or any person with power of representation, decision-making or control in relation to the candidate or tenderer. This would be the case when the national legislation concerned gives juridical responsibility of the acts committed by a legal entity (moral persons) to their legal representatives. The tenderer shall provide information on the ownership or on the management, control and power of representation of the legal entity whenever necessary for the proper understanding of the evidence submitted or whenever the Commission requests it.

5. Where they have doubts as to whether tenderers are in one of the situations of exclusion, the Commission may itself apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.

6. The Commission may waive the obligation of a tenderer to submit the documentary evidence referred to in paragraphs 1 and 2 if such evidence has already been

submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided to the Commission in a previous procurement procedure and confirm that no changes in his situation have occurred. He shall indicate in its tender all the references necessary to allow the Commission services to check this evidence.

3.1.4. Administrative and financial penalties

By returning the form in Annex 5.1, duly signed, tenderers confirm that they have been notified of the following points.

Administrative or financial penalties may be imposed by the Commission on tenderers who are in one of the cases of exclusion provided for in 3.1.2 above after they have been given the opportunity to present their observations.

These penalties are detailed in Article 96 of the Financial Regulation and Articles 133a and 134b of the Regulation laying down the rules for the implementation of the Financial Regulation. We invite tenderers to read carefully these two articles.

3.2. STAGE 2 - APPLICATION OF SELECTION CRITERIA (SELECTION OF TENDERERS)

This part of the tender concerns the criteria and evidence relating to the technical and professional capacity and economic and financial capacity of the service provider(s) involved in the bid. It should also contain any other document that the tenderer(s) wish(es) to include by way of clarification.

An economic operator may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. In that case, evidence must be provided that it will have at its disposal the resources necessary for performance of the contract, for example by producing a clear undertaking on the part of those entities to place those resources at its disposal.

If several service providers are involved in the bid, each of them must have the professional and technical capacity to perform the tasks assigned to them in the tender and the necessary economic and financial capacity.

This rule applies to all legal entities once they have chosen to be tenderers. If the tender includes subcontractors, the Commission reserves the right to request evidence of their economic and financial capacity if the tasks subcontracted represent a substantial part of the contract.

3.2.1. Selection criteria

SELECTION CRITERIA
1. FINANCIAL AND ECONOMIC CAPACITY
1.1 Sufficient economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract.
2. TECHNICAL AND PROFESSIONAL CAPACITY
2.1 Knowledge based on a minimum of 5 years of experience of a least one member of the team in each of the following fields : IPRs, standardisation, public policies.
2.2 Expertise in the field of data collection, editing and analysis; surveying techniques; assessing public/private organisational structures; drafting reports and clear recommendations.
2.3 Reliability of the tenderer to perform the services in terms of human and technical resources, including high quality of written and spoken language skills in English.

These criteria will be assessed on the basis of the documents referred to in 3.2.2 and 3.2.3.

3.2.2. Evidence of the economic and financial capacity of the service provider(s)

All tenderers must provide proof of their economic and financial capacity by submitting the following documents by filling Annex 5.4, consisting of an extract of the tenderer's annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) of the last two years, as approved by the general assembly of the company and, where applicable, audited and/or published. These documents must be signed by the authorised representative of the tenderer.

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.

3.2.3. Evidence of the technical and professional capacity of the service provider(s)

The ability of service providers to perform services will be assessed in particular with regard to their know-how, efficiency, experience and reliability.

Evidence of the technical and professional capacity of the providers involved in the tender may be furnished on the basis of the following documents:

a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the tasks; The Europass curriculum vitae format (http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1) shall be filled in and signed, by each person involved in the execution of the tasks foreseen in the tender. The precise contractual link with the tenderer will also be described.

This evidence refers to selection criteria 2.1-2.3.

b) a list of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;

This evidence refers to selection criteria 2.1-2.3.

c) a description of the measures employed to ensure the quality of the services;

This evidence refers to selection criteria 2.1-2.3.

d) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;

This evidence refers to selection criterion 2.3.

e) an indication of the proportion of the contract which the service provider may intend to subcontract.

By submitting a tender, each legal entity involved therein accepts the possibility of a check being carried out by the Commission on its technical capacities and, if necessary, on its research facilities and quality control measures.

In addition, all tenderers are informed that they may be asked to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a professional or trade register or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

3.3. STAGE 3 - APPLICATION OF AWARD CRITERIA (ASSESSMENT OF TENDERS)

The contract will be awarded to the most cost-effective tender. The following award criteria will be applied:

No	Qualitative award criteria	Weighting (maximum points)
1.	Soundness and resilience of the approach proposed for access to raw data, on the basis of experience in access to the specific necessary data sources in sufficient countries/markets, and of the quality and predictability of proposed complementary field research. Soundness of the approach for analytical work.	50
2.	Methodology, coherence and clarity of the service to be provided, in particular the work plan and the analytic procedures/methodologies proposed to be used, completeness of aspects considered in relation to the subject of this call.	30
3.	Overall understanding of the objectives of the call, of the subject matter concerned, of the issues to be examined, and of the legal, economic and technical challenges involved.	20
	Total number of points	100

The selected tender is assessed according to the above qualitative award criteria and the weighting applicable to each criterion.

Tenders scoring less than 60 % in the overall points total or less than 50% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.

Award criterion	
	Total price

Tenders presenting a total price superior to the maximum amount of 200.000 € will be excluded from the rest of the assessment procedure.

The contract will be awarded to the tender which is the most cost-effective (offers the best value for money) on the basis of the ratio between the total points scored and the price.

Final Evaluation	
	Total Quality Points/Price

Tenders should elaborate on all points addressed by these specifications in order to score as many points as possible. The mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, will only result in a very low score. In addition, if certain essential points of these specifications are not expressively covered by the tender, the Commission may decide to give a zero mark for the relevant qualitative award criteria.

3.4. INFORMATION FOR TENDERERS

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, the Commission will inform all rejected tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

3.5. AWARD OF THE CONTRACT

The procurement procedure is concluded by a contract signed by the parties. In this case, the General Terms and Conditions applicable to service contracts referred to above shall apply.

After the period of validity of the tender has expired, conclusion of the contract shall be subject to the tenderer's agreement in writing.

The Commission shall not sign the contract or framework contract with the successful tenderer until a standstill period of 14 calendar days has elapsed, running from the day after the simultaneous dispatch of the award decisions and decisions to reject.

After the award, during standstill period, the Commission will request to the tenderer proposed for award the evidence on exclusion criteria defined in section 3.1.3. If this evidence was not provided or proved to be unsatisfactory the Commission reserves the right to cancel the award procedure or to change the award decision to the benefit of the next best ranked tenderer on condition that he satisfies with the provision of the evidence on exclusion.

3.6. DATA PROTECTION

The follow up of your response to the invitation to tender will require the recording and further processing of personal data (name, address, CV, for example). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. Except if mentioned otherwise, replies to questions and personal data are necessary for the purpose of assessing your tender according to the specifications of the invitation to tender and will only be processed by Unit I3 'Standardisation' of Directorate-General Enterprise and Industry for this purpose. You may, upon request, obtain the communication of your personal data and rectify any inaccurate or incomplete personal data. Should you have any queries concerning the processing of your personal data, please address them to Unit I3 'Standardisation' of Directorate-General Enterprise and Industry. As regards to the processing of your personal data, you have a right to recourse at any time to European Data Protection Supervisor.

4. TECHNICAL SPECIFICATIONS

4.1. Introduction

Standardisation is primarily a voluntary cooperation among companies to develop some common technical specifications about interoperability, quality and safety levels, or test methods. Standardisation makes an important contribution to a good-working market-economy, facilitating trade in the Single Market and at international level, and providing public goods such as interoperability and comparability of different solutions, which in turn facilitate **competition and innovation.** The benefits of standardisation are drawn once the standards are effectively implemented and used.

Intellectual property rights (IPRs) such as patents, designs, copyright and plant variety rights give an **incentive to develop new inventions and other innovations** by awarding an exclusive right for a limited period of time. These advantages are not only beneficial to the holder of the rights but also to the wider public since they facilitate the **dissemination of knowledge**. IPRs therefore generally promote competition but must remain subject to competition law enforcement to prevent abuses.

Both intellectual property rights and standardisation encourage innovation and facilitate the dissemination of technology. However, as they contribute to these common objectives by different means, there is sometimes tension between IPRs and standardisation[2].

Purely **performance-oriented standards** would allow different solutions based on possibly different technologies interoperating or being compared. However, in practice, standards, in particular those dealing with interoperability, tend to be specific to certain technologies, which may well be protected, thus raising the issue of the inclusion of IPRs in standards.

The inclusion in standards of specific technologies protected by IPRs following a **transparent and well-informed decision** by the interested parties may bring the benefits of

[2] COM(2008)133 "Towards an increased contribution from standardisation to innovation in Europe"

superior technologies to all potential implementers and users of the standard, whether or not subject to compensation to the owner of the IPRs.

However, including protected technologies in standards also raises competition issues, as **it may give the IPR holder a very strong position for negotiating** compensations for the use of the protected technology. Depending on the configuration of the market and the strategies of the actors, this situation may hamper the standardisation process or even prevent the standard from being used.

The Commission monitors developments related to IPR and standards on the market and within the standards organisations. This refers of course to standardisation within formally recognised standards organisations but also to less formal Standards Development Organisations (SDOs), consortia and fora, which are increasingly important, in particular in the area of ICT[3].

The ICT standardisation review revealed that IPRs covering technologic solutions necessary for interoperability has become a key issue. In particular, **the dedicated stakeholder workshop on the issue of IPR in ICT standards held in November 2008, also revealed that many different IPR policies** adapted to individual circumstances can be found among standards-developing organisations.

The study which is the object of this call for tender will make a key contribution to the continuation of the Commission's monitoring efforts.

4.2. Background

Standardisation, as a form of cooperation among companies and other stakeholders, is subject to the provisions of competition law but usually does not fall under the general prohibition of agreements among competitors under Article 81(1) EC, as it provides pro-competitive results, thereby justifying an exemption under Article 81(3) EC. This, however, obliges standardisation bodies and procedures to meet certain requirements. Consequently, timely (ex-ante) identification of essential IPRs and FRAND[4] terms are key elements of **EU standardisation policy**, as defined in Commission Communication COM(92)445 on IPRs and Standardisation[5]. In addition to this, the European Standardisation Organisations (ESOs) committed themselves in the Guidelines for cooperation[6] between the EC and EFTA and the ESOs, to support market-led standardisation, and to respect principles of openness, transparency, consensus, independence and impartiality in order to prevent standardisation from being abused by particular interests. The Commission holds a permanent dialogue with these organisations in order to ensure the fulfilment of those commitments.

The relationship between IPRs and standardisation was addressed recently in the **2008 Commission Communication on the contribution of standardisation to innovation[7], in the Council** Conclusions on standardisation and innovation of September 2008[8], and in the **2008 Commission Communication on industrial property[9].** The ongoing Commission

[3] Information and Communication Technologies
[4] This abbreviation stands for "Fair Reasonable and Non Discriminatory".
[5] Communication from the Commission on "Intellectual Property Rights and Standardisation" (COM(92)445).
[6] "General Guidelines for the cooperation between CEN, CENELEC and ETSI and the European Commission and the European Free Trade Association" of 28 March 2003, (2003/C 91/04)
[7] COM(2008)133 "Towards an increased contribution from standardisation to innovation in Europe »
[8] Council Conclusions on standardisation and innovation of 25th September 2008
[9] COM(2008) 465 final An Industrial Property Rights Strategy for Europe of 16th July 2008

policy review of standardisation, including the planned Commission White Paper on the review of ICT standardisation policy, may also take up the subject.

The inclusion of technologies protected by **IPRs in standards** obliges implementers and users to agree with IPR holders on **the conditions for implementation and use of the standard**. These arrangements take many forms, usually based on a combination of agreements within the standards organisations, such as commitments to license essential patents on FRAND terms or on royalty-free terms, and outside the organisations, such as individual licenses and patent-pools and patent pledges.

The introduction of protected technologies in standards has a very significant **economic impact,** which can only increase in the current knowledge-based economy. In particular, it influences market access, innovation and competition in areas where the role of standards is prevalent. In particular the payment of royalties associated to the use of standards generates important monetary flows.

The interplay between IPRs and standards is also at the origin of **highly complex and specific issues** which deserve special attention. Standards organisations which follow the FRAND policy principle and/or their members experience problems with the timely identification of essential IPRs, with the interpretation of FRAND terms and with the implementation of the IPR policy in conflict situations. One example of a distortion may be a *"patent ambush"*, whereby the owner of a proprietary technology essential to a standard extracts an artificially inflated *ex post* (i.e. after a standard is adopted) value for his patented technology by deliberately concealing his patent during the standard-setting process. Firms may also use their IPRs to restrict the use of some standards in selected regions and thus segment global markets by simply refusing to license their IPRs in those regions. Other firms may transfer their patent rights to other organisations which are not bound by the same commitments. Also, large numbers of overlapping patent rights can create additional barriers to commercialising new technologies that already exist in "*patent thickets*".

All formal **standards organisations** and most well-established Standards Development Organisations (SDOs) have a well considered **IPR policy** which intends to allow the standardisation process to deal successfully with technologies protected by IPRs. The policy of most standards organisations is to facilitate that IPRs deemed essential for the implementation of a standard are identified prior to its approval, and to ensure that those essential IPRs shall be licensed for use on **FRAND terms**. Most industry members consider FRAND as the best way to describe a balance between the interests of IPR owners and the interests of implementers.

As an alternative to FRAND terms, some relevant SDOs have adopted a **royalty-free** IPR policy which renders it unnecessary for the members of the SDO to declare essential IPRs. Other SDOs have different IPR policies coexisting in the organisation, which provides the flexibility to adapt to particular situations.

FRAND IPR schemes, in particular in the area of ICT, have become the subject of disputes and public debate. Discussions on streamlining and improving the effectiveness of FRAND-based IPR policies are ongoing within the standardisation organisations in Europe as well as the global standards producing organisations. The co-existence between FRAND schemes and other schemes such as royalty-free is also an issue of growing importance.

Less formal technical specifications initially agreed by a limited number of industry players under loose IPR policies may also quickly make a strong impression on the market,

favouring those involved from the beginning and the value of their IPRs included in the standards.

Competition authorities, including the Commission, usually intervene *ex post* whenever competition provisions have not been respected. However, it is important to put in place a framework which effectively prevents those abuses. To this aim, the Commission would greatly benefit from having a more systematic picture of the current situation.

4.3. Scope of the study

A number of recent papers and studies[10] have discussed both the issues which arise from the relationship between IPR and standards, and the IPR polices of different standards organisations. Therefore, conceptual discussions of these issues or of the IPR policies of the SDOs should not be the core of this study. Copyrights of standards themselves are not the subject of the study.

However, the Commission would benefit from a clear, updated, and also quantitative picture of the benefits and the issues arisen from the interplay between IPR and standards, including how often issues tend to arise, how important those issues are in terms of the global interplay of IPRs and standards, and how existing mechanisms at all levels help to solve the issues at hand.

The study shall focus on sectors where the interplay of IPRs and standards is relevant, such as ICT, electronics and consumer electronics, the application of ICT to other technologies such as transport, and life sciences.

The markets covered shall include the EU, US, Japan, China and others as relevant. The analysis shall concentrate on the recent past and the current trends, and will include a comparative analysis of sectors, sub-sectors and economic areas where relevant.

Stakeholders potentially concerned include industry, public authorities, SDOs, final users.

4.4. Objectives of the study

The study shall provide the Commission with a quantified up to date description of the situation regarding the inclusion of IPRs in standards, its economic impact on the different stakeholder categories, and the related disputes. This is the main objective of the study.

The study shall also propose an explanation for variations in the type and recurrence of the disputes according to differences in legal and business practice and business models in different sectors/sub-sectors or economic areas. Finally, on the basis of the issues and practices observed, the study shall point to the main issues in the interplay of IPRs and standards that may be addressed, and propose a number of solutions.

4.5. Tasks of the study

[10] See section on references below

1. Fact-finding, quantification and descriptive analysis of the current situation and trends regarding the inclusion of IPR protected elements[11] in standardisation from an international perspective.

   - The analysis shall identify, quantify and segment the presence of essential IPRs in standards relevant to particular sectors and subsectors of industry and services
   - The intensity of IPR in standards shall be compared to the intensity of IPR of the sectors/sub-sectors and with their intensity of standardisation
   - The analysis shall also include segmentation according to the main economic areas, and according to the type of company (eg size and SMEs)
   - Relevant standards may have the status of formal standards or a less formal status

   This task should combine existing data, with *ad hoc* collected new data where appropriate

   Questions to be answered under this task include *inter alia*:

   - Is there a growing presence of IPR protected technology in ICT and other sectors of the economy? Is the convergence of technologies making an impact?
   - Are some economic areas more likely to adopt standards involving IPRs than others?
   - What is the share of SMEs among owners of IPRs essential to standards?

2. Fact-finding, quantification and analysis of the current situation and trends of the economic impact of IPRs included in standards.

   - This shall include, in particular, a quantification of the financial flows derived from royalties and other compensations for the use of IPRs essential to standards, as well as of other non-monetary arrangements such as exchanges of licenses
   - This analysis should in particular focus on the variations of the royalties and other compensations between different economic sectors/sub-sectors, economic areas and type of company (eg SMEs).
   - The analysis shall also include a qualitative assessment of the impact on the conditions for market access and innovation in different sectors and sub-sectors.

Questions to be answered under this task include *inter alia*:

   - How does the weight of IPRs in standards compare to the presence of IPRs in each sector/sub-sector? Are there significant differences between sectors
   - Are there significant geographical variations?
   - How does the compensation SMEs obtain for incorporation of their essential IPRs in standards compare to the overall average across all company sizes?

3. Fact-finding, quantification and analysis of the current situation and trends regarding actual issues arisen from the introduction of IPR protected elements in standards and their use. These issues shall include situations where consensus in the standards-making process was difficult or lacking, use of standards is limited, and in cases of

[11] Such as technologies, algorithms and designs

commercial and legal dispute between different stakeholders. Questions to be answered under this task include *inter alia*:

- How often is there a failure to disclose essential patents in advance within the standardisation process?
- How often do difficult disputes arise from the practical definition of reasonable and non-discriminatory terms in licensing IPR essential to a standard
- How often does compulsory licensing of technologies or other IPRs included in standards take place? How is a patent-holder rewarded when participates in the formulation of a technical standard or gives consent to incorporating his patent into the standard, compared to compensations not related to standards
- How often do standards fail to be used due to lack of agreement among potential licensees and owners of essential IPRs on the fees required as compensation?

4. Analyse the current situation and trends of IPR policies of governments, of relevant standards organisations and of business, as well as the legal practice of stakeholders in different sectors, economic areas and legal environments; develop an explanation for the variations in type and the recurrence of issues in 3 according to the elements in 4 where appropriate. Questions to be answered under this task include *inter alia*:
   - Are there cases where a combination of IPR policies of SDOs and legal and business environments provide for a comparatively limited conflict?
   - Do similar legal and business practices lead to very different outcomes in different sectors?
   - What is the impact of the lack of openness and transparency and the conflict for those standards set by closed cooperation between a limited number of industry players under loose IPR rules?

5. Following the analysis in 4, identify the main issues to be addressed by private and public stakeholders in order to improve the interplay of standards and IPRs, and propose solutions building on already observed practice.

   Note: The majority of the research effort shall correspond to tasks 1 to 3

4.6. Execution of the study

The execution of the study by the contractor will be assisted by:

- Regular contacts with the Commission services responsible for the study, DG Enterprise and Industry Directorate I
- A Monitoring and Steering Committee which will be set up by the Commission services, possibly including external experts as appropriate

The duration of the study shall be 16 months.

4.7. References

- "Study on the interaction between standardisation and intellectual property rights", coordinated by FhH ISI, Karlsruhe, Germany *(Knut Blind et al)*
- "Standards and Patents", WIPO, Standing Committee on the Law of Patents,

  http://www.wipo.int/edocs/mdocs/scp/en/scp_13/scp_13_2.pdf
- "Antitrust enforcement and intellectual property rights: Promoting innovation and competition", issued by the U.S. Department of Justice and the Federal Trade Commission, April 2007
- "Intellectual Property Rights and Standard Setting Organisations", Mark A. Lemley, UC Berkeley School of Law, Public Law and Legal Theory, Research Paper No. 84, 2002
- IPR in standardisation workshop, Brussels, 19th November 2008,

  http://ec.europa.eu/enterprise/ict/policy/standards/ws08ipr_en.htm

4.8. REPORTS AND DOCUMENTS

The Contractor is to provide the required reports and documents in accordance with the conditions of the standard service contract appended in Annex 5.2.

The deliverables of the study shall be the following:

- An initial Roadmap at T:0+1,5 months, containing the intermediate results to be attained and the associated tasks and sub-tasks which the contractor will execute

  The Commission will have fifteen days to make its comments known to the contracting party, which will also have fifteen days to amend its roadmap taking into account these remarks and to deliver the final document.
- An Interim Report at T:0+6 months, including the initial results of tasks 1-3, and preliminary results for tasks 4-5

  The Commission will have thirty days to make its comments known to the contracting party, which will also have thirty days to amend its interim report taking into account these remarks and to deliver the final document.
- A draft Final Report, at T:0+12 months, including the final results for tasks 1-3 and a draft for the results of tasks 4-5

  The Commission will have thirty days to make its comments known to the contracting party, which will also have thirty days to amend its draft final report taking into account these remarks and to deliver the final document.
- A Final Report at T:0+14 months, incorporating comments of Monitoring and Steering group on the draft final report.

  The Commission will have thirty days to make its comments known to the contracting party, which will also have thirty days to amend its final report taking into account these remarks and to deliver the final document.

The contractor shall also provide a brief bi-monthly progress report outlining progress according to the roadmap, possible modifications to the roadmap, and the next steps to be taken.

Time-line	Meetings	Reports	Approval of reports	Payments
Contract signature	Kick-off meeting			Pre-financing on request
1,5 month		**Roadmap**	Approval required	
2 months	Discussion of Roadmap			
3 months				
4 months		Progress report		
5 months				
6 months		**Interim Report** + Progress report	Approval required	Interim Payment on request
7 months	Discussion of Interim Report			
8 months		Progress Report		
9 months				
10 months		Progress Report		
11 months				
12 months		**Draft Final Report** + Progress report		
13 months	Discussion of the draft Final Report			
14 months		**Submission Final Report**	Approval required – 30 days	Final payment on approval of report

5. ANNEXES

ANNEXES

5.1. EXCLUSION CRITERIA FORM (INVITATION TO TENDER NO ENTR/09/015)

Exclusion Criteria Form

The undersigned *[name of the signatory of this form, to be completed]*:

in his/her own name *(if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator[12])*

or

representing *(if the economic operator is a legal person)*

official name in full *(only for legal person)*:

official legal form *(only for legal person)*:

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents / he/she:

a) 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;

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

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

d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;

e) 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;

f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

<u>In addition</u>, the undersigned declares on their honour:

[12] To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;

h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;

i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;

j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.

k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above[13].

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.

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.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs 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.]

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name Date Signature

[13] Mandatory for contracts of value above €133 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.

5.2. DRAFT SERVICE CONTRACT

See separate document.

5.3. MODEL GUARANTEE

Model
Contract performance guarantee

Bank (Letterhead)
[Place/Date]

European Community
Represented by the European Commission
Directorate-General Enterprise and Industry – [Unit]
1049 Brussels - Belgium

Contract performance guarantee No …
[Subject/Brief description of contract]

We hereby confirm that we give the European Community an unconditional and irrevocable joint and several guarantee for an unlimited period to the value of

EUR […] (in words: … euro)

for performance of the contract concluded between the European Community and

[Firm/Name/Address – as given in the contract (No/exact title – hereinafter "the contract")] (hereinafter "the Contractor").

If the Commission gives notice that the Contractor has for any reason failed to fulfil his obligations under the contract by the due date, the Bank, acting on behalf of the Contractor, undertakes to pay up to the above amount into a bank account designated by the Commission immediately on receipt of a first written request from the Commission (sent by registered post, with acknowledgement of receipt).

The Bank waives the right to require exhaustion of remedies against the principal, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the Commission under the contract or in connection with it or on any other grounds.

The Bank may be released from this guarantee only with the Commission's written consent and does not have the right of deposit without its consent.

The Bank's obligations under this guarantee are not affected by any arrangements or agreements made by the Commission with the Contractor which may concern his obligations under the contract.

This guarantee shall take immediate effect. It shall expire on return of this document, which must occur within [30] days after the final payment under the contract has been made.

This guarantee is governed by the law applicable to the contract.

The courts having jurisdiction for matters relating to the contract shall have sole jurisdiction in respect of matters relating to this guarantee.

[Place/Date]

_____ _____
[Signature/Function] [Signature/Function]

5.4. FINANCIAL AND ECONOMIC CAPACITY OVERVIEW FORM (INVITATION TO TENDER NO ENTR/09/015)

Financial and Economic Capacity Overview			
Currency : *EURO*			**Figures** ***(000)***
	N* (* most recent figures available)	**N-1**	**N-2**
Total Balance Sheet			
TRADE DEBTORS *Amounts due by commercial customers*			
CAPITAL and RESERVES (Equity) *Amounts owned by the company*			
TRADE CREDITORS *Amounts due to commercial suppliers*			
SHORT TERM DEBT			
LONG TERM DEBT			
LIQUIDITY *Bank accounts, cash at hand*			
About PROFIT & LOSS			
TURNOVER			
ORDINARY RESULT			
EXTRAORDINARY RESULT			
INCOME TAX			
NET RESULT			

You may add any data that you would consider of vital relevance for your organisation and for the understanding of the above figures.

Comments: Please explain BRIEFLY important variations from one year to another if appropriate. In case of negative equity or repeated losses, please explain how the future of the organisation will be ensured.

5.5. SUBCONTRACTOR / LETTER OF INTENT ENTR/09/015

Study on the interplay between standards and intellectual property rights (IPRs)

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).*

Declares hereby accepting the general conditions attached to the tendering specifications for this call for tender, and in particular art. II.17 in relation with checks and audits.

Full name **Date** **Signature**

.....

5.6. POWER OF ATTORNEY

POWER OF ATTORNEY – MODEL 1

Agreement / Power of Attorney

(DESIGNATING ONE OF THE COMPANIES OF THE GROUP AS LEADER 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:

In case the European Commission awards Contract …. (« **the Contract** ») to Company 1, Company 2, …, Company N (« **the Group Members** »), based on the joint offer submitted by them on … ….. for the supply of ….. and/or the provision of services for … (« **the Supplies and/or the Services** »).

(1) As co-signatories of the Contract, all the Group Members:

(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.

(2) To this effect, the Group Members designate Company X as **Group Leader**. *[N.B.: The Group Leader has to be one of the Group Members*]

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

(4) The Group Members grant to the Group Leader all the necessary powers to act on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks:

(a) The Group Leader shall sign any contractual documents —including the Contract and Amendments thereto— and issue any invoices related to the Supplies or the Services on behalf of the Group Members.

(b) The Group Leader shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. It shall co-ordinate the provision of the Supplies and/or the Services by the Group Members 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 Group Members towards the European Commission in connection with the Supplies and/or 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

Name
Function
Company

POWER OF ATTORNEY – MODEL 2

Agreement / Power of Attorney

(CREATING THE GROUP AS SEPARATE ENTITY, APPOINTING A GROUP MANAGER AND GIVING A MANDATE TO HIM/HER)

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:

In case the European Commission awards Contract …. (« **the Contract** ») to Company 1, Company 2, …, Company N (« **the Group Members** »), based on the joint offer submitted by them on … ….. for the supply of ….. and/or the provision of services for … (« **the Supplies and/or the Services** »).

(1) As co-signatories of the Contract, all the Group Members:

(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.

(2) To this effect, the Group Members have set up under the laws of ……. the Group ….. (« **the Group** »). The Group has the legal form of a …... [*Provide details on registration of the Group: VAT Number, Trade Register, etc.*].

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

(4) The Group Members appoint Mr/Ms ……. as **Group Manager**.

(5) The Group Members grant to the Group Manager all the necessary powers to act alone on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks :

(a) The Group Manager shall sign any contractual documents —including the Contract and Amendments thereto— and issue any invoices related to the Supplies or the Services on behalf of the Group Members.

(b) The Group Manager shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. He/she shall co-ordinate the provision of the Supplies and/or the Services by the Group Members 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 Group Members towards the European Commission in connection with the Supplies and/or 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

Name
Function
Company

5.7. CHECKLIST OF DOCUMENTS TO BE SUBMITTED

The purpose of the table below is to facilitate the preparation of the tender by providing an overview of the documents that must be included (marked by ■) depending on the role of each economic operator in the tender (coordinator/group leader in joint bid, partner in joint bid, single contractor, main contractor, subcontractor).

Some of the documents are only relevant in cases of joint bids or when subcontractors are involved. Additional documents might be necessary depending on the specific characteristics of each tender.

Description	Section	Coordinator or group leader in joint bid	All partners in joint bid	Single or Main contractor	Sub-contractor
Power of attorney of partners in joint bid indicating the group leader (see annex 5.6)	1		■		
Letter of intent of subcontractor (see annex 5.5)	1				■
Legal Entity Form (see section 2.3.1) Download the form from : http://ec.europa.eu/budget/execution/legal_entities_en.htm	1	■	■	■	■
Supporting documents for the Legal Entity File Form	1	■	■	■	
Financial Identification form (see section 2.3.1) Download the form from: http://europa.eu.int/comm/budget/execution/ftiers_fr.htm.	1	■		■	
Exclusion Criteria form (see section 3.1 and annex 5.1)	2	■	■	■	■
Evidence of Economic and financial capacity (see section 3.2.2 and annex 5.4)	3	■	■	■	
Evidence of Technical and professional capacity (see section 3.2.3) Go to the following page to fill in the CV: http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1	3	■	■	■	■

The following sections must be provided in the bid, their absence would mean rejection of the bid for incompleteness:

Description	Section	Coordinator or single tenderer
Technical Proposal (see section 2.3.2 and 4)	4	■
Financial Proposal (see section 2.3.3)	5	■