

TENDER SPECIFICATIONS

ASSESSMENT OF THE

**ECONOMIC AND SOCIAL IMPACT OF THE PUBLIC DOMAIN IN THE INFORMATION SOCIETY -
SMART N° INFSO/2007/0043**

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1. CONTEXT OF THE PROCUREMENT

1.1. Introduction

The envisaged purpose of the assessment is to analyse the economic and social impact of the public domain and to gauge its potential to contribute for the benefit of the citizens and the economy.

The public domain refers in a broad sense to information resources which can be freely accessed and used and re-used by all. Public domain content is material that is not or no longer protected by intellectual property rights. These aspects are further developed in section 1.2. But it also encompasses material that, although strictly speaking copyright protected, is generally available for all, as the copyright holder has waived part of his rights allowing for its use and re-use. This facet will be further introduced and developed in section 1.3.

The new tools of the information society make that public domain material has a considerable potential for re-use - by citizens or for new creative expressions (e.g. documentaries, services for tourism, learning material). It contains published works, such as literary or artistic works, music and audiovisual material for which copyright has expired, material that has been assigned to the public domain by the right holders or by law, mathematical methods, algorithms, methods of presenting information and raw data, such as facts and numbers. A rich public domain has, logically, the potential to stimulate the further development of the information society. It would provide creators – e.g. documentary makers, musicians, multimedia producers, but also schoolchildren doing a Web project – with raw material that they can build on and experiment with, without high transaction or other costs. This is particularly important in the digital context, where the integration of existing material has become much easier.

Although there is some evidence¹ of its importance, there has been no systematic attempt to map or measure its social and economic impact. This is a problem when addressing policy issues that build on public domain material (e.g. digital libraries) or that have an impact on the public domain (e.g. discussions on intellectual property instruments) in the digital age.

1.2. Public domain content

The Commission Communication “i2010 Digital Libraries²” and Commission Recommendation on “the digitisation and online accessibility of cultural material and digital preservation”³ have highlighted the importance of public domain material as a basic content resource and as a potential driver for new content creation and of traffic on

¹ The film “West Side Story” which grossed \$43.7 million may be considered a reworking of “Romeo and Juliet” which is considered to be based on Ovid’s “Pyramus and Thisbe”, both of which are out of copyright

²http://ec.europa.eu/information_society/activities/digital_libraries/doc/communication/en_comm_digital_libraries.pdf

³

http://ec.europa.eu/information_society/activities/digital_libraries/doc/recommendation/recommendation/en.pdf

the Internet. In this context the European digital libraries initiative aims to work together with major European libraries and other cultural institutions to turn their collections into searchable digital content. The importance of public domain material in the information society was recently stressed in the context of WIPO when discussing the establishment of its Development Agenda⁴, building on previous declarations at UNESCO⁵ and/or the World Summit on the Information Society⁶.

However, limited information exists on the number of works available in the public domain in Europe and its different types of uses and users. This will be the first objective (Objective a) of the assessment. The Internet environment has created ample possibilities for sharing information. It makes it necessary to more clearly distinguish between information that is freely available for reproduction, dissemination and commercial re-use by others and material that is not. This will increase legal certainty for users and underpin creative efforts. At the same time it will reinforce the general message that copying or distributing protected material without the consent of the rightholder is illegal.

It remains to be assessed the current economic and cultural value of works in the public domain, as well as the value of those works that will fall into the public domain in the next 10-20 years for example. This estimate will enable to gauge the real economic value and potential of the public domain. This will be the second objective (Objective b) of the assessment.

Similarly, in recent times, intense discussions have sparked about the present state and future of the public domain. Many believe that the public domain is and has been under some pressure as many discussions have focussed on the expansion of intellectual property rights. The harmonisation of the term of copyright protection until 70 years after the death of the author has, for example, brought material which would otherwise be today in the public domain back under copyright protection. It would be therefore important to analyse the consequences of those actions leading to shrinking or to extending the public domain. This feature will be part of objective b) of the assessment.

The wide majority of European cultural establishments, such as museums, libraries, and/or archives hold amongst their collections a considerable amount of public domain material. These institutions are interested in the wide dissemination and preservation of their public domain material to realise various social (cultural/educational) and economic goals, and also interested in the potential commercial and non commercial re-use of this material.

These institutions have embarked themselves in major digitalisation efforts in order to achieve the above mentioned goals and make full use of the opportunities the new digital environment offers. Funds for digitisation and availability of cultural content are scarce and are being rationalised and, with increasing public spending restrictions public-private partnerships have come into play. Private firms are co-operating with public institutions in their digitisation efforts in exchange, for example, for Web-space for advertising. This

⁴ http://www.wipo.int/pressroom/en/articles/2007/article_0037.html

⁵ The UNESCO Universal Declaration on Cultural Diversity, adopted by the thirty-first session of the UNESCO General Conference, on November 2, 2001; or the "Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace", adopted by the UNESCO General Conference in November 2003.

⁶ WSIS Geneva declaration of principles of 12 December 2003,

has enabled that an important amount of public domain material is made available on-line allowing for its wide access and re-use.

In certain circumstances, however, some conditions on "digitized" public domain material are being established for its access and reuse. These range from establishing some fees to recoup some of the cost to the establishment of deals between cultural institutions and private firms for certain type of access and reuse conditions of this material. This could lead to public domain material becoming somehow "privatised" in the digital world through restrictive access and re-use conditions,

This study aims to identify and analyze the current practices for online access and re-use of public domain content held by European cultural institutions. Particular emphasis should be provided to the availability of "digital" public domain content and the nature and extent of use of deals between cultural institutions and private firms. In addition it should be assessed the European Cultural Institutions' capacity to implement the principles for re-use as established in the Public Sector Information (PSI) Directive⁷. (This would be the third objective of the assessment (objective c)). The Directive aims to introduce greater transparency in all EU Member States on the re-use of the information resources of public sector bodies and to ensure that private and public entities face the same conditions when re-using PSI.

1.3. Publicly available and usable content: simple mechanisms for voluntary sharing

In line with international conventions, copyright is granted automatically, without any formal procedures of registration. As soon as a text, a picture, a film or any other expression protected by copyright law has been created in its simplest form, it is automatically protected (unlike patents or trademarks, for which a registration is necessary). An explicit prior permission from the author is necessary to further distribute the material or to copy it, for example for combining it with other material.

But what if the author intends to make his creation available for others to use? Authors can waive all their rights and assign the material to the public domain, or keep some of the rights and make it available under certain conditions (e.g. the requirement to mention the source or not to re-use the material commercially). Recent initiatives, building on the possibility for the author to waive (part of) his rights are Creative Commons and Wikipedia.

In this context it is of paramount interest identifying and analyzing available mechanisms for voluntary sharing of publicly available and usable content, ascertaining the pro's and cons and estimating their impact on the basis of relevant indicators. This would be the final objective of the assessment (objective d)

2. OBJECTIVES OF THE STUDY

The main purpose of this study is to have a first and general overview of what is the situation in Europe with regard to public domain material and to assess the economic and social potential of the accessibility to this material.

⁷ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information

2.1. Specific Objectives

The specific objectives of the study are four fold:

- a. To estimate the number of works in the public domain in the EU (at least 5 Member States) for published works, such as literary or artistic works, music and audiovisual material, to calculate approximately the levels and ways of use of the public domain material and to highlight the main users in the above mentioned sectors.** For example the contractor should identify what is the number and percentage of public domain material that national libraries and national archives hold amongst their collections.
- b. To estimate the current economic value of public domain works and estimate the value of the works that in the next 10-20 years are to be released into the public domain and determine any change in its value whilst under copyright and once it is on the public domain.** The contractor should also, analyse the consequences of applying different sets of criteria aiming at extending or shrinking the public domain describing the different potential scenarios through a sensitivity analysis.
- c. To identify and analyze the current practices for re-use of public domain content held by European cultural institutions and assess their capacity to implement the principles for re-use as established in the Public Sector Information (PSI) Directive.**
- d. To identify and analyze current available mechanisms for voluntary sharing of content and to ascertain the pro's and cons of each mechanism, highlighting the degree of use of the most successful ones and their impact based on relevant indicators.**

2.2. Methodology/Approach

In order to be able to carry out this assessment the future contractor shall have access to a network of senior experts having an excellent knowledge of the public domain and the digital content/copyright markets in the EU. The future contractor will have to demonstrate that it has the capacity to gather the necessary information, either directly or through appropriate correspondents in targeted institutions (e.g. national libraries, major publishers, phonogram institutions, collecting societies, audiovisual institutions, etc) enabling them to address the different objectives and areas covered by the study.

The future contractor must have a proven track record in strategic business studies, including an in-depth knowledge of the public domain and content/copyright industries. The future contractor should also have the ability to access leading cultural/copyright industries in the EU to gather industry experience, as well as key public sector players.

The use of data quantification to support the findings and the extrapolations envisaged in the study is a key part of the study. This will be particularly the case in the context of estimating the current and future value of the public domain. (Objective b)

The methodology indicated here is based on the experience of previous studies. Alternative approaches may be proposed and will be considered and evaluated as part of the tender. The study methodology should be based on data collection and verification techniques.

In particular, the external future contractor will have to use different methodological tools to carry out the assessment, like for example:

- *desk research*, gathering all relevant existing material on the situation in the different countries and areas.
- *on site surveys*, to measure *i.e.* the number of public domain works within national archives
- a survey (paper-based or online) and in depth *interviews with key-players* from the public and private sector in different sectors and EU Member States.
- *analysis of case studies*, to *i.e.* illustrate the findings.

The assessment of the economic and social impact of the public domain in the information society is a challenging task as no specific methodology has been established so far. In this context, the Commission, when discussing the inception report at the second meeting (see below 4.1), at its expense will contact relevant experts in the field in order to discuss, fine tune if necessary and validate the proposed methodology of the contractor.

3. DURATION

The duration of the execution of the tasks shall be up to 16 months and subject to the provisions of Art. I.2.3 of the contract.

4. DELIVERABLES, MEETINGS AND TIME TABLE

4.1. Deliverables

The future contractor shall present the following deliverables:

- I. **Inception Report:** to be submitted not later than 2 months following the signature of the Contract. This report will contain a detailed planning of activities, including the process of stakeholders' consultation and gathering of information, the coordination process between the different parts of the assessment, a detailed list of indicators for the objectives and draft versions of questionnaires to be submitted to relevant stakeholders shall be presented.
- II. **Progress Report:** to be submitted not later than 9 months following the signature of the Contract. The progress report will describe the work carried out and the results obtained according to the work plan presented by the contractor. It will also include results on at least two countries of particular relevance. In particular, the report will state; (i) the preliminary results obtained on the overall work covered by the contract and (ii) the planned work programme for the following period.
- III. **Draft final study report:** 3 paper copies of the Draft final study report shall be presented at the end month 14 following the signature of the Contract. This draft shall contain an advanced version of the report for quality assessment and revision and describe the work carried out. The feedback from the review will provide guidelines to consolidate the final study report and steer the work of the last weeks.

IV. **Final Study Report:** shall be presented at the end of month 16. The future contractor shall produce:

- a. 3 paper copies of the Final Executive Summary only, consisting of several pages summarising the main findings of the Report.
- b. 3 paper copies of the Final Executive Summary and full Final Report, bound together; as well as 1 unbound copy.
- c. 3 paper copies of any supporting presentations and material.
- d. 2 sets of all documentation in electronic form on a CD/DVD. The files should be stored in multiple (portable) file formats (word, pdf, rtf, etc).

All deliverables are to be produced in English. The deliverables will be reviewed by the European Commission Services, who will provide the quality assessment of the work performed.

4.2 Meetings

Four working meetings will take place in the European Commission premises in Luxembourg.

Kick-off Meeting

A first (kick-off) meeting will be organised by the Commission services during month 1 just after the signature of the contract by both parties.

Second Meeting

A second meeting during which the future contractor will present the inception report shall be held 2 months after signature of the contract by both parties. In this meeting, the Commission, at its expense will contact relevant experts in the field in order to discuss, fine tune if necessary and validate the proposed methodology of the contractor in its inception report.

Third Meeting

A third meeting will be organised during which the future contractor will present the progress report and shall be discussed with the Commission services . This meeting will be held 10 months after signature of the contract by both parties.

Fourth Meeting

A fourth meeting will be organised during which the future contractor will present the draft final study report and shall be discussed with the Commission services. This meeting will be held 15 months after the signature of the contract by both parties.

4.3 Timetable

Deliverable	Meeting	Month						
	Kick-off meeting		1					
Inception report as in § 4.1				2				
	Meeting to discuss inception report			2				
Progress report as in § 4.1					9			
	Meeting to present and discuss progress report				10			
Draft final study report as in § 4.1						14		
	Meeting to present and discuss draft final study report						15	
Final study report as in § 4.1								16

5. TERMS OF APPROVAL OF REPORTS

After reception of each report, the Commission will have 20 working days in which:

- to approve it, with or without comments or reservations;
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within 20 working days. The new report shall likewise be subject to the above provision

PART 2: ADMINISTRATIVE DETAILS

1. ELIGIBILITY REQUIREMENTS

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

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

2. ADMINISTRATIVE REQUIREMENTS

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

2.1 Different ways to submit an offer

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

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

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

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

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

2.2 Joint Offers and Subcontracting

Joint offers

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

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

The partnership may take the form of:

- a *new legal entity*. In that case, the new entity shall contract with the Commission
or

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

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

Subcontracting

Subcontracting is a situation where a contract is to be established between the Commission and a service provider and where this service provider, in order to carry

out the contract, enters into legal commitments with other legal entities for performing part of the tasks foreseen in the contract.

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

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

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

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

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

Standard forms in each EU language are available at:
http://ec.europa.eu/budget/execution/legal_entities_en.htm

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

Standard forms in each EU language are available at:
http://ec.europa.eu/budget/execution/ftiers_en.htm

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

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

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

Options 3 and 4 : documents to be provided by Subcontractors

- **Annex 1:** as described above.
- **Annex 4:** Exclusion criteria and **non conflict of interest form** (filled in and signed by an authorised representative)
- **Annex 6:** Letter of intent from each subcontractor (signed by an authorised representative) to confirm their willingness, availability and capacity to perform the assigned tasks.

3. SIGNATURE OF THE TENDER

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

4. OFFER PRESENTATION

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

4.1 Administrative Section

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

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

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

4.2 Technical Section

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

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

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

4.3 Financial Section

The price offer shall fulfil all below requirements:

- A **total** fixed price expressed **in euros** must be included in the tender.
- The contract prices shall **be firm and not subject to revision**.
- Prices should be quoted **free of all duties, taxes and other charges**, i.e. also free of VAT, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

- The price of the contract shall be subject to the terms set in Article I.3 of the model contract attached.
- The type of costs included in the price offer must fall within the scope of these Tender specifications
- The price **must be** broken down (showing clearly unit prices and quantities) into the following categories⁸:

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

(b) Travel and Subsistence Costs.

(c) Other Costs (if applicable): break down by category

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

The maximum budget available for this contract shall be **€ 200.000**. Offers presenting a higher total price shall be excluded from this tendering procedure.

5. EVALUATION OF TENDERS

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

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

5.1 Exclusion Criteria / Grounds for exclusion of Tenderers

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

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the

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

- country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation .

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

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

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

5.1.2. Pursuant to Article 45(2) of Council Directive 2004/18/EC and Article 94 of the Financial Regulation, a contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

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

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

5.1.4. In addition, ONLY the Tenderer to whom the contract is to be awarded shall confirm the declaration by providing, within a time-limit defined by the contracting authority and preceding the signature of the contract, the following evidences (if the tender is proposed by a partners, these evidences must be submitted by each partner):

- 1) The contracting authority shall accept as satisfactory evidence that the candidate or Tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or Tenderer is not in the situation described in point (d) of Article

93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

- 2) Where the document or certificate referred to in the first subparagraph is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

Depending on the national legislation of the country in which the Tenderer is established, the documents referred in 1) and 2) shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or Tenderer.

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

5.1.5. Administrative and financial penalties

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

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

2. In accordance with Article 96 of the Financial Regulation the contracting authority may impose administrative or financial penalties on the following:

(a) candidates or tenderers in the cases referred to in point (b) of Article 94 of the Financial Regulation;

(b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

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

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

(a) exclusion of the candidate or tenderer or contractor from the contracts and grants financed by the Community budget for a maximum period of ten years; and/or

(b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.

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

(a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by Council Act of 26 July 1995 (OJ C 316, 27.11.1995, p. 48);

(b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997 (OJ C 195, 25.6.1997, p. 1);

(c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ L 351, 29.12.1998, p. 1);

(d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ L 166 of 28 June 1991, p. 77).

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

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

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

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

(a) from the date of the judgment having the force of res judicata in the cases referred to in points (b) and (e) of Article 93(1) of the Financial Regulation;

(b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 93(1)(c) of the Financial Regulation.

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

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

8. Pursuant to article 134b of the Regulation laying down the rules for the implementation of the Financial Regulation, without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be

excluded from all contracts and grants financed by the Community budget for a maximum of five years from the date on which the infringement is established as confirmed following an adversarial procedure with the contractor.

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

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

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

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

The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 133a, paragraphs 5 – 8 of the Regulation laying down the rules for the implementation of the Financial Regulation.

5.2 Selection criteria

The following criteria will be used to select the tenderer. If the tender is submitted by partners (as defined under section 2.2 above) these criteria in the section "Professional Information" and "Financial and Economic capacity" must be fulfilled by each partner, whereas the requirements written in the section "Technical Background" could be fulfilled jointly by partners.

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

5.2.1. **Professional Information**

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

5.2.2. **Financial and Economic capacity**

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

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

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

5.2.3. **Technical Background**

Individual tenderers or partners must provide evidence of compliance or joint compliance of the consortium as a whole, in the case of partners, with the technical selection criteria outlined below. Subcontractors, if any, must comply with one or more of the criteria below, but will not be assessed in order to determine the joint compliance of the partners with the Technical selection criteria:

1. Relevant expertise of the tenderer and other applicants, including subcontractors if any, in the last 3 years, in the field of legal, technical, economical and social issues related in information society services and products, information and communication technologies, and capacity to provide this expertise in different EU Member States.
2. Experience and credibility of proposed team: concise but informative curricula vitae of all professional team members, showing relevant experience in the specific domain of this study for at least 3 years, must be included with the tender.
3. Technical knowledge and experience in collection and analysis of data.

4. Management capability
5. Demonstration of access to relevant information sources based on past experience in the field/area.

Documentary evidence of the tenderers' claims in respect of the above-mentioned criteria is required, for example by way of lists of studies, research, previous projects and contracts etc.

5.3 Award criteria

5.3.1 Technical criteria

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

(a) Understanding of the task required in relation to the tender (Maximum 20 points)

- Credibility, control and understanding of the work to be carried out (listed in part 1, point "study objectives"). The tenderer should explain the way in which he intends to achieve these objectives.

(b) Technical content of the tender (Maximum 50 points)

- Quality of the technical approach and proposed methodology to obtain the necessary data and the information as stated in the objectives of the study.
- Extent to which all relevant issues are covered.
(All of equal relative importance)

(c) Project Management (Maximum 30 points)

- Balanced and consistent method of work.
- Realistic time scale and allocation of resources.
(All of equal relative importance)

Minimum attainment per criterion

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

Minimum attainment overall

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

5.3.2 Price

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

6 AWARD OF THE CONTRACT

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

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

7 PAYMENT AND STANDARD CONTRACT

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

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

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

8. VALIDITY OF THE OFFER

Period of validity of the tender shall be **12** months from the closing date given above.

9. ADDITIONAL PROVISIONS

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

10. LIQUIDATED DAMAGES: SEE ARTICLE II.16 OF THE MODEL CONTRACT

11. NO OBLIGATION TO AWARD THE CONTRACT

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

12. RESULTS

The results of the service must be forwarded to the Commission of the European Communities in Brussels. **The copyright will belong to the Commission;** the Commission will in particular have the right to publish the results and allow the re-use of the information contained in the study.

13. DISCLAIMER

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

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

PART 3: ANNEXES

ANNEX 1: ADMINISTRATIVE IDENTIFICATION FORM

Identification of the tenderer
(to be completed by the tenderer)

IDENTITY

Name of tenderer

Legal form of tenderer

Date of registration

Country of registration

Registration number

VAT number

ADDRESS

Address of Registered Office of the
tenderer

When appropriate, administrative
address of tenderer for the purposes of
this invitation to tender

CONTACT PERSON

Name

Forename

Title (e.g. Dr, Mr, Mrs)

Position (e.g. Manager)

Telephone number

Fax number

e-mail address

Internet address

Other

NAMES OF LEGAL REPRESENTATIVES

And of other representatives of the
tenderer who are authorised to sign
contracts with third parties

DECLARATION BY THE AUTHORISED REPRESENTATIVE OF THE ORGANISATION⁹:

I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.

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

Date of signature:
.....

Signature and Name (in capital letters):
.....

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

ANNEX 2: LEGAL ENTITY FORM

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

Standard Documents may be found at:

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

ANNEX 3: BANK IDENTIFICATION FORM

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

Standard Documents may be found at:

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

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ANNEX 4: EXCLUSION CRITERIA AND NON CONFLICT OF INTEREST FORM

EXCLUSION CRITERIA and non conflict of interest FORM
ASSESSMENT OF THE ECONOMIC AND SOCIAL IMPACT OF THE PUBLIC DOMAIN IN THE INFORMATION SOCIETY

The undersigned:

Name of the company/organisation:

Legal address:

.....

Registration number:

VAT Number:

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

.....
.....

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

- is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- has not been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- has fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- has not been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- is not currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation.

In addition, the undersigned declares on his honour:

- that on the date of submission of the tender, the company or organisation he represents and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; he undertakes to inform the Commission without delay of any change in this situation which might occur after the date of submission of the tender;

- that the information provided to the Commission within the context of this invitation to tender is accurate, truthful and complete.

- By signing this form, the undersigned acknowledges that he is aware of the administrative and financial penalties described under section 5.1.5 part II of the specifications, which may be applied if one of the situations described above arises.

Full name

Date

Signature

.....

ANNEX 5: POWER OF ATTORNEY / AGREEMENT BETWEEN PARTNERS

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

We the undersigned :

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

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

HEREBY AGREE AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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(b) The Lead contractor shall act as single point of contact for the European Commission in connection with the Services to be provided under the Contract. It shall coordinate the provision of the Supplies and/or the Services by the partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present agreement / power of attorney shall be subject to the European Commission's express approval.

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

Signed in on

Name

Function
Company
Name
Function
Company
Name
Function
Company

ANNEX 6: SUBCONTRACTOR / LETTER OF INTENT

**ASSESSMENT THE ECONOMIC AND SOCIAL IMPACT OF THE PUBLIC DOMAIN
IN THE INFORMATION SOCIETY**

The undersigned:

Name of the company/organisation:

Address:

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

Full name

Date

Signature

.....