

TENDER SPECIFICATIONS

Standards terms and performance criteria in service level agreements for cloud computing services

SMART 2013/0039

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1 PART 1: TECHNICAL DESCRIPTION

1 CONTEXT

On 27 September 2012, the European Commission adopted a Communication to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions on "Unleashing the Potential of Cloud Computing in Europe"¹.

The Communication "Unleashing the Potential of Cloud Computing in Europe" states that the Commission will develop with stakeholders model terms for cloud computing service level agreements for contracts between cloud providers and professional cloud users, taking into account the developing EU acquis in this field.

The Staff Working Document², which accompanies the Communication, underlines that the development of the model terms for cloud computing of the service level agreements for professional users was one of the most important issues that arose during the consultation process on the Cloud Computing.

It states also that many respondents underline that model Service Level Agreements will help Cloud services to define the rights and responsibilities of all involved parties. User concerns are related among others to data access and portability, change of control and ownership of the data, liability for service failures such as downtime or loss of data, unilateral changes to the contract made by the provider, ownership of data created in cloud applications and dispute resolution.

The Staff Working Document refers also to the Public Consultation Report on Cloud Computing³ and the results of the study "Quantitative Estimates of the Demand for Cloud Computing in Europe and the Likely Barriers to Take-up" underline that the need for model contracts for Service Level Agreements (SLAs) at European level is widely shared among all respondent groups.

In this context, the European Commission will work together with stakeholders in order to develop model terms for cloud computing service level agreements for contracts between cloud providers and professional cloud users.

This study is complementary to a separate comparative study on model contract terms and conditions for consumer and small firms to be launched by the European Commission in 2013. The distinction is that the present study will focus on the classification and analysis of service level agreements as well as existing and potentially relevant legislation and jurisprudence which could apply to such service level agreements in particular for corporate markets (professional users); while the complementary study will undertake an EU wide survey of the legislation and jurisprudence governing cloud computing contracts with a particular focus on contracts for standardised cloud computing services orientated

¹http://ec.europa.eu/information_society/activities/cloudcomputing/docs/com/com_cloud.pdf.

²http://ec.europa.eu/information_society/activities/cloudcomputing/docs/com/swd_com_cloud.pdf.

³http://ec.europa.eu/information_society/activities/cloudcomputing/docs/quantitative_estimates.pdf

towards consumers and small firms. Coordination between the studies will be assured through inter-service participation in the steering committees for both projects. The contractor will be expected to take account of the state of the art (inter alia reflecting the results of the other study) in conducting its work.

2 OBJECTIVES

The objective of the study is to develop a classification of the key elements of service level agreements for cloud computing services (CSLAs)⁴ and to list the essential information and necessary regulations that are important for drawing up and terminating CSLAs. The Commission will publish the results of the study in the Commission's web-page on cloud computing. The data used should be very recent, from 2012 or later.

2.1 Geographical scope

The study should take account of both existing and potentially relevant legislation and jurisprudence in all 28 EU Member States and EFTA, and, although not a central aim of the study also economic aspects of cloud computing services should be taken into account. In particular, provisions that could be standardised in the future should be considered.

2.2 Specific objectives

The study should provide an empirical survey of terms and metrics in all 28 EU Member States and EFTA that are used in CSLAs. The focus should be 1) primarily to investigate professional contracts but should also 2) provide an input for the development of model terms for cloud computing service level agreements for contracts between cloud providers and professional cloud users (offered to corporates, SMEs and Consumer markets alike), taking into account the developing national and EU acquis in this field. The study should take full account of the complexity of the transactions involved, inter alia: all EU and EFTA jurisdictional considerations; sectoral distinctions, the diverse requirements of large and smaller enterprises; differences related to the complex sub-contracting chains in cloud service provision.

Furthermore, the study should examine all relevant specific legislation related to how service level agreements underpin mandatory requirements (compliance obligations).

The study should provide recommendations on strategy and policy aspects for the further development of the model service level agreements for cloud computing services.

2.3 Tasks

1) the survey of terms and metrics and the investigation of the professional contracts and possible regulations that could apply to these contracts in all 28 EU Member States and EFTA that are used in CSLAs;

⁴ - The catalogue of recommended contractual elements that should be incorporated into the Service Level Agreements (SLA) for cloud service providers.

- 2) an input containing a draft of the model terms for cloud computing service level agreements for contracts between cloud providers and professional cloud users (offered to corporates, SMEs and Consumer markets alike), taking into account the developing national and EU acquis in this field.
- 3) recommendations on strategy and policy aspects for the further development of the model service level agreements for cloud computing services.

2.4 Methodology

The study should be developed following a clear methodology covering all aspects of the study. Tenderers are free to propose the specific methodology, taking into account the context and objectives of the study and the following conditions.

The study should be based on data from a variety of sources such as industry, government, and consumer organisations, as well as different legal and market studies. It should include information from literature reviews and discussions/interviews with technology/market experts and key stakeholders in the field of cloud computing. Efficient use of available networks should be made by liaising with relevant stakeholder groups such the Cloud Select Industry Group.

The contractors will organise two workshops in the course of the study in order (respectively) to generate data and to validate the results.

3 DURATION

Duration of the tasks must not exceed 18⁵ months and is subject to the provisions of Article I.2.3 of the contract.

4 DELIVERABLES, MEETINGS AND TIMETABLE

4.1 Deliverables

4.1.1 The deliverables listed below must be provided by the contractor:

- **Inception report**, specifying the methodology, resources and objectives provided in the tender in accordance with the indications provided by the Commission during the inception meeting (see section 4.2 below). A draft of the report shall be made available to the Commission's services for information 5 working days before the inception meeting. The contractor will be expected to update the inception report in respect of the guidance of the Commission services as a result of the inception meeting, including as regards coordination with the complementary study on model contract terms and conditions for consumer and small firms. The Inception Report shall be made available within 2 weeks after the inception meeting. No modifications to the tender specifications or the offer can be made during the inception meeting or through the inception report.

⁵ Including the period of approval of the final study report which is two months as foreseen in article I.4.4 of the contract.

- **Interim study report**, which will cover general overview of the professional contracts for cloud computing services, which exists in all 28 EU Member States and EFTA . A draft of the report shall be made available to the Commission's services 5 working days before the first interim meeting in month 6 (described in section 4.2 below). The report should be finalised after the meeting taking into account all observations and comments raised at the meeting. The finalised first Interim Study Report shall be submitted to the Commission's services within 2 weeks after the first interim meeting.
- **Interim progress report**, including e.g. time-sheets on person/days consumption, travel details, use of consumables, etc.
- **Second interim study report**, which will focus on: 1) the results of the investigation and survey of the professional contracts 2) first input for the development of model terms for cloud computing service level agreements for contracts between cloud providers and professional cloud users (offered to corporates, SMEs and Consumer markets alike), taking into account the developing national and EU acquis in this field, 3) initial recommendations on strategy and policy aspects for the further development of the model service level agreements for cloud computing services. A draft of the report shall be made available to the Commission's services 5 working days before the second interim meeting in month 12 (described in section 4.2 below). The report should be finalised after the meeting taking into account all observations and comments raised at the meeting. The finalised second Interim Study Report shall be submitted to the Commission's services within 2 weeks after the second interim meeting.
- **Draft study report**. The draft study report shall be made available to the Commission's services within 15 months after signature of the contract by the last contracting party.

Final study report with feedback workshop. The final study report shall be made available to the Commission's services within 16 months after signature of the contract by the last contracting party. The final study report should be finalised after the final meeting taking into account all observations and comments raised at the meeting. The finalised final study report shall be submitted to the Commission's services within 2 weeks after the final meeting.

4.1.2 Report format

All deliverables must be written in English.

All reports should be consistent in style (headings, margins, citations, bibliography, etc) and contain a short executive summary. The contractor is required to properly apply quotation techniques and particular care will be taken to verify improper re-use of existing material.

All reports will be submitted in 2 paper copies and in electronic format (.doc, .xls, .ppt or equivalents in open formats). Exchange of advance copies as well as other non-formal communications shall take place via electronic mail.

The Commission services will decide the possible dissemination of the findings and conclusions and any other information produced under this assignment.

4.1.3 Content

4.1.3.1 Final Study Report

The final study report shall include:

- an abstract of no more than 200 words and an executive summary of maximum 6 pages, both in English and French;
- the following standard disclaimer:

"By the European Commission, Directorate-General of Communications Networks, Content & Technology.

The information and views set out in this publication are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.

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- *No third-party textual or artistic material is included in the publication without the Copyright holder's prior consent to further dissemination and reuse by other third parties or:*
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Replace XXXX with the year of publication

- specific identifiers which shall be incorporated on the cover page provided by the Contracting Authority.

The Final Study Report shall be provided in 3 bound paper copies including annexes and in a .pdf format suitable for publication by the Commission's services on Commission websites. In addition, the executive summary shall be provided in 3 bound paper copies (for each of the two languages), and in a .pdf format suitable for publication by the Commission's services on Commission websites.

4.1.3.2 Publishable executive summary

The publishable executive summary shall be provided in both in English and French and shall include:

- the following standard disclaimer:

"By the European Commission, Directorate-General of Communications Networks, Content & Technology.

The information and views set out in this publication are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.

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Replace XXXX with the year of publication

- specific identifiers which shall be incorporated on the cover page provided by the Contracting Authority.

4.1.3.3 Abstract

The abstract provided both in English and French in the Final study report (see point 4.1.3.) in no more than 200 words shall be provided as well in a separate document for the purpose of the description of the study on the website of the EU Bookshop.

No identifiers shall be incorporated on this file.

4.1.4 Structure

The **Final study report** shall include the following sections:

1. Executive summary
2. Survey results
3. Analysis of the key elements of service level agreements for cloud computing services
4. List of the essential information and necessary regulations that are important for drawing up and terminating CSLAs
5. Input for the development of model terms for cloud computing service level agreements for contracts between cloud providers and professional cloud users (offered to corporates, SMEs and Consumer markets alike), taking into account the developing national and EU acquis in this field
6. Recommendations on strategy and policy aspects
7. Conclusions

8. Annexes

4.1.5 Graphic requirements

The new visual identity applies to all commission services and related bodies.

For graphic requirements please refer to the template provided in the annex 10, "Visual identity template for DG CONNECT studies". The cover page shall be filled in by the contractor in accordance with the instructions provided in the template.

In case you foresee other logos than the Commission logo, the additional logo may only be placed on the cover page of the study if they are one of the following categories:

- a logo duly authorised by the Secretary General and the Director-General for Communication of the European Commission;
- the logo of the author of the study (i.e. the contractor);
- in case of co-branded studies, the logo of a partner organisation involved in the production of the study. In this case, the European Commission's Visual Identity Manual does not apply.

4.2 Meetings and workshops

A schedule of meetings will be agreed with the contractor for this assignment. Such meetings will be attended by representatives of the European Commission, the project manager leader and other members of the contractor's team, as required. The meetings will be chaired by a Commission representative and will take place in *Brussels*.

The aim of the meetings will be to guide the work of the contractor. In particular, they will allow setting-up the initial orientations, review progress in critical milestones and review the deliverables of the assignment.

Within three days following each meeting, the contractor will circulate minutes of the meeting to all participants, together with copies of presentations made during the meeting or other related documents. The minutes shall be concise and concentrate on major decisions and shall list the open action points for the next reporting period.

Inception meeting

An inception meeting will be organised by the Commission's services at the Commission's premises in Brussels within 1 month after signature of the contract by the last contracting party. The contractor will have to finalise the inception report on the basis of the outcome of the inception meeting.

Interim meeting

An interim meeting during which the contractor will present the initial results will be held within 5 months after signature of the contract by the last contracting party. It will be organised by the Commission's services at the Commission's premises in Brussels. The

contractor will have to finalise the interim study report on the basis of the outcome of the interim meeting.

First Workshop

Two workshops will be organised within 5 and 18 months after the signature of the contract. The first workshop will have an aim to gather more data and to present the preliminary results of the survey. The second one will have an aim to present the final study report. The detailed description of this final workshop is indicated below.

Second interim meeting

A second interim meeting during which the contractor will present the interim results will be held within 12 months after signature of the contract by the last contracting party. It will be organised by the Commission's services at the Commission's premises in Brussels. The contractor will have to finalise an interim study report on the basis of the outcome of the interim meeting.

Monthly conference calls

In addition to the meetings to be organised in Brussels, a monthly conference call on the state of progress of the study will take place between representatives from the contractor and the Commission.

Final Workshop

The final study report as approved by the Commission in accordance with section 5 below will be presented by the contractor during a final workshop to be held within 15 months after signature of the contract by the last contracting party. The contractor is expected to provide a senior member of staff having worked on the contract to deliver a presentation on the main findings. The workshop will be organised by the Commission's services at the Commission's premises in Brussels and will last 1 day. In case an alternative location for the workshop is proposed by the contractor, this has to be agreed by the Commission in advance and to remain within the budget foreseen in the tender.

The aim of the workshop is to inform relevant stakeholders and experts about the findings of the final study report, validate and collect their views on them, as well as more general views, especially on current and future developments in the area of the study and policy implications. This will require the contractor preparing a short document and/or a presentation, which will summarise the findings of the study and will raise issues for discussion at the workshop.

The contractor will also prepare the workshop (agenda, invitations, speakers, participants, etc.) and manage the discussion together with the Commission. The feedback from the workshop will be incorporated in the final study report as described above. The final list of participants has to be agreed in advance with the Commission's services.

Costs related to the following activities and items must be borne by the contractor and included in the price (2 workshops):

- Setting the agenda of the 2 workshops in cooperation with the Commission;
- Identifying participants (up to 25) and speakers (up to 5) in cooperation with the Commission;
- Inviting speakers and participants;
- Financing the travel and subsistence expenses for up to 5 speakers
- Any expert fees: where justified

○ Printing and distributing relevant information material for speakers and participants. The meetings should be organised on the Commission premises and therefore the costs of meeting rooms, coffee/tea and lunches should not be included in the contract as they will be borne by the Commission.

Final meeting

A final meeting during which the contractor will present the final findings and proposed conclusions will be held within 16 months after signature of the contract by the last contracting party. It will be organised by the Commission’s services at the Commission’s premises in Brussels. The contractor will have to finalise the final study report on the basis of the outcome of the final meeting.

Each tenderer should include costs of attendance of its own representative(s) at all the above meetings and workshops in the financial section of the offer.

4.3 Timetable

Title	Type	Due month
Inception meeting	Meeting	1
Inception report	Deliverable	2
Workshop	Meeting	5
Interim meeting	Meeting	5
Interim study report	Deliverable	6
Interim progress report	Deliverable	8
Second Interim study report	Deliverable	10
Second Interim meeting	Meeting	12
Draft study report	Deliverable	15
Final workshop	Meeting	15
Final meeting	Meeting	16
Final study report with feedback workshop	Deliverable	16

5 TERMS OF APPROVAL OF REPORTS/DELIVERABLES

5.1 Study reports

After reception of each study report included in section 4.1 above, except for the reports linked to payments, the Commission will have 30 calendar days in which:

- to approve it,
- to reject it and request a new report.

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

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

For the terms of approval of the reports linked to payments we refer to article I.4 of the contract.

5.2 Progress report

The Commission shall have 20 days from receipt to approve or reject the progress report, and the Contractor shall have 20 days in which to submit additional information or a new report.

6 LAYOUT/CONTENT OF THE WORK PLAN

Offers should include a detailed work plan. The work plan should specify the management structure as well as the responsibility of each member of the team, including the main contractor and/or sub-contractors. It should include the names of the persons in charge of the different countries where data have to be gathered.

The work plan should include a list of tasks to be performed, with clear and realistic phases and milestones. Resources should be clearly associated to each task.

PART 2: ADMINISTRATIVE DETAILS

1 ELIGIBILITY REQUIREMENTS

The present tender documents are drawn up in respect of the Financial Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, hereinafter referred to as the Financial Regulation, as well as the Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, hereinafter referred to as the Rules of Application. , , .

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 Union 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.

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

ADMISSIBILITY OF TENDERS

All the **requirements** related to the **submission and opening of the tenders** are detailed in the invitation to tender (see sections 2, 4 and 8 of the invitation to tender) including:

- *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 a tender as a single entity or decide to collaborate with other service providers to present a bid: either by submitting a **joint tender** or through **subcontracting**. Tenders may also combine both approaches. Whichever type of bid is chosen, the tender must stipulate the legal status and role of each legal entity in the tender proposed.

2.1 Different ways to submit a tender

Options 1 to 4 below describe the different ways to submit a tender.
Please make sure all required documents and evidences are submitted with your tender.
(Please refer to the checklist in Annex 7)

- Option 1:** Submission by **one tenderer: Private / Public entity / Individual.**
- Option 2:** Submission by **partners** as defined under section 2.2 below.
One must be designated as **lead partner/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 partner/contractor) **with subcontractors** as defined under section 2.2 below

The tender must include a cover letter (Annex 9) presenting the name of the tenderer (including all entities in case of joint offer as well as their roles) and identified subcontractors, if applicable.

2.2 Joint Tenders and Subcontracting

2.2.1 Joint tenders

In case of a joint tender submitted by a group of tenderers, these latter will be regarded as **partners**. If awarded the contract, they will have an equal standing towards the contracting authority in the execution of the contract.

The partnership may take the form of:

- a) a **new legal entity** which will sign the contract with the Commission in case of award
- or
- b) a group of partners not constituting a new legal entity, who via a **power of attorney (Annex 5)**, signed by an authorised representative of each partner (except the lead partner), designate one of the partners as lead partner, and mandate him as lead contractor to sign the contract with the Commission in case of award.

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

2.2.2 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 tender, if awarded the contract, shall become the sole contractor and shall assume **full liability toward 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.7 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 single tenderer or lead partner:

- Annex 1: Administrative identification form (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 2: Legal Entities form⁶ (ORIGINAL filled in, signed by (an) authorised representative(s), and supported by relevant evidences according to the entity concerned, i.e. private/public/individual)
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 a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.
- Annex 3: Financial Identification form⁷ (ORIGINAL filled in according to the instructions contained in this form)
If the corresponding bank account of economic operators is already registered in the Commission's files they are not obliged to provide a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.
- Annex 4: Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest (ORIGINAL filled in and signed by (an) authorised representative(s))
- Legible photocopy of the statutes of the legal entity (for public/private entities)
- Legible photocopy 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.

Options 2 and 4: documents to be provided by each partner, except the lead partner

- Annex 1: Administrative identification form (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 2: Legal Entities form⁸ (ORIGINAL filled in, signed by (an) authorised representative(s), and supported by relevant evidences according to the entity concerned, i.e. private/public/individual)

⁶ A standard template in each EU language is available at

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

⁷ A standard template in each EU language is available

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

⁸ A standard template in each EU language is available at

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

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 a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.

- Annex 4: Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 5: Power of attorney (ORIGINAL filled in and signed by (an) authorised representative(s) of each partner)
- Legible photocopy of the statutes of the legal entity (for public/private entities)
- Legible photocopy 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.

Options 3 and 4: Documents to be provided by each subcontractor

- Annex 1: Administrative identification form (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 4: Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 6a: Letter of intent from each subcontractor (ORIGINAL signed by (an) authorised representative(s)) to confirm their willingness and availability to perform the tasks.

Individual external experts, not part of the tenderer's staff, foreseen to execute a part of the work are also to be considered subcontractors. Individual external experts will have to provide only the letter of intent in Annex 6b (ORIGINAL).

3 SIGNATURE OF THE TENDER

The signature of the single tenderer's or lead partner's authorised representative or representatives (preferably in blue ink) on the administrative identification form (**Annex 1**) will be considered as the signature of the tender, binding the single tenderer or the group of partners to the terms included in the tender.

4 LAYOUT OF THE TENDER

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

The documentary evidence required in accordance with part 2 section 2, section 3, section 5.1.3 and section 5.2 of the Tender Specifications must be included in the administrative section of the tender. **Tenders not including the necessary evidence may be rejected.**

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 (3) of the invitation to tender.

4.2 Technical section

This section must address all the requirements laid down in Part 1 - Technical description of the tender specifications. Information included here will be used to conduct the qualitative assessment of the tenders on the basis of the technical award criteria listed in section 5.3 below.

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

4.3 Financial section

The price quoted must fulfil the following requirements:

- A **total** fixed price expressed **in Euro** must be included in the tender.
- The price quoted must **be firm and not subject to revision.**
- The European Commission, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, is exempt from all duties, taxes and dues, including value added tax (VAT).

Such charges may not therefore be included in the calculation of the price quoted.

VAT 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 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 Commission is exempt from VAT.

- The price quoted shall be subject to the terms set in Article I.3 of the model contract attached.
- The price must fall within the scope of these tender specifications and be broken down into unit prices and quantities per each of the following categories:

(a) Professional fees. The daily rates and total number of person-day for each member of staff working on the contract must be specified.

(b) Travel and subsistence expenses (including costs of attendance of future contractor's representative(s) at meetings and/or workshops with the Commission as foreseen in section 4.2, part 1). In the event of travel being necessary to carry out the duties specified in the tender, travel and subsistence expenses shall be paid as indicated in the tender.

(c) Other expenses (outsourced services or supplies e.g. translation expenses, printing expenses, website development, cost of acquiring data etc.)

- Tenders involving more than one legal entity, either as partner or subcontractor (including external experts) must specify the categories above for each legal entity.
- The Commission will reject tenders where no financial offers are proposed.

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

The total price quoted cannot exceed EUR 250 000 [two hundred fifty thousand euros]. Tenders with a higher total price will be rejected.

5 EVALUATION OF TENDERS

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

- The Commission verifies that the **tenderer** is not in one of the situations covered by the exclusion criteria (first step, see section 5.1 below)
- For all tenderers that are not in one of the situations covered by the exclusion criteria, the Commission verifies that the **tenderer** has the appropriate capacities to perform the contract on the basis of the selection criteria (second step, see section 5.2 below)
- For those tenderers that have met the minimum requirements for the selection criteria, the Commission assesses the **tender** on the basis of the award criteria (third step, see section 5.3 below).

5.1 Exclusion Criteria

5.1.1. Pursuant to Article 45(2) of Council Directive 2004/18/EC and to Article 106(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 or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authorities can justify including by decisions of the European Investment Bank and international organisations;
- (d) they are not in compliance with their 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 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 or persons having powers of representation, decision making or control over them have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;

- (f) they are currently subject of an administrative penalty referred to in Article 109(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.

Points (b) and (e) of the first subparagraph shall not apply where the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having powers of representation, decision making or control over them, who are subject to a judgement as referred to in points (b) or (e) of the first subparagraph.

For the purpose of the correct application of paragraph 1, the candidate or tenderer, whenever requested by the contracting authority, shall:

(a) where the candidate or tenderer is a legal person, provide information on the ownership or on the management, control and power of representation of the legal person and certify that they are not in one of the situations referred to in paragraph 1 of Article 106 of the Financial Regulation;

(b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1 of Article 106 of the Financial Regulation

5.1.2. Pursuant to Article 45(2) of Council Directive 2004/18/EC and Article 107 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 misrepresenting the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;
- (c) find themselves in one of the situations of exclusion, referred to in Article 106(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 (Annex 4), duly signed and dated, stating that they are not in one of the situations referred to in Article 106(1) or 107 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, for contracts of a value higher than EUR 130000, ONLY the tenderer to whom the contract is to be awarded shall confirm the declaration by providing, within a time-limit defined by the contracting authority and preceding the signature of the contract, the following evidences (if the tender is proposed by partners, these evidences must be submitted by each partner):

- 1) The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 106(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, a recent equivalent document issued **issued less**

than 12 months before the date of the letter informing of the contract award 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. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 106(1) of the Financial Regulation, recent certificates or letters issued by the competent authorities of the State concerned, **issued less than 12 months before the date of the letter informing of the contract award**. 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.

Where the document or certificate referred to in the first subparagraph 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.

- 2) If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 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 and dated**, 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 Union 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.

Tenderers and, if they are legal entities, persons who have power of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p. 125), or
- the Commission Regulation of 17.12.2008 on the Central Exclusion Database – CED (OJ L 344, 20.12.2008, p.12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with power of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract or a grant agreement or decision.

2. In accordance with Article 109 of the Financial Regulation the contracting authority may impose administrative or financial penalties on the following:
 - (a) contractors, candidates or tenderers in the cases referred to in point (b) of Article 107(1) 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 shall first give the person concerned an opportunity to present his or her 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) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the 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 141 of the Regulation laying down the rules of application of the Financial Regulation, the cases referred to in point e) of 5.1.1. above shall include all illegal activities detrimental to the Union's financial interests and be in particular 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 participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA (OJ L 300, 11.11.2008, p. 42);
 - (d) cases of money laundering as defined in Article 1 of Council Directive 2005/60/EC of the European Parliament and of the Council (OJ L 309, 25.11.2005, p. 15);
 - (e) cases of terrorist offences, offences linked to terrorist activities, and inciting, aiding, abetting or attempting to commit such offences, as defined in Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA (OJ L 164, 22.6.2002, p.3).
5. Pursuant to article 142 of the Regulation laying down the rules of application of the Financial Regulation, in order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impact on the Union's 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 108(2) and (3) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 106(4) of the Financial Regulation.

6. The period referred to in Article 106(4) 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 106(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 106(1)(c) of the Financial Regulation where the misconduct relates to contracts with the institution concerned.

For the purposes of point (b) of the sixth subparagraph, if the grave professional misconduct was established by a decision of a public authority or an international organisation, the date of the decision shall prevail.

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 106(1) of the Financial Regulation.
8. Pursuant to article 145 of the Regulation laying down the rules of application 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 Union budget for a maximum of five years from the date on which the infringement is established as confirmed following a contradictory procedure with the candidate, tenderer or 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 142(1) of the Regulation laying down the rules of application of the Financial Regulation.

5.2 Selection criteria

The following selection criteria will be used to select the tenderers.

If the tender is submitted by partners (as defined under section 2.2 above)

- the selection criteria in respect of financial and economic capacity (see point 5.2.2 below) are to be considered as setting minimum standards which must be fulfilled by each partner; consequently, documentary evidence has to be provided by each partner and an evaluation of the financial and economic capacity will be carried out for each of them;
- the selection criteria in respect of technical capacity (see 5.2.3 below) will be assessed in relation to the combined capacities of all the members of a partnership as a whole (including subcontractors)

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

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

5.2.1 Professional information

Criterion:	Enrolment in one of the professional or trade registers in the country of establishment or equivalent
Documentary evidence:	Declaration or certificate of enrolment in one of the professional or trade registers in the country of establishment

5.2.2 Financial and economic capacity

Criterion:	Sufficient financial and economic standing to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract
Documentary evidence:	Photocopies of annual income statements and balance sheets or extracts there from signed by the authorised representative of the legal entity for the last three financial years, where applicable, as approved by the general assembly of the company, audited and/or published AND Statements of overall turnover and turnover from contracts in the field of

	cloud computing in the last three financial years.
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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*

Criterion:	Relevant expertise of the tenderer and other applicants, including subcontractors if any, acquired in the last three years, in the cloud computing related fields.
Documentary evidence:	List of 2 contracts in the fields listed above performed in the past three years, or currently being performed, with their respective values

Criterion:	Experience, technical knowledge and credibility of proposed team
Documentary evidence:	<p>Concise but informative curricula vitae of team members, demonstrating professional experience, including the requisite language skills, in the field of cloud computing of at least three years.</p> <p>The Europass curriculum vitae template (available at http://europass.cedefop.europa.eu/europass/home/hornav/Introduction.csp) shall be filled in by each person involved in the execution of the tasks foreseen in the tender. Please make sure the precise contractual link with the tenderer is clearly indicated.</p>

Criterion:	Management capability
Documentary evidence:	<p>List of 2 contracts of a value of at least EUR 100 000 [one hundred thousand] each, performed by the tenderer(s) (including subcontractor(s), if any) in the last three years.</p> <p>Short description of the measures employed to ensure the quality of the services for each of the listed contracts.</p> <p>Statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years</p>

5.3 Award criteria

5.3.1 Technical award criteria

The tenders will be qualitatively assessed on the basis of the technical award criteria and respective scores listed below:

<u>Technical award criterion</u>	<u>Maximum score/weighting</u>	<u>Threshold</u>
<p>1. Understanding of the tasks required</p> <p>1.1. Understanding of specific and long-term objectives</p> <p>1.2. Value added in respect of information included in the tender specifications</p> <p><i>(All the sub-criteria above are of equal relative importance)</i></p>	20	10
<p>2. Technical quality of the tender</p> <p>2.1. 2.1. Completeness and full coverage of the scope of the tasks</p> <p>2.2. Value added at the EU level</p> <p>2.3. Sound methodology to assess legal and possible economic impact and other relevant impacts, and make the appropriate links to policy goals and outcomes</p> <p>2.4. Approach for policy analysis throughout all the tasks</p> <p>2.5. Quality of proposed deliverables</p> <p>2.6. Quality and extent of contacts proposed with relevant public and private stakeholders in order to provide an input for the development of service level agreements for cloud computing services</p> <p>2.7. Relevance, quality and completeness of the information proposed to be used, and of the analysis proposed to be undertaken</p> <p><i>(All the sub-criteria above are of equal relative importance)</i></p>	60	30

<p>3. Management</p> <p>3.1. Feasibility to meet the objectives specified in the tender specifications (outlined e.g. by a workplan or timetable)</p> <p>3.2. Sound and realistic allocation of:</p> <ul style="list-style-type: none"> - financial and - human resources, including allocation of expertise <p><i>(All the sub-criteria above are of equal relative importance)</i></p>	20	10
TOTAL	100	60

Minimum score per criterion (threshold):

Tenders scoring less than 50% of the maximum score for any technical award criterion will be considered of insufficient quality and rejected.

Minimum total score (threshold):

Tenders with a total score of less than 60 points at the end of the evaluation process will be considered of insufficient quality and rejected.

5.3.2 *Price*

The price quoted must comply with the requirements laid down in Part 2 - section 4.3 above.

6 AWARD OF THE CONTRACT

The Contract shall be awarded to the tender offering the best value for money, which will be the one with the best quality/price ratio, taking into account the award criteria listed in section 5.3.

The qualitative score obtained for the technical award 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, I.10 and II.15 of the model contract attached provided that the contractor has fulfilled all his contractual obligations.

The invoice shall be submitted in electronic format only by using the e-PRIOR communication platform. A brief description of the system and connection modalities is enclosed to the present Tender Specifications (Annex 8: e-PRIOR description). The tenderer(s) is/are required to inform the Commission about the

submission modality chosen for the dispatch of the invoice, should a contract be awarded to them. To this end, the tenderer should specify in Annex 9 (Cover letter for the tender) whether (s)he intends to use the Supplier Portal or establish a direct connection between the contractor's back office and the Commission's back-office/ use the services of a third party service provider already connected to e-PRIOR and offering such services.

Further instructions/guidance documents to assist contractors in sending electronic invoices will be communicated by the Commission after the contract award.

Contractors should note that since the model service contract for this call for tender foresees submission of electronic invoices, paper invoices will not be taken into account, except in the cases referred to in points 6 and 7 of Article I.10.2 (Submission and validity of financial documents) of the Model Service Contract attached.

8 VALIDITY OF THE TENDER

Period of validity of the tender shall be 9 months from the closing date for submission of the tender 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.12 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 European Commission in Brussels. **The copyright will belong to the Commission**; the Commission will in particular have the right to publish the results.

If the result is not to be fully created for the purpose of the contract it is to be clearly pointed out in the tender. There should be information provided about the scope of pre-existing materials, their source and when and how right to have them have been acquired.

The provisions on the use of the results and ownership of the results can be found in the Model Service Contract (Article I.8 Exploitation of the results of the contract and Article II.10 Ownership of the results – Intellectual and Industrial Property Rights).

PART 3: ANNEXES

ANNEX 1: ADMINISTRATIVE IDENTIFICATION FORM

Standards terms and performance criteria in service level agreements for cloud computing services – SMART 2013/0039

<u>TENDERER'S ID</u>	
Name	
Legal form	
Date of registration	
Country of registration	
Registration number	
VAT number	
Address of registered office	
Contact address (if different)	
URL	
<u>AUTHORISED REPRESENTATIVE(S)⁹</u>	
<u>CONTACT PERSON</u>	
Name	
Forename	
Position	
Telephone	
Fax	
Email	
<u>DECLARATION BY THE AUTHORISED REPRESENTATIVE(S):</u> I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	

⁹ Please include the names of the legal representative(s) whose contract signature is required in accordance with the statutes of the organisation and the official document to be provided as required in Part 2 under section 2.3

Place and date:

Name (in capital letters) and signature:

ANNEX 2: LEGAL ENTITIES FORM

As required in PART 2 under section 2.3 of the tender specifications.

A standard template in each EU language is available at:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

ANNEX 3: BANK IDENTIFICATION FORM

As required in PART 2 under section 2.3 of the tender specifications

A standard template in each EU language is available at:

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

**ANNEX 4: DECLARATION OF HONOUR ON THE EXCLUSION CRITERIA AND ABSENCE OF
CONFLICT OF INTEREST**

Standards terms and performance criteria in service level agreements for cloud computing
services – SMART 2013/0039

(Complete or delete the parts in blue italics in parentheses)
[Choose options for parts in blue between square brackets]

The undersigned *(insert name of the signatory of this form)*:

in *[his][her]* own name *(for a natural person)*

or

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

full official name:

official legal form:

full official address:

VAT registration number:

- declares that *[the above-mentioned legal person][he][she]* is not in one of the following situations:
- a) is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - b) has been convicted of an offence concerning professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
 - c) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify including by decisions of the European Investment Bank and international organisations;
 - d) is not in compliance with 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 performed;
 - e) has been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the Union's financial interests;
 - f) is a subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a procurement procedure or failing to supply this information, or having been declared to be in serious breach of its obligations under contracts covered by the Union's budget.
- *(Only for legal persons other than Member States and local authorities, otherwise delete)* declares that the natural persons with power of representation, decision-

making or control¹⁰ over the above-mentioned legal entity are not in the situations referred to in b) and e) above;

- declares that [the above-mentioned legal person][he][she]:
- g) has 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 affinity, family, emotional life or any other shared interest;
 - h) 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) has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to award of the contract;
 - j) provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure ;
- acknowledges that [the above-mentioned legal person][he][she] may be subject to administrative and financial penalties¹¹ if any of the declarations or information provided prove to be false.

In case of award of contract, the following evidence shall be provided upon request and within the time limit set by the contracting authority:

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.

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

Full name

Date

Signature

¹⁰ This covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares.

¹¹ As provided for in Article 109 of the Financial Regulation (EU, Euratom) 966/2012 and Article 145 of the Rules of Application of the Financial Regulation

ANNEX 5: POWER OF ATTORNEY¹²

MANDATING ONE OF THE PARTNERS IN A JOINT TENDER AS LEAD
PARTNER AND LEAD CONTRACTOR
Standards terms and performance criteria in service level agreements for cloud
computing services – SMART 2013/0039

The undersigned:

– Signatory (Name, Function, Company, Registered address, VAT Number)

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

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by **Company 1, Company 2, Company N**, and led by **Company X**, in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached.
- 2) If the European Commission awards the Contract to the group of partners constituted by **Company 1, Company 2, Company N**, and led by **Company X** on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
 - (a) All partners shall be jointly and severally liable towards the European Commission for the performance of the Contract.
 - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
- 1) Payments by the European Commission related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: **[Provide details on bank, address, account number]**.
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
 - (a) The lead partner shall submit the tender on behalf of the group of partners.
 - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
 - (c) The lead partner shall act as a single contact point with the European Commission in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the European Commission's express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the European Commission for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in on **[dd/mm/yyyy]**

¹² To be filled in and signed by each of the partners in a joint tender, except the lead partner;

Place and date:

Name (in capital letters), function, company and signature:

ANNEX 6A: LETTER OF INTENT FOR SUB-CONTRACTORS

Standards terms and performance criteria in service level agreements for cloud computing services – SMART 2013/0039

The undersigned:

.....

Name of the company/organisation:

.....

Address:

.....

Declares hereby that, in case the contract is awarded to [name of the tenderer], the company/organisation that he/she represents, intends to collaborate in the execution of the tasks subject to this call for tender, in accordance with the tender specifications and the tender to which the present form is annexed, and is available to carry out its part of the tasks during the period foreseen for the execution of the contract.

Declares hereby taking note of Art. II.7 regarding subcontracting and Art. II.18 in relation with checks and audits of the service contract.

Place and date:

Name (in capital letters) and signature:

ANNEX 6B: LETTER OF INTENT FOR EXTERNAL EXPERTS

Standards terms and performance criteria in service level agreements for cloud computing services – SMART 2013/0039

The undersigned:

Address:

Declares hereby that, in case the contract is awarded to [name of the tenderer], he/she intends to collaborate in an individual capacity as **an external expert** in the execution of the tasks subject to this call for tender, in accordance with the tender specifications and the tender to which the present form is annexed, and is available to carry out its part of the tasks during the period foreseen for the execution of the contract. In addition, the undersigned declares not to have any conflict of interest in connection with the contract, and not to be in one of the situations of exclusion referred to in Article 106(1) of the Financial Regulation¹³.

Declares hereby taking note of Art. II.7 regarding subcontracting and Art. II.18 in relation with checks and audits of the service contract.

Place and date:

Name (in capital letters) and signature:

¹³ Available at http://ec.europa.eu/budget/documents/financial_regulation_en.htm

ANNEX 7: CHECK LIST OF DOCUMENTS TO BE SUBMITTED

Standards terms and performance criteria in service level agreements for cloud computing services – SMART 2013/0039

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 (be it lead partner, partner in joint bid, single tenderer or subcontractor/external expert). 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	Lead partner in a joint bid	All the other partners in a joint bid	Single tenderer (with or without subcontractors)	Subcontractor	Subcontractor – External expert
<i>Administrative section of the tender</i>					
Annex 1: Original Administrative identification form (see section 2.3, part 2)	■	■	■	■	
Annex 2: Original Legal Entity Form (see section 2.3, part 2)	■	■	■		
Annex 3: Original Financial Identification form (see section 2.3, part 2)	■		■		
Annex 4: Original Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest (see section 2.3, part 2)	■	■	■	■	
Annex 5: Original Power of attorney (see section 2.3, part 2)		■			
Annex 6 a: Original Letter of intent from each subcontractor (see section 2.3, part 2)				■	
Annex 6 b: Original Letter of intent from each subcontractor (see section 2.3, part 2)					■
Annex 9: Cover letter for the tender	■		■		
Legible photocopy of the statutes of the entity (see section 2.3, part 2)	■	■	■		
Legible photocopy of the notice of appointment of the persons authorised to represent the tenderer (see section 2.3, part 2)	■	■	■		
Declaration or certificate of enrolment in one of the professional or trade registers in the country of establishment (see section 5.2.1, part 2)	■	■	■		
Evidence of financial and economic capacity (see section 5.2.2, part 2)	■	■	■		
Evidence of Technical background (see section 5.2.3, part 2)	■	■	■	■	■
<i>Technical Section of the tender (see section 4.2, part 2)</i>	■		■		
<i>Financial Section of the tender (see section 4.3, part 2)</i>	■		■		

ANNEX 8: E-PRIOR DESCRIPTION

1.1. What is e-PRIOR

e-PRIOR is the service-oriented communication platform¹⁴ that allows electronic procurement (e-Procurement) between suppliers and customers, targeted to the European Institutions, including the European Commission.

e-Procurement consists in exchanging procurement documents such as Requests, Offers, Orders, Catalogues, Invoices, etc. in an electronic format following standards. The standards that are used by e-PRIOR are promoted by the CEN ("Comité Européen de Normalisation"). Using standards allows the interoperability between the IT systems (back-offices) of the suppliers on one hand and those of the customers on the other hand.

1.2. e-PRIOR Ways of communication

There are two main ways for communicating/exchanging electronic documents between the suppliers/contractors and the European Institutions:

- Through a direct connection between the supplier's back-office and the Commission/contracting authority's back-office, via interfaces using secured web-services (machine-to-machine communication). In this case the suppliers have the option to:
 - Develop themselves the connection to e-PRIOR or,
 - Pass through a third party Service Provider already connected to e-PRIOR and offering such services¹⁵.
- Via Web Portals - Supplier and Customer portal - where specific user interfaces running in an Internet Browser may be used by end-user to create and manage electronic documents such as receiving and approving orders, creating electronic invoices¹⁶ and receiving acknowledgements, sending dispatch advices and receipt advices.

Both communication ways may be used simultaneously and combined together. Nevertheless, the machine-to-machine communication is targeted for suppliers managing large number of documents (>100 invoices/orders/etc. per year), whereas the Supplier Portal is mainly used by suppliers, such as SME's or individuals, managing few documents per year. In case of connection via web services, Directorate-General for Informatics (DIGIT) will provide all the necessary assistance.

¹⁴ For more information please consult http://ec.europa.eu/dgs/informatics/supplier_portal/index_en.htm

¹⁵ Service providers already connected to e-PRIOR: AdValvas, b2boost, certipost, inovis.

¹⁶ The User's manual for e-invoicing on the Supplier Portal is available for consultation at http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm

1.3. e-PRIOR Modules

e-PRIOR is made up of several modules, but only the e-Invoicing module (standard invoices and credit notes) will be used in the execution of this contract.

1.4. What is the added value of e-PRIOR?

- Paperless
- Reduced encoding/transaction costs
- Faster communication
- Reduced payment delays
- Secure and transparent processes
- Environmental friendly

ANNEX 9: COVER LETTER FOR THE TENDER

Please select the appropriate option

OPTION 1

Single legal person or private/ public entity

- The offer is submitted by a **one tenderer**.
-

OPTION 2

Joint offers

- The offer is submitted by **partners**.
- Company acting as **lead partner** for the group of tenderers:
.....
 - **Other partners** taking part in the joint tender:
.....
.....
-

OPTION 3

Joint offers

- The offer is submitted by one tenderer **with subcontractors**.
- Company acting as **tenderer**:
.....
 - **Subcontractors**:
.....
.....
-

OPTION 4

Joint offers

- The offer is submitted by partners **with subcontractors**.
 - Company acting as **lead partner** for the group of tenderers:
.....
 - **Other partners** taking part in the joint tender:
.....
.....
 - **Subcontractors**:
.....
.....
-

Submission modality for the dispatch of the invoice

- Via the Supplier Portal
- Via a direct connection
 - Between the Contractor's back office and the Commission's back office
 - Using the services of a third party service provider already connected to e-PRIOR and offering such services
 - Name of the third party service provider:
.....

ANNEX 10: TEMPLATE STUDY FINAL REPORT OR EXECUTIVE SUMMARY

A

FRONT COVER

Template version 07/02/2013



B

Title

C

Subtitle (optional)

D

Insert cover picture here (optional)

E

FINAL REPORT or **EXECUTIVE SUMMARY**

A study prepared for the European Commission
DG Communications Networks, Content & Technology

F

*Digital
Agenda for
Europe*

This study was carried out for the European Commission by

G Logo(s) + Company identifier(s) + Authors' name(s) (optional)



H
Internal identification
Contract number:
SMART number

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DOI: number

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