
Specifications – Invitation to tender No VT/2007/037

Study on positive action measures in the European Union

1. Title of the contract

Study on positive action measures in the European Union (VC/2007/270).

2. Background

PROGRESS

In its Social Agenda (2005-2010), the Union has fixed as its overall strategic goal to promote more and better jobs and to offer equal opportunities for all. The realisation of the Social Agenda relies on a combination of instruments comprising EU legislation, the implementation of open methods of coordination in various policy fields and financial incentives such as the European Social Fund.

Until now, the implementation of the open methods of coordination in the employment and social inclusion/social protection fields relied on two distinct Community programmes. Equally the promotion of gender equality and of the non-discrimination principle was at the core of two distinct Community programmes. And lastly promotion of labour law including health and safety regulations were dealt with by separate interventions.

With the view of fostering greater coherence and simplification in the way Community programmes are delivered, the Commission proposed that all these separate programmes be now integrated into one framework programme, PROGRESS.

The Decision n°1672/2006 establishing a Community programme for employment and social solidarity – PROGRESS was adopted by the European Parliament and the Council on 24 October and published in the OJ on 15 November 2006.

PROGRESS overall aim is to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

It aims at supporting the core functions of the European Community towards fulfilling its Treaty-delegated tasks and powers in its respective areas of competence in the employment and social sphere. It will support initiatives aimed at reinforcing the role of the Community in proposing EU strategies; implementing and following-up EU objectives and their translations into national policies; transposing and following-up of EU legislation's application in a coherent way through Europe; promoting the co-operation and co-ordination mechanisms between Member States and cooperating with social partners and organisations that represent civil society.

More specifically, PROGRESS will support:

- (1) the implementation of the European Employment Strategy (section 1);

- (2) the implementation of the open method of coordination in the field of social protection and inclusion (section 2);
- (3) the improvement of the working environment and conditions including health and safety at work and reconciling work and family life (section 3);
- (4) the effective implementation of the principle of non-discrimination and promotion of its mainstreaming in all EU policies (section 4);
- (5) the effective implementation of the principle of gender equality and promotion of its mainstreaming in all EU policies (section 5).

It is divided up into five policy sections which are (1) Employment, (2) Social inclusion and social protection, (3) Working conditions, (4) Non-discrimination and (5) Gender Equality.

Against this background, PROGRESS pursues the following general objectives, as set out in article 2.1 of the Decision:

- (1) to improve the knowledge and understanding of the situation prevailing in the Member States (and in other participating countries) through analysis, evaluation and close monitoring of policies;
- (2) to support the development of statistical tools and methods and common indicators, where appropriate broken down by gender and age group, in the areas covered by the programme;
- (3) to support and monitor the implementation of Community law, where applicable, and policy objectives in the Member States, and assess their effectiveness and impact;
- (4) to promote networking, mutual learning, identification and dissemination of good practice and innovative approaches at EU level;
- (5) to enhance the awareness of the stakeholders and the general public about the EU policies and objectives pursued under each of the policy sections;
- (6) to boost the capacity of key EU networks to promote, support and further develop EU policies and objectives, where applicable.

The present Call for tenders is issued in the context of the implementation of the 2007 annual plan of work which is consultable at http://ec.europa.eu/employment_social/progress/docs_en.html.

Background information on anti-discrimination at European level

The Union and the Member States have already undertaken serious efforts to combat discrimination and promote equality. Nonetheless, the fight against discrimination continues to constitute a major challenge for the EU if genuine equality is to be achieved in practice.

In this context, the Commission published in May 2004 a Green Paper on "Equality and non-discrimination in an enlarged European Union" whereby it solicited the contributions of all interested stakeholders and the public at large on issues and questions concerning future policy developments¹.

As a response to this wide public consultation exercise, the Commission has adopted a Communication setting out its new framework-strategy on non-discrimination and equal opportunities in June 2005². The Communication underlines that the implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by some groups. There is a need to go beyond anti-discrimination policies designed to prevent unequal treatment of

¹http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/grpap04_en.pdf

²http://ec.europa.eu/employment_social/fundamental_rights/pdf/ey07/com07_en.pdf

individuals. It calls for the EU to reinforce its efforts to promote equal opportunities for all, in order to tackle the structural barriers faced by migrants, ethnic minorities, disabled people, older and younger workers and other vulnerable groups. Achieving equality requires a mobilisation of all actors and all policies in support to the promotion of a society free from discrimination. Consequently, the new strategy places a reinforced impetus on developing complementary positive and voluntary measures.

Positive Action

Positive Action is typically understood to cover a wide range of measures taken to compensate for present and past disadvantages which exist because of discrimination.

Directives³, 2000/43/EC (Race Equality Directive) article 5 and directive 2000/78/EC (Employment Equality Directive) article 5.1 confirm that:

“With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to [the protected grounds]”.

3. Objectives of the call

The European Commission wishes to build on the work on positive action that has been undertaken by the Independent Group of Legal Experts in the field of anti-discrimination (a thematic report was produced which will be published shortly under:

http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud.)

To this aim, the Commission wants to develop a framework for better understanding the role that positive action measures can play in practice in preventing or remedying discrimination, building on the knowledge of the existing legal framework set out in the above study. Therefore, the European Commission wants to gain a better insight in what kind of practical positive action measures are already being taken in the EU (and in the EFTA-EEA countries participating in PROGRESS) and in third countries. The possible costs and benefits of the positive action measures shall also be indicated by the contractor in the study. Given the difficulties surrounding the interpretation of the term 'positive action', the contractor(s) should develop a working definition, based on the information contained in the above mentioned report and in the publication *Comparative Study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great-Britain and the Netherlands*, which can be found under:

http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/compstud04_en.pdf.

³

In June 1997, Heads of State and Government agreed to introduce Article 13 of the Treaty establishing the European Community. This Article gives the Community specific powers to take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

On 29 June and 27 November 2000, on the basis of proposals presented by the Commission in November 1999, the Council adopted three key instruments intended to prevent and combat discrimination based on racial or ethnic origin, religion or belief, age, disability or sexual orientation:

- Directive 2000/43/EC (Race Equality Directive) prohibits discrimination based on racial or ethnic origin in a wider range of fields such as employment, education, provision of goods and services and social protection;
- Directive 2000/78/EC (Employment Equality Directive) prohibits discrimination in employment and excludes all discrimination based on religion or belief, disability, age or sexual orientation;
- Community action programme to combat discrimination (Council Decision 2000/750/EC).

4. Participation

- (1) The competition is open to any physical person or legal entity coming within the scope of the Treaties and any other physical person or legal entity from a third country which has concluded with the Communities a specific agreement in the area of public contracts, under the conditions provided for in that agreement.
- (2) Where the Multilateral Agreement on Public Contracts concluded within the framework of the WTO applies, the contracts are also open to nationals of States that have ratified this Agreement, under the conditions provided for therein. It should be noted that research and development services, which come under category 8 of Annex II A of Directive 2004/18/CE, are not covered by this Agreement.
- (3) In practice, the participation of applicants from third countries that have concluded a bilateral or multilateral agreement with the Communities in the area of public contracts must be allowed, under the conditions provided for in that agreement. Bids submitted by applicants from third countries that have not concluded such an agreement may be accepted, but may also be rejected.

5. Tasks to be carried out by the contractor

The contractor will be asked to carry out tasks in the following areas:

Task I: Survey of positive action measures currently employed in the EU and in the EFTA/EEA states participating in PROGRESS

The contractor will be asked:

To conduct a survey among a representative sample of public and private sector organisations in all EU Member States and EFTA-EEA states participating in PROGRESS (minimum number of organisations to be included in the survey is 4000; the contractor will have to ensure a good balance in terms of geographical spread, sectors and company sizes).

The objectives of the survey shall be above all, but not exclusively, to identify:

- How widespread positive action measures are
- What kind of such measures are being taken
- If there is a difference in the number and kind of measures undertaken across different grounds of discrimination (religion or belief, disability, race or ethnicity, age and sexual orientation)
- The main driving force(s) for an organisation to apply positive action measures
- If and how this varies by size, sector, location and type of organisation
- The impact, if any, of the existing regulatory framework on the organisations' decision to choose for specific measures (or not to have any measures at all)
- The perceived (cost-)effectiveness of the actions undertaken and how this could be improved

The research questionnaires shall be drafted in close collaboration with the European Commission. The survey can only start once the contractor has submitted an inception note

for the approval of the Commission and the approval has been given by the European Commission in particular in relation to the sample selected and the research questions put forward.

Task 2: Comparative study on positive action

The contractor will be asked to:

Prepare a comparative study based on the 1) existing legal frameworks of two to four selected non-European countries and compare them to the legal frameworks of the European Union (and for EFTA-EEA countries participating in PROGRESS) countries, and 2) a comparative study on the practical measures taken in the selected countries (using a sample of approximately 100 public and private organisations per selected country)

1. Select two to four non-European countries that have a strong and relevant background in imposing and/or applying binding positive action measures. The contractor should, in close collaboration with acknowledged experts of these countries, give an overview of the experience of these countries with the legal context and practical positive action measures and point out the main lessons that have been drawn. In particular, attention should be paid – among other things – to the types of measures applied, the context in which they have been developed and the effects these measures have (had).
2. Analyse if, to what extent and how the lessons learnt from the use of positive action measures are relevant in the context of the European Union (and for EFTA-EEA countries participating in PROGRESS). This analysis should take into account differences in contextual factors, differences in the sociological and economic structure as well as in the legal framework, and any other variables that are deemed to have a significant impact.

This analysis will take two forms. First, a general comparison with the EU should be made in each case (i.e. with each non-European country). Second, a comparison should be made with a selected subset of EU member states (and EFTA-EEA countries participating in PROGRESS). These European states should be selected so as to represent a good spread in terms of geography, size and experience with positive action measures.

The contractor is asked to carry out his/her work on the bases of the above mentioned thematic brochure prepared by the Independent Group of Legal Experts in the field of anti-discrimination:

http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud

Furthermore, a study financed by the European Commission was delivered on the measures of discrimination in the USA, Canada and Australia. Certain information of this study is on anti-discrimination, and the study also contains examples of positive measures taken in these countries. The contractor is requested to use the findings of this study as bases for the work it carries out on the comparative study on positive action.

http://ec.europa.eu/employment_social/fundamental_rights/policy/aneval/data_en.htm

Task 3: Follow up seminar on both Tasks and publication

A day long expert seminar shall be organised by the contractor in Brussels to present to the Commission and other interested parties the results of both Tasks. This meeting should not be held in Commission premises but in an external venue e.g. hotel conference centre. Approximately 30 people should attend this seminar. The contractor is responsible for the organisation, reimbursements of travel and accommodation expenses for the participants.

The contractor is requested to draft a publication based on the synthesis of Task one and Task two's (the study and the survey) content. This work is to be done in close cooperation with the European Commission's services. This publication, which should summarise the work carried out under tasks 1 and 2 should respect the following specifications:

- The maximum length of the final text should be not more than 50 pages.
- The contractor should submit the text in English, French and German.
- The text should be provided to the European Commission in Word and charts in Excel.
- The contractor should secure the rights and provide the Commission with 10 photos to illustrate the text.
- The layout, printing and distribution of the report are not covered by this call for tender. It is intended that these tasks should be undertaken by the company that holds the publication framework contract with DG Employment, Social Affairs and Equal Opportunities and by the EC Publications Office.

The publication shall be ready for distribution at the seminar mentioned above.

6. Guide and details of how the tasks are to be carried out

- (1) The contractor shall work in close contact with the Commission, which will guide and monitor the quality of work and compliance with deadlines.
- (2) The contractor shall appoint one contract coordinator who acts as a single contact point for the Commission on all tasks, unless agreed otherwise for specific purposes.
- (3) The contractor shall ensure that any subcontractor it engages performs the work to a satisfactory standard. The contractor will remain responsible for any work performed by subcontractors and for their compliance with the deadlines agreed by the Commission. Subcontracting must to be authorised by the Commission in accordance with Art.II.13. of the Standard Contract. Sub-contractors included in the tender are deemed to be authorised by the Commission if the contract is awarded.
- (4) The PROGRESS Programme aims at promoting gender mainstreaming in all its five policy sections and commissioned or supported activities. Consequently, the Contractor will take the necessary steps to ensure that its proposed team and/or staff respects the gender balance at all levels. It will also pay due attention when appropriate to the gender dimension of the service he is asked to deliver as detailed in the description of tasks.
- (5) Equally, needs of disabled people shall be duly acknowledged and met while executing the requested service. This will in particular entail that where the Contractor organises training sessions, conference, issues publications or develops dedicated websites, people with disabilities have equal access to the facilities or the services provided.

- (6) Finally, the Contracting Authority encourages the Contractor to promote equal employment opportunities for all its staff and team. This entails that the Contractor shall foster an appropriate mix of people, whatever their ethnic origin, religions, age, and ability.
- (7) The Contractor will be required to detail in its activity report accompanying the request for the final instalment the steps and achievements it made towards meeting these contractual provisions.

7. Rights

- (1) Any results, products or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the European Communities, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.
- (2) Should the Contractor use third-party copyright material, whether textual or artistic, for the purpose of the performance of the Contract, he shall have sole responsibility for taking the necessary steps to obtain unfettered rights from the copyright holder(s), or from his or their legal representative, to include, print, publish, and sell the material, for the full legal term of copyright, in whole or in part, in all editions, forms and media, and in any language whatsoever, as well as for the European Commission itself further to license reproduction or translation thereof.
- (3) Any costs associated to such rights shall be borne by the Contractor, who ensures that any other conditions linked to the rights are fulfilled, in particular concerning the appropriate acknowledgement of the source material.

8. Professional Qualifications required

See Annex IV of the draft contract, CVs and classification of experts.

The contractor will need to show the capacity to run large scale networks at European level and have a proven capacity to manage the administrative and financial aspects of such a project.

See also point 14 on "Selection Criteria".

9. Time schedule and reporting

The duration of the contracts will be 12 months from the entry into force of the contract.

For details see Article 1.2 of the draft contract.

The specific deadlines for the completion of each of the tasks set out at point 5 will be agreed and approved between the Commission and the contractor, on the proposal of the contractor to the Commission.

Reporting

The following reports will be required covering all tasks;

1. **An inception note** shall be submitted to the Commission for approval 6 weeks after the contract came into effect. Together with the inception note the Contractor shall present the methodology it will follow to undertake both Task 1 and Task 2, a draft questionnaire and a draft of the selection of countries must be provided to the Commission.

2. Interim report

6 months after the signature of the contract, an interim report has to be submitted to the European Commission, summarising the achieved progress since the incentive note and detailing the remaining foreseen future activities until the completion of the contract. This report should be not longer than 10 pages.

3. Final report

To put together a final report summarising the methodology and main findings of the above mentioned activities and come up with recommendations. The maximum length of the final text should be not more than 50 pages, including up to 5 pages of executive summary. The contractor should submit the text in English, French and German. The text should be provided to the European Commission in Word and charts in Excel. The contractor should secure the rights to and provide the Commission with 6 photos to illustrate the text. The contractor should also prepare a short document for internal Commission use identifying the gaps and problems organisations face in taking positive action and how these could be addressed.

Additional reporting and information requirements

1. With a view to facilitating appropriate monitoring and evaluation by the European Commission of all results obtained and outputs delivered under PROGRESS programme, the Contractor will be required to provide for each of the tasks required under the present call

- Presentation of their key points in one page. Key points should be concise, sharp and easily understandable. They shall be provided in English, French and German. Other Community languages would be welcome even if not compulsory.
- Unless prescribed more precisely in the section "tasks to be carried out", an executive summary in 5/6 pages and in English, French and German.

2. In accordance with the general conditions, the contractor is under the obligation to acknowledge that the present service is delivered on behalf of the Community in all documents and media produced, in particular final delivered outputs, related reports, brochures, press releases, videos, software, etc, including at conferences or seminars, as follows:

"This (publication, conference, training session) is financed by the European Community Programme for Employment and Social Solidarity (2007-2013). This programme was established to support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA and EU candidate and pre-candidate countries.

The Programme has six general objectives. These are:

- (1) to improve the knowledge and understanding of the situation prevailing in the Member States (and in other participating countries) through analysis, evaluation and close monitoring of policies;*
- (2) to support the development of statistical tools and methods and common indicators, where appropriate broken down by gender and age group, in the areas covered by the programme;*
- (3) to support and monitor the implementation of Community law, where applicable, and policy objectives in the Member States, and assess their effectiveness and impact;*
- (4) to promote networking, mutual learning, identification and dissemination of good practice and innovative approaches at EU level;*
- (5) to enhance the awareness of the stakeholders and the general public about the EU policies and objectives pursued under each of the policy sections;*
- (6) to boost the capacity of key EU networks to promote, support and further develop EU policies and objectives, where applicable.*

For more information see:

http://ec.europa.eu/employment_social/progress/index_en.html

For publications it is also necessary to include the following reference:

"The information contained in this publication does not necessarily reflect the position or opinion of the European Commission"

With regard to publication and any communication plan linked to the present service, the contractor will insert the European Union logo, and any other logo developed for the employment and social solidarity fields, and mention the European Commission as the Contracting Authority in every publication or related material developed under the present service contract.

Failure by the contractor to respect these obligations could lead the European Commission to reduce by 5% the final amount to be paid under the present service contract.

10. Payments and standard contract

In drawing up the bid, the tenderer should take into account the provisions of the standard contract comprising the "General terms and conditions applicable to service contracts". Article 1.4 thereof provides for the modalities of payment.

Payments will be made at intervals throughout the contract period as a function of the progress made, the reports submitted and the quality of the work undertaken.

Modalities applicable to this contract will be:

- At the earliest 6 weeks after signature of the contract, the contractor can submit to the Commission a formal request for a first interim payment accompanied by the inception note and the relevant invoices covering actual costs. Acceptance by the Commission of the inception note is a precondition for payment.

The total amount of this first interim payment cannot exceed 20 % of the total amount specified under part A.

The Commission shall have 45 days from receipt to approve or reject the incentive report, and the Contractor shall have 30 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, an interim payment corresponding to the relevant invoices shall be made.

At the earliest 6 months after signature of the contract, the contractor can submit to the Commission a formal request for a second interim payment of maximum 40 % of the total amount specified under part A, accompanied by an interim report and the relevant invoices covering actual costs. Acceptance by the Commission of the interim report is a precondition for payment.

The total amount of these two interim payments cannot exceed 60 % of the total amount specified under part A.

The Commission shall have 45 days from receipt to approve or reject the interim report, and the Contractor shall have 30 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, an interim payment corresponding to the relevant invoices shall be made.

- A final payment covering the balance due, payable upon written request, submitted along with the final performance and activity report and a final financial statement on the annual budget execution, and after approval of the said final performance and activity report and final financial statement.

The Commission shall have 45 days from receipt to approve or reject the report, and the Contractor shall have 30 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, payment of the balance of the total amount referred to in point 11 shall be made.

In particular, as mentioned in the section on "guide on how the tasks are to be carried out", the Contractor is required to explain in its final activity report its achievements in meeting the described equal opportunities provisions.

11. Price

Under the terms of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the latter are exempt from all charges, taxes and duties, including value added tax; such charges may not therefore be included in the calculation of the price quoted. The amount of VAT is to be indicated separately.

The **maximum** amount available in this call for tender is € 400.000. Bidders should note that any bid exceeding these limits will not be considered.

The price must be stated in EUR(€), net of VAT (using, where appropriate, the conversion rates published in the C series of the Official Journal of the European Union on the day when the invitation to tender was issued), and broken down according to the model in Annex III included in the attached standard contract, in order to include:

For each task described under point 5 the tenderer must specify:

■ **Part A: Professional fees and direct costs**

- Fees, expressed as the number of person-days multiplied by the unit price per working day for each expert proposed. The unit price should cover the experts' fees and administrative expenditure, but not the reimbursable expenses referred to below.
- Travel and subsistence costs relating to the research and analysis tasks.
- Travel and subsistence expenses of the contractor, its staff or its experts arising from meetings with the European Commission in Brussels (at least 4 meetings).
- All costs relating to the organisation of the final briefing session.
- Documentation.
- Translation costs related to the final report.

■ **Part B: Reimbursable expenses**

- Travel and subsistence expenses of the contractor, its staff or its experts, arising from additional meetings of the contractor with the European Commission in Brussels upon request of the European Commission.

Total price = Part A + Part B

12. Groupings of economic operators or consortia

Tenders can be submitted by groupings of service providers/suppliers who will not be required to adopt a particular legal form prior to the contract being awarded, but the consortium selected may be required to assume a given legal form when it has been awarded the contract if this change is necessary for proper performance of the contract⁴. However, a grouping of firms must nominate one party to be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration, and for coordination. The documents required and listed in the following points 13 and 14 must be supplied by every member of the grouping.

⁴ These entities can take the form of an entity with or without legal personality but offering sufficient protection of the Commission's contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

The contract has to be signed by all members of the group, or by one of the members, which has been duly authorised by the other members of the grouping (a power of attorney or sufficient authorisation is to be attached to the contract), when the tenderers have not formed a legal entity.

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

13. Exclusion criteria and supporting documents

- 1) Bidders must provide a declaration on their honour, duly signed and dated, that they are not in one of the situation referred to in Articles 93 and 94 a) of the Financial Regulation.

Those articles are as follows:

Article 93:

Applicants or tenderers shall be excluded 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 their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;*
- e) they have been the subject of a 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) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.*

Article 94:

Contracts may not be awarded to candidates or tenderers who, during the procurement procedure

- a) are subject to a conflict of interest;*
- 2) The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in Article 134 of the implementing Rules, confirming the declaration referred to in point 1 above.

Article 134 of the Implementation Arrangements – Supporting documents

- I. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in points (a), (b) or (e) of Article 93 of the Financial Regulations, production of a recent extract from the judicial record or,*

failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that these requirements are met.

2. *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 of the Financial Regulations, a recent certificate issued by the competent authority of the State concerned.*

Where no such document or certificate is 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.

3. *Depending on the national legislation of the country in which the tenderer or applicant is established, the documents referred to in paragraphs 1 and 2 above shall relate to legal entities and/or physical persons, including, where considered necessary by the awarding authority, company directors or any person with powers of representation, decision-making or control in relation to the tenderer.*

See Annex I (which may be used as a checklist) for the supporting documents accepted by the European Commission to be provided by applicants, tenderers or tenderers to whom the contract will be awarded.

- 3) The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in Article 134 of the Implementing Rules, if such evidence has already been submitted to it for the purposes of another procurement procedure launched by DG EMPL and provided that the issuing date of the documents does not exceed one year and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

14. Selection criteria

The candidates will be selected on the basis of their financial and economic capacity and their professional and technical capacity.

(1) **Economic and financial capacity** to carry out the tasks set out in the tender specification must be demonstrated as follows:

- (a) the tenderer (or all partners of the grouping of service providers/suppliers together) must provide proof of turnover in the last financial year for which accounts have been closed at least equivalent to 75% of the proposed price of the contract;
- (b) balance sheets or extracts from balance sheets from the last two financial years that have been closed, where publication of the balance sheets is required under company law in the country in which the service provider is established; in the case of tenders from groupings of service providers/suppliers, this certificate must be provided by each member of the grouping of service providers/suppliers;
- (c) a statement of the undertaking's turnover in respect of the services to which the contract relates for the previous two financial years; in the

case of tenders from groupings of service providers/suppliers, this certificate must be provided by each member of the grouping of service providers/suppliers;

- (d) a bank declaration providing evidence of good financial standing; in the case of tenders from groupings of service providers/suppliers, this declaration must be provided by each member of the grouping of service providers/suppliers;

(2) Professional and technical capacity

- (a) The tenderer's professional and technical capacity in the field covered by the contract will be further assessed on the basis of the following:

For the **coordinator** of the contact, this will require:

At least 5 years experience in survey work and the proven ability to perform the co-ordination and the administrative tasks involved in organising and managing contracts and projects at European level. The Commission will assess this criterion on the basis, *inter alia*, of a list of previous activities in this field submitted by the tenderer.

The proven ability to set up the appropriate organisational structure to carry out all the tasks involved, in particular the ability to call on the necessary expertise to cover all the countries and all grounds of discrimination listed. The Commission will assess this criterion, *inter alia*, on the basis of a list of potential or existing partner organisations in the countries involved in the project as well as on the basis of an organisational chart explaining the structure to be put in place.

Very good knowledge of Community working languages particularly English to facilitate communication with the Commission.

Excellent written skills in English (on the basis of published work).

Excellent oral presentation skills in English (on the basis of references to the previous work).

For the **members of the team**, this will require:

At least 2 members of the team should have a proven experience of minimum 5 years in developing, doing, analysing and interpreting surveys.

At least 1 member of the team, whose responsibility includes analysing the survey results, should have a strong statistical background.

At least 2 members of the team should have proven experience of minimum 5 years in the field of non-discrimination in the EU.

At least 1 member of the team should have proven experience of minimum 3 years in the field of non-discrimination in at least two third countries

See Annex IV of the draft contract, CVs of experts.

(b) Means of proof required

Technical and professional capacity of the tenderer to undertake the analysis described above shall be evaluated and verified on the basis of the following:

- a list of coordinators and members of the team to be used for the performance of services requested, together with their CVs and qualifications, and a clear description of the specific tasks each person will carry out during this project taking into account the above description of requirements to be fulfilled by the coordinators and members of the team.
- A separate list containing the CVs of the members of the team, a list of the main works and/or articles published by all the experts involved, in relation to the relevant subject specified in this tender, undertaken over the last 5 years at least
- a declaration by the applicant certifying his technical capacity and the competence of the team to carry out the services
- firm commitments of involvement in the project signed and dated from external persons to the firm.

In the case of tenders from groupings of service providers/suppliers, the following are required:

- a clear identification of the contractor who will also be responsible for signing the contract, and
- written confirmation from each member of the grouping of service providers/suppliers that they would be ready and willing to participate in the execution of the contract, and briefly describing their role(s).

Tenderers considered by the European Commission not to meet the above-mentioned requirements on financial and operational capacity will be eliminated without further assessment.

15. Award criteria

The contract will be awarded to the tenderer whose offer represents the best value for money, taking account of the criteria listed below as well as of the unit prices proposed.

The most economically advantageous tender in terms of:

1 – Quality of the offer

1. The quality of the understanding of the assignment's nature, its context and the results to be achieved **(20%)**.
2. The qualitative value of the offer **(40%)**, including in particular the presentation of the overall working method and the capacity to liaise and cooperate with all the relevant stakeholders.

3. Work organisation (**40%**), in particular of the administrative and logistical tasks involved and feasibility of the time schedule given; this criteria also includes clarity and coherence of the work programme and structure of the whole team with regard to the identification and distribution of tasks.

2 - The Price

The contract will not be awarded to any bid that receives less than 70% in the award criteria.

The points total will then be divided by the price, with the highest-scoring bid being chosen.

16. Content and presentation of bids

Content of bids

The tenderer must provide all the information and documents necessary to enable the Commission to conduct an appraisal of the offer on the basis of the selection and the award criteria (see sections 14 and 15 above) and taking account of the exclusion criteria listed in section 13 above.

Tenders must be presented in three parts:

- (1) **a first part:** containing all administrative information including:
 - (a) Date of bid for the provision of services;
 - (b) Name of tenderer, full address, telephone and fax numbers and e-mail address;
 - (c) Legal entity form duly completed⁵;
 - (d) Legal status;
 - (e) Identification of the tenderer's headquarter or domicile (presented with the supporting evidence normally acceptable under its own law);
 - (f) Date of establishment or registration;
 - (g) Name and quality of the Contractor's legal representative (i.e. the person duly authorised to act legally on behalf of the Contractor in relation to third parties);
 - (h) VAT number or proof of exemption;
 - (i) Social security number;

⁵ Form available from http://europa.eu.int/comm/budget/execution/legal_entities_en.htm

- (j) Certified copies of certificates as required under point 13 above "Exclusion criteria and supporting documents";
 - (k) Details of the tendering organisation structure;
- (2) **a second part:** concerning the **technical content** of the bid including:
- (a) A description of the intended organisation and management of the services and tasks to be carried out;
 - (b) A detailed description of the planned approach and methodology to be used;
 - (c) A work-plan, indicative timetable and detailed description of the services to be provided;
 - (d) Details of the proposed project team and an explanation of the nature and extent of their participation in the project;
 - (e) Description of relevant professional experience with emphasis on the specific fields covered by the invitation to tender;
 - (f) Detailed curriculum vitae of key project team members, as well as national experts.
 - (g) if not already covered elsewhere, the tender must supply specific information covering each of the award criteria listed in point 15.
- (3) **a third part:** comprising the **financial part** of the tender and including:
- (a) Full details of the proposed price as described in point 11 above and following the format of Annex III of the attached blank draft contract;
 - (b) A financial identification form (Bank ID form) duly completed and signed and stamped by the bank⁶;
 - (c) proof of turnover of the tenderer in the last financial year for which accounts have been closed;
 - (d) balance sheets or extracts from balance sheets from the last two financial years that have been closed, where publication of the balance sheets is required under company law in the country in which the service provider is established; in the case of tenders from consortia, this certificate must be provided by each member of the consortium;
 - (e) a statement of the undertaking's overall turnover and its turnover in respect of the services to which the contract relates for the previous two financial years; in the case of tenders from groupings

⁶ Form available from http://ec.europa.eu/budget/execution/fiers_en.htm

of service providers/suppliers, this certificate must be provided by each member of the grouping of service providers/suppliers;

- (f) a bank declaration providing evidence of good financial standing; in the case of tenders from groupings of service providers/suppliers, this declaration must be provided by each member of the grouping of service providers/suppliers;

Presentation of the bids

Bids must:

- 1) be signed by the tenderer's legal representative; **all unsigned bids will be excluded;**
- 2) be submitted in triplicate (1 original and 2 copies);
- 3) contain all the information required above;
- 4) be clear and concise;
- 5) be submitted in one of the official languages of the European Union;
- 6) be delivered according to the requirements set out in the letter of invitation to tender and before the date and time limit indicated therein (all addresses, dates and deadlines are indicated in this letter).

17. Additional provisions

- 1) Fulfilment of adjudication or invitation to tender procedure shall not involve the Commission in any obligation to award the contract.
- 2) The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be liable in the event of its deciding not to award the contract.
- 3) Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.
- 4) No information of any kind will be given on the state of progress with regard to the evaluation of tenders.
- 5) All documents submitted by tenderers will become property of the European Commission.