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Specifications – Invitation to tender No VT 2008/005

**A comparative study on sanctions and time limits in the Members States and EFTA/EEA countries in the field of gender and anti discrimination**

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## **1. TITLE OF THE CONTRACT**

**A comparative study on sanctions and time limits in the Member States and EFTA/EEA countries in the field of gender and anti discrimination**

## **2. BACKGROUND**

PROGRESS

The Social Agenda (2005-2010) 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.

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.

PROGRESS 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. *PROGRESS* mission is to strengthen the EU contribution in support of Member States' commitments and efforts to create more and better jobs and to build a more cohesive society. To that effect, PROGRESS will be instrumental in:

- providing analysis and policy advice on PROGRESS policy areas;
- monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;
- promoting policy transfer, learning and support among Member States on EU objectives and priorities; and

- relating the views of the stakeholders and society at large.

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).

The present Call for tenders is issued in the context of the implementation of the 2008 annual plan of work which is consultable at [http://ec.europa.eu/employment\\_social/progress/annwork\\_en.htm](http://ec.europa.eu/employment_social/progress/annwork_en.htm).

## **GENDER EQUALITY AND ANTIDISCRIMINATION**

The EU is committed to the elimination of all discrimination and the creation of an inclusive society for all. The right of all individuals to equality before the law and to protection from discrimination is a fundamental right which is essential in order to allow any democratic society to function properly. It helps to achieve the objectives of promoting economic and social progress and a high level of employment by increasing economic and social cohesion.

For many years, the EU has been at the forefront of efforts to tackle sex discrimination and to promote equality between women and men. More recently, it has taken further action to protect people against discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation. These efforts have produced results, including the development of some of the most comprehensive and far-reaching anti-discrimination legislation to be found anywhere in the world. Nonetheless, the fight against discrimination continues to constitute a major challenge for the EU if genuine equality and a society free from discrimination are to be achieved in practice. However, further action is required in order to not only ensure the full and effective implementation and enforcement of this legal framework, but also to further exclude discrimination. The principle of access to justice is of fundamental importance for victims engaging procedures when cases of discrimination occur. The concept of access to justice contains several requisites. Two of these are rules on time limits to engage procedures and rules on sanctions. Time limits are essential for individuals when filing complaints. If the time limits are too short then the complainant may risk that her/his case cannot be tried and that she/he will lose the right to have the case tried at court and that there will be no remedy in case of discrimination. In order to combat discrimination it is also important that sanctions be adequate in relation to wrong committed. The sanctions must be effective, proportionate and dissuasive.

It is in this context that the Commission is launching the above mentioned study.

The Commission wants to receive further information on the rules concerning time limits and sanctions in the Member States as well as in the EFTA/EEA countries, in the field of gender equality and anti discrimination. The information will be gathered with a view to updating, modernising, completing and recasting the existing Community legislation concerning these rules where necessary.

#### *Directives concerning the field of gender equality*

- *Directive 75/117/EEC on the principle of equal pay for men and women*
- *Directive 76/207/EEC on the principle of equal treatment for men and women as regards access to employment, vocational training, and promotion, and working conditions*
- *Directive 2002/73/EC amending council directive 76/207/EEC*
- *Directive 92/85/EEC on pregnant workers*
- *Directive 96/34/EC on parental leave*
- *Directive 97/75/EC extending to United Kingdom and Northern Ireland on 97/75/EC*
- *Directive 86/613/EEC on self employed*
- *Directive 79/7/EEC on statutory social security schemes;*
- *Directive 86/378/EEC as amended by*
- *Directive 96/97/EC, on occupational social security schemes;*
- *Directive 2004/113/EC prohibiting sex discrimination as to access to and supply of goods and services.*

#### *Directives concerning discrimination on grounds other than gender*

- *Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin, and*
- *Directive 2000/78/EC on equal treatment in employment and occupation.*

Under EC law there is a general right to a personal remedy for victims of discrimination. It is clear from the European Court of Justice (ECJ) case law on gender equality that there is also a requirement for an effective, proportionate and dissuasive remedy. An upper limit on the compensation payable in case of a breach of an EC law right to gender equality may not be fixed by national legislation. The ECJ case law has been codified in Directive 2002/73/EC, Article 8, and similar provisions exist in Directive 2004/113/EC, Article 8(2). The Directives concerning discrimination on other grounds than gender also contain provisions about sanctions and remedies. Directive 2000/43/EC, Article 15, and Directive 2000/78/EC, Article 17, oblige the Member States to lay down rules on effective, proportionate and dissuasive sanctions. The existing Community legislation concerning sanctions is however limited in the sense that it does not provide the right for a particular remedy (this is a matter for national

law), except in cases of discriminatory dismissals which only can be restored by reinstating or granting financial compensation to the victim.

The existing Community legislation concerning the material scope of time limits consists of a reference to ECJ case law in the preamble of Directive 2002/73/EC. In the absence of relevant Community rules the ECJ has held in that it is for the national legal order of each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of Community law. These rules cannot be less favourable than those governing similar domestic actions or be framed in such a way as to render impossible in practice the exercise of rights conferred by Community law.

The study should give the Commission an overview over each Member States' as well as EFTA/EEA countries' rules on sanctions and time limits in cases concerning all forms of discrimination regarding grounds of gender, race or ethnic origin, religion or belief, disability, age and sexual orientation compared with similar non discrimination disputes in the various fields of law.

The study shall also provide an analysis on the effectiveness, proportionality and dissuasiveness of the sanctions concerning discriminatory behaviour compared with sanctions regarding other illegal but non-discriminatory behaviour. It should also evaluate whether or not and to what extent existing time limits to engage procedures prevent victims of discrimination to exercise their rights to present their case to court or other competent authority compared with similar non discrimination disputes.

### **3. SUBJECT OF THE CONTRACT**

The purpose of the study will be to provide the Commission with independent input on the situation in the Member States and the EFTA/EEA countries, as regards rules on time limits and sanctions in cases of discrimination on grounds of gender, race or ethnic origin, religion or belief, disability, age and sexual orientation compared with similar disputes in the various fields of law.

The study shall also provide an independent analysis of the effectiveness, proportionality and dissuasiveness of the sanctions and if time limits prevent victims of discrimination from exercising their rights to present their case to court compared with similar disputes. A comparison between Member States and the EFTA/EEA countries should be done and best practices identified.

The study comprises all areas concerning gender equality such as working life, including pregnant workers and parental leave, equal treatment in statutory occupational social security, self employed people and their spouses and access to goods and services available to the public, including accommodation. It also comprises the area of working life on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation and race or

ethnic origin in the field of education, social protection, social advantages and access to goods and services available to the public, including accommodation. The study should also where applicable compare the grounds of religion or belief, disability, age and sexual orientation in the area of access to and supply of goods and services with other similar disputes concerning the same area.

The final report of the results should be presented at a half a day conference.

More specifically, the purpose of the contract can be broken down into three steps:

The first step consists of setting-up an investigation method, the structure, analytical framework and an outline of the final report as well as preparations for a conference to present the result of the study. The investigation method and outline should cover the situation in the 27 Member States and the EFTA/EEA countries.

A first step would be to investigate and to clarify if a comparison on sanctions and time limits can be made in all fields of law. This should be done with a perspective to exclude the situations where corresponding rules on sanctions and time limits do not exist or are significantly different than in the field of gender and anti discrimination legislation. The following can serve as examples to illustrate the comparative questions which should be answered in the study:

- Are the sanctions applicable for breaches of minimum wage legislation the same as in cases of wage discrimination due to gender?
- Are time limits the same when an individual files a complaint concerning access to social security benefits compared with a complaint from an individual who considers herself/himself discriminated against due to her/his ethnic origin when applying for social security benefits?

The investigation method can build on existing studies and reports where appropriate. On the basis of the completion of the first step , the Commission services and the contractor will jointly decide on the scope for the second and third step.

The second step will consist of the delivery of a report applying the investigation method agreed in step 1.

The third step will consist of organising a conference where the final report of the study will be presented and officially published.

#### **4. PARTICIPATION**

Please note that:

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.

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.

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 AND DEADLINES**

I. The study will consist of the following tasks:

To produce a report in which the contractor should

(1) a) Give an overview of the rules and regulations concerning **time limits** when filing complaints or engaging procedures before authorities, courts or other similar institutions in the Member States and the EFTA/EEA countries and

b) describe/analyse if the rules on time limits in employment including pregnant workers and parental leave are different in cases concerning sex discrimination than other labour law disputes.

c) describe/analyse if the rules on time limits in cases concerning sex discrimination in social security are different than in other disputes concerning social security.

d) describe/analyse, if the rules on time limits in cases concerning sex in the area of self employment are different than other disputes concerning self employment.

e) describe/analyse, if the rules on time limits in cases concerning sex discrimination in the area of access to and supply of goods and services are different than other disputes concerning the area of access to and supply of goods and services.

f) describe/analyse if the rules on time limits in employment are different in cases concerning discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation than in other labour law disputes.

g) describe/analyse if the rules on time limits in education, social protection, social advantages and goods and services are different in cases concerning discrimination on grounds of racial or ethnic origin and where applicable also on the grounds of religion or belief, disability, age and sexual orientation than in other disputes concerning the same areas.

h) describe/analyse uncertainties and debates relating to time limits within the Member States and the application of Community legislation.

**(2) a)** Give an overview of the rules and regulations concerning **sanctions** in the respective Member States and the EFTA/EEA countries and

b) describe/analyse if the rules on sanctions in employment including pregnant workers and parental leave are different in cases concerning sex discrimination than in other labour law disputes.

c) describe/analyse, if the rules on sanctions in cases concerning sex discrimination are different than in other disputes concerning social security.

d) describe/analyse, if the rules on sanctions in equal treatment between women and men in cases concerning sex discrimination in the area of self employment are different than in other disputes concerning self employment.

e) describe/analyse, if the rules on sanctions in equal treatment between women and men in cases concerning sex discrimination in the area of access to and supply of goods and services are different than in other disputes concerning the area of access to and supply of goods and services.

f) describe/analyse if the rules on sanctions in employment are different in cases concerning discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation than in other disputes in labour law.

g) describe/analyse if the rules on sanctions in education, social protection, social advantages and goods and services are different in cases concerning discrimination on grounds of racial or ethnic origin, and where applicable also on the grounds of religion or belief, disability, age and sexual orientation than in other disputes concerning the same areas.

h) describe/analyse uncertainties and debates relating to sanctions within the Member States and the application of Community legislation.

i) describe/analyse if there are criminal sanctions in any of the areas mentioned above and if there are differences in those sanction depending on ground of discrimination.

j) describe/analyse if the taxation rules for damages are different in cases concerning labour law from cases concerning the area of access to and supply of goods and services.

k) describe/analyse the effectiveness, proportionality and the dissuasiveness of the sanctions compared with similar non discrimination disputes in the various fields of law.

(3) The report/study shall be presented by the contractor at a **conference** organised by the contractor.

More specifically, the purpose of the conference is to present the results of the study and to officially publish the report. The place and date for the conference have to be approved by the Commission.

a) The contractor shall organise a half a day conference as follows:

- Reserve a conference room in Brussels within 12 months after the signature of the contract
- Interpretations should be foreseen in EN, FR and DE
- Technical assistance should be foreseen
- Invitations should be sent out to:
  - 2 governmental representatives from each Member States
  - 1 representative from each equality body, up to a maximum of 4, from each Member States
  - 10 representatives from Social Partners on EU level
  - 10 representatives from Non Governmental Organisations (NGO) on EU level
  - 1 representative from each EFTA/EEA country
  - Travel expenses should be foreseen and reimbursed by the contractor
- 250 copies of the study in the respective language EN, DE and FR shall be available for the participants

**II.** The contractor should be available for 4-5 meetings in Brussels to be determined by the Commission services and should be prepared to present the following reports:

a) two months after the signature of the contract in order to present the completed first step with the investigation method and outline for the final report. A preliminary plan on the organising of the conference should be presented

b) within 5 months after the signature of the contract in order to present an interim report maximum 150 pages

c) within 9 months after the signature of the contract to discuss the draft of the final report which should be provided in an understandable format, easy usable for policy and legal development purposes.

d) within 12 months after the signature of the contract a final report should be presented by the contractor at a conference organised by the contractor.



## 5.1 Description of the tasks

Two months after the signature of the contract the contractor should present a preliminary report on the investigation method, the structure, analytical framework and the outline of the final report. A preliminary plan on the organising of the conference should be presented. Within five months after the signature of the contract the contractor should present an interim report.

Within nine months after the signature of the contract a draft of the final report should be provided in an understandable format, easy usable for policy and legal development purposes.

As regards the final report to be presented within twelve months and not exceeding 200 pages, which should be in English (paper and electronic format), it should contain:

- Presentation of the 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 but not compulsory.
- an executive summary in English, French and German (5-6 pages)
- a more substantial summary of around ten pages in English, French and German;
- a methodology note containing the literature reviewed, databases used, etc;
- recommendations to the Commission services and, where appropriate on how rules on sanctions and time limits could be updated in the existing Community legislation.

## 5.2 Guide and details of how the tasks are to be carried out

The PROGRESS Programme aimed 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:

- Gender equality issues are taken into account when relevant for the drafting of the technical offer by paying attention to the situation and needs of women and men;
- Implementation of the requested tasks includes a gender perspective by considering systematically women and men dimension;
- Performance monitoring includes the collection and gathering of data disaggregated by sex when needed.
- its proposed team and/or staff respects the gender balance at all levels.

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.

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.

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.

## **6. PUBLICITY AND INFORMATION REQUIREMENTS**

1.- As a matter of principle, with a view to favouring valorisation by the European Commission of all results obtained and outputs delivered under PROGRESS programme, the Contractor will be required to provide - either upon specific request or in any event with the final activity report - for each of the tasks required under the present Call the following:

- 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.
- And an executive summary in 5/6 pages in English, French and German unless otherwise more precisely described in the section "tasks to be carried out".

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 supported for under the European Community Programme for Employment and Social Solidarity (2007-2013). This programme is managed by the Directorate-General for Employment, social affairs and equal opportunities of the European Commission. It was established 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.*

*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-EEA and EU candidate and pre-candidate countries.*

*PROGRESS mission is to strengthen the EU contribution in support of Member States' commitments and efforts to create more and better jobs and to build a more cohesive society. To that effect, PROGRESS will be instrumental in:*

- *providing analysis and policy advice on PROGRESS policy areas;*
- *monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;*

- *promoting policy transfer, learning and support among Member States on EU objectives and priorities; and*
- *relaying the views of the stakeholders and society at large*

For more information see:

[http://ec.europa.eu/employment\\_social/progress/index\\_en.html](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 if any another 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.

## **7. REPORTING REQUIREMENTS**

PROGRESS will be implemented through a results-based management - RBM. Managing for outcomes and results is about working to maximise results for European citizens. This includes:

- Identifying the most important results for European citizens;
- Managing for these results, including setting clear desired results, implementing plans based upon these results and learning about ‘what works’ in the process;
- Seizing opportunities to work together whenever this helps achieve the results.

As a first step, a Strategic Framework for the implementation of PROGRESS has been developed in collaboration with Member states and organisations from the civil society. The Strategic Framework provides the framework for implementing PROGRESS, complemented by the Performance Measurement, which defines PROGRESS mandate, its long-term and specific outcomes. See in Annex the overview of PROGRESS performance measurement framework. For more information on the strategic framework, please visit PROGRESS website.

The Commission will in that context monitors the effect of PROGRESS supported or commissioned initiatives and considers how these initiatives contributes to PROGRESS outcomes as defined in the Strategic Framework. In that context, the Contractor will be asked to loyally work in close cooperation with the Commission and/or persons authorised by it to define their expected contributions and the set of performance measures against which their contribution will be assessed. The Contractor will be asked to collect and report on its own performance on a regular basis to the Commission and/or persons authorised by it. In addition, the Contractor will make available to the Commission and/or persons authorised by

it all documents or information that will allow PROGRESS performance measurement to be successfully completed and to give them the rights of access.

## **8. PROFESSIONAL QUALIFICATIONS REQUIRED**

See Annex IV of the contract;

Additional requirements:

The contractor will need to involve experienced lawyers and academics from the respective Member States and EFTA/EEA countries, specialised in national legislation in the area of gender equality and anti discrimination with a very sound knowledge of Community law, in particular as regards the gender equality and anti-discrimination acquis.

## **9. TIME SCHEDULE AND REPORTING**

See Article I.2. of the contract.

The duration of the contract will be 12 months from the entry into force of the contract which will be the date of signature of the contract by the second party. Please note that there will be no extension of the contract allowed. To that end, only contractors who are capable of meeting and of establishing the appropriate structure to meet the deadlines imposed by the European Commission are invited to submit an offer under the present Call.

Additional requirements:

The specific deadlines for the completion of each task set out at point 5 will be agreed with the Commission.

## **10. PAYMENTS AND STANDARD CONTRACT**

In drawing up the bid, the contractor should take into account the provisions of the standard contract comprising the "General terms and conditions applicable to service contracts".

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default of negligence on the part of the Contractor.

### **Pre-financing**

Following signature of the Contract by the last contracting party, within 30 days of the receipt by the Commission of a request for pre-financing with a relevant invoice, a pre-financing payment equal to 20% of the total amount referred to in Article I.3.1 of the draft contract shall be made.

### **Interim payment**

Requests for interim payment by the Contractor shall be admissible if accompanied by  
–an interim report,  
–the relevant invoices,

provided the report has been approved by the Commission.

The Commission shall have 60 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, an interim payment corresponding to the relevant invoices, up to maximum 60% of the total amount referred to in

Article I.3.1 of the draft contract, shall be made.

### **Payment of the balance**

The request for payment of the balance of the Contractor shall be admissible if accompanied by:

–the final report,  
–the relevant invoices,

provided the report has been approved by the Commission.

The Commission shall have 60 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 Article I.3.1 of the draft contract shall be made.

## **11. PRICES**

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 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.

The maximum amount available for this contract is 400.000 EUR. Contractors should note that any bid exceeding this limit will not be considered. The total price covers the professional fees and costs as mentioned below:

- Fees, expressed as the number of person-days multiplied by the unit price per working day for each expert proposed, the co-ordinator and each member of the executive committee. The unit price should cover the experts' fees and administrative expenditure.
- The costs linked to the implementation of the seminar;
- Travel expenses (other than local transport costs);

- Daily subsistence allowances (DSAs): these cover all the subsistence costs of the contractor and his staff on necessary short-term trips outside their normal place of work including participation in the meetings in Brussels (see point 5).
- Translation expenses, if any.
- Expenses for the shipment of equipment or unaccompanied luggage directly connected with performance of the tasks specified in this Contract

Other direct costs which have to be specified in detail, if applicable, by the tenderer.

## **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 contract<sup>1</sup>. However, a grouping of economic operators 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.

Each member of the grouping assumes joint and several liabilities 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:*

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<sup>1</sup> 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.

*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) they are currently subject to an administrative penalty referred to in Article 96(1)<sup>2</sup>.*

*(...)*

*Article 94 :*

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

- a) are subject to a conflict of interest;*
- b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;(..."*

*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

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<sup>2</sup> "Article 96(1): The contracting authority may impose administrative or financial penalties on the following:

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

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

(...)"

1. 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 who 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**

a) Economic and financial capacity to carry out the tasks set out in the tender specifications must be demonstrated as follows:

1. A statement of the undertaking's overall turnover for the last two financial years. For the last financial year, the annual turnover should at least equal the value of the contract.

2. Balance sheets or extracts from balance sheets from the last two financial years for which accounts have been closed, where publication of the balance sheets is required under the company law in the country in which the economic operator is established.



3. A bank declaration providing evidence of good financial standing.

In the case of tenders from consortia, these documents must be provided for by each member of the consortium.

If, for some exceptional reason which the contracting authority considers justified, the tenderer or candidate is unable to provide the references requested by the contracting authority, she/he may prove his economic and financial capacity by any other means which the contracting authority considers appropriate.

**b) Technical capacity to carry out the contract to be assessed on the basis of the following:**

- Detailed CVs of all team members participating in the execution of this study. The contractor will need to involve experienced lawyers and academics from the respective Member States and EFTA/EEA countries, specialised in national legislation in the area of gender equality and anti-discrimination issues with a sound knowledge of Community law, in particular as regards the gender equality and anti-discrimination acquis.

- A list of principal services/studies provided in the relevant policy domain in the course of the last 3 years.

- Solid experience of analysis in the field concerned, including both the theoretical and empirical aspects, as attested by CVs and related documentation.

- Sufficient language skills to execute the tasks efficiently and to ensure access to information in all 27 Member States and other participating countries.

- A declaration by the coordinator certifying the competence of the team to carry out the study, including professional and linguistic capacity, and experience/skill for seminars organisation.

- In the case of tenders from consortia: clear identification of the coordinator of the work who will also be responsible for signing the contract, and written confirmation from each member of the consortium that they would be ready and willing to participate in the project, and describing their role.

## **15. AWARD CRITERIA**

The contract will be awarded to the bid offering the best price/quality ratio, taking account of the following criteria:

## 1. Quality of the offer

a. Approach: 25% - Degree of understanding of the nature of the assignment, its context and the results to be achieved.

b. Methodology: 45% - Methodology proposed to execute each part of the proposed study, with particular attention on

aa.) gathering information in the Member States in the field of gender equality and non discrimination about sanctions and time limits compared to sanctions and time limits in similar disputes in other fields of national legislation – 30%

bb.) analyzing, evaluating and presenting this information – 15%

c. Work organization: 30% - Work organization proposed for the management of the project, on how the coordinator will ensure the implementation and follow-up, the quality, the homogeneity and consistency of the work provided by the experts as well as contacts with them, in order to meet the deadlines and to ensure the geographical coverage of all 27 Member States and the EFTA/EEA countries.

## 2. Price

Please note that 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.

The Commission may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

## **16. CONTENT AND PRESENTATION OF BIDS**

### **Content of bids**

Tenders must include:

- all information and documents necessary to enable the Commission to appraise the bid on the basis of the selection and award criteria (see points 14 and 15 above);
- a bank ID form duly completed and signed by the bank;
- a "legal entity" form duly completed;
- the price;

- the detailed CVs of the proposed experts;
- the name and function of the contractor's legal representative (i.e. the person authorised to act on behalf of the contractor in any legal dealings with third parties);
- proof of eligibility: contractors must indicate the State in which they have their registered office or are established, providing the necessary supporting documents in accordance with their national law.

### **Presentation of bids**

Bids must be submitted in triplicate (i.e. one original and two copies).

They must include all the information required by the Commission (see points 11, 12, 13).

They must be clear and concise.

They must be signed by the legal representative.

They must be submitted in accordance with the specific requirements of the invitation to tender, within the deadlines laid down.

# OVERVIEW OF PROGRESS PERFORMANCE MEASUREMENT FRAMEWORK

## PROGRESS Ultimate Outcome

*Member States implement laws, policies and practices in a manner that contributes to the desired outcomes of the Social Agenda*

PROGRESS works toward its ultimate outcome by helping strengthen the EU's support for Member States' efforts to create more and better jobs and to build a more cohesive society. PROGRESS seeks to contribute to (i) an **effective legal regime** in the EU in relation to the Social Agenda; (ii) **shared understanding** across the EU with regard to Social Agenda objectives; and (iii) **strong partnerships** working toward Social Agenda objectives.

In operational terms, support provided by PROGRESS facilitates (i) provision of analysis and policy advice; (ii) monitoring and reporting on the implementation of EU legislation and policies; (iii) policy transfer, learning and support among Member States; and (iv) relaying to decision-makers the views of the stakeholders and society at large.

### Legal Regime

#### Outcome:

*Compliance in Member States with EU law related to PROGRESS areas.*

#### Performance Indicators

1. Transposition rate of EU law on matters related to PROGRESS policy areas
2. Effectiveness of application in Member States of EU law on matters related to PROGRESS policy areas.
3. EU policies and legislation are grounded in thorough analysis of situation and responsive to conditions, needs and expectations in Member States in PROGRESS areas
4. Extent to which PROGRESS-supported policy advice feeds into the development and implementation of EU legislation and policies
5. Cross-cutting issues are addressed in PROGRESS policy sections
6. EU policies and legislation display a common underlying logic of intervention in relation to PROGRESS issues
7. Gender mainstreaming is systematically promoted in PROGRESS

### Shared Understanding

#### Outcome:

*Shared understanding and ownership among policy/decision-makers and stakeholders in Member States, and the Commission, of objectives related to PROGRESS policy areas.*

#### Performance Indicators

1. Attitudes of decision-makers, key stakeholders and general public regarding EU objectives in PROGRESS policy areas
2. Extent to which national policy discourses or priorities reflect EU objectives
3. Extent to which principles of good governance (including minimum standards on consultation) are respected in policy debate
4. Extent to which the outcomes of policy debates feed into the development of EU law and policy.
5. Greater awareness of policy-and decision-makers, social partners, NGOs, networks regarding their rights/obligations in relation to PROGRESS policy areas
6. Greater awareness of policy-and decision-makers, social partners, NGOs, networks regarding EU objectives and policies in relation to PROGRESS policy areas

### Strong Partnerships

#### Outcome:

*Effective partnerships with national and pan-European stakeholders in support of outcomes related to PROGRESS policy areas.*

#### Performance Indicators

1. Existence of common ground/consensus among policy and decision-makers and stakeholders on EU objectives and policies
2. Identification and involvement by the EU of key actors in a position to exert influence or change at EU and national levels
3. Effectiveness of partnerships in relation to outcomes related to PROGRESS policy areas.
4. Number of individuals served or reached by networks supported by PROGRESS.
5. Extent to which advocacy skills of PROGRESS-supported networks have improved
6. Satisfaction of EU and national authorities with the contribution of networks
7. Extent to which PROGRESS-supported networks take a cross-cutting approach