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## Specifications – Invitation to tender No VT/2007/019

### *Organisation and co-ordination of a European Network on Free Movement of Workers within the European Union*

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#### 1. *Title of the contract*

Organisation and co-ordination of a European Network on Free Movement of Workers within the European Union

#### 2. *Background*

Freedom of movement of workers is a fundamental right granted by the EC-Treaty to the citizens of the Union. It does not only aim at the creation of a single employment market but has also a significant social dimension. It implies thus the right to social, economic and cultural integration of the Community worker and his/her family in the host Member State. It is an important vehicle for the creation of a true consciousness of European citizenship.

Free movement is a mean of creating a European employment market and of establishing a more flexible and more efficient labour market, to the benefit of workers, employers and Member States. It is common ground that labour mobility allows individuals to improve their job prospects and allows employers to recruit the people they need. It is an important element in achieving efficient labour markets and a high level of employment as demonstrated during the European Year of Workers' mobility 2006.

Freedom of movement of workers, as established 50 years ago by the current Article 39EC, has been subsequently developed by the secondary legislation, notably by Regulation (EEC) 1612/68<sup>1</sup> and Directive 2004/38/EEC<sup>2</sup>. This considerable legal corpus guarantees the rights of the migrant workers and their family members to move and reside freely for work purposes within the EU. The role of the Court of Justice was crucial in the interpretation of the principles of free movement of workers.<sup>3</sup>

However, certain legal and administrative obstacles continue to persist as regards application of the Community norms. It seems essential to eliminate such obstacles and develop thus the potential of free movement in order to allow European citizens to benefit from the internal market.

Moreover, after 2004 and 2007 enlargements, the legal situation is more complex with 27 Member States and transitional measures in place.

The tasks performed by the previous European Network on Free Movement of workers within the EU, which has been active since 2003, has considerably helped the Commission to gather information of the different national legislation and case law and has enhanced the quality of its task of monitoring of compliance with the Community law by the Member States.

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<sup>1</sup> Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257 of 19.10.1968, p. 2).

<sup>2</sup> European Parliament and Council Directive 2004/38 of 29 April 2004 on the right of citizens of the European Union and their family members to move and reside freely within the territory of the EU (JOL 158 du 30 04 2004 repealing Directive 68/360 ECC).

<sup>3</sup> Communication from the Commission "Free movement of workers – achieving the full benefits and potential" [COM(2002) 694 final].

The Commission is therefore planning to rely again on a European Network on Free Movement of Workers within the EU to ensure a constant supply of accurate information for all parties active in this area, particularly with regard to compliance with Community law by the national bodies responsible for legislation and its application and the relevant national jurisprudence. Any information or events in the above-mentioned context will, as a matter of course, be collated and made available by the Network. The Commission hopes to help in this way to improve the situation of people moving within the European Union.

### **3. *Subject of the contract***

The contract to be awarded concerns the organisation and co-ordination of a European Network on Free Movement of Workers within the European Union. The function of this Network will be to monitor developments in legislation, application and national courts' practice of EU law on freedom of movement for workers<sup>4</sup>, mainly through the elaboration every year of 27 national reports for each Member State of 1 consolidated European report on legal developments in the EU Member States ; the organisation of a legal conference presenting the outcomes as well as through responding to any request of the Commission in relation to the application of Community law on free movement of workers in a given Member State.

The activities will be carried out under the direct supervision and responsibility of Unit E/3, Directorate General for DG Employment, Social Affairs and Equal Opportunities.

### **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***

Services required under the contract will include:

**Task 1** – Proposing of 27 national experts on free movement of workers (in principle, one per Member State) specialising in the field of application of the Regulation 1612/68 and Directive 2004/38, with a view to creating a network with complete technical and geographical coverage in the above-mentioned areas.

**Task 2** – Administrative and financial management of subcontractors (national experts): the contracts with these experts will be concluded by and on the responsibility of the co-ordinator, who will be responsible for their administrative and financial management. These contracts must give precise details of the tasks to be accomplished.

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<sup>4</sup> In particular: Regulation 1612/68, Directive 2004/38.

**Task 3** – Monitoring, co-ordination and all necessary back-up for the network created. In particular, the co-ordinator will be responsible for close monitoring of the experts' activities through regular and intensive contact. The co-ordinator will assist the experts in gathering data and complementary information on developments in the field of free movement of salaried workers.

**Task 4** – Production every year of 27 National Reports and delivery in an electronic print-ready form (PDF format) as well as paper versions (3 copies each).

It is emphasised that the national and European reports would be annual and would cover respectively the years 2007, 2008, 2009 and 2010.

The national reports should be submitted to the Commission in English at least. The first drafts should be submitted not later than 5 months after the signature of the contract by both parties.

The national reports submitted by the experts must cover at least the table of contents listed below.

The reports shall concern mainly the implementation of Community legal texts, their application by the administrative authorities as well as by national courts in the concerned Member States during the year of reference, the effective impact of free movement, problems encountered as well as perspectives of infra-community labour mobility.

The reports should cover in principle the beneficiaries of Community law in the area of labour mobility. Freedom of movement benefits mainly to the citizens of the Union and to the members of their family. Nationals of third countries are also concerned insofar they are covered by agreements concluded between the Community or the Community and its Member States on one side and their country of origin on the other side.

Community law on free movement of workers applies in a variety of areas concerning, in particular, entry, residence and departure in and from the territory of a Member State, access to employment and its eventual restrictions, equality of treatment of Community workers and the members of their family (as regards, for example, taxation, social, cultural matters etc.).

Major issues arise in respect of employment in the public sector of another Member State. The reports should in particular cover questions related to the access to the public sector (Art 39.4 EC), the recognition of previous professional experience and seniority acquired in another Member State for the purpose of access to the public sector and the determination of professional advantages (e.g. salary) and the recognition of qualifications and diplomas for access to the public sector.

The reports should provide information on legislative developments in the Member State concerned which may affect free movement of workers. It is also important to refer to relevant administrative circulars and/or practices. The judgements, articles and circulars referred to should be annexed to the reports.

The reports should contain a summary of rulings made during the reference period by national courts (especially the highest ones) in the areas under examination.

The follow-up of the judgements of the Court of Justice should also be dealt with.

National statistics relating to freedom of movement are also useful to the Commission.

The Contractor's duties will include standardising the compilation and communication of these reports for ease of analysis and implementation. The Contractor should carry out the following tasks: linguistic checking, editing, graphic design and lay-out of the reports in order to ensure a harmonised and clear set of reports. The Contractor would be also responsible for controlling the overall quality of the reports and ensuring that the Commission comments are taken into account.

In order to ensure better readability and comparability of the national reports, the national reports' table of contents could be as follows:

#### INDICATIVE TABLE OF CONTENTS

##### Chapter I: entry, residence, departure

- A. Entry
- B. Residence
- C. Departure

##### Chapter II: Access to employment

- A. Equal treatment in access to employment
- B. Language requirement
- C. Recognition of qualifications and diplomas

Chapter III: Equality of treatment on the basis of nationality-Obstacles to free movement

- A. Working conditions, social and tax advantages
- B. Other obstacles to free movement
- C. Specific issues: frontier workers, sportsmen/sportswomen, maritime sector, researchers, artists
- D. Relationship between Regulation 1408/71 and Article 39 and Regulation 1612/68

Chapter IV: Employment in the public sector

- A. Access to public sector
- B. Equality of treatment

Chapter V: Members of the family

- A. Residence rights
- B. Access to work
- C. Access to education and study grants
- D. Other issues concerning equal treatment

Chapter VI: Relevance/Influence/Follow-up of recent Court of Justice judgements

Chapter VII: Policies, texts and/or practices of a general nature with repercussions on free movement of workers

Chapter VIII: EU enlargement

- A. Information on transitional arrangements regarding Member States who joined the EU in 2004
- B. Information on transitional arrangements regarding Member States who joined the EU in 2007

Chapter IX: Statistics

- A. Duration of mobility
- B. Repartition by gender/branch/skills-qualifications/region
- C. Trends

Chapter X: Miscellaneous

**Task 5** – Production every year of 1 European Report and delivery in an electronic print-ready form (PDF format) as well as paper versions (20 copies).

It is emphasised that the European reports will be annual and cover respectively the years 2007, 2008, 2009 and 2010.

The Contractor shall produce a European Report on the developments in the field of free movement of workers. This report will follow the contents, format and guidelines developed in close consultation with the Commission.

The report should be submitted to the Commission in English, not later than two months before the end of the 12-calendar month contract's period of performance.

**Task 6** – Providing the Commission with any relevant information.

The Contractor should provide a summary of the most interesting studies, reports and articles published during the year(s) of reference, indicating the name, source and the author, as well as copies of the most important relevant texts (legislations, court rulings, circulars, legal literature, etc.).

The Contractor should also inform the Commission of any seminar, symposium, etc., organised concerning the area under examination.

The Contractor's appreciation and observations on national and EU-level developments will be useful to the Commission to form a clear idea of the situation, trends and perspectives.

The contractor may be requested by the Commission to provide information in relation to the application of Community law on free movement of workers in a given Member State at any time.

**Task 7** – The secretarial, translation and communication services needed to perform the duties under the contract adequately.

**Task 8** – Organisation of two yearly meetings.

The first meeting will take place in Brussels in the initial stages of the contract after creation of the network of experts, to inform them of the plan of action, provide all essential information and establish the necessary contacts. The second meeting will take place before the end of the contract period to enable the experts to present the information given in their reports and draw the appropriate conclusions and recommendations from the reports. This second meeting could be organised in the country where the conference is organised (see task 9). Commission's representatives (of Unit E/3 of Directorate General for Employment, Social Affairs and Equal opportunities) must be attending both meetings.

Regarding the 3 possible renewals of the initial contract: the first meeting will then mainly allow to examine and discuss the draft national and European reports and ensure that they are consistent with the work programme as agreed with Unit E/3 of Directorate General for Employment, Social Affairs and Equal opportunities .

**Task 9** – Organisation of a yearly conference presenting the results of the national and European reports.

The conference should be organised at the end of the year in a Member State and should aim at disseminating the results as well as should involve the participation of representatives of national administrations, of social partners, of lawyers and judges) in order to inform them on the evolution of the European legislation and case law and their application in the Member States.

All the expenses arising from the conferences will be included in the total price of the contract.

If, during the contract period, an enlargement of the EU takes place and consequently new Member States participate in this network, an extension of the contract will be made by negotiated procedure according to Article 126(1)(f) of Commission Regulation No. 2342/2002 (EC, Euratom) laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>5</sup>

**6. Professional qualifications required**

See Annex IV of the draft contract, experts' CVs and classification of experts. (See point 12. Selection criteria below).

**Additional requirements:**

The tenderer must engage experts specialised in free movement of workers issues who cover the 27 Member States. The tenderer must prove his experience in the financial, administrative and operational management of large scale networks at European level.

**7. Time schedule and reporting**

See Article I.2. of the contract.

**Additional requirements** (specific deadlines for the performance of tasks):

Work may not start until after the signature of the contract by both parties, which it is estimated would be in November 2007. The period of performance will be 12 calendar months from the date of contract signature.

The initial contract may be renewed 3 times for a period of 12 calendar months each only with the express written agreement of the parties before payment of the balance. Renewal does not imply any modification or deferment of existing obligations.

In addition to regular (every month) informal, oral reporting to the DG Employment and Social Affairs project manager on potential problems, ideas, and developments, the Contracted Party shall produce, no later than 5 months after the signature of the contract by both parties, an **Interim Report** assessing overall progress towards the achievement of the key tasks together with the 27 draft national reports.

**Draft Final Report** together with revised national reports and draft European report will be delivered two months before the last day of the contractual period.

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<sup>5</sup> Official Journal L 357 of 31/12/2002

**Final Report** will be delivered before the end the contractual period. It will provide a full description of the work carried out, a presentation of the results obtained for the whole period of the performance, as well as any comments, suggestions or recommendations judged useful or necessary by the contractor. The final national reports and European report will be annexed to the Final Report.

**All reporting must be done in English and delivered both on paper and electronically.**

## **8. Payments and standard contract**

See articles I.3., I.4, II.4 and II.5 of the draft contract.

Payments will be made according to the following schedule:

### **Pre-financing payment**

Following the 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 30% of the total amount of fees and direct costs referred to in Article I.3.1 of the contract shall be made.

### **Interim payment**

Request for interim payment by the Contractor shall be admissible if accompanied by:

- an interim report in accordance with the instructions laid down in Annex I of the model contract ;
- the relevant invoices

Provided the report has been approved by the Commission

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, an interim payment corresponding to the relevant invoices, up to maximum 40% of the total amount referred to in Article I.3.1 of the 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 in accordance with the instructions laid down in Annex I of the draft contract;
- the relevant invoices,

Provided the report has been approved by the Commission.

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 Article I.3.1 of the contract shall be made.

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".

## **9. 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.

■ **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;
- Travel expenses;
- Subsistence expenses of the Contractor and his staff (covering the expenditure incurred by experts on short-term trips outside their usual place of work)
- Expenses for the shipment of equipment or unaccompanied luggage, directly connected with performance of the tasks specified in Article I.1 of this Contract
- Other direct costs (to be specified)

■ **Part B: Reimbursable expenses**

N.A.

The total price sought ought not to exceed €400,000.00 per year.

**10. Composition of a partnership or consortium**

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>6</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 11 and 12 must be supplied by every member of the grouping.

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

**11. 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

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<sup>6</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.

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*

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.

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.

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 bidders 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.

## **12. Selection criteria**

The selection of offers will be carried out in accordance with the following criteria:

### a) economic and financial capacity:

Sound financial and legal position of the tenderers

- Tenderers will be required to demonstrate their financial status by presenting their balance sheets and their profit and loss statements for the last two years for which the accounts have been closed, including total turnover and turnover relating to services similar to those covered by this call for tenders for the past two financial years.

### b) technical capacity of the tenderer:

#### Experience required for the tenderer:

Proven experience in financial, administrative and operational management of large scale networks at European level. Tenderers are required to provide a brief description of their business activities in services of the type which are the subject of this invitation to tender as well as detailed curriculum vitae of all the persons proposed to demonstrate relevant competence and professional capacity.

#### Experience required of national experts:

Proven 5-year knowledge/expertise in the field of free movement of workers and application of Regulation 1612/68 and Directive 2004/38 in the Member State concerned as well as knowledge of the national language(s) of the country concerned. Experts must also be able to demonstrate a sound grasp of written and oral English or French.

## **13. Award criteria**

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

- 1) Quality criteria understanding of the context and nature of the project and the tasks to be carried out. Tenderers will be required to provide information about the managerial staff, the distribution of tasks among the members of the team and a detailed timetable of the activities to be carried out.
- Approach (30%): Demonstration of an understanding of the nature and context of the analysis required by the Commission along with the tasks to be performed and the results to be obtained.
- Methodology (30%): Methodology proposed by the tenderer to analyse the implementation and application of Community provisions in the field of free movement of workers.
- Work Organisation (40%):
  - Work organisation proposed by the tenderer concerning the management of the network's work by the coordinator, in order to meet the deadlines imposed by the production of 27 national reports and 1 consolidated report. Furthermore, the tenderer must explain how he plans to organise the annual conference presenting the results.

- Work organisation proposed by the tenderer with regard to the administrative management of the network by the coordinator. The tenderer must specify the number of people involved in the administrative management and give details on the organisation of meetings, the delivery of work and the manner in which contact with the network will be guaranteed, for example, in order to reply to specific questions from the Commission.
- 2) Price  
These criteria weighted as indicated above will determine the quality of the bids and will be compared with the price in order to determine the proposal that provides the **best value for money**.

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

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

Initiation of a tendering procedure imposes no obligation on the Commission to award the contract. The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the contract.

#### **14. 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 12 and 13 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: tenderers 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 9, 10, 11 and 12 above).

They must be clear and concise.

They must be signed by the legal representative. **Unsigned bids will be rejected.**

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

#### **15. Validity of tenders**

Tenders must be valid up to 6 months after submission.

*Annex 1*

| Exclusion criteria<br>(Article 93(1) FR)  | Supporting documents to be provided by applicants, tenderers or bidders   |  |
|---|---|--|
|   | Procurement<br>(Article 93(2) FR; Article 134 IR)   |  |
| <b>1. Exclusion from a procurement procedure, Article 93(1) FR :</b><br><i>« Candidates or tenderers shall be excluded from participation in a procurement procedure if:</i>  |   |  |
| <b>1.1. (subparagraph a)</b><br><i>they are bankrupt or being wound up, are having their affairs administered by the courts,</i><br><br><i>have entered into an arrangement with creditors have suspended business activities, are the subject of proceedings concerning those matters,</i><br><br><i>or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations<sup>7</sup>;</i> | Recent extract from the judicial record<br><b>or</b><br>recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance<br><b>or</b><br>Where no such certificate is issued in the country concerned : 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 |  |
| <b>1.2. (subparagraph b)</b><br><i>they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata<sup>8</sup>;</i>  | Cf. supporting documents for Article 93(1)(a) FR above  |  |

<sup>7</sup> See also Article 134(3) IR : *Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.*

<sup>8</sup> Cf. footnote n° 1.

| Exclusion criteria<br>(Article 93(1) FR)  | Supporting documents to be provided by applicants, tenderers or bidders  |  |
|---|--|--|
|   | Procurement<br>(Article 93(2) FR; Article 134 IR)  |  |
| <b>1.3. (subparagraph c)</b><br><i>they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</i>  | Declaration by the candidate or tenderer that he is not in the situation described   |  |
| <b>1.4. (subparagraph d)</b><br><i>they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the 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<sup>9</sup>;</i> | Recent certificate issued by the competent authority of the State concerned confirming that the candidate is not in the situation described<br><br><b>or</b><br>Where no such certificate is issued in the country concerned : 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 |  |
| <b>1.5. (subparagraph e)</b><br><i>they have been the subject of a judgment 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<sup>10</sup>;</i>   | Cf. supporting documents for Article 93(1)(a) FR above   |  |
| <b>1.6. (subparagraph f)</b><br><i>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. »</i>   | Declaration by the candidate or tenderer that he is not in the situation described   |  |

| Exclusion criteria<br>(Article 94 FR)  | Supporting documents to be provided by applicants, tenderers or bidders |        |
|--|---|--------|
|  | Procurement   | Grants |
| <b>2. Exclusion from a procurement or grant award procedure Article 94 FR :</b><br><i>« Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:</i> |   |        |

<sup>9</sup> Cf. footnote n°1.

<sup>10</sup> Cf. footnote n° 1.

|  |   |  |
|--|---|--|
| <p><b>2.1. (subparagraph a)</b></p> <p><i>are subject to a conflict of interest;</i></p>   | <p>Statement by the applicant, tenderer or bidder confirming the absence of conflict of interests, to be submitted with the application, bid or proposal</p>  |  |
| <p><b>2.2. (subparagraph b)</b></p> <p><i>are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information»<sup>11</sup>.</i></p> | <p>No specific supporting documents to be supplied by the applicant, tenderer or bidder</p> <p>It is the responsibility of the authorising officer, represented by the evaluation committee, to check that the information submitted is complete<sup>12</sup> and to identify any misrepresentation</p> |  |

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<sup>11</sup> Cf. Article 146(3) of the FR Implementing Rules: « ...the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within a specified time-limit. » and Article 178(2) of the FR Implementing Rules: « The evaluation committee may ask an applicant to provide additional proof or to clarify the supporting documents establishing financial and operational capacity, within a specified time-limit. »

<sup>12</sup> Cf. footnote n°1