

INVITATION TO TENDER No. TREN/G4/134-2008

Study on possible migration to toll systems using satellite positioning and mobile communications technologies by systems using other technologies

FREQUENTLY ASKED QUESTIONS

1. *Are tenderers registered outside of the EU eligible for entering a proposal?*

Article 106 and 107 of the Financial Regulation limits the participation in tendering procedures (see the Annex to this note).

2. *Any Extension of Bidding Deadline?*

No.

3. *Any Addendum or Pre Bid meeting Minutes?*

No.

4. *How are road tolling equipment manufacturers affected by Clause IV.1.2 of the Invitation to Tender relative to conflicts of interest?*

The Commission services require an "impartial and objective performance" of the contract. The successful tenderer will have to sign a service contract, a draft of which is presented in Annex 5 to the Invitation to Tender. Clause II.3.1 of the contract stipulates that *"The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it."*

5. *How should the following clauses of the Tender Specifications be interpreted?*

- *III.2.1 "However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the contract."*
- *IV.1.3 "When the subcontracted part is above 20% of the contract value, the subcontractor(s) must also provide the above-mentioned evidence."*
- *IV.2.1 "However, if the tender includes subcontractors whose tasks represent less than 20% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity."*

The information referred to in III.2.1, IV.1.3 and IV.2.1 is only required in the case of an individual sub-contractor whose share of the contract value is at least 20% of the contract value.

ANNEX

Eligibility of tenderers from third countries

1. Article 106 of the Financial Regulation (bilateral and special agreements)

According to Article 106 of the Financial Regulation, which stipulates that "*participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has with the European Communities a special agreement in the field of public procurement under the conditions laid down in that agreement*", suppliers established in third countries may participate in tendering procedures if an international agreement in the field of public procurement grants them the right to do so.

Among the relevant international agreements in the field of public procurement are the Stabilisation and Association Agreements (SAA) and European Economic Area (EEA) Agreement.

More information on these and other agreements can be found on the following sites:

http://ec.europa.eu/trade/issues/bilateral/countries/index_en.htm

and

http://www.consilium.europa.eu/cms3_fo/showPage.asp?lang=en&id=252&mode=g&name=

The Agreements may set minimal thresholds under which access to tenderers from third countries is not granted.

2. Article 107 of the Financial Regulation

Article 107 of the Financial Regulation refers to the Multilateral **Agreement on Government Procurement** concluded within the World Trade Organisation. The WTO Agreement on Government Procurement – usually called the GPA – grants access to procurement procedures of Community institutions to entities of States having ratified this Agreement. The GPA sets minimal thresholds under which access to tenderers from third countries is not granted.

The GPA does not cover all contracts awarded by the institutions of the EC; Appendix I to the GPA sets out which contracts are covered. The GPA and its appendices can be found on:

http://www.wto.org/english/tratop_e/gproc_e/loose_e.htm.

3. Ad hoc Admission of non eligible Suppliers

In case a tenderer is not eligible according to the above-mentioned agreements, Community institutions **can admit on an ad hoc basis** tenders to the respective procurement procedure without creating a precedent or obligation for the future.