European Commission

Call for tenders EC-CNECT/2024/OP/0046 – Study “Online advertising at the crossroads of different regulatory frameworks”

Open procedure

TENDER SPECIFICATIONS
# TABLE OF CONTENTS

1. **SCOPE AND DESCRIPTION OF THE PROCUREMENT** ............................................. 4  
   1.1. Contracting authority: who is the buyer? ........................................... 4  
   1.2. Subject: what is this call for tenders about? ................................... 4  
   1.3. Lots: is this call for tenders divided into lots? .................................. 4  
   1.4. Description: what do we want to buy through this call for tenders? .......... 4  
   1.5. Place of performance: where will the contract be performed? ................. 21  
   1.6. Nature of the contract: how will the contract be implemented? ................. 21  
   1.7. Volume and value of the contract: how much do we plan to buy? ............ 22  
   1.8. Duration of the contract: how long do we plan to use the contract? .......... 22  
   1.9. Electronic exchange system: can exchanges under the contract be automated? .. 22  
   1.10. Security ........................................................................................................ 22  

2. **GENERAL INFORMATION ON TENDERING** .................................................. 23  
   2.1. Legal basis: what are the rules? ................................................................. 23  
   2.2. Entities subject to restrictive measures and rules on access to procurement: who may submit a tender? ................................................................. 23  
   2.3. Registration in the Participant Register: why register? ............................. 23  
   2.4. Ways to submit a tender: how can economic operators organise themselves to submit a tender? ................................................................. 24  

3. **EVALUATION AND AWARD** ........................................................................ 29  
   3.1. Exclusion criteria .......................................................................................... 29  
   3.2. Selection criteria .......................................................................................... 30  
   3.3. Compliance with the conditions for participation and minimum requirements specified in the procurement documents ............................................. 34  
   3.4. Award criteria .............................................................................................. 34  
   3.5. Award (ranking of tenders) .......................................................................... 36  

4. **FORM AND CONTENT OF THE TENDER** ..................................................... 37  
   4.1. Form of the tender: how to submit the tender? ........................................... 37  
   4.2. Content of the tender: what documents to submit with the tender? .......... 37  
   4.3. Signature policy: how can documents be signed? ...................................... 38  
   4.4. Confidentiality of tenders: what information and under what conditions can be disclosed? ................................................................. 38
APPENDIX: LIST OF REFERENCES ................................................................. 40
ANNEXES ........................................................................................................ 41
  Annex 1. List of documents to be submitted with the tender or during the procedure .... 42
  Annex 2. Declaration on Honour on exclusion and selection criteria ....................... 46
  Annex 3. Agreement/Power of attorney .................................................................. 47
  Annex 4. List of identified subcontractors and proportion of subcontracting ............ 48
  Annex 5.1. Commitment letter by an identified subcontractor .................................. 49
  Annex 5.2. Commitment letter by an entity on whose capacities is being relied ........ 49
  Annex 6. Financial tender form ............................................................................. 51
1. SCOPE AND DESCRIPTION OF THE PROCUREMENT

1.1. Contracting authority: who is the buyer?
This call for tenders is launched and managed by the European Commission, DG CNECT - Communications Networks, Content and Technology, referred to as the contracting authority for the purposes of this call for tenders.

1.2. Subject: what is this call for tenders about?
The subject of this call for tenders is “Online advertising at the crossroads of different regulatory frameworks.

1.3. Lots: is this call for tenders divided into lots?
This call for tenders is not divided into lots.

1.4. Description: what do we want to buy through this call for tenders?
The purchases that are the subject of this call for tenders, including any minimum requirements, are described in detail below. Variants (alternatives to the model solution described in the tender specifications) are not allowed. The contracting authority will disregard any variants described in a tender.

1.4.1. Background and objectives

A. Trends and developments
The size and importance of the online advertising sector in the overall advertising ecosystem has grown. By now, online advertising is the largest advertising channel in the European Union and European Economic Area, generating more revenue than all other advertising channels combined. In 2022, online digital advertising spending in Europe amounted to EUR 86 billion, up by nearly 10 percent compared to the value of EUR 78.3 billion recorded a year earlier. Online advertising has enabled many companies and in particular SMEs to reach out to potential clients, although the tradeoff raised challenges concerning data protection issues.

At the same time, the sector is undergoing paradigm changes, in view of the recent trends and fast-paced developments that have an impact on the modalities of the provision of this service. In addition, the sector comes at the crossroads of different regulatory developments, which have an important impact on how services are presented, offered, and provided in the Union.

a. Relevant developments, including data protection driven initiatives

See: Europe: online ad spend 2006-2022 | Statista
Considerations related to protection of personal data and associated developments continue to shape the online ecosystems, including in relation to online advertising. Even if advertising has always been at the centre of privacy-related policies this has become even more prominent in the digital world. In particular, the digital world “made” the targeting and personalisation increasingly more visible, while the exact mechanisms of any tracking and consumer profiling remain very opaque. Consequently, online advertising has in recent years become associated with persistent exposure of end users to what is often considered excessive and opaque profiling and targeting over which end users feel they have no control. Beyond data protection concerns, targeted advertising raises a number of other questions, including in relation to deceptive advertising, consumer manipulation and discrimination, and it is said to have the potential to harm end users, political processes (e.g., the danger that disinformation poses to democratic processes) and even the environment. In such context, the European legislators adopted two landmark regulatory frameworks, the Digital Markets Act (“DMA”) and Digital Services Act (“DSA”), which both aim to address different concerns identified, either of economic nature (DMA) or wider societal nature (DSA).

From a technological point of view, market players are increasingly developing alternative ways of targeting and personalising services in general and online advertising services in particular, where computation and profiling take place on the user’s device/browser, which means that ads can be matched without personal data being shared with third parties.

This is the case for the Privacy Sandbox initiative led by Alphabet, and the App Track Transparency framework (ATT) implemented by Apple. The extensive collection of data by means of cookies has given rise to concerns about users’ privacy and compliance with data protection laws. The stated aim of the Privacy Sandbox Proposals is to remove cross-site tracking of Chrome users through third-party cookies and alternative tracking methods such as fingerprinting, and replace it with tools to provide selected functionalities currently dependent on cross-site tracking. The ATT requires third-party apps to request permission from iOS users to track their digital activity for the purposes of ad targeting.

Both the Privacy Sandbox and the ATT came under scrutiny of competent authorities, in particular data protection and competition authorities. The UK’s Competition and Market Authority (CMA) closed its investigation into the Privacy Sandbox subject to commitments. These commitments involve the CMA working with Alphabet on the design and assessment of the Privacy Sandbox proposals before a final decision is taken to remove third-party cookies from Chrome. As regards Apple’s ATT, the competition authorities in Germany, France, Italy, and Poland are investigating potential self-preferencing practices.

b. Alternative advertising models

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2 See CMA’s decision of 11 February 2022 to accept commitments offered by Alphabet in relation to its Privacy Sandbox Proposals, Decision to accept commitments (publishing.service.gov.uk)

3 The CMA’s competition concerns related to third parties’ unequal access to the functionality associated with user tracking. Google self-preferencing its own ad tech providers and owned and operated ad inventory, and the imposition of unfair terms on Chrome’s web users. See more: Investigation into Google’s ‘Privacy Sandbox’ browser changes - GOV.UK (www.gov.uk).

Online advertising is very often seen as an enabler of ‘freely accessible’ online content that end users can consume without monetary payment. In the wake of moves by Alphabet and Apple to restrict third-party tracking within the ecosystem of their different services (Chrome, Android OS and iOS), advertisers and publishers are showing increasing interest in alternative advertising models and in particular monetisation thereof. Such could be models of ‘contextual advertising’, where targeting is based on the content the user is consuming at a given time rather than on their personal profile, cohort-based advertising, or location-based advertising, as a way to mitigate the anticipated negative impacts of reducing third-party data sharing in an online advertising context.

Other models have also emerged. An increasingly large share of commercial content is now posted by ‘influencers’ on different online platforms, including social media, replacing the traditionally paid-for adverts intermediated by a digital service. In the context of influencer marketing, a screening exercise of social media posts from influencers undertaken by the Commission and national consumer protection authorities of 22 Member States, Norway and Iceland found that nearly all (97%) of these influencers posted commercial content but only one in five systematically indicated that their content was advertising. Such practices again point to a lack of transparency and raise broader concerns about lack of fairness and lack of proper empowerment for consumers online.

Furthermore, as regulatory requirements concerning tracking-based advertising models increase, the subscription model, as an alternative to end users’ consent to targeted advertising, may significantly rise. In this context, it is yet to be seen how the European Data Protection Board (EDPB)’s opinion of 17 April 2024, according to which it will not be possible, in most cases, for large online platforms to comply with the requirements for valid consent if they confront users only with a choice between consenting to processing of personal data for behavioural advertising purposes and paying a fee, will impact the advertising environment. This is the case in relation to the EDPB Opinion according to which when developing alternatives, ‘large online platforms should consider providing individuals with an ‘equivalent alternative’ that does not entail the payment of a fee.

In addition, the EDPB also plans to develop guidelines on ‘consent or pay’ models with a broader scope, engaging with stakeholders for this purpose, so further developments, that have the potential to (re-)shape the advertising environment, are expected in this area.

This ongoing evolution of alternative advertising or ‘monetisation of service’ models in the online ecosystem may have an impact on the risks, such as the ones mentioned in Article 34 DSA. This is why it is important to map and analyse in-depth the different risks such alternative advertising models may cause, amplify, mitigate or avoid for the recipients of the service on which advertising is displayed (e.g. online social networks, online search engines, video-sharing platforms) and map different risk mitigating measures in this context. In particular, since such evolution may have both positive and negative impact on the risks, it is important to understand them and their impact to be able to assess comprehensively the impact on the subsequent risk mitigating measures.

c. The use of artificial intelligence in online advertising

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5 See: Results of a screening (“sweep”) of social media posts (europa.eu). During the exercise, posts of 576 influencers published on major social media platforms were checked.

6 The EDPB was asked to issue this opinion under Art. 64(2) GDPR to address the validity of consent in the context of ‘consent or pay’ models deployed by large online platforms, when consent is sought to process personal data for the purposes of behavioural advertising, also in view of the Court of Justice of the European Union’s Bundeskartellamt judgment (C-252/21). This pinion (Opinion 08/2024) is available here: https://www.edpb.europa.eu/system/files/2024-04/edpb_opinion_202408_consentorpay_en.pdf.

7 Idem
Other trends are emerging such as the generation and targeting of advertising by means of artificial intelligence (AI) systems with the potential to make it easier and cheaper to deliver hyper-personalised advertising campaigns. AI generated ads are fast and cheap to produce at massive scale, and there are AI systems which are claimed to allow very precise customer targeting optimised by the vast amounts of data already collected on individuals. New AI based systems have the potential to replace many of the industry’s traditional functions, from creating ads to displaying them to the users of online platforms. Instead of hiring creative agencies, brands can ask an AI chatbot for ads ideas and then select the best. Another aspect is the use of data by AI tools. Granularity, frequency, and quality of input data determine the possibilities of actors to develop AI algorithms and the performance of those algorithms. The deployment of proprietary AI bidding tools by the providers of certain platforms (e.g., Google’s Performance Max) can lead to a situation where the training of AI models relies on data sets that are significantly more extensive and diverse than those available to advertisers or non-platform ad-tech intermediaries. A closer look into the platform providers’ practices in terms of data usage is therefore needed, including any effects on market dynamics, contestability, and innovation.

d. Opacity of the online advertising environment and related societal risks

A number of recent studies focusing on online advertising identify lack of transparency of the ‘black box’ decision-making in the online advertising process as something that recipients of these services find extremely difficult to understand or challenge and to exercise their different choices effectively and freely. For example, one can see the exercise of these choices in different contexts such as Article 5(2) DMA that requires gatekeepers to obtain consent when processing, combining or cross-using data of their end users across different core platform services and other services. Furthermore, Article 6(8) DMA, requires gatekeepers to ensure that advertisers, publishers or their authorised third parties have access to data which allows them to run their own ad verification and assess the performance of the ads inventory. The placement conditions for the ad, such as targeting according to the user characteristics or context (e.g., avoiding placements next to children’s content), can be part of the agreed campaign terms between the online platforms and advertisers as business users of these services, just next to conditions aimed at combatting bot-related fraud, for example. Having gatekeepers providing access to this type of information to advertisers has the potential to allow them to individually verify their ad placements and confirm that their brands will not be associated with unwanted, illicit or devaluing inventory.

However, as noted above the DMA is just one of the recently adopted regulatory frameworks that may be relevant in this context. Under Articles 34 and 35 DSA, providers of very large online platforms (VLOPs) and very large online search engines (VLOSEs) are required to diligently identify, analyze and assess systemic risks stemming from their service, including the design,

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9 The Interactive Advertising Bureau (IAB), Europe’s leading industry association promoting digital advertising, defines ad verification as “a process which attempts to verify that one or more attributes of a served online ad have been executed in a manner consistent with the terms specified by the advertiser or agency and agreed to as part of the ad campaign terms”. IAB, 2012, p. 5.

functioning and use made of that service, and to mitigate those risks with reasonable, proportionate and effective measures. Systems for selecting and presenting advertisements are among the factors to be looked at by providers of VLOPs and VLOSEs when making their risk assessment. The examples provided in Article 35 DSA on the mitigation of risks include ‘adapting their advertising systems and adopting targeted measures aimed at limiting or adjusting the presentation of advertisements in association with the service they provide’.

Article 26 DSA sets down rules to improve the transparency of online advertising to recipients, such as informing them about the main parameters used to present them advertisements on the platform. Article 39 DSA includes additional transparency obligations for providers of VLOPs and VLOSEs making them compile and make publicly available a repository of ads for the entire period they present an advertisement and until one year after they last present it on their interface. With the aim of protecting minors online, Article 28 DSA prohibits the presentation of ads to minors based on profiling when the platform provider is aware, with reasonable certainty, that the user potentially targeted is a minor. In addition, providers of online platforms are also required, under Article 26 DSA, not to present advertisements to recipients of the service based on profiling using special categories of personal data.

Lastly, Article 46 DSA mandates the Commission to encourage providers of online advertising to draw-up voluntary codes of conduct at Union level to provide further transparency into the online advertising value chain beyond the obligations set-out in Articles 26, 28 and 39 DSA.

These DMA and DSA tools, together with other regulatory tools mentioned below, if implemented to their fullest extent, have the potential to contribute to a fair, open and contestable online advertising sector, and to empower advertisers to become responsible actors when exercising control over the placements online platforms choose to display their ads on.\(^\text{11}\)

**B. Regulatory framework**

a. **Digital Markets Act**

In the years preceding the adoption of the DMA, market investigations within EU Member States and in third countries identified concerns around concentration of platform powers and possible anti-competitive behaviour in online advertising sector. Lack of transparency, unfair data-driven advantages, conflicts of interests and dependencies of publishers and advertisers on a limited number of online platforms were among the concerns identified\(^\text{12}\). The DMA seeks to regulate the behaviour of undertakings providing core platform services acting as gatekeepers, which are to be understood as platforms being important gateways between business users and their customers and enjoying a significant and durable market position (Article 3). The DMA contains a number of provisions expressly referring to online advertising, but also provisions that are indirectly very

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relevant for the provision of online advertising services. Some of the most relevant examples are provided below.

First, the DMA introduces a set of transparency obligations requiring gatekeepers to provide advertisers, publishers and third parties authorised by them, free of charge, continuous and real-time access to information on the advertisement portfolio. In particular, Articles 5(9), 5(10) and 6(8) DMA increase the data available to actors active in the programmatic advertising sector. Second, the DMA also introduces opt-in consent mechanisms for cross-use and combination of personal data, which are very relevant and currently widely used in the advertising sector (Articles 5(2)(a), 5(2)(b) and 5(2)(c)). Third, the DMA requires gatekeepers to provide business users and third parties authorised by them, effective access to and enable use of aggregated and non-aggregated data, provided by those business users and their end users when making use of the gatekeeper’s platform (Article 6(10)). Said right of access is complemented by a right to data portability (Article 6(9) DMA) which is inspired by the portability right of data subjects under the General Data Protection Regulation (GDPR). Finally, the DMA aims also to ensure transparency about consumer profiling techniques employed by the gatekeepers and requires them, in Article 15 DMA, to provide audited descriptions of their consumer profiling techniques to the European Commission, which can be further shared with the EDPB.

b. Digital Services Act

The DSA imposes legally binding due diligent obligations on providers of online platforms, which are, among other things, related to: content moderation; online advertising, including transparency requirements and restrictions on profiling-based targeted advertising; and, for a subset of providers, risk management. First, the DSA introduces bans on presenting advertising based on profiling using the personal data of minors (Article 28) or special categories of personal data (Article 26(3)). Second, the DSA introduces several transparency provisions regarding online advertising. Article 26 requires that providers of online platforms provide information on each displayed ad. Article 39 additionally requires providers of VLOPs and VLOSEs to create a public repository of online advertisements, including information about the content of the advertisement, its sponsor, the period during which the advertisement was presented, the targeting parameters relied on, and the total number of individuals to whom the advertisement was exposed. Third, the DSA introduces risk assessment and risk mitigation obligations for providers of VLOPs and VLOSEs (Articles 34, 35). Fourth, the DSA provides for voluntary codes of conduct on digital advertising (Article 46).

c. The General Data Protection Regulation

The GDPR lays down rules applicable to any person or organisation (controller) established in the EU who processes personal information, and to any controller offering goods or services to people in the EU or monitoring the behaviour of people in the EU. That means that most of the actors involved in the online advertisement supply chain are within scope of application of the GDPR. Those rules include the requirement that data processing be minimised and have a valid legal basis which, in the case of sensitive personal information such as a political views, health and sexual

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14 Public versions of these reports are accessible here: https://digital-markets-act-cases.ec.europa.eu/reports/consumer-profiling-reports.
orientation, must be explicit, informed, freely given and specific consent. Additional protection is granted to personal data about children since children are less aware of the risks and consequences of sharing data and of their rights.

d. ePrivacy Directive

Where the provider of an online service stores information in the terminal equipment of a user, or gains access to information already stored therein, it must also comply with the rules in the ePrivacy Directive as transposed by the Member States in their national legislation. Storing information in or accessing information already stored in the terminal equipment is only allowed on the basis of user’s consent as defined in the GDPR. The conditions for valid consent, including information requirements, are determined by the GDPR. It is for the data controller to seek consent in a way that allows users to easily and freely make their choice and define their settings. There are two exceptions to this general rule: storing or gaining access to information is also allowed for the purpose of carrying out the transmission of a communication or if it is strictly necessary to deliver the information society service explicitly requested by the user. The ePrivacy Directive is currently under revision.

e. Proposal of e-Privacy Regulation

In January 2017, the European Commission proposed a Regulation on Privacy and Electronic Communications to modernise the current ePrivacy Directive. The proposed Regulation aims at improving and strengthening the protection of the terminal equipment of end-users. In addition, the proposed Regulation provides a possibility to accept or reject cookies in an easy way, for example through privacy settings of web browsers. To this end, the end-users should be informed about the possibility to personalise the privacy settings and be asked to make a choice that will be applicable to all websites they visit. Web browsers are also encouraged to provide easy ways for end-users to change the privacy settings at any time during use and to allow the end-user to make exceptions for or to whitelist certain websites, or to specify for which websites cookies are always or never allowed. The proposed Regulation is currently under legislative negotiation at the European Parliament and at the Council of the European Union.

f. Consumer Rights Directive 2024/825

EU consumer protection rules aim at ensuring that consumers have access to the information they need before they purchase goods, services or digital content in the EU (e.g. environmental and social impacts). In spring 2022, the Commission launched a Fitness Check of EU consumer law on digital fairness. The objective is to determine whether the existing key horizontal consumer law instruments remain adequate to ensure a high level of consumer protection in the digital environment. It examines the adequacy of the Unfair Commercial Practices Directive, Consumer Rights Directive and Unfair Contract Terms Directive in dealing with consumer protection issues such as consumer vulnerabilities, dark patterns, personalisation practices, influencer marketing, contract cancellations, subscription service contracts, marketing of virtual items, the addictive use of digital products, and others. The purpose is to evaluate whether the existing directives would benefit from a targeted strengthening or streamlining, while taking into account other relevant legislation in the digital area and ensuring coherence. The consultation period ended on 20 February 2023 and the final version is planned for the second quarter 2024.

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g. **Artificial Intelligence Act**

Recently adopted\(^{16}\), the AI Act lays down harmonised rules governing the development, marketing, and use of AI systems, including generative AI, in the EU. The AI Act aims to ensure that fundamental rights, democracy, the rule of law and environmental sustainability are protected from high-risk AI. The AI Act is based on a risk-based approach: the higher the risk of the AI system, the stricter the obligations to comply with. The AI Act includes the regulation of models and systems of Generative AI (GPAI, general purpose AI) and imposes transparency and cooperation obligations on the providers of these systems and models, so that users have sufficient information to be able to comply with the requirements of the regulation. Providers of generative AI must maintain the technical documentation of the model, provide information to other providers who integrate the model, respect EU copyright law and publish a detailed summary of the content used for training, and cooperate with the Commission and national authorities. The law includes prohibited uses, such as emotion recognition in work and education. This regulation obliges actors in high-risk AI systems to assess potential negative impacts in advance, rather than aftermarket launch, as it is much easier and cheaper to prevent negative impacts at the outset, before implementation.

**C. Objectives to achieve by the end of the contract**

The purpose of the study is to provide the Commission with an updated comprehensive overview and understanding of the most relevant developments (e.g. technological, regulatory, market) in the online advertising sector, map the main issues and identify possible regulatory gaps (risks not addressed with the existing tools).

The study should also allow the Commission to understand whether advertisers and publishers perceive the current regulatory toolbox, in particular the DSA and the DMA, as sufficient to enable further transparency, choice and fairer provision of advertising services. The study should also inform the Commission whether the regulations enable advertisers to understand and decide where their advertisement is displayed. The DMA and the DSA include a range of obligations that enable transparency in general and on specific aspects of online advertising and consumer profiling in particular. These regulations also facilitate access to data\(^ {17}\) to help increase market contestability and fairness. In addition, there are also several other regulatory tools that shape to a larger or lesser extent how the services are provided on the market and foresee different rights and obligations for all the involved stakeholders.

The study should meet four specific objectives.

1. **Data protection-driven initiatives** in the online advertising sector:
   
a. Provide an overview of the main data protection-driven initiatives\(^ {18}\), as well as other standardisation efforts and codes of conduct from the relevant stakeholders.

   b. Assess, based on independent and objective evidence, including with qualitative data where relevant:


\(^{18}\) Both company specific initiatives and multilateral initiatives.
• How these data protection-driven initiatives are impacting the provision of online advertising in general, and monetisation models and revenues of the different stakeholders, in particular.

• The forward-looking impact of these data protection-driven initiatives on the objectives of the DMA and the DSA, in particular safety, contestability, transparency, and fairness.¹⁹

• The impact, including on any systemic risks, that alternative advertising models emerging, may cause, intensify, avoid or mitigate (e.g., public health, mental health, civic discourse, including due to deceptive advertising, disinformation).

2. Assemble evidence on the economic, social, market and user impact of the utilisation of AI technology in the online advertising sector, with a particular focus on:
   a. The scope of data collection and related benefits and risks.
   b. Hyper targeting and related benefits and risks.
   c. The effectiveness of ad campaigns (and ad campaign forecasting accuracy).
   d. The effects of AI usage of data on online ad auctions.

3. Role of the interplay between the DMA and the DSA on transparency in online advertising and enhanced safety of end users:
   a. Identify what possibilities to influence and what type of information advertisers have access to verify the effects of a given advertisement.
   b. Map any concerns (e.g. brand safety, deceptive advertising) that advertisers may find relevant in relation to how their products and services are presented and/or perceived by end users.
   c. Provide an overview of existing tools, (e.g. brand safety), and procedures available to advertisers and:
      • Assess their popularity/market uptake.
      • Assess their effectiveness in helping advertisers to understand and improve their ad placements.
      • Assess whether existing regulatory tools, such as Article 6(8) DMA – that grants access to the gatekeepers’ data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory – and ad transparency obligations included in Articles 26, 34, 35, and 39 DSA, allow advertisers to know where their ads are being shown and whether the information accessible allows them to behave in a socially responsible manner in view of avoiding the amplification or monetisation of illegal and harmful content.
   d. Provide informed conclusions on how to enhance the effectiveness of the existing tools in achieving further transparency for actors in the online advertising value

¹⁹ The purpose of the study is not to assess compliance of given initiatives with the respective regulatory frameworks.
chain, in particular making use of any commitments stated in voluntary codes of conduct to be developed under Article 46 DSA.

4. **Potential regulatory gaps:**

Identify any remaining issues and regulatory gaps to address the risks identified, if any, by this study.

1.4.2. **Detailed characteristics of the purchase**

The contractor will be required to engage in three main research activities that will contribute to the monitoring and enforcement of the obligations identified in the section 1.4.1.:

A. **Data protection-driven initiatives in the online advertising sector**

- Provide an overview of the main data protection-driven initiatives\(^{20}\), as well as other standardisation efforts and codes of conduct from the relevant stakeholders.
- Assess, based on independent and objective evidence, including with qualitative data where relevant, the impact of the identified privacy-driven initiatives on the provision of online advertising in general.
- Assess the impact of the identified privacy-driven initiatives on monetisation models and revenues of different stakeholders, i.e. publishers, intermediaries and advertisers.
- Assess the forward-looking impact of the identified privacy-driven initiatives on the objectives of the DMA and the DSA, in particular safety, contestability, transparency, and fairness.\(^{21}\)
- Identify and describe the main alternative advertising models to online behavioural advertising that are emerging due to the identified privacy-driven initiatives.
- For each of the identified alternative advertising model, assess the impact, including on any systemic risks, it may cause, intensify, avoid or mitigate (e.g. to public health, mental health, civic discourse).

B. **The use of AI technology in the online advertising sector**

- Assemble evidence on the economic, social, market and user impact of the utilisation of AI technology in the online advertising sector, with a particular focus on:
  - The scope of data collection and related benefits and risks.
  - Hyper targeting and related benefits and risks.

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\(^{20}\) Both company specific initiatives and multilateral initiatives.

\(^{21}\) The purpose of the study is not to assess compliance of given initiatives with the respective regulatory frameworks.
o The effectiveness of ad campaigns (and ad campaign forecasting accuracy).

o The effects of AI usage of data on online ad auctions.

C. Role of the interplay between the DMA and the DSA on transparency in online advertising and enhanced safety of end users

- Identify what possibilities to influence and what type of information advertisers have access to verify the effects of a given advertisement.

- Map any concerns (e.g. brand safety, deceptive advertising) that advertisers may find relevant in relation to how their products and services are presented and/or perceived by end users.

- Provide an overview of existing tools (e.g. brand safety) and procedures available to advertisers and:
  o Assess their popularity/market uptake.
  o Assess their effectiveness in helping advertisers to understand and improve their ad placements.
  o On the basis of interviews with at least 30 advertisers, assess whether existing regulatory tools, such as Article 6(8) DMA – that grants access to the gatekeepers’ data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory t – and ad transparency obligations included in Articles 26, 34, 35, and 39 DSA, allow advertisers to know where their ads are being shown and whether the information accessible allows them to behave in a socially responsible manner in view of avoiding the amplification or monetisation of illegal and harmful content.

- Provide informed conclusions on how to enhance the effectiveness of the existing tools in achieving further transparency for actors in the online advertising value chain, in particular making use of any commitments stated in voluntary codes of conduct to be developed under Article 46 DSA.

D. Potential regulatory gaps

- Identify any remaining issues and regulatory gaps that may require attention and further intervention to address the risks identified, if any, by this study.

In their tenders, tenderers should present and explain in detail the methodology for carrying out the tasks specified.

The study can take into consideration previous studies and analyses but should not merely reproduce earlier conclusions. Tenderers are free to propose methodologies, but any approach chosen should be compatible with the Commission's Better Regulation Guidelines. The methodology should propose suitable data collection tools for obtaining new evidence on the identified issues.

22 Available here
Tenderers are asked to propose a specific work plan, illustrating the key project planning elements such as tasks and deliverables and the proposed approach, timing and milestones for executing the tasks described in section 1.4.2. and 1.4.3, taking into account the context and objectives of the project and the following conditions:

- The balance between the efforts devoted to each specific objective of the study should be reasonable and well justified.

- The geographical scope of the monitoring, which should aim to be as comprehensive as possible, and possible restrictions to such scope should be well justified.

- The contractor shall participate in meetings (conference calls and physical meetings when relevant) with the Commission for preparing and coordinating the activities and tasks described in section 1.4.3.

Data protection compliance

Where the contractor processes personal data in the context of the present contract, the contractor must respect Regulation (EU) 2018/1725. In this sense, the contractor will follow the instructions (in the light of Article 29 Regulation (EU) 2018/1725) of the Commission to achieve data protection compliance. This means, amongst other actions, that the contractor will ensure that the processing activities will comply with existing data protection records (and use the relevant privacy statements as relevant).

The contractor must document and share with the Commission the measures it has adopted to demonstrate compliance with data protection rules in the specific activities to be carried out.

Where they are fit for purpose, the contractor will use corporate tools (such as EU Survey).

If the contractor carries out processing activities which are not covered by existing data protection records, the contractor will assist the Commission in the preparation of all relevant data protection documentation, such as data protection records, privacy statements, Data Protection Impact Assessments, where applicable, etc.

The contractor therefore must make sure it possesses the data protection expertise necessary to perform these tasks.

Intellectual Property Considerations

The contractor will ensure that the presentation of the texts, tables and graphs is clear and complete and corresponds to commonly recognised standards for publication. In particular, the contractor will make reference to and apply the Interinstitutional Style Guide (https://publications.europa.eu/code/en/en-000300.htm).

The contractor will give attention to the following requirements:

- web content accessibility guidelines
- copyright/ intellectual property rights

Regarding the Intellectual Property Rights, the contractor’s attention is brought to the contract provisions on the intellectual property rights in deliverables created in the framework of this contract and the use of these deliverables.
The contractor shall ensure that the deliverable already includes the necessary attributions, disclaimers and copyright notices for its publication. Any non-EU-owned content in the deliverable must be explicitly acknowledged (both in the copyright notice and where this content is used), identifying the copyright holder (and, if different and identifiable, the author of the work), the content’s location in the work and any conditions/limitations on the reuse.

The contractor shall include in the deliverable the following copyright notices:

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- ”

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the Commission’s behalf may be held responsible for the use which may be made of the information contained therein. Any final decision taken on the basis of the analysis prepared by the contractor will be the result of an independent assessment by the Commission services.”

The copyright notice of a text document should normally be included in the title page, on the reverse side of the title page or on either side of the front or back cover.

1.4.3. Deliverables

1.4.3.1 Timetable

<table>
<thead>
<tr>
<th>Title</th>
<th>Type</th>
<th>Due month</th>
<th>Linked to payment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(at the latest)</td>
<td></td>
</tr>
<tr>
<td>Inception report</td>
<td>Deliverable</td>
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</tr>
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<td>Meeting</td>
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</tr>
<tr>
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</tr>
<tr>
<td>First interim report meeting</td>
<td>Meeting</td>
<td>3</td>
<td>NO</td>
</tr>
<tr>
<td>First interim report meeting minutes</td>
<td>Minutes</td>
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<tr>
<td>Second interim report meeting minutes</td>
<td>Minutes</td>
<td>5</td>
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</tr>
<tr>
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</tr>
<tr>
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<td>Meeting</td>
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<td>NO</td>
</tr>
<tr>
<td>Preliminary final report meeting minutes</td>
<td>Minutes</td>
<td>7</td>
<td>NO</td>
</tr>
<tr>
<td>Workshop</td>
<td>Meeting</td>
<td>7</td>
<td>NO</td>
</tr>
<tr>
<td>Post-workshop report</td>
<td>Deliverable</td>
<td>8</td>
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</tr>
<tr>
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<td>Final datasets</td>
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<td>Final meeting</td>
<td>Meeting</td>
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</tr>
<tr>
<td>Final report meeting minutes</td>
<td>Minutes</td>
<td>9</td>
<td>NO</td>
</tr>
</tbody>
</table>

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

The following deliverables will have to be prepared by the contractor following the timeline

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23 This will allow contractors to execute the tasks under the contract earlier in case they have the capacity and wish to do so. It is up to the Project Officer to decide whether this would make sense for the contract in question or not.
outlined in section 1.4.3.1:

- **D1. Inception report**
The contractor is required to compile an inception report that offers a preliminary overview of the proposed approach, methodology and timeline for executing the study in accordance with the indications provided by the Commission during the inception meeting. This report will serve as the initial foundation for the study.

A draft of the report shall be made available to the Commission's services for information 5 working days before the inception meeting. The report should be finalised after the meeting taking into account all observations and comments raised at the meeting. The finalised inception report shall be made available to the Commission's services within 2 weeks after the inception meeting.

- **D2. First interim report**
First interim study report will cover Task A and Task B (see 1.4.2) and a detailed outline of Task C and Task D (see 1.4.2). The interim study report shall be made available to the Commission’s services within 3 months after signature of the contract by the last contracting party. A draft of the report shall be made available to the Commission's services 5 working days before the first interim meeting in month 3. The report should be finalised after the meeting taking into account all observations and comments raised at the meeting. The finalised first interim report shall be submitted to the Commission’s services within 2 weeks after the first interim meeting.

- **D3. Second interim report**
Second interim report will cover Tasks A to D (see 1.4.2 above). The second interim report shall be made available to the Commission’s services within 5 months after signature of the contract by the last contracting party. A draft of the report shall be made available to the Commission's services 5 working days before the second interim meeting. The report should be finalised after the meeting taking into account all observations and comments raised at the meeting. The finalised second interim report shall be submitted to the Commission’s services within 2 weeks after the second interim meeting.

- **D4. Preliminary final report**
Preliminary final study report will cover Tasks A to D and a summary of the interim reports and a full report covering all issues described in first and second interim reports. The draft preliminary final study report shall be made available to the Commission’s services within 7 months after signature of the contract by the last contracting party. The report should be finalised after the meeting taking into account all observations and comments raised at the meeting. The finalised preliminary final report meeting.

- **D5. Post-workshop report**
The post-workshop report shall contain the presentations, position papers and preparatory papers; a high-quality synthesis of the discussions; and the list of participants to said workshop. The deliverable should be made available no later than 2 weeks after the workshop.

- **D6. Final report**
The comprehensive report will provide a thorough analysis of the online advertising sector, most relevant developments (e.g. technological, regulatory, market) in this sector, offering insights into
the main issues and identify possible regulatory gaps (risks not addressed with the existing regulatory framework,). It will meticulously detail evidence and methodologies developed for conducting both quantitative and qualitative analyses. The final report should include the measures adopted by the contractor to ensure data protection compliance.

The final study report shall be made available to the Commission’s services within 9 months after signature of the contract by the last contracting party. A draft of the final report shall be made available to the Commission's services for information 10 working days before the final meeting. The report should be finalised after the meeting taking into account all observations and comments raised at the meeting. The finalised final report shall be made available within 2 weeks after the final meeting. The final report will then be published. The completion and submission of this final report will be tied to the payment associated with the conclusion of the contract.

- **D7. Final datasets**

  Final datasets gathered for each of the tasks, should be provided as structured data in a machine-readable format (e.g. in the form of a spreadsheet and/or an RDF file) for the Commission internal usage. The raw datasets and/or the derived indicators shall be made available to the Commission’s services within 9 months after signature of the contract by the last contracting party.

  All deliverables must be written in English.

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

**Meetings and workshops**

A schedule of meetings will be agreed with the contractor for this assignment. Such meetings will be attended by representatives of the Commission, the project manager leader and other members of the contractor’s team, as required. Other external experts might be invited to participate by the Commission. The meetings will be chaired by a Commission representative and will take place online or, if in person, in Brussels.

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

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

The contractor will organise a workshop with experts and stakeholders to discuss the provisional observations and conclusions set out in the draft final report, between the submission of the draft final report and the submission of the final report. The format programme and participants will be agreed with the Commission.

- **Inception meeting**

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

- **Interim meeting**

A first interim meeting during which the contractor will present the interim findings will be held within three months of signature of the contract by the last contracting party. It will be organised by the Commission’s services. The contractor will have to finalise the first interim report on the basis of the outcome of the interim meeting.

- **Second interim meeting**

A second interim meeting during which the contractor will present the interim findings will be held within five months of signature of the contract by the last contracting party. It will be organised by the Commission’s services. The contractor will have to finalise the second interim report on the basis of the outcome of the second interim meeting.

- **Workshop**

The second interim report as approved by the Commission will be presented by the contractor during a workshop to be held within seven months after signature of the contract by the last contracting party. The contractor is expected to provide a senior member of staff having worked on the contract to deliver a presentation on the main findings. The workshop will be organised by the Commission’s services online or at the Commission’s premises in Brussels, and will last one day. In case an alternative location for the workshop is proposed by the contractor, this has to be agreed by the Commission in advance and to remain within the budget foreseen in the tender.

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

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

The duration of the workshop should be one day.

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

- Setting the workshop agenda in cooperation with the Commission;
- Identifying participants and speakers in cooperation with the Commission;
- Inviting speakers and participants;
- Managing the travel and accommodation arrangements for up to 20 speakers and participants;
• Any speakers' fees;
• Cost of providing any catering during the workshop;
• Any printing and distributing of relevant information material for speakers and participants.

• Final meeting

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

In addition to the meetings, conference calls on the state of progress of the study may take place between representatives from the contractor and the Commission where necessary.

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

1.5. Place of performance: where will the contract be performed?

The services will be performed at the following locations:

• the contractor's premises
• the location(s) indicated in Section 1.4 of these specifications.

1.6. Nature of the contract: how will the contract be implemented?

The procedure will result in the conclusion of a direct contract.

In direct contracts all the terms governing the provision of the services, supplies or works are defined at the outset. Once signed, they can be implemented directly without any further contract procedures.

Tenderers need to take full account of the full set of procurement documents, including the provisions of the draft contract as the latter will define and govern the contractual relationship to be established between the contracting authority and the successful tenderer. Special attention is to be paid to the provisions specifying the rights and obligations of the contractor, in particular those on payments, performance of the contract, confidentiality, and checks and audits.

Please be aware that if a tenderer to whom the contract is awarded (any of the group members in case of a joint tender) has established debt(s) owed to the Union, the European Atomic Energy Community or an executive agency when the latter implements the Union budget, such debt(s) may be offset, in line with Articles 101(1) and 102 of Regulation (EU, Euratom) 2018/1046 of the
1.7. Volume and value of the contract: how much do we plan to buy?

The maximum total amount of all purchases under this call for tenders is indicated under Section 2.1.3 of the contract notice. The volumes/values of the purchases over the total duration of the contract are specified in Section 1.4 of these specifications.

Within three years following the signature of the contract resulting from the current call for tenders, the contracting authority may use the negotiated procedure under point 11.1.e of Annex 1 to the Financial Regulation to procure new services from the contractor up to a maximum 20% of the initial contract value. These services would consist in the repetition of similar services entrusted to the contractor and would be awarded under the same conditions as the current call for tender.

1.8. Duration of the contract: how long do we plan to use the contract?

The contract resulting from the award of this call for tenders will be concluded for at most 9 months. The details of the initial contract duration and possible renewals are set out in the draft contract.

1.9. Electronic exchange system: can exchanges under the contract be automated?

For all exchanges with the contractor during the implementation of the contract as well as for future possible subsequent proceedings, including, but not limited to, for the purposes of EDES (European Union's Early Detection and Exclusion System), the contracting authority may use an electronic exchange system meeting the requirements of Article 148 of the Financial Regulation. At the request of the contracting authority, the use of such a system shall become mandatory for the contractor at no additional cost for the contracting authority. Details on specifications, access, terms and conditions of use will be provided in advance.

1.10. Security

When performing tasks for the contracting authority in execution of the contract, the contractor and its personnel shall comply with the contracting authority's applicable security requirements. For the Commission (and, when relevant - for the Executive Agencies), the applicable security requirements include:

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✓ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission, as well as all its subsequent versions.

Any financial burden for complying with the security measures (e.g. security background checks, security clearance etc.) will be entirely at the expense of the contractor and not of the contracting authority.

2. GENERAL INFORMATION ON TENDERING

2.1. Legal basis: what are the rules?

This call for tenders is governed by the provisions of the Financial Regulation.

The contracting authority has chosen to award the contract resulting from this call for tenders through an open procedure pursuant to Article 164(1)(a) of the Financial Regulation.

In this procedure any interested economic operator (any natural or legal person who offers to supply products, provide services or execute works) may submit a tender.

2.2. Entities subject to restrictive measures and rules on access to procurement: who may submit a tender?

Tenderers must ensure that no involved entities (see Section 2.4) nor any subcontractors, including those which do not need to be identified in the tender (see Section 2.4.2), are subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU)25, consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze. The prohibition applies throughout the whole performance of the contract.

Participation in this call for tenders is open on equal terms to all natural and legal persons coming within the scope of the Treaties, as well as to international organisations.

It is also open to all natural and legal persons established in a third country provided that it has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement.

As the Agreement on Government Procurement26 concluded within the World Trade Organisation applies, the participation to this call for tenders is also open to natural and legal persons established in the countries that have ratified this Agreement, on the conditions laid down therein.

The rules on access to procurement do not apply to entities on whose capacity tenderers rely to fulfil the selection criteria nor to subcontractors. Subcontracting may not be used with the intent or effect to circumvent the rules on access to procurement.

25 Please note that the EU Official Journal contains the official list and, in case of conflict, its content prevails over that of the EU Sanctions Map.

26 https://www.wto.org/english/tratop_E/gproc_e/gp_gpa_e.htm
To enable the contracting authority to verify the access, each tenderer must indicate its country of establishment (in case of a joint tender – the country of establishment of each group member) and must present the supporting evidence normally acceptable under the law of that country. The same document(s) could be used to prove country/ies of establishment and the delegation(s) of the authorisation to sign, as described in Section 4.3.

2.3. Registration in the Participant Register: why register?

Any economic operator willing to participate in this call for tenders must be registered in the Participant Register - an online register of organisations and natural persons (participants) participating in calls for tenders or proposals of the European Commission and other EU institutions/bodies.

On registering each participant obtains a Participant Identification Code (PIC, 9-digit number), which acts as its unique identifier in the Participant Register. A participant needs to register only once – the information provided can be further updated or re-used by the participant in other calls for tenders or calls for proposals of the European Commission and other EU institutions/bodies.

Each participant needs to ensure that its SME status in the Participant Register is registered and kept up to date.

At any moment during the procurement procedure, the Research Executive Agency Validation Services (hereafter the EU Validation Services) may contact the participant and ask for supporting documents on legal existence and status and financial capacity. The requests will be made through the register's messaging system to the e-mail address of the participant's contact person indicated in the register. It is the responsibility of the participant to provide a valid e-mail address and to check it regularly. The documents that may be requested by the EU Validation Services are listed in the EU Grants and Tenders Rules on Legal Entity Validation, LEAR appointment and Financial Capacity assessment.

Please note that a request for supporting documents by the EU Validation Services in no way implies that the tenderer has been successful.

2.4. Ways to submit a tender: how can economic operators organise themselves to submit a tender?

Economic operators can submit a tender, either as a sole economic operator (sole tenderer) or as a group of economic operators (joint tender). In either case subcontracting is permitted.

Tenders must be drawn and submitted in complete independence and autonomously from the other tenders. A declaration in this regard by each tenderer (in case of a joint tender, by the group leader) shall be requested (Annex 2).

A natural or legal person cannot participate at the same time and within the same procedure either as member of two or more groups of economic operators or as a sole tenderer and member of another group of economic operators. In such case, all tenders in which that person has participated, either as sole tenderer or as member of a group of economic operators, will be rejected.

27 Each economic operator participating in the joint tender is referred to as “group member”.

Economic operators linked by a relationship of control or of association (e.g. belonging to the same economic/corporate group) are allowed to submit different and separate tenders, provided that each tenderer is able to demonstrate that its tender was drawn independently and autonomously.

A natural or legal person may act as subcontractor for several tenderers as long as the tenders are drawn and submitted in complete independence and autonomously from each other. However, cross subcontracting among tenderers is forbidden, more precisely an entity “A” may participate as tenderer (either as sole tenderer or as member of a group of economic operators) and as subcontractor to another tenderer “B” within the same procurement procedure. However, in this case it is forbidden that tenderer “B” (or any of its participating members in case of a group of economic operators) is at the same time subcontractor for tenderer “A” (or for the group of economic operators in which “A” participates) within the same procurement procedure. In this case, both tenders A and B shall be rejected.

In order to fulfil the selection criteria set out in Section 3.2 the tenderer can rely on the capacities of subcontractors (see Section 2.4.2) or other entities that are not subcontractors (see Section 2.4.3).

An “involved entity” is any economic operator involved in the tender. This includes the following four categories of economic operators:

- sole tenderer,
- group members (including group leader),
- identified subcontractors (see Section 2.4.2), and
- other entities (that are not subcontractors) on whose capacity the tenderer relies to fulfil the selection criteria.

The role of each entity involved in a tender must be clearly specified in the eSubmission application: i) sole tenderer, ii) group leader (in case of a joint tender), iii) group member (in case of a joint tender), or iv) subcontractor

For an entity on whose capacities the tenderer relies to fulfil the selection criteria (that is not a subcontractor), this role is defined in the commitment letter (Annex 5.2)

### 2.4.1. Joint tenders

A joint tender is a situation where a tender is submitted by a group (with or without legal form) of economic operators regardless of the link they have between them in the group. The group as a whole is considered a tenderer

All group members assume joint and several liability towards the contracting authority for the performance of the contract as a whole.

Group members must appoint from among themselves a group leader (the group leader) as a single point of contact authorised to act on their behalf in connection with the submission of the tender and all relevant questions, clarification requests, notifications, etc., that may be received during the evaluation, award and until the contract signature. All group members (including the group leader)

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28 Only identified subcontractors (see Section 2.4.2) must be specified in the eSubmission application.

29 References to tenderer or tenderers in this document shall be understood as covering both sole tenderers and groups of economic operators submitting a joint tender.
must sign an Agreement/Power of attorney drawn up in the model attached in Annex 3.

The joint tender must clearly indicate the role and tasks of each group member, including those of the group leader who will act as the contracting authority's contact point for the contract's administrative or financial aspects and operational management. The group leader will have full authority to bind the group and each of its members during contract execution.

If the joint tender is successful, the contracting authority shall sign the contract with the group leader, authorised by the other members to sign the contract also on their behalf via the Agreement/Power of attorney drawn up in the model attached in Annex 3.

Changes in the composition of the group during the procurement procedure (after the deadline for submission of tenders and before contract signature) shall lead to rejection of the tender, with the exception of the following cases:

• case of a merger or takeover of a group member (universal succession), provided that the following cumulative conditions are fulfilled:
  - the new entity is not subject to restrictive measures, has access to procurement (see Section 2.2) and is not in an exclusion situation (see Section 3.1),
  - all the tasks assigned to the former entity are taken over by the new entity member of the group,
  - the group meets the selection criteria (see Section 3.2),
  - the change must not make the tender non-compliant with the procurement documents,
  - the terms of the originally submitted tender are not altered substantially and the evaluation of award criteria of the originally submitted tender are not modified,
  - the new entity undertakes to replace the former entity for the implementation of the contract, in case of an award.

• case where a group member is subject to restrictive measures or does not have access to procurement (see Section 2.2) or is in an exclusion situation (see Section 3.1), provided the following cumulative conditions are fulfilled:
  - none of the remaining group members is subject to restrictive measures (see Section 2.2),
  - all the remaining group members have access to procurement (see Section 2.2),
  - the remaining group members meet the selection criteria (see Section 3.2),
  - the change must not make the tender non-compliant with the procurement documents,
  - the terms of the originally submitted tender are not altered substantially and the evaluation of award criteria of the originally submitted tender are not modified,
  - the continuation of the participation of the remaining group members in the procurement procedure does not put the other tenderers in a competitive disadvantage,
  - the remaining group members undertake to implement the contract, in case of an award, without the excluded group member.

The replacement of the group member not having access to procurement or in a situation of exclusion is not allowed.

2.4.2. Subcontracting

Subcontracting is the situation where the contractor enters into legal commitments with other economic operators, which will perform part of the contract on its behalf. The contractor retains full liability towards the contracting authority for performance of the contract as a whole.
The following shall not be considered subcontracting:

a) Use of workers posted to the contractor by another company owned by the same group and established in a Member State (“intra-group posting” as defined by Article 1, 3, (b) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services).

b) Use of workers hired out to the contractor by a temporary employment undertaking or placement agency established in a Member State (“hiring out of workers” as defined by Article 1, 3, (c) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services).

c) Use of workers temporarily transferred to the contractor from an undertaking established outside the territory of a Member State and that belongs to the same group (“intra-corporate transfer” as defined by Article 3, (b) of Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer).

d) Use of staff without employment contract (“self-employed persons working for the contractor”), without the tasks of the self-employed persons being particular well-defined parts of the contract.

e) Use of suppliers and/or transporters by the contractor, in order to perform the contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of this call for tenders (see Section 1.4).

f) Performance of part of the contract by members of an EEIG (European Economic Interest Grouping), when the EEIG is itself a contractor or a group member.

The persons mentioned in points a), b), c) and d) above will be considered as “personnel” of the contractor as defined in the contract.

All contractual tasks may be subcontracted unless the procurement documents expressly reserve the execution of certain critical tasks to the sole tenderer itself, or in case of a joint tender, to a group member.

By filling in the form available in Annex 4 (List of identified subcontractors), tenderers are required to give an indication of the proportion of the contract that they intend to subcontract, as well as to identify and describe briefly the envisaged contractual roles/tasks of subcontractors meeting any of these conditions (hereafter referred to as identified subcontractors):

- subcontractors on whose capacities the tenderer relies upon to fulfil the selection criteria as described under Section 3.2;
- subcontractors whose intended individual share of the contract, known at the time of submission, is above 20%.

Any such subcontractor must provide the tenderer with a commitment letter drawn up in the model attached in Annex 5.1 and signed by its authorised representative.

Each tenderer shall identify such subcontractors and provide the commitment letters with its tender. The information must be true and correct at the time of submitting the tender. Any changes or additions regarding the envisaged subcontractors after the deadline for submission of tenders must be justified to the contracting authority.

The above rules apply also where the economic operators, which will perform part of the contract on behalf of a successful tenderer, belong to the same economic/corporate group as the sole tenderer or a member of the group submitting the joint tender.
Changes concerning subcontractors identified in the tender (withdrawal/replacement of a subcontractor, additional subcontracting) during the procurement procedure (after the deadline for submission of tenders and before contract signature) require the prior written approval of the contracting authority subject to the following verifications:

- any new subcontractor is not subject to restrictive measures, has access to procurement if the rules on access to procurement apply also to subcontractors (see Section 2.2) and is not in an exclusion situation (see Section 3.1),
- the tenderer still fulfils the selection criteria and the new subcontractor fulfils the selection criteria applicable to it individually, if any;
- the terms of the originally submitted tender are not altered substantially, i.e. all the tasks assigned to the former subcontractor are taken over by another involved entity, the change does not make the tender non-compliant with the tender specifications, and the evaluation of award criteria of the originally submitted tender is not modified.

Subcontracting to subcontractors identified in a tender that was accepted by the contracting authority and resulted in a signed contract, is considered authorised.

2.4.3. Entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria

In order to fulfil the selection criteria a tenderer may also rely on the capacities of other entities (that are not subcontractors), regardless of the legal nature of the links it has with them. It must in that case prove that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment letter in the model attached in Annex 5.2, signed by the authorised representative of such an entity, and the supporting evidence that those other entities have the respective resources.\(^\text{30}\)

\(\text{ DISCLAIMER: The above rules apply also where the economic operators on whose capacities the tenderer relies to fulfil the selection criteria (that are not subcontractors) belong to the same economic/corporate group as the sole tenderer or a member of the group submitting the joint tender.}\)

2.4.4. Rules common to subcontractors and entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria

If a successful tenderer intends to rely on another entity to meet the minimum levels of economic and financial capacity, the contracting authority may require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required, i.e. the latter will either assume the role of subcontractors or will fall within the exceptions listed in Section 2.4.2 and will then assume the role of entities (not subcontractors) on whose capacities the tenderer relies to fulfil the selection criteria.

\(^{30}\) This does not apply to subcontractors on whose capacity the tenderer relies to fulfil the selection criteria – for these the documentation required for subcontractors must be provided.
Relying on the capacities of other entities is only necessary when the capacity of the tenderer is not sufficient to fulfil the required minimum levels of capacity. Abstract commitments that other entities will put resources at the disposal of the tenderer will be disregarded.
3. EVALUATION AND AWARD

The evaluation of the tenders that comply with the submission conditions will consist of the following elements:

- Check if the tenderer is not subject to restrictive measures and has access to procurement (see Section 2.2);
- Verification of administrative compliance (if the tender is drawn up in one of the official EU languages and the required documents signed by duly authorised representative(s) of the tenderer);
- Verification of non-exclusion of tenderers on the basis of the exclusion criteria;
- Selection of tenderers on the basis of selection criteria;
- Verification of compliance with the minimum requirements specified in the procurement documents;
- Evaluation of tenders on the basis of the award criteria.

The contracting authority will evaluate the above mentioned elements in the order that it considers to be the most appropriate.

If the evaluation of one or more elements demonstrates that there are grounds for rejection, the tender will be rejected and will not be subjected to further full evaluation. The unsuccessful tenderers will be informed of the ground for rejection without being given feedback on the non-assessed content of their tenders. Only the tenderer for whom the verification of all elements did not reveal grounds for rejection can be awarded the contract resulting from this call for tenders.

The evaluation will be based on the information and evidence contained in the tenders and, if applicable, on additional information and evidence provided at the request of the contracting authority during the procedure. If any of the declarations or information provided proves to be false, the contracting authority may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

For the purposes of the evaluation related to exclusion and selection criteria the contracting authority may also refer to publicly available information, in particular evidence that it can access on a national database free of charge.

3.1. Exclusion criteria

The objective of the exclusion criteria is to assess whether the tenderer is in any of the exclusion situations listed in Article 136(1) of the Financial Regulation.

Tenderers found to be in an exclusion situation will be rejected.

As evidence of non-exclusion, each tenderer\textsuperscript{31} needs to submit with its tender a Declaration on Honour\textsuperscript{32} in the model available in Annex 2.\textsuperscript{33} The declaration must be signed by an authorised

\textsuperscript{31} See Annex 1 which of the involved entities participating in a tender need to provide the Declaration on Honour.

\textsuperscript{32} The European Single Procurement Document (ESPD) may not be used yet in calls for tenders of the European Commission.
representative of the entity providing the declaration. Where the declaration has been signed by hand, the original does not need to be submitted to the contracting authority, but the latter reserves the right to request it from the tenderer at any time during the record-keeping period specified in Section 4.3.

The initial verification of non-exclusion of tenderers will be done on the basis of the submitted declarations and consultation of the European Union's Early Detection and Exclusion System.

At any time during the procurement procedure, the contracting authority may request the documents mentioned in the Declaration on Honour as supporting evidence on non-exclusion (the documentary evidence). It may also request information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners, and appropriate evidence that none of those persons are in one of the exclusion situations referred to in Section A point (1) (c) to (f) of the Declaration on Honour.

All tenderers are invited to prepare in advance the documentary evidence, since they may be requested to provide such evidence within a short deadline. In any event, the tenderer proposed by the evaluation committee for the award of the contract will be requested to provide such evidence.

If the tenderer does not provide valid documentary evidence within the deadlines set by the contracting authority, the latter reserves the right to reject the tender. In any event, in case a tenderer proposed for the award of the contract fails to comply with the above evidence requirement, its tender will be rejected, unless the tenderer can justify the failure on the grounds of material impossibility to provide such evidence.

Annex 1 specifies which of the involved entities participating in a tender need to provide the Declaration on Honour and, when requested by the contracting authority, the supporting evidence.

Please note that a request for evidence in no way implies that the tenderer has been successful.

3.2. Selection criteria

The objective of the selection criteria is to assess whether the tenderer has the legal, regulatory, economic, financial, technical and professional capacity to perform the contract.

The selection criteria for this call for tenders, including the minimum levels of capacity, the basis for assessment and the evidence required, are specified in the following subsections.

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33 Unless the same declaration has already been submitted for the purposes of another award procedure of the European Commission, the situation has not changed, and the time elapsed since the issuing date of the declaration does not exceed one year.

34 The obligation to provide the supporting evidence will be waived in the following situations:
   - if the same documents have already been provided in a previous award procedure of the European Commission, have been issued no more than one year before the date of their request by the contracting authority and are still valid at that date;
   - if such evidence can be accessed by the contracting authority on a national database free of charge, in which case the economic operator shall provide the contracting authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document;
   - if there is a material impossibility to provide such evidence.
Tenders submitted by tenderers not meeting the minimum levels of capacity will be rejected.

When submitting its tender each tenderer shall declare on honour that it fulfils the selection criteria for this call for tenders. The model Declaration on Honour available in Annex 2 shall be used.

The initial assessment of whether a tenderer fulfils the selection criteria will be done on the basis of the submitted declaration(s).

The subsections below specify which selection criteria evidence must be provided with the tender or may be requested later, at any time during the procurement procedure, within a deadline given by the contracting authority. The evidence must be provided in accordance with the applicable basis for assessment of each criterion: in case of a consolidated assessment – only by the involved entities who contribute to the fulfilment of the criterion, and in case of individual assessment – by each entity to whom the criterion applies individually.

In case not all selection criteria evidence is requested with the tender, all tenderers are invited to prepare in advance the documentary evidence, since they may be requested to provide such evidence within a short deadline. In any event, the tenderer proposed by the evaluation committee for the award of the contract will be requested to provide such evidence.

If the tenderer does not provide valid documentary evidence within the deadlines set by the contracting authority, the contracting authority reserves the right to reject the tender. In any event, in case a tenderer proposed for the award of the contract fails to comply with the above evidence requirement, its tender will be rejected, unless there is a ground for a waiver.

Please note that a request for evidence in no way implies that the tenderer has been successful.

3.2.1. Legal and regulatory capacity

Tenderers can be natural or legal persons. Tenderers are not obliged to take a specific legal form in order to submit their tenders.

Where tenderers submit a tender through an entity, which lacks legal personality (e.g., a branch), the compliance with the exclusion criteria, selection criteria, the rules on access to procurement as well as the absence of restrictive measures shall be assessed at the level of the tenderers.

Tenderers must prove that they have legal capacity to perform the contract and the regulatory capacity to pursue the professional activity necessary to carry out the work subject to this call for tenders.

The legal and regulatory capacity shall be proven by the evidence listed below:

- Proof of enrolment in a relevant trade or professional register

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The obligation to provide the supporting evidence will be waived in the following situations:

- if the same documents have already been provided in a previous award procedure of the European Commission and are still up-to-date;
- if such evidence can be accessed by the contracting authority on a national database free of charge, in which case the economic operator shall provide the contracting authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document.
In addition, involved entities (see Section 2.4) and all subcontractors, including those which do not need to be identified in the tender (see Section 2.4.2), must not be subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU) that constitute a legal impediment to perform the contract. This requirement will be assessed by reference to the EU restrictive measures in force. Therefore, the tenderer is not required to submit any evidence of not being subject to EU restrictive measures.

3.2.2. Economic and financial capacity

Tenderers must comply with the following selection criteria in order to prove that they have the necessary economic and financial capacity to perform the contract.

<table>
<thead>
<tr>
<th>Criterion F1</th>
</tr>
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<tbody>
<tr>
<td>Minimum level of capacity</td>
</tr>
<tr>
<td>Average yearly turnover of the last two financial years above EUR 300,000.</td>
</tr>
<tr>
<td>Basis for assessment</td>
</tr>
<tr>
<td>This criterion applies to the tenderer as a whole, i.e. a consolidated assessment of the combined capacities of all involved entities will be carried out.</td>
</tr>
<tr>
<td>Evidence</td>
</tr>
<tr>
<td>Copy of the profit and loss accounts and balance sheets for the last two years for which accounts have been closed from each concerned involved entity, or, failing that, appropriate statements from banks. The most recent year must have been closed within the last 18 months.</td>
</tr>
</tbody>
</table>

The evidence of economic and financial capacity does not need to be provided with the tender but may be requested by the contracting authority at any time during the procedure. Please note that a request for evidence in no way implies that the tenderer has been successful.

3.2.3. Technical and professional capacity

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required. The entity on whose capacity the tenderer relies will either assume the role of a subcontractor or fall within the exceptions listed in Section 2.4.2.

Tenderers must comply with the following selection criteria in order to prove that they have the necessary technical and professional capacity to perform the contract:

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36 Please note that the EU Official Journal contains the official list and, in case of conflict, its content prevails over that of the EU Sanctions Map.
# Criterion T1

The tenderer must prove expert knowledge in the field of legal, market, social and policy research related to online advertising and data protection, and in interview/survey techniques, data collection, analysing legislation, drafting reports and making recommendations.

<table>
<thead>
<tr>
<th>Minimum level of capacity</th>
<th>At least three similar (in scope and complexity) projects completed in the last four years preceding the deadline for submission of tenders with a minimum value for each of them € 10,000.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis for assessment</td>
<td>This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all involved entities will be carried out.</td>
</tr>
<tr>
<td>Evidence</td>
<td>A list of projects meeting the minimum level of capacity. The list shall include details of their start and end date, total project amount and scope, role and amount invoiced. In case of projects still ongoing, only the portion completed during the reference period will be taken into consideration. The tender must provide documents or references demonstrating that the project team meets the above-mentioned minimum level of capacity. Concise but informative curriculum vitae (CV) of each person involved in the execution of the tasks foreseen in the tender. The CVs shall demonstrate professional experience in the specific domain of this project, in particular experience during the last 4 years.</td>
</tr>
</tbody>
</table>

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# Criterion T2

The tenderer delivering the services must prove the track record of producing high quality studies, reports or other publications.

<table>
<thead>
<tr>
<th>Minimum level of capacity</th>
<th>The tenderer must prove capacity to draft reports in English.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis for assessment</td>
<td>This criterion applies to the tenderer as a whole, i.e. the consolidated assessment of combined capacities of all involved entities will be carried out.</td>
</tr>
<tr>
<td>Evidence</td>
<td>The tenderer must provide one document of at least 10 pages (report, study, etc.) in English that it has drafted and published or delivered to a client in the last two years. The verification will be carried out on 5 pages of the document.</td>
</tr>
</tbody>
</table>

All of the above-specified evidence of technical and professional capacity must be provided with the tender.

***

Involved entities (see Section 2.4) and all subcontractors, including those which do not need to be
identified in the tender (see Section 2.4.2), must not be subject to professional conflicting interests which may negatively affect the contract performance. Where the contracting authority has established such conflicting interests, it may conclude that the tenderer or an involved entity does not possess the required professional capacity to perform the contract to an appropriate quality standard.

The presence of conflicting interests shall be examined during the evaluation phase based on the statements made through the Declarations on Honour and, where applicable, the commitment letters (Annex 5.1 and Annex 5.2).

Further details and obligations concerning professional conflicting interests are set out in the draft contract.

### 3.3. Compliance with the conditions for participation and minimum requirements specified in the procurement documents

By submitting a tender a tenderer commits to perform the contract in full compliance with the terms and conditions of the procurement documents for this call for tenders. Particular attention is drawn to the minimum requirements specified in Section 1.4 of these specifications and to the fact that tenders must comply with applicable data protection, environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.

The minimum requirements shall be observed throughout the entire duration of the contract. Compliance with these requirements is mandatory and cannot be subject to any assumptions, limitations, conditions, or reservations on the part of a tenderer.

Tenderers must declare when submitting their tenders in eSubmission whether their tenders comply with the minimum requirements specified in the procurement documents.

힌 Tenders that are not compliant with the applicable minimum requirements shall be rejected.

### 3.4. Award criteria

The objective of the award criteria is to evaluate the tenders with a view to choosing the most economically advantageous tender.

Tenders will be evaluated on the basis of the following award criteria and their weighting:

1. **Price** - 35%

The price considered for evaluation will be the total price of the tender, covering all the requirements set out in the tender specifications.

2. **Quality** - 65%

The quality of the tender will be evaluated based on the following criteria:
<table>
<thead>
<tr>
<th>Technical award criterion</th>
<th>Maximum score/weighting</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Quality of the proposed methodology and tools:</strong></td>
<td>60</td>
<td>30</td>
</tr>
<tr>
<td>This criterion will assess the feasibility, credibility, appropriateness of the methodology proposed to achieve the objectives of the study taking into account the range of sources of information consulted.</td>
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<tr>
<td><strong>Sub-criterion 2.1:</strong> Quality of the methodological approach. Tenderers must list in particular the tools and methods they propose to use for each task with the concepts and theories followed.</td>
<td></td>
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</tr>
<tr>
<td><strong>Sub-criterion 2.2:</strong> Relevance, quality and completeness of the information proposed to be used, and of the analysis proposed to be undertaken.</td>
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</tr>
<tr>
<td><em>(All the sub-criteria above are of equal relative importance)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2. Organisation of work:</strong></td>
<td>30</td>
<td>15</td>
</tr>
<tr>
<td>This criterion will assess how the roles and responsibilities of the proposed team and of the different economic operators (in case of joint tenders, including subcontractors if applicable) are distributed for each task. It will also assess the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the performance of a quality work. The tender must provide details on the allocation of time and human resources and the rationale behind the choice of this allocation.</td>
<td></td>
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</tr>
<tr>
<td><strong>Sub-criterion 2.1:</strong> Work plan and timetable on how to meet the objectives and deliverables specified in the tender specifications. This includes specifying clearly the identity, roles, activities and responsibilities of consortium members and/or subcontractor(s) where applicable.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>3. Quality control measures:</strong></td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>This criterion will assess the quality control system applied to the services foreseen in these tender specifications concerning the quality of the deliverables, the language quality check, and continuity of the services in case of absence of a member of the team.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sub-criterion 3.1:</strong> Adequacy of the quality control system applied to the objectives foreseen in the tender specifications. Tenderers must provide a quality control system (plan) concerning the quality of the deliverables, the control and guarantee of deadlines, the language quality check, and continuity of the service in case of absence of a member of the team.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>100</td>
<td>60</td>
</tr>
</tbody>
</table>

37 The quality system should be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a low score.
Tenders must score minimum 50% for each criterion, and minimum 60% in total. Tenders that do not reach the minimum quality levels will be rejected and will not be ranked.

### 3.5. Award (ranking of tenders)

Tenders shall be ranked according to the best price-quality ratio in accordance with the formula below:

\[
\text{score for tender X} = \frac{\text{cheapest price}}{\text{price of tender X}} \times 100 \times 35\% + \text{total quality score (out of 100) for all award criteria of tender X} \times 65\%
\]

Should the outcome of the formula lead to two or more tenders with the same result, the tenderer who has been awarded the highest marks for quality will be deemed to be the most economically advantageous tender. This approach will continue to be applied to each of the award criteria in the descending order listed in below until a most economically advantageous tender can be determined: technical quality of the tender, understanding of the tasks required, organisation of work.

The contract shall be awarded to the tender ranked first, which complies with the minimum requirements specified in the procurement documents and is submitted by a tenderer not subject to restrictive measures, having access to procurement, not in an exclusion situation and fulfilling the selection criteria.

Detection of abnormally low tenders

Tenderers must be aware of Point 23 of Annex I to the Financial Regulation on abnormally low tenders and of the possibility for rejection of the tender based on it.
4. FORM AND CONTENT OF THE TENDER

4.1. Form of the tender: how to submit the tender?

Tenders are to be submitted via the eSubmission application according to the instructions laid down in the Invitation letter and the eSubmission Quick Guide available at the link below:

https://wikis.ec.europa.eu/display/FTPortal/Open+procedures_EN

Make sure you prepare and submit your tender in eSubmission early enough to ensure it is received within the deadline for receipt indicated under Section 5.1.12 of the contract notice and/or on Funding & Tenders Portal (F&T Portal).

4.2. Content of the tender: what documents to submit with the tender?

The documents to be submitted with the tender in eSubmission are listed in Annex 1.

The following requirements apply to the technical and financial tender to be uploaded in eSubmission:

- **Technical tender**

  The technical tender must provide all the information needed to assess the compliance with Section 1.4 of these specifications and the award criteria. Tenders deviating from the minimum requirements or not covering all the requirements may be rejected on the basis of non-compliance and not evaluated further.

- **Financial tender**.

  A complete financial tender, including the breakdown of the price, needs to be submitted. For this purpose, the Financial Model in Annex 6 shall be used.

  The financial tender shall be:

  - expressed in euros. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the risks or the benefits deriving from any variation.
  - quoted free of all duties, taxes and other charges, i.e. also free of VAT.

The European Union Institutions are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 annexed to the Treaty on the Functioning of the European Union. Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

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38 https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home
In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact its national authorities to clarify the way in which the European Union is exempt from VAT.

4.3. Signature policy: how can documents be signed?

Where a document needs to be signed, the signature must be either hand-written or, preferably, a qualified electronic signature (QES) as defined in Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS Regulation).

Tenderers are strongly encouraged to sign with a QES all documents requiring a signature and only exceptionally to sign such documents by hand as hand-written signatures lead to an additional administrative burden for both the tenderer and the contracting authority. The originals of any hand-signed documents (other than the contract) do not need to be submitted to the contracting authority but the tenderer must keep them for a period of five years starting from the notification of the outcome of the procedure or, where the tenderer has been awarded a contract resulting from this call for tenders and the contract has been signed, the payment of the balance.

All documents must be signed by the signatories (when they are individuals) or by their duly authorised representatives.

For the following documents, when signed by representatives, tenderers must provide evidence for the delegation of the authorisation to sign:

- The Declaration on Honour of the tenderer (in case of a joint tender – the Declarations on Honour of all group members);
- (in the case of a joint tender) the Agreement/Power(s) of attorney drawn up using the model attached in Annex 3).

The delegation of the authorisation to sign on behalf of the signatories (including, in the case of proxy(-ies), the chain of authorisations) must be evidenced by appropriate written evidence (copy of the notice of appointment of the persons authorised to represent the legal entity in signing contracts (together or alone), or a copy of the publication of such appointment if the legislation which applies to signatory requires such publication or a power of attorney). A document that the contracting authority can access on a national database free of charge does not need to be submitted if the contracting authority is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.

4.4. Confidentiality of tenders: what information and under what conditions can be disclosed?

Once the contracting authority has opened a tender, it becomes its property and shall be treated confidentially, subject to the following:

- For the purposes of evaluating the tender and, if applicable, implementing the contract, performing audits, benchmarking, etc., the contracting authority is entitled to make available (any part of) the tender to its staff and the staff of other Union institutions, bodies and

39 See here how to apply a QES on a document exchanged with a European institution, body or agency.
agencies, as well to other persons and entities working for the contracting authority or cooperating with it, including contractors or subcontractors and their staff, provided that they are bound by an obligation of confidentiality.

- After the signature of the award decision, tenderers, whose tenders were received in accordance with the submission modalities, who are not subject to restrictive measures, have access to procurement, who are not found to be in an exclusion situation referred to in Article 136(1) of the FR, who are not rejected under Article 141 of the FR, whose tenders are not found to be compliant with the procurement documents, and who make a request in writing, will be notified of the name of the successful tenderer to whom the contract is awarded, the characteristics and relative advantages of the successful tender and its total financial tender amount. The contracting authority may decide to withhold certain information that it assesses as being confidential, in particular where its release would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them. Such information may include, without being limited to, confidential aspects of tenders such as unit prices included in the financial tender, technical or trade secrets.\(^{40}\)

- The contracting authority may disclose the submitted tender in the context of a request for public access to documents, or in other cases where the applicable law requires its disclosure. Unless there is an overriding public interest in disclosure\(^{41}\), the contracting authority may refuse to provide full access to the submitted tender, redacting the parts (if any) that contain confidential information, the disclosure of which would undermine the protection of commercial interests of the tenderer, including intellectual property.

\(\blacklozenge\) The contracting authority will disregard general statements that the whole tender or substantial parts of it contain confidential information. Tenderers need to mark clearly the information they consider confidential and explain why it may not be disclosed. The contracting authority reserves the right to make its own assessment of the confidential nature of any information contained in the tender.

\(^{40}\) For the definition of trade secrets please see Article 2 (1) of Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

## APPENDIX: LIST OF REFERENCES

<table>
<thead>
<tr>
<th>Reference</th>
<th>See Section</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Award criteria</strong></td>
<td>3.4</td>
</tr>
<tr>
<td><strong>Contracting authority</strong></td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Entities on whose capacities the tenderer relies to fulfil the selection criteria</strong></td>
<td>2.4.3</td>
</tr>
<tr>
<td><strong>EU Validation services</strong></td>
<td>2.3</td>
</tr>
<tr>
<td><strong>Exclusion criteria</strong></td>
<td>3.1</td>
</tr>
<tr>
<td><strong>Group leader</strong></td>
<td>2.4.1</td>
</tr>
<tr>
<td><strong>Group member</strong></td>
<td>2.4.1</td>
</tr>
<tr>
<td><strong>Identified subcontractors</strong></td>
<td>2.4.2</td>
</tr>
<tr>
<td><strong>Involved entities</strong></td>
<td>2.4</td>
</tr>
<tr>
<td><strong>Joint tender</strong></td>
<td>2.4.1</td>
</tr>
<tr>
<td><strong>Participant Register</strong></td>
<td>2.3</td>
</tr>
<tr>
<td><strong>Selection criteria</strong></td>
<td>3.2</td>
</tr>
<tr>
<td><strong>Sole tenderer</strong></td>
<td>2.4</td>
</tr>
<tr>
<td><strong>Subcontracting/subcontractor</strong></td>
<td>2.4.2</td>
</tr>
<tr>
<td><strong>Treaties</strong></td>
<td>The EU Treaties:</td>
</tr>
<tr>
<td></td>
<td><a href="https://europa.eu/european-union/law/treaties_en">https://europa.eu/european-union/law/treaties_en</a></td>
</tr>
</tbody>
</table>
ANNEXES
Annex 1. List of documents to be submitted with the tender or during the procedure

<table>
<thead>
<tr>
<th>Description</th>
<th>Sole tenderer</th>
<th>Joint tender</th>
<th>Identified subcontractor</th>
<th>Entity on whose capacity is being relied (that is not subcontractor)</th>
<th>When and where to submit the document?</th>
<th>Instructions for uploading in eSubmission (if applicable)</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>1. Identification and information about the tenderer.</td>
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<tr>
<td>eSubmission view</td>
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<tr>
<td>[Diagram of ways to submit, Parties, Tender data, Submission report, Submit]</td>
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</tr>
<tr>
<td>Declaration on Honour on Exclusion and Selection Criteria (see Section 3.1)</td>
<td></td>
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<tr>
<td><em>model in Annex 2</em></td>
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<td>Evidence that the person</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Instructions for uploading in eSubmission (if applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>How to name the file?</td>
</tr>
<tr>
<td>Where to upload?</td>
</tr>
</tbody>
</table>

- With the tender in eSubmission
- 'Declaration on Honour'
- With the concerned entity under 'Parties'
  - 'Identification of the participant'
  - 'Attachments'→'Declaration on Honour'.

For entities that are not subcontractors and on whose capacity the tenderer relies to fulfil the selection criteria, the document must be uploaded in the section of the sole tenderer or group leader:

- 'Identification of the participant'
- 'Attachments'→'Other documents'.

With the tender

- 'Authorisation to'

With the concerned entity
<table>
<thead>
<tr>
<th>Document Type</th>
<th>Authorised Representative</th>
<th>In eSubmission</th>
<th>Sign Documents'</th>
<th>Under 'Parties'</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement/Power of attorney (see Section 2.4.1)</td>
<td>An authorised representative of the entity (^{20}) (see Section 4.3)</td>
<td></td>
<td></td>
<td></td>
<td>In the group leader's section under 'Parties'</td>
</tr>
<tr>
<td>List of identified subcontractors (see Section 2.4.2)</td>
<td>An authorised representative of the entity (^{20}) (see Section 4.3)</td>
<td></td>
<td></td>
<td></td>
<td>In the sole tenderer’s or the group leader's section under 'Parties'</td>
</tr>
<tr>
<td>Commitment letter (see Section 2.4.2 and 2.4.3)</td>
<td>An authorised representative of the entity (^{20}) (see Section 4.3)</td>
<td></td>
<td></td>
<td></td>
<td>With the concerned entity under 'Parties'</td>
</tr>
<tr>
<td>Evidence of non-exclusion (see Section 3.1)</td>
<td>An authorised representative of the entity (^{20}) (see Section 4.3)</td>
<td></td>
<td></td>
<td></td>
<td>n.a.</td>
</tr>
</tbody>
</table>

\(^{20}\) A document that the contracting authority can access on a national database free of charge does not need to be submitted if the contracting authority is provided with the exact internet link and, if applicable, the necessary identification data to retrieve the document.
and, in any event, if a tenderer is successful, before the award of the contract.

Subcontractors and entities on whose capacity a tenderer relies to fulfil the selection criteria must provide the evidence only upon request by the contracting authority.

| Evidence of legal existence and status (see Section 2.3) | ☒ | ☒ | ☒ | Only upon request by the EU Validation services | n.a. | n.a. |
| Evidence of legal capacity (see Section 3.2.1) | ☒ | ☒ | ☒ | With the tender in eSubmission | No specific requirements how to name the file(s) | With the concerned entity under 'Parties' →'Identification of the participant' →'Attachments'→'Legal and regulatory capacity'. |
| Evidence of economic and financial capacity F1 (see Section 3.2.2) | | | | The documents must be provided only by the involved entities which contribute to reaching the minimum capacity level for criterion F1 | Only upon request by the contracting authority At any time during the procedure | n.a. | n.a. |
| Evidence of technical and professional capacity T1, T2 (see Section 3.2.3) | | | | The documents must be provided only by the involved entities which contribute to reaching the minimum capacity level | With the tender in eSubmission 'Project reference No.1' 'Project reference No.2' | With the group leader or the sole tenderer under 'Parties' →'Identification of the participant' |
2. Tender data.

_eSubmission view_

Ways to submit  Parties  Tender data  Submission report  Submit

Failure to upload the following documents in eSubmission will lead to rejection of the tender.

| Technical tender (see Section 4.2) | ☒ | ☒ | With the tender in eSubmission | 'Technical tender' | Under section 'Tender Data' → 'Technical tender' |
| Financial tender (see Section 4.2) model in Annex 6 | ☒ | ☒ | With the tender in eSubmission | 'Financial tender' | Under 'Tender Data' → 'Financial tender' |
Annex 2. Declaration on Honour on exclusion and selection criteria

Annex 2 is published as a separate document
Annex 3. Agreement/Power of attorney

Annex 3 is published as a separate document
Annex 4. List of identified subcontractors and proportion of subcontracting

Annex 4 is published as a separate document
Annex 5.1. Commitment letter by an identified subcontractor

Annex 5.1 is published as a separate document
Annex 5.2. Commitment letter by an entity on whose capacities is being relied

Annex 5.2 is published as a separate document
Annex 6. Financial tender form

Annex 6 is published as a separate document