Annex I

CALL FOR TENDERS
SMART 2019/0042

STUDY ON Application of the Orphan Works Directive (2012/28/EU)

TENDER SPECIFICATIONS

Negotiated procedure
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TABLE OF CONTENTS</td>
<td>2</td>
</tr>
<tr>
<td>INFORMATION ON TENDERING</td>
<td>4</td>
</tr>
<tr>
<td>Participation</td>
<td>4</td>
</tr>
<tr>
<td>Contractual conditions</td>
<td>4</td>
</tr>
<tr>
<td>Compliance with applicable law</td>
<td>4</td>
</tr>
<tr>
<td>Joint tenders</td>
<td>4</td>
</tr>
<tr>
<td>Subcontracting</td>
<td>5</td>
</tr>
<tr>
<td>Structure and content of the tender</td>
<td>5</td>
</tr>
<tr>
<td>Identification of the tenderan</td>
<td>6</td>
</tr>
<tr>
<td>TECHNICAL SPECIFICATIONS</td>
<td>7</td>
</tr>
<tr>
<td>Context</td>
<td>7</td>
</tr>
<tr>
<td>Objectives, tasks, methodology</td>
<td>9</td>
</tr>
<tr>
<td>Duration</td>
<td>13</td>
</tr>
<tr>
<td>Timetable, Deliverables and Meetings</td>
<td>13</td>
</tr>
<tr>
<td>Terms of approval of reports and deliverables</td>
<td>15</td>
</tr>
<tr>
<td>Layout/content of the workplan</td>
<td>16</td>
</tr>
<tr>
<td>Intellectual Property rights</td>
<td>16</td>
</tr>
<tr>
<td>CONTENT, STRUCTURE AND GRAPHIC REQUIREMENTS OF THE DELIVERABLES</td>
<td>16</td>
</tr>
<tr>
<td>Data formats</td>
<td>16</td>
</tr>
<tr>
<td>Report format</td>
<td>16</td>
</tr>
<tr>
<td>Content</td>
<td>17</td>
</tr>
<tr>
<td>Graphic requirements</td>
<td>18</td>
</tr>
<tr>
<td>EVALUATION AND AWARD</td>
<td>18</td>
</tr>
<tr>
<td>Verification of non-exclusion</td>
<td>19</td>
</tr>
</tbody>
</table>
Selection criteria .................................................................................................................. 19
Award criteria ....................................................................................................................... 24
Ranking of tenders ............................................................................................................... 25
5 PAYMENT AND STANDARD CONTRACT ........................................................................ 25
6 ADDITIONAL PROVISIONS .......................................................................................... 25
7 LIQUIDATED DAMAGES ................................................................................................. 26
8 NO OBLIGATION TO AWARD THE CONTRACT ......................................................... 26
9 RESULTS .......................................................................................................................... 26
INFORMATION ON TENDERING

Participation

Participation in this procurement procedure is restricted to the invited candidates only. The legal entities are required to be registered in the EU or for natural persons to have their domicile in the EU. Participation is also open to all natural and legal persons registered or having their domicile in a non-EU country which has an agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. The rules of access to the market do not apply to subcontractors.

For tenderers from the United Kingdom:

Please be aware that after the UK’s withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to candidates or tenderers from the UK depending on the outcome of the negotiations. In case such access is not provided by legal provisions in force candidates or tenderers from the UK could be rejected from the procurement procedure.

Contractual conditions

The tenderer should bear in mind the provisions of the draft contract which specifies the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

Compliance with applicable law

The tender must comply with applicable 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.

Joint tenders

A joint tender is a situation where a tender is submitted by a group of economic operators (natural or legal persons). Joint tenders may include subcontractors in addition to the members of the group.

In case of joint tender, all members of the group assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole, i.e. both financial and operational liability. Nevertheless, tenderers must designate one of the economic operators as a single point of contact (the leader) for the Contracting Authority for administrative and financial aspects as well as operational management of the contract.

---

After the award, the Contracting Authority will sign the contract either with all members of the group, or with the leader on behalf of all members of the group, authorised by the other members via powers of attorney (see Annex 7).

**Subcontracting**

Subcontracting is a situation where a contract is to be established between the Commission and a service provider and where this service provider, in order to carry out the contract, enters into legal commitments with other legal entities for performing part of the tasks foreseen in the contract. Subcontracting is permitted but the contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole.

Tenderers are required to identify all subcontractors whose share of the contract is above 10% of the price of the tender or whose capacity is necessary to fulfil the selection criteria.

During contract performance, the change of any subcontractor identified in the tender or additional subcontracting will be subject to prior written approval of the Contracting Authority (please refer to article II.10 of the model service contract).

**Structure and content of the tender**

The tenders must be presented as follows:

Part A: Identification of the tenderer (see section 1.7)

Part B: Non-exclusion (see section 4.1)

Part C: Selection (see section 4.2)

Part D: Technical offer

The technical offer must cover all aspects and tasks required in the technical specifications and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be rejected on the basis of non-compliance with the tender specifications and will not be evaluated.

Part E: Financial offer

The price must fulfil the following requirements:

A **total** fixed price expressed **in Euro** must be included in the tender. The **maximum total** amount to be paid by the Commission under the contract **must not exceed** EUR 143 999 – one hundred forty three thousand nine hundred ninety nine euros. Tenders with a higher total price will be rejected.

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 assume the risks or the benefits deriving from any variation.
The price quoted must be firm and not subject to revision.

The European Commission, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, is exempt from all duties, taxes and dues, including value added tax (VAT).

**Such charges may not therefore be included in the calculation of the price quoted.**

VAT 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.

For those countries where national legislation provides an exemption by means of reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Commission is exempt from VAT.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately.

The price must fall within the scope of this tender specifications and be broken down into unit prices and quantities for each of the following categories:

(a) **Professional fees.** The daily rates and total number of person-day for each member of staff working on the contract must be specified.

(b) **Travel and subsistence expenses** (including costs of attendance of future contractor's representative(s) at meetings and/or workshops with the Commission (as foreseen in section 2.4.3)

(c) **Other costs**

**Identification of the tenderer**

The tender must include a **cover letter** (annex 2) signed by an authorised representative presenting the name of the tenderer (including all entities in case of joint tender) and identified subcontractors if applicable, and the name of the single contact point (leader) in relation to this procedure.

In case of a joint tender, the cover letter must be signed either by an authorised representative for each member, or by the leader authorised by the other members with powers of attorney. The signed powers of attorney must be included in the tender as well. Subcontractors that are identified in the tender must provide a letter of intent signed by an authorised representative stating their willingness to provide the services presented in the tender and in line with the present tender specifications.

All tenderers (including all members of the group in case of joint tender) must provide a signed Legal Entity Form with its supporting evidence. The form is available on:  
Tenderers that are already registered in the Contracting Authority’s accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

The tenderer (or the leader in case of joint tender) must provide a Financial Identification Form with its supporting documents. Only one form per tender should be submitted. No form is needed for subcontractors and other members of the group in case of joint tender. The form is available on: [http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm)

Economic operators already registered as a legal entity in the Commission's files (i.e. they are or have been contractors of the Commission) are not obliged to provide a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.

Likewise, if the corresponding bank account of economic operators is already registered in the Commission's files they are not obliged to provide a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.

**TECHNICAL SPECIFICATIONS**

**Context**

Orphan works are works which are protected by copyright or related rights and for which no rightholder is identified or for which the rightholder, even if identified, is not located.

Copyright is the economic foundation for the creative industry, since it stimulates innovation, creation, investment and production. Mass digitisation and dissemination of works is therefore a means of protecting Europe's cultural heritage. Copyright is an important tool for ensuring that the creative sector is rewarded for its work.

The rightholders’ exclusive rights of reproduction of their works and of making them available to the public necessitate the prior consent of rightholders to the digitisation and the making available to the public of a protected work. In the case of orphan works, it is not possible to obtain such prior consent to the carrying-out of acts of reproduction or of making available to the public.

Orphan works represent a substantial part of the collections of Europe's cultural institutions (e.g. the British Library estimates that 40 percent of its copyrighted collections – 150 million works in total are orphan works).

The Communication on Digital Libraries, which aimed at making Europe’s cultural, audiovisual and scientific heritage accessible to all, indicated that, for example in the case of printed media, the proportion of orphan works reaches 50%. In 2001, it was estimated that the total number of books and bound periodicals (volumes) in the libraries of the EU-25 exceeded 2.5 billion.

In the audio-visual field, a 2009/10 survey by the Association des Cinémathèques Européennes estimated that 12%-21% of the films contained in the 24 film archives that responded to the survey were orphan works. The Association estimates that approximately
100 thousand of these works could be made available via the European Film Gateway and Europeana if a pragmatic or legal solution for rights clearing would exist.

European public broadcasters estimate to have 28 million hours of material contained in their archives. However, due to numerous contributors and the equivalent number of contracts, it is difficult to quantify the number of orphan works. The German broadcaster ZDF handles around 70,000 contracts a year, which add to more than 3 million since 1963.

Different approaches in the Member States to the recognition of orphan work status could present obstacles to the functioning of the internal market and the use of, and cross-border access to, orphan works. Such different approaches could also result in restrictions on the free movement of goods and services, which incorporate cultural content.

The Orphan Works Directive (OWD) was adopted on 25 October 2012 to address this issue. Its purpose was to establish a common approach to determining the orphan work status and the permitted uses of orphan works. This would ensure legal certainty in the internal market with respect to the use of orphan works by publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations.

The Directive addresses the issue of the mass-digitisation of the European cultural heritage by enabling European libraries and archives to make available online the content of their archives of which the holders of copyright and related rights are unknown or cannot be located.

The Directive enables beneficiary organisations to use orphan works to achieve the aims of their public interest missions and to conclude public-private partnerships with commercial operators to generate revenues from the use of orphan works to cover the digitisation costs.

The Directive determines that before a work or phonogram can be considered an orphan work, a diligent search for the rightholders in the work or phonogram, including rightholders in works and other protected subject-matter that are embedded or incorporated in the work or phonogram, should be carried out in good faith.

The Directive includes provisions for the creation of a single publicly accessible online database for the Union containing information on diligent searches.

The database enables beneficiary organisations that want to make use of orphan works in digitisation projects, to have easy access to relevant information about them. These organisations shall also record works in the database that they have identified as orphan during diligent searches.

The database allows right holders to search for orphan works, obtain contact information of the organisations using them, and put an end to their orphan work status. The database could also play an important role in preventing and bringing to an end possible copyright infringements, particularly in the case of changes to the orphan work status of the works and phonograms. It also provides beneficiary organisations and competent national authorities with reports and statistical data on orphan works that have been recorded in the database.

The Directive was due to be transposed by Member States by 29 October 2014, but was only effectively transposed by all MS at the end of 2015 and the first effects were only visible two years later.
Article 10 of the Directive includes a review clause whereby the Commission shall keep under constant review the development of rights information sources and shall submit annual reports concerning the possible inclusion in the scope of application of the Directive of publishers and of works or other protected subject-matter not currently included in its scope, and in particular stand-alone photographs and other images.

Article 10 also requested the Commission to submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the Directive, in the light of the development of digital libraries.

Objectives, tasks, methodology,

The general objective of this study is to collect the necessary factual evidence and analysis in order for the Commission to prepare the review report requested by Article 10 of the Directive. DG CONNECT of the European Commission intends to use the findings of the study to report to the European Parliament, the Council and the European Economic and Social Committee on the application of the Directive.

Objectives

The study will include three specific objectives:

1) Provide the European Commission with factual information about the application of the Directive, in particular the implementation of Articles 1 to 7, in the light of the developments of digital libraries in the EU Member States, the EEA countries and Switzerland;

2) Provide the European Commission with an objective quantitative and qualitative assessment of this implementation, looking in particular at the most significant issues. The analysis should therefore pay special attention to aspects such as the diligent search procedure, the use of the EU database of orphan works and the actual use of orphan works for commercial purposes. The study should ultimately provide an evaluation of the overall efficiency and effectiveness of the Directive to achieve its main objective, i.e. the creation of a legal framework that facilitates the digitisation and dissemination of orphan works, thereby promoting the free movement of knowledge and innovation in the internal market and enhancing the value of Europe's cultural heritage by supporting its dissemination for cultural and educational purposes.

3) Identify, where justified by the above assessment, areas for possible amendments to the Directive that could bring an improvement to its application and to the achievement of its objectives. Such amendments could potentially comprise the inclusion in the scope of application of the Directive of publishers and of works or other protected subject-matter not currently included in its scope, and in particular stand-alone photographs and other images.

Tasks

The minimum requirements to be met by the tender are:

The study must cover at least the three following tasks.

The future contractor should perform a desk research to collect and analyse any information available that enables a quantitative and qualitative analysis of the application of the Directive.

The set of information used for this task should include, as a minimum, the following information:

- The national laws, regulations and administrative provisions, necessary to comply with the Directive, including any possible updates, which Member States have brought into force.
- The list of sources that each Member State has drawn up in accordance with Article 3(2).
- The EU Intellectual Property Office Survey on Orphan works.
- A sample of best practice examples on the digitisation and online accessibility of cultural material and digital preservation.
- Information on the provisions related to out-of-commerce works included in the Commission proposal for a Directive on Copyright in the Digital Single Market.
- Any other reports, studies or case studies publicly available that the study contractor may find relevant for the purposes of this study.
- The final reports of the ENDOW and FORWARD projects funded by the EU should also be analysed.

2. Quantitative and qualitative assessment of the implementation of the rules

This task can be divided into three sub-tasks:

1. Analysis of the material collected under Task 1. The future contractor should classify and analyse this material with a view to present the application of the Orphan Works Directive and its overall results.

This analysis should include a quantitative analysis of the records included in the orphan works database maintained by the EUIPO and put these data into perspective, looking at the overall objective of facilitating the mass digitisation on orphan works.

The analysis should also be of qualitative nature, e.g. the study should identify the main aspects of the Directive. For example, with regard to Article 1, the analysis could look at whether there has been any problem with the application of Article 3(1) whereby it is reasonable to assume that the rightholder would not oppose to the uses referred to in Article 6.

Regarding Article 3, the future contractor should describe with a sufficient level of detail the issues around the diligent search procedure. The analysis should look at the possible

---

4 COM(2016)593
5 http://diligentsearch.eu/
6 http://project-forward.eu/results/
complexity of the procedure and its suitability for mass digitisation purposes. Other possible issues include the number of appropriate information sources that beneficiary organisations have to check – some Member States have a list of mandatory sources, others have a non-mandatory list- and the online accessibility or not of these sources; the lack of responses from some sources; the due diligence costs this process entails, including the obligation in some cases to register and pay; the need for clearer guidelines about this process – some national laws do not foresee situations where the work is first published and broadcasted in another Member State or do not foresee cases where the entity that made the work publicly accessible is established in another Member State; the lack of human and financial resources for beneficiary organisations and the time and efforts these organisations have put on digitisation facilities and workflows. The study could also look at the way in which some Member States have addressed the validation of potential beneficiary organisations.

This qualitative analysis should be done from the perspective of achieving mass-digitisation of orphan works, which in many cases are of high educational and cultural value, but have a rather low commercial value. The analysis of the diligent search procedures as established in the Directive should assess whether such procedure is the most efficient tool to promote mass-digitisation.

On Article 5, the analysis could focus on the applicable responsibility for copyright infringement in case the holder of copyright or other intellectual property rights would be identified after registering the work as orphan, as well as the absence of legal practice in this respect. The study should also try to identify examples of rightholders that have claimed ownership of works and put an end to the orphan work status of some works.

On Article 6, the study should look at ways in which Member State have transposed this article, including the possible introduction of additional conditions such as a time limit for claiming compensation. The study should also investigate whether national laws determine the level of compensation with sufficient clarity.

Beyond the above list, the future contractor should propose other possible issues for analysis not mentioned here.

2- Running of an online survey and a series of interviews with a representative sample of the three main categories of stakeholders:

- National Competent Authorities assigned by Member States and EEA Countries to collect information about Orphan works in line with the Article 3.5 of the Directive.

- Beneficiaries, as defined in the Article 1 of the directive (publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations).

- Other Stakeholders: i.e. associations or entities representing the interests of rights holders, cultural organisations, collective management societies, civil society, as well as individual respondents.

The future contractor will need to identify and propose a list of stakeholders, to be agreed with the Commission. It will also have to propose a questionnaire for the survey and the interviews, in agreement with the Commission. Ideally, this survey and the interviews should be run after the analysis of the existing evidence in subtask 1 so that the questions can be
adapted and fine-tuned in order to obtain additional insights and detailed views on specific issues. The analysis should be structured in a way similar to that in subtask 1.

3- Summary of the main findings of the above tasks, looking in particular into whether the rules have helped, and to what extent, to achieve the objectives of the Directive. The issues identified during the analysis of the factual information and the survey/interviews should be grouped according to the Articles to which they refer to, and the analysis should assess the degree of effectiveness and efficiency of the provisions.

3. Identify, where justified by the above assessment, possible areas for amendments to the Directive

The study should also examine possible options to improve the application and effects of the Directive, by looking for example at:

- the possible use of collective licensing agreements and protecting the good faith use of content (public/not for profit and commercial);
- proposals to streamline the diligent search procedure of Article 3, so that beneficiary organisations focus their activity of digitising orphan works and not on performing the diligent searches. The future contractor should take into account existing research and proposed options (e.g. EnDOW project);
- the possible inclusion in the scope of application of the Directive of publishers and of works or other protected subject-matter currently not covered by the Directive;
- the possibilities of the use of orphan works for commercial purposes. What legal regulations might be considered and what commercial returns might be expected. Explore possibilities (legal and economic) for stakeholders to license orphan works to publishers for commercial uses.
- the possible options to increase the legal certainty of digital libraries and other users of orphan works in case the diligent search procedure would be considered not diligent enough and/or copyright claim would take place. Options should include collective licensing agreements and other possible means, which ensure an appropriate protection to copyright holders. Examine cases both for public/non-profit and for commercial uses.
- the possibility to extend the scope of the Directive towards standalone pictures, photographs, drawings and other subject matter.
- other relevant proposals.

The study will need to take into account the new copyright framework proposed by the Commission. This new framework includes an approach on 'Out of Commerce Works' that could be considered under a possible review of the Orphan Works Directive. The proposed study will thus have to analyse how the regulatory treatment of 'Out of Commerce Works' will relate to Orphan Works, and possible options to update the Directive in line with it.
Methodology

The study should be developed following a clear methodology covering all aspects of the study. Tenderers are free to propose the specific methodology, taking into account the context and objectives of the study and the following conditions:

The contractor's contribution will support the Commission in providing the evidence base and defining the issues by organising existing data and evidence (see the indicative list below in Reference Documents) with additional quantitative and qualitative data.

The balance between the efforts devoted to each specific objective of the study should be reasonable and well justified. The analysis of today's situation should build on existing analysis and sources of information, including the results from the ENDOw and FORWARD projects and the sources listed under Objective 1. It should include information from literature reviews, targeted survey and discussions/interviews with technology/market experts and key stakeholders in the field of Orphan Works. Efficient use of available networks should be made by liaising with relevant stakeholder groups such as the Orphan Works Network coordinated by the EU Intellectual Property Office.

The contractor will draw on analysis and assessment already made but should not accept or reproduce earlier conclusions without careful scrutiny.

Duration

The duration of the contract will be 6 (six) months.

Timetable, Deliverables and Meetings

Timetable:

<table>
<thead>
<tr>
<th>Title</th>
<th>Type</th>
<th>Due month</th>
<th>Linked to payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inception meeting</td>
<td>Meeting</td>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>Inception study report</td>
<td>Report</td>
<td>1</td>
<td>No</td>
</tr>
<tr>
<td>Interim meeting</td>
<td>Meeting</td>
<td>4</td>
<td>No</td>
</tr>
<tr>
<td>Interim study report</td>
<td>Deliverable</td>
<td>4</td>
<td>Yes</td>
</tr>
<tr>
<td>Multi-Stakeholder Survey and Interview Dataset</td>
<td>Deliverable</td>
<td>4</td>
<td>Yes</td>
</tr>
<tr>
<td>Final meeting</td>
<td>Meeting</td>
<td>6</td>
<td>No</td>
</tr>
<tr>
<td>Final study report</td>
<td>Deliverable</td>
<td>6</td>
<td>Yes</td>
</tr>
<tr>
<td>Progress Report</td>
<td>Deliverable</td>
<td>6</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The deliverables listed below must be provided by the contractor:

Inception study report, specifying the methodology, resources and objectives provided in the tender in accordance with the indications provided by the Commission during the inception meeting (see section 2.4.3 below). 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 Inception Report shall be made available to the Commission's services within 2 weeks after the inception meeting.

**Interim study report**, which will cover tasks 1 & 2. The interim study report shall be made available to the Commission’s services within 4 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 interim meeting in month four (see section 2.4.3 below). The report should be finalised after the meeting taking into account all observations and comments raised at the meeting. The finalised Interim Study Report shall be submitted to the Commission’s services within 2 weeks after the interim meeting.

**Multi-Stakeholder Survey and Interview Dataset.** A separate document consisting of the raw-dataset of collected stakeholder answers to the questionnaires and the interviews will accompany the interim report and will be organised in three categories of stakeholders: Competent national authorities, beneficiaries, and other stakeholders. The dataset shall be submitted to the Commission’s services within 2 weeks after the interim meeting.

**Final study report** shall be made available to the Commission’s services within 6 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 Final study Report shall be made available within 2 weeks after the final meeting.

An electronic version of this deliverable will be prepared in line with the provisions of the General Data Protection Regulation and other applicable legal requirements.

**Progress Report**, which will describe the use of resources in the performance of the contract, and will be required as a condition for payment. It will allow for verification of the resources actually used against the planned allocation indicated in the offer.

**Meetings and workshops**

Apart from the meetings indicated below, other meetings may, whenever appropriate, be requested by the Commission or the contractor. Unless otherwise agreed, meetings will take place in Brussels. The contractor will bear the costs of attendance of its own staff for all the meetings.

Within three days following each meeting, the contractor will circulate draft conclusions of the meeting to all participants, together with copies of presentations made during the meeting or other related documents.

**Inception meeting**

An inception meeting will be organised by the Commission’s services at the Commission’s premises in Brussels within one month after 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**

An interim meeting during which the contractor will present the interim findings will be held within four months after signature of the contract by the last contracting party. It will be
organised by the Commission’s services at the Commission’s premises in Brussels. The contractor will have to finalise the interim study report on the basis of the outcome of the interim meeting.

**Final meeting**
A final meeting during which the contractor will present the final findings and proposed conclusions will be held within six months after signature of the contract by the last contracting party. It will be organised by the Commission’s services at the Commission’s premises in Brussels. The contractor will have to finalise the final study report on the basis of the outcome of the final meeting.

**Monthly conference calls**
In addition to the meetings to be organised in Brussels, a monthly conference call on the state of progress of the study will take place between representatives from the contractor and the Commission.

**Terms of approval of reports and deliverables**

**Study report(s)**
After reception of each study report included in section 2.4.2 above, except for the reports linked to payments, the Commission will have 20 calendar days in which:
- to approve it;
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved.

Where the Commission requests a new report because the one previously submitted has been rejected, this must be submitted within 15 calendar days. The new report shall likewise be subject to the above provisions.

For the terms of approval of the reports linked to payments please refer to article I.5 of the contract.

**Other deliverables**
Except for the reports linked to payments, the Commission shall have 20 days from receipt to approve or reject the deliverable(s), and the Contractor shall have 15 days in which to submit additional information or a new deliverable.

For the terms of approval of the other deliverables linked to payments please refer to article I.5 of the contract.

Offers should include a detailed work plan. The work plan should specify the management structure as well as the responsibility of each member of the team, including the main contractor and/or sub-contractors. It should also include the name of the organisation or the person in charge of the different countries where data have to be gathered.

The work plan should include a list of tasks to be performed, with clear and realistic phases and milestones. Resources should be clearly associated to each task, i.e. for example the estimate number of man days and travels required for each task or phase.
**Layout/content of the workplan**

Offers should include a detailed work plan. The work plan should specify the management structure as well as the responsibility of each member of the team, including the main contractor and/or sub-contractors. It should also include the name of the organisation or the person in charge of the different countries where data have to be gathered. The work plan should include a list of tasks to be performed, with clear and realistic phases and milestones. Resources should be clearly associated to each task, i.e. for example the estimate number of man days and travels required for each task or phase.

**Intellectual Property rights**

The intellectual property rights related to the services/studies are foreseen in clauses I.10 and II.13 of the service contract.

**CONTENT, STRUCTURE AND GRAPHIC REQUIREMENTS OF THE DELIVERABLES**

The contractor must deliver the study and other deliverables as indicated below.

**Data formats**

The raw datasets should comply with the following provisions:

- The data delivered should **include the appropriate metadata** (e.g. description of the dataset, definition of the indicators, label and sources for the variables, notes) to facilitate reuse and publication.

- The data delivered could be linked to data resources external to the scope of the study, preferably data and semantic resources from the Commission's own data portal or from the upcoming pan-European portal. The tenderer should describe in the offer the approach they will adopt to **facilitate data linking**. Companies mentioned in the datasets should be cross referenced with the company identifiers made available by Open Corporates. For legislation the standard **European Legislation Identifiers** should be used. For a list of shared data interoperability assets see the **Joinup catalogue** from DG DIGIT’s ISA program.

- In case of statistical data that could be used to derive/compute indicator (e.g. for benchmarking national policies), the contractor should **use templates** provided by (or agreed with) Commission services, like those available on [http://ec.europa.eu/digital-agenda/en/download-data](http://ec.europa.eu/digital-agenda/en/download-data), on the DataCube vocabulary.

**Report format**

All deliverables must be written in English. The final study report must also include an abstract of no more than 200 words and an executive summary of maximum 6 pages in French.
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.

All reports will be submitted in electronic format (.doc, .xls, .ppt) and in a .pdf format suitable for publication by the Commission’s services on Commission websites. Exchange of advance copies as well as other non-formal communications shall take place via electronic mail.

The Commission services will decide the possible dissemination of the findings and conclusions and any other information produced under this assignment.

**Content**

**Final study report**

The final study report must include:

- an abstract of no more than 200 words and an executive summary of maximum 6 pages, both in English and French;
- specific identifiers which must be incorporated on the cover page provided by the Contracting Authority;
- the following disclaimer:

> “By the European Commission, Directorate-General of Communications Networks, Content & Technology. The information and views set out in this publication are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission’s behalf may be held responsible for the use which may be made of the information contained therein.

© 2020 – European Union. All rights reserved. Certain parts are licensed under conditions to the EU."

The **Final Study Report** shall be provided in a .pdf format suitable for publication by the Commission’s services on Commission websites.

**Publishable executive summary**

The publishable executive summary must be provided in both in English and French and must include:

- specific identifiers which must be incorporated on the cover page provided by the Contracting Authority;
- the following disclaimer:

> “By the European Commission, Directorate-General of Communications Networks, Content & Technology. The information and views set out in this publication are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not
guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission’s behalf may be held responsible for the use which may be made of the information contained therein.”

© 2020 – European Union. All rights reserved. Certain parts are licensed under conditions to the EU.”

Requirements for publication on Internet

The Commission is committed to making online information as accessible as possible to the largest possible number of users including those with visual, auditory, cognitive or physical disabilities, and those not having the latest technologies. The Commission supports the Web Content Accessibility Guidelines 2.0 of the W3C.

For full details on the Commission policy on accessibility for information providers, see: http://ec.europa.eu/ipg/standards/accessibility/index_en.htm

For the publishable versions of the study, abstract and executive summary, the contractor must respect the W3C guidelines for accessible pdf documents as provided at: http://www.w3.org/WAI/.

Graphic requirements

The contractor must deliver the study and all publishable deliverables in full compliance with the corporate visual identity of the European Commission, by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo. The graphic rules, the Manual and further information are available at:

http://ec.europa.eu/dgs/communication/services/visual_identity/index_en.htm

A simple Word template will be provided to the contractor after contract signature. The contractor must fill in the cover page in accordance with the instructions provided in the template. The use of templates for studies is exclusive to European Commission's contractors. No template will be provided to tenderers while preparing their tenders.

EVALUATION AND AWARD

The evaluation is based solely on the information provided in the submitted tender. It involves the following:

- 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 set out in these tender specifications
- Evaluation of tenders on the basis of the award criteria

The contracting authority may reject abnormally low tenders, in particular if it established that the tenderer or a subcontractor does not comply with applicable obligations in the fields of environmental, social and labour law.
The tenders will be assessed in the order indicated above. Only tenders meeting the requirements of one step will pass on to the next step.

**Verification of non-exclusion**

All tenderers must provide a declaration on honour (see Annex 6), signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in that declaration on honour.

In case of joint tender, each member of the group must provide a declaration on honour signed by an authorised representative.

In case of subcontracting, all subcontractors whose share of the contract is above 10% of the price of the tender or whose capacity is necessary to fulfil the selection criteria must provide a declaration on honour signed by an authorised representative.

The Contracting Authority reserves the right to verify whether the successful tenderer is in one of the situations of exclusion by requiring the supporting documents listed in the declaration of honour.

The obligation to submit supporting evidence does not apply to international organisations.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year before the date of their request by the contracting authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that there has been no change in its situation.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit a specific document if the contracting authority can access the document in question on a national database free of charge.

**Selection criteria**

Tenderers must prove their legal, regulatory, economic, financial, technical and professional capacity to carry out the work subject to this procurement procedure.

The tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

**The tender must include the proportion of the contract that the tenderer intends to subcontract.**
1.1.1. Declaration and evidence

The tenderer(s) (and each member of the group in case of joint tender) and subcontractors whose capacity is necessary to fulfil the selection criteria must provide the declaration on honour (see Annex 6), signed and dated by an authorised representative, stating that they fulfil the selection criteria applicable to them individually. For the criteria applicable to the tenderer as a whole the tenderer (sole tenderer or leader in case of joint tender) must provide the declaration on honour stating that the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, fulfils the selection criteria for which a consolidated assessment will be carried out.

This declaration is part of the declaration used for exclusion criteria (see section 4.1) so only one declaration covering both aspects should be provided by each concerned entity.

The Contracting Authority will evaluate selection criteria on the basis of the declarations on honour. Nevertheless, it reserves the right to require evidence of the legal and regulatory, financial and economic and technical and professional capacity of the tenderers at any time during the procurement procedure and contract performance. In such case the tenderer must provide the requested evidence without delay. The Contracting Authority may reject the tender if the requested evidence is not provided in due time.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year before the date of their request by the contracting authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that that there has been no change in its situation.

A tenderer (or a member of the group in case of joint tender, or a subcontractor) is not required to submit a specific document if the contracting authority can access the document in question on a national database free of charge.

1.1.2. Legal and regulatory capacity

<table>
<thead>
<tr>
<th>Criterion L1</th>
<th>Capacity to pursue the professional activity necessary to carry out the work subject to this call for tenders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence L1 (to be provided on request):</td>
<td>Declaration or certificate of inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the value added tax (hereinafter ‘VAT’) register⁸</td>
</tr>
</tbody>
</table>

⁸ For private entities:
Economic and financial capacity criteria

The tenderer must have the necessary economic and financial capacity to perform this contract until its end. In order to prove their capacity, the tenderer must comply with the following criterion:

<table>
<thead>
<tr>
<th>Criterion F1</th>
<th>Evidence F1 (to be provided on request):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual turnover of the last two financial years, for which the accounts have been closed, above EUR 250 000; this criterion applies to the tenderer as a whole, i.e. the combined capacity of all members of a group, in case of a joint tender.</td>
<td>- Copy of the profit and loss accounts for the last two years for which accounts have been closed from each concerned legal entity;</td>
</tr>
<tr>
<td></td>
<td>- Failing that, appropriate statements from banks;</td>
</tr>
</tbody>
</table>

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, it may prove its economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

- a proof of registration, as prescribed in their country of establishment, on one of the professional or trade registers or any other official document showing the registration number;
- if the above documents do not show the VAT number, a copy of the VAT registration document, where applicable

For individuals:
- a legible copy of his or her identity card or passport;
- where applicable, a proof of registration, as prescribed in the individual's country of establishment, on one of the professional or trade registers or any other official document showing the registration number;
- if the above documents do not show the VAT number, a copy of the VAT registration document, where applicable.

For public entities:
- a copy of the resolution decree, law, or decision establishing the entity in question or failing that, any other official document attesting to the establishment of the entity;
- if the public entity has completed a VAT registration number in the legal entity form, an official document showing the VAT number.
Technical and professional capacity criteria and evidence

With respect to the criteria listed in sub-sections A and B below (e.g. relevant expertise of the tenderer and other applicants, management capability), in case of participation of group members, e.g. local affiliates of international companies, documentary evidence of the entire group (e.g. list of contracts, etc.) will only be taken into account if a specific written endorsement of the participation by the local affiliate and/or mother company is provided.

With respect to the criterion relating to the team members, any team member who is not directly employed by the legal entity (or one of the entities in case of a joint tender) submitting the tender is considered as a subcontractor. In such case either his employer, even if this is a local branch of the same global company, should be declared as a subcontractor or he is to be considered to participate as independent expert. In both cases the forms requested in Annex 1) need to be provided.

A. Criteria relating to tenderers

Tenderers (in case of a joint tender the combined capacity of all members of the group and identified subcontractors) must comply with the criteria listed below. The evidence must be provided only on request.

The project references indicated below consist in a list of relevant services provided in the past three years, with the sums, dates and clients, public or private, accompanied by statements issued by the clients.

<table>
<thead>
<tr>
<th>Criterion A1:</th>
<th>The tenderer must prove experience in the field of copyright law as well as in survey techniques, data collection, statistical analyses and drafting reports and policy recommendations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence A1</td>
<td>the tenderer must provide references for three contracts or relevant services with sums, dates and recipients, public or private, accompanied upon request by statements issued by the clients in the fields listed above performed in the past five years with a minimum value for each contract of € 50 000.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Criterion A2</th>
<th>The tenderer must prove capacity to work in three EU official languages including at least English and French and German.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence A2</td>
<td>the tenderer must provide references for three contracts or relevant services delivered in the last five years showing the necessary language coverage.</td>
</tr>
</tbody>
</table>
**Criterion A3**: The tenderer must prove capacity to draft reports in English.

**Evidence A3** (to be provided on request): The tenderer must provide one document of at least 10 pages (report, study, etc.) in this language 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.

---

**B. Criteria relating to the team delivering the service:**

The team delivering the service should include, as a minimum, the following profiles.

Evidence will consist in CVs of the team responsible to deliver the service. Each CV should indicate the intended function in the delivery of the service.

The Europass curriculum vitae template (available at [https://europass.cedefop.europa.eu/documents/curriculum-vitae](https://europass.cedefop.europa.eu/documents/curriculum-vitae)) shall be filled in by each person involved in the execution of the tasks foreseen in the tender. Please make sure the precise contractual link with the tenderer is clearly indicated.

**Criterion B1**: **Project Manager**: At least five years experience in project management, including overseeing project delivery, quality control of delivered service, client orientation and conflict resolution experience in project of a similar size (at least € 144 000) and coverage (at least 10 countries covered), with experience in management of team of at least 5 people.

**Evidence (to be provided on request)**: Concise but informative curricula vitae, with the educational and professional qualifications.

**Criterion B2**: at least all members of the team should have at least C1 level in the Common European Framework for Reference for Languages in English.

**Evidence (to be provided on request)**: Evidence: CV, a language certificate or past relevant experience.

**Criterion B3**: **Expert in copyright legislation**: At least five years of professional experience. Relevant higher education degree or equivalent professional experience and at least five years professional experience in the field.

**Evidence (to be provided on request)**: Concise but informative curricula vitae, with the educational and professional qualifications.

---

9 See [http://www.coe.int/t/dg4/linguistic/Cadre1_en.asp](http://www.coe.int/t/dg4/linguistic/Cadre1_en.asp)
| **B4 - Team for data collection** | collectively the team of at least three people should have knowledge of six EU languages and proven experience of three years in data collection techniques. |
| **Evidence (to be provided on request)** | CV and a language certificate or past relevant experience. shall be filled in by each person involved in the execution of the tasks foreseen in the tender. Please make sure the precise contractual link with the tenderer is clearly indicated. |

**Continuity of the service:** the tenderers shall confirm the continuity of the team possessing the profile and qualifications mentioned above for the whole duration of the execution of the tasks. They shall inform the contracting authority without delay of any modification occurring in the team delivering the service.

**Award criteria**

The contract will be awarded based on the most economically advantageous tender, according to the 'best price-quality ratio' award method. The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points.

1. **Quality of the proposed methodology and tools for performing the tasks** (maximum score: 70 points)

   Under this criterion, the quality and appropriateness of the methodology and tools as described in the tender and the specific methodology envisaged for each task will be assessed. The quality and appropriateness will be assessed against the completeness, clarity and relevance of the proposed approach as regards the tasks set out in the technical specifications.

   **Sub-criterion 1.1:** Clarity, credibility, quality and feasibility of the tender (i.e. project description, and functionality of the approach);

   **Sub-criterion 1.2:** Soundness of the proposed analytical basis

   Tenderers should provide a description of the methodology and the approach proposed for undertaking the tasks. They should list in particular the tools and methods envisaged. This description must be as precise as possible. The description must be as comprehensive and precise as possible.

2. **Organisation of the work and resources** (maximum score: 20 points)

   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 also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work. The tender should provide details on the allocation of time and human resources and the rationale behind the choice of this allocation. Details should be provided as part of the technical offer. It is not a budget requested as part of the financial offer.

   **Sub-criterion 2.1:** Feasibility to meet the objectives specified in the tender specifications outlined by a workplan or timetable.
Sub-criterion 2.2: Adequacy and appropriateness of the overall allocation of time and resources to the study and to each task or deliverable, as well as the level of direct participation of senior staff in performance of the tasks required under these tender specifications and specifying clearly the identity, roles, activities and responsibilities of subcontractor(s).

3. Quality control measures (maximum score: 10 points)

Tenderers should provide a quality plan, to specify how they intend to control and ensure high quality and effective monitoring of the services and works they may be required to supply to the Commission in execution of the contract. This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the language quality check, and continuity of the service in case of absence of the member of the team. 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.

Sub-criterion 3.1: Adequacy of the quality control system applied to the service foreseen in the tender specifications (the quality of all information supplied to the contracting authority, the deliverables, the language quality check, and continuity of the service in case of absence of a member of the team).

Tenders must score minimum 50% for each criterion and minimum 70% in total. Tenders that do not reach the minimum quality levels will be rejected and will not be ranked.

**Ranking of tenders**

The contract will be awarded to the most economically advantageous tender, i.e. the tender offering the best price-quality ratio determined in accordance with the formula below. A weight of 60/40 is given to quality and price.

\[
\text{score for tender } X = \frac{\text{cheapest price}}{\text{price of tender } X} \times 100 \times 40\% + \text{total quality score (out of 100) for all award criteria of tender } X \times 60\%
\]

The tender ranked first after applying the formula will be awarded the contract.

5  Payment and standard contract

Payments under the contract shall be made in accordance with articles I.5 and II.21 of the model contract attached, provided that the contractor has fulfilled all his contractual obligations.

The invoice shall be submitted in electronic format using the e-prior communication platform.

Further instructions/guidance documents to assist contractors in sending the electronic invoice will be communicated by the Commission after the award contract.

6  Additional provisions

Changes to tenders will be accepted only if they are received on or before the final date set for the receipt of tenders.
No information of any kind will be given on the state of progress with regard to the evaluation of tenders.

7 Liquidated damages

Please refer to article II.15 of the model contract

8 No obligation to award the contract

Initiation of a tendering procedure imposes no obligation on the Commission to award the contract. Should the invitation to tender cover several items or lots, the Commission reserves the right to award a contract for only some of them. The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the contract.

9 Results

The results of the service must be forwarded to the European Commission in Brussels. The copyright will belong to the Commission; the Commission will in particular have the right to publish the results, including the structured final data.

If the result is not to be fully created for the purpose of the contract it is to be clearly pointed out in the tender. There should be information provided about the scope of pre-existing materials, their source and when and how right to have them have been acquired.

The provisions on the use of the results and ownership of the results can be found in the Model Service Contract (Article I.10 Exploitation of the results of the contract and Article II.13 Intellectual Property Rights).