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## **Tender specifications – Public invitation to tender No VT/2007/063**

### **Contract to analyse and evaluate the impact of the practical implementation in the workplace of national measures implementing Directive 98/24/EC on Chemical Agents.**

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## **1 TITLE OF THE CONTRACT**

Contract to analyse and evaluate the impact of the practical implementation of the requirements of Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

## **2 BACKGROUND**

### **2.1 Progress Programme**

In its Social Agenda (2005-2010), the Union has fixed as its overall strategic goal to promote more and better jobs and to offer equal opportunities for all. The realisation of the Social Agenda relies on a combination of instruments comprising EU legislation, the implementation of open methods of coordination in various policy fields and financial incentives such as the European Social Fund.

Until now, the implementation of the open methods of coordination in the employment and social inclusion/social protection fields relied on two distinct Community programmes. Equally the promotion of gender equality and of the non-discrimination principle was at the core of two distinct Community programmes. And lastly promotion of labour law including health and safety regulations were dealt with by separate interventions.

With the view of fostering greater coherence and simplification in the way Community programmes are delivered, the Commission proposed that all these separate programmes be now integrated into one framework programme, PROGRESS.

Decision No 1672/2006 establishing a Community programme for employment and social solidarity – PROGRESS was adopted by the European Parliament and the Council on 24 October and published in the Official Journal on 15 November.

The overall aim of PROGRESS is to support financially the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

It sets out to support the core functions of the European Community in fulfilling its Treaty-delegated tasks and powers in its respective areas of competence in the employment and social spheres. It will support initiatives aimed at reinforcing the role of the Community in proposing EU strategies; implementing and following-up EU objectives and their translations into national policies; transposing and following-up of EU legislation's application in a coherent way through Europe;

promoting the co-operation and co-ordination mechanisms between Member States and cooperating with social partners and organisations that represent civil society. More specifically, PROGRESS will support:

- 1) the implementation of the European Employment Strategy (section 1);
- 2) the implementation of the open method of coordination in the field of social protection and inclusion (section 2);
- 3) the improvement of the working environment and conditions including health and safety at work and reconciling work and family life (section 3);
- 4) the effective implementation of the principle of non-discrimination and promotion of its mainstreaming in all EU policies (section 4);
- 5) the effective implementation of the principle of gender equality and promotion of its mainstreaming in all EU policies (section 5).

It is divided into five policy sections: (1) employment, (2) social inclusion and social protection, (3) working conditions, (4) non-discrimination and (5) gender equality.

Against this background, PROGRESS pursues the following general objectives, as set out in Article 2.1 of the Decision:

- 1) to improve the knowledge and understanding of the situation prevailing in the Member States and in other participating countries through analysis, evaluation and close monitoring of policies;
- 2) to support the development of statistical tools and methods and common indicators, where appropriate broken down by gender and age group, in the areas covered by the Programme;
- 3) to support and monitor the implementation of Community law, where applicable, and Community policy objectives in the Member States, and assess their effectiveness and impact;
- 4) to promote networking, mutual learning, identification and dissemination of good practice and innovative approaches at European level;
- 5) to enhance awareness of Community policies and objectives pursued under each of its five policy sections among stakeholders and the general public;
- 6) to boost the capacity of key European-level networks to promote, support and further develop Community policies and objectives, where applicable.

Budget heading 04.040103 "Progress Programme – Working conditions" allows the Commission of the European Communities to support projects in the area of health and safety where the objectives pursued can contribute significantly to its priorities.

## **2.2 Background information specific to this contract**

Directive 98/24/EC, which is the fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC, lays down minimum requirements for the protection of workers from risks to their health and safety arising, or likely to arise, from the effects of chemical agents that are present at the workplace or as a result of any work activity involving chemical agents.

The effective application of Community law, including Directive 98/24/EC, is a prerequisite for improving the quality of the working environment.

According to Article 15 of the Directive on Chemical Agents the European Commission is required to analyse and evaluate the effectiveness of the relevant legislation on protection of the health and safety of workers at work from the risks related to chemical agents at work.

Furthermore, the Commission is required to report on the practical application of this Directive to the Council, European Parliament and Economic and Social Committee.

The Council Decision on Progress no. 1672/2006, in particular the general objective (3) set out in Article 2.1 concerning the support and monitoring of the implementation of community law provides a mechanism to support this work. The outcome of this contract will assist the Commission to meet this obligation.

Enforcement of Community legislation on safety and health at work is the responsibility of the national authorities. The need to comply with the principle of subsidiarity in this domain in which powers are shared means that these measures are limited to supporting Member States, employers and workers regarding analysis of the effects of the practical application of the national legislation transposing the above-mentioned directives in the workplace.

This measure will also provide guidance for Member States for the purposes of identifying and resolving difficulties encountered in connection with the practical application of national legislation.

Directive 98/24/EC was adopted on 7 April 1998 and the Member States were required to bring it into law not later than 5 May 2001. The national provisions transposing the Directive have now been in force for a sufficiently long period. Therefore, it is now timely to analyse and evaluate the practical effectiveness of national legislation as regards safety and health conditions at the workplace.

However, the date of entry into force of this Directive and the date of accession to the EU of the individual Member States results in differing durations of experience of the practical application of the Directive.

The contractor in preparing the report should reflect this in the level of detail in the information to be provided to the Commission. In particular for two new member States, namely Bulgaria and Romania, only summary information on the current situation need be provided

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

This invitation to tender invites bids for the preparation of a report that will include the analysis and evaluation of the impact of the national legal requirements when they apply in practice on the workplaces, in transposing Directive 98/24/EC, including challenges and successes. The tasks to be carried out are described in Section 5.

### **4 PARTICIPATION**

The competition is open to any physical person or legal entity coming within the scope of the Treaties and any other physical person or legal entity from a third country which has concluded with the Communities a specific agreement in the area of public contracts, under the conditions provided for in that agreement.

Where the Multilateral Agreement on Public Contracts concluded within the framework of the WTO applies, the contracts are also open to nationals of States that have ratified this Agreement, under the conditions provided for therein. It should be noted that research and development services, which come under category 8 of Annex II A of Directive 2004/18/CE, are not covered by this Agreement.

In practice, the participation of applicants from third countries that have concluded a bilateral or multilateral agreement with the Communities in the area of public contracts must be allowed, under the conditions provided for in that agreement. Bids submitted by applicants from third countries that have not concluded such an agreement may be accepted, but may also be rejected.

## **5 TASKS TO BE CARRIED OUT BY THE CONTRACTOR**

### **5.1 General description of the tasks**

#### **5.1.1 *Emphasis:***

In carrying out the work the contractor shall give emphasis to the practical application of the requirements of the directive in EU workplaces.

The contractor must submit a methodology that will demonstrate how they will make contact with a number of key players, both at company and individual level. This should include for example contact with, employers at all levels of company size across a representative range of employment sectors, trade associations, individual employees and their representatives such as trade unions, as well as Member State national labour inspection organisations.

Therefore, the approach should not be a theoretical review of national implementing measures.

#### **5.1.2 *Outcome:***

The outcome shall be the preparation of a report by the contractor to be submitted to the Commission. The report shall address all the items under section 5 of this contract and it shall assist the Commission in deciding what action may be necessary to ensure that risks to workers arising from the use of chemicals are effectively controlled.

The contractor should identify successes and challenges regarding the effective implementation of the requirements of the directive. The contractor where it identifies challenges relating to the practical application of the requirements of the directive may make suggestions for how these challenges could be overcome. Similarly, where successes are identified in one specific area then suggestions on how to encourage a broader utilisation of these successful approaches should be included in the report. For example options for future work at EU or Member State level can be suggested and may include strategies for different Member States, employment sectors, nature of type and/or size employing organisation or broad grouping of worker (e.g. young, older, pregnant).

The report should include examples of real situations to support the observations and remarks presented by the contractor. Where possible the examples chosen should include an assessment, in broad terms, of the administrative and technical burden and costs of meeting the requirements of the directive.

The report shall include any suggestions and recommendations made, both by employers (including undertakings and bodies in the public sector) and by workers and/or their representatives, which could improve the practical application of the legislation.

The focus of the questions is on the effectiveness of the legal requirements when implemented in practice at the workplace level, in the various employment sectors across the European Union. Wherever relevant, the evaluation of the impact should include further analysis and qualitative assessment of the efficiency, effectiveness, relevance, utility, sustainability and cost effectiveness of the issues under consideration.

The evaluation must go beyond merely describing what has been observed. It should analyse and evaluate the links between the component parts of the requirements of the directive and their impact on workers health and safety.

The contractor shall present conclusions based on well argued responses to the tasks of this contract.

The report should take account of:

- a) the specific prevention approaches (e.g. technical, organisational and/or administrative measures) adopted by Member States and employers, including undertakings and bodies in the public sector;
- b) the impact of these specific prevention approaches on protecting workers health and safety from risks due to exposure to chemicals at work;
- c) the difficulties and the challenges encountered by employers in connection with the practical application of the legislation;
- d) the successes achieved by employers in connection with the practical application of the legislation;
- e) the unexpected negative or positive side effects resulting from the practical application of the legislation;
- f) the degree of participation by workers and their representatives in developing and implementing prevention policies at workplace level.
- g) the impact of the practical implementation measures on work organisation and competitiveness of employers, including SMEs and micro-sized organisations.

In all cases, special attention must be given to small and medium-sized enterprises (SMEs) and to micro-sized organisations.

The analyses and evaluations must also identify and draw attention to any features presenting particular challenges, or successes. They must also take account of particularities relating to the age or sex of workers or other broad grouping of worker.

The results of these analyses and evaluations should provide objective information allowing Member States to identify any areas in which it is necessary to enforce the national provisions more effectively.

## **5.2 Specific tasks**

### **5.2.1 General appreciation**

- Are the requirements of the Directive comprehensible, coherent and capable of being met in practice by employers and workers?
- What evidence exists to indicate the ability of employers and employees to understand their obligations under the directive and be able to protect the health of workers from exposure to hazardous chemical substances?

- Is the practical application of the requirements more or less similar across different employment sectors and/or geographical areas?
- Are SMEs able to understand and comply with the requirements of the directive including access to appropriate information on risks posed by chemical substances and how to select and implement effective risk management measures (RMMs)?
- Are the requirements of the directive more or less equally applied for different categories of chemical substance?
- Are there specific categories of chemical substance for which a different, or more detailed, approach to achieving effective risk management may be necessary? For example based on their potential adverse health effects such as asthmagens.
- Are there specific categories of workers for which the directive has brought about significant improvements in the protection of their health and safety?  
Conversely is it possible to identify categories of workers for whom the implementation of the directive has not achieved effective protection e.g. young workers, pregnant workers, older workers, skilled versus less skilled, workers with pre-existing medical conditions (e.g. asthmatics).

### **5.2.2 Risk assessment**

- How is risk assessment carried out in the various sectors of the EU industry and what conclusions can be drawn from the way employers implement risk assessment in practice? Suggestions should be provided on the best way to fulfil the risk assessment requirement.
- Is the risk assessment process effective in identifying hazardous substances, assessing the risks from the actual working conditions and enabling the identification of appropriate, proportionate and effective risk management measures (RMMs)?
- Identify what information is known about the costs of carrying out a risk assessment.

### **5.2.3 Occupational Exposure Limits (OELs)**

- Employers, as one method of demonstrating compliance with OELs, are required to carry out measurements of workers exposure to chemical agents where a risk to workers health may be present.
- What evidence exists to indicate that employers are aware of OELs, their role in risk management and to what extent does exposure measurement occur in practice?
- What are the reasons why this does or does not occur?
- Identify what information is known about the costs of carrying out exposure measurements or other means of demonstrating compliance with OELs

### **5.2.4 Information requirements and sources of information**

- What sources of information are used by companies when carrying out a risk assessment and when introducing risk management measures and how easy is it to identify and access this information?

- Which sources of information are found to be helpful or less helpful? For example consider the use of Safety Data Sheets (SDSs) and other supplier provided information, guidance produced by member States (MSs) competent authorities, by industry trade associations, by trade unions or by the European Commission services etc.
- What types of information would companies appreciate receiving to assist them comply with the requirements of the Directive and how should this information be provided e.g. published guidance documents, specialist prevention services (either internal or external to the organisation) etc.?

### **5.2.5 Substitution**

- How does substitution work in practice?
- Identify practical examples of effective substitution or of barriers to effective substitution.
- What motivates an employer to actively consider and introduce the use of substitute substances?
- Is substitution supplier or user driven?
- Identify what information is known about the costs of substitution.

### **5.2.6 Risk Management Measures (prevention strategies)**

- What knowledge exists on the use of effective risk management measures (RMMs) especially in making decisions regarding the control of risks at source versus the use of personal protective equipment (PPE)?
- Identify what information is known about the costs of installing and operating control at source RMMs compared to the costs of using PPE. Provide examples to demonstrate the consequences, in broad terms, of the administrative and technical burden and costs of meeting the requirements of the directive through risk control at source and by using PPE
- What are the most significant considerations when deciding on a control solution? For example compliance with occupational exposure limits (OELs), requirements of SDSs, costs of control, administrative and technical burden of introducing controls etc.
- Where sector specific guidance on RMMs exists does this have a positive impact on the ability of employers to implement effective RMMs and for workers to understand how to use the RMMs? Examples should be provided.
- Does the ability to achieve effective risk management vary across the size of the undertakings, in particular within SMEs and micro enterprises, or between employment sectors? A distinction should be made between employers with good technical knowledge of chemicals and those employers who are principally users of chemicals but who do not have specific chemical knowledge.

### **5.2.7 Health surveillance**

- Is health surveillance readily available, useful, used and how does it contribute to overall risk management and employee wellbeing?

- What evidence exists to show that health surveillance works in practice?
- In situations where it does not work in practice the reasons why should be identified.
- Identify any specific categories of chemicals, for example where workers may be exposed to asthmagens, where health surveillance can play a critical role in risk management.

#### **5.2.8 Training and consultation of workers**

- Does the consultation, training and instruction of workers, including management and supervisory staff take place in practice and to what extent?
- How does this contribute to effective risk management?
- Provide examples of effective approaches taken and identify where more effective action is required and provide examples of how this could be achieved in practice.

#### **5.2.9 Protective and prevention services**

- Directive 89/391/EEC (the Framework Directive) at Article 7 introduces a requirement for protective and preventive services. How does this work in relation to facilitating the practical application of the specific requirements of the chemical agents directive?
- What are the experiences of employers in using either internal or external services for this purpose?
- Are there a sufficient number of readily accessible and cost effective protective and preventive services with appropriately qualified personnel?
- Are there suitable training courses to enable employers to designate and train internal personnel to provide part or all of this service?

#### **5.2.10 Enforcement**

- Enforcement of Community legislation on safety and health at work is the responsibility of the national authorities. However, there may be a role, separate from formal enforcement, for Member State national labour inspection organisations, or other national authority organisations, to provide help and/or guidance on how employers can comply with key aspects of the directive.
- To what extent does this occur in practice?

### **5.3. Guide on how the activities shall be carried out**

The PROGRESS Programme aims to promote gender mainstreaming in its five policy sections and commissioned or supported activities. Consequently, the contractor will take the necessary steps to ensure that its proposed team and/or staff respects the gender balance at all levels. It will also pay due attention when appropriate to the gender dimension of the service he is asked to deliver as detailed in the description of tasks.

Equally, needs of disabled people shall be duly acknowledged and met while executing the requested service. This will in particular entail that where the contractor organises training



sessions, conferences, issues publications or develops dedicated websites, people with disabilities have equal access to the facilities or the services provided.

Finally, the contracting authority encourages the contractor to promote equal employment opportunities for all its staff and team. This entails that the contractor shall foster an appropriate mix of people, regardless of their ethnic origin, religion, age and ability.

The contractor will be required to detail in its activity report accompanying the request for the final instalment the steps and achievements it made towards meeting these contractual provisions.

## **6. SKILLS REQUIRED - PROFESSIONAL QUALIFICATIONS REQUIRED**

Tenderers must have at their disposal a team with confirmed experience in the specific field as well as in applying analysis and assessment techniques and in collecting information. In order to carry out the required analyses and assessments properly, tenderers and their teams must be familiar with the specific European and national legislation relating to Directive 98/24/EC on chemical agents and the EU common methodology for assessing administrative costs imposed by legislation COM/2006/691.

The team must also have the ability to communicate with undertakings and bodies in the public sector and with SMEs and micro sized organisations and their employees in all the Member States concerned by this invitation to tender.

## **7. TIME SCHEDULE AND REPORTING**

The work must be carried out within **24** (twenty four) months from the date on which the contract is signed. The various stages are as follows.

- Within 30 (thirty) days of signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) details of the methods to be used, in English.
- Within 8 (eight months) of signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) an initial interim report describing the progress of work in relation to the proposed timetable, together with a summary of the results obtained so far. This initial interim report must be in English and should be presented and discussed at a meeting of the Commission department responsible (EMPL F/4) in Luxembourg.
- 15 (fifteen) months after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) a second interim report describing the progress of work in relation to the proposed timetable, together with a summary of the results obtained so far. This second interim report must be in English and should also be presented and discussed at a meeting of the Commission department responsible (EMPL F/4) in Luxembourg.
- 20 (twenty) months after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) a draft final report in English.
- The European Commission (Unit EMPL F/4) may communicate any objections and comments to the contractor, within 30 days of receiving the draft final report. Within fifteen days of receiving such objections and comments, the contractor must submit a final report

in English taking account of them or setting out a different point of view. Having done so, the contractor can obtain written acceptance.

- If there are no objections and/or comments from the European Commission (Unit EMPL F/4) within 30 (thirty) days of submission of the draft final report, the report will be regarded as accepted.
- The final report, once it has been accepted by the Commission, must be supplied in the following three languages within one (1) month: English, French and German.

The final report submitted by the contractor must cover the various aspects referred to in section 5 above.

The draft final report and the final report must include a brief summary of the main findings.

The detailed methods and plan of work and the various reports mentioned in this section must be submitted to the Commission (Unit EMPL F/4) both in hard copy (in triplicate) and in a widely used electronic format. The contractor must also provide a copy of the information collected and used in preparing the final report. At the contractor's request, this information will be treated confidentially.

### Reporting and information requirements

In accordance with the General Conditions, the contractor is required to acknowledge that the present service is delivered on behalf of the Community in all documents and media produced, in particular final delivered outputs, related reports, brochures, press releases, videos, software, etc, including at conferences or seminars, as follows :

*This (publication, conference, training session) is supported by the European Community Programme for Employment and Social Solidarity (2007-2013). This programme was established to support financially the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.*

*The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA and EU candidate and pre-candidate countries.*

*The programme has six general objectives:*

- 1) *to improve the knowledge and understanding of the situation prevailing in the Member States and in other participating countries through analysis, evaluation and close monitoring of policies;*
- 2) *to support the development of statistical tools and methods and common indicators, where appropriate broken down by gender and age group, in the areas covered by the Programme;*
- 3) *to support and monitor the implementation of Community law, where applicable, and Community policy objectives in the Member States, and assess their effectiveness and impact;*
- 4) *to promote networking, mutual learning, identification and dissemination of good practice and innovative approaches at European level;*
- 5) *to enhance awareness of Community policies and objectives pursued under each of its policy sections among stakeholders and the general public;*
- 6) *to boost the capacity of key European-level networks to promote, support and further develop Community policies and objectives, where applicable.*

*For more information, see:*

[http://ec.europa.eu/employment\\_social/progress/index\\_en.html](http://ec.europa.eu/employment_social/progress/index_en.html)

For publications it is also necessary to include the following reference: *"The information contained in this publication does not necessarily reflect the position or opinion of the European Commission"*.

With regard to publication and any communication plan linked to the present service, the contractor will insert the European Union logo, and, if applicable, any another logo developed for the employment and social solidarity fields, and mention the European Commission as the contracting authority in every publication or related material developed under the present service contract.

## **8. PAYMENTS AND STANDARD CONTRACT**

When preparing their bids, tenderers must take account of the provisions of the standard contract, which includes the "general conditions applicable to service contracts".

### **8.1. Pre-financing**

Once the contract has been signed by the last contracting party, and within 30 days of the receipt of a request for pre-financing accompanied by a corresponding invoice, a pre-financing payment equal to 30% of the total amount referred to in Article 1.3.1 of the standard contract will be transferred.

### **8.2. Interim payments**

In accordance with point 7 above, the contractor can request two interim payments. Each request for interim payment shall be admissible if accompanied by:

- an interim technical report in accordance with the instructions laid down in Annex 1 of The model contract
- the relevant invoices,

provided the report has been approved by the Commission.

The Commission shall have 45 days from receipt to approve or reject the report, and the contractor shall have 30 days in which to submit additional information or a new report. Within 30 days of the date on which the report is approved by the Commission, an interim payment corresponding to the relevant invoices, up to maximum 20 % of the total amount referred to in Article 1.3.1. of the contract shall be made (with a maximum of 40% of the total amount referred to in Article 1.3.1 of the contract for both interim payments).

### **8.3. Payment of the balance**

To be acceptable, the contractor's request for payment of the balance must be accompanied by:

- a final technical report in accordance with the instructions in section 7,
- corresponding invoices,
- statements of reimbursable expenditure in accordance with Article II.7 of the standard contract.

The said report must be accepted by the Commission.

After receiving the report, the Commission has 45 days in which to accept or reject it, and the contractor has 30 days in which to submit new documents.

The balance in accordance with the relevant invoices will be paid within 30 days of approval of the report by the Commission.

## 9. PRICE

Under the terms of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the latter are exempt from all charges, taxes and duties, including value added tax; such charges may not therefore be included in the calculation of the price quoted. The amount of VAT is to be indicated separately.

The price must be stated in EUR(€), net of VAT (using, where appropriate, the conversion rates published in the C series of the Official Journal of the European Union on the day when the invitation to tender was issued), and broken down according to the model in Annex III included in the attached standard contract.

### ■ Part A: Professional fees and direct costs

- Fees, expressed in number of person/days and unit price per working day for each expert proposed. The unit price covers the experts' fees and administrative expenditure, but not the reimbursable expenses referred to below.
- Translation costs, where applicable

### ■ Part B: Reimbursable expenses

- Travelling expenses (not including local transport)
- Subsistence expenses of the contractor and his staff (covering the expenditure incurred by experts on short-term trips outside their normal place of work) — see p. 17 of the standard contract
- Cost of transporting equipment or unaccompanied baggage directly linked to the performance of the tasks set out in Article I.1 of the standard contract
- Contingencies

The total price = Part A + Part B, with a maximum of € 350,000

## 10. Groupings of economic operators or consortia

Tenders can be submitted by groupings of service providers/suppliers who will not be required to adopt a particular legal form prior to the contract being awarded, but the consortium selected may be required to assume a given legal form when it has been awarded the contract if this change is necessary for proper performance of the contract<sup>1</sup>. However, a grouping of economic operators must nominate one party to be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration, and for coordination. The documents required and listed in the following points 11 and 12 must be supplied by every member of the grouping.

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<sup>1</sup> These entities can take the form of an entity with or without legal personality but offering sufficient protection of the Commission's contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

The contract has to be signed by all members of the group, or by one of the members, which has been duly authorised by the other members of the grouping (a power of attorney or sufficient authorisation is to be attached to the contract), when the tenderers have not formed a legal entity.

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

## **11. EXCLUSION CRITERIA AND SUPPORTING DOCUMENTS**

**1) Bidders must provide a declaration on their honour, duly signed and dated, that they are not in one of the situation referred to in Articles 93 and 94 a) of the Financial Regulation.**

Those articles are as follows :

### **Article 93 :**

*Applicants or tenderers shall be excluded if:*

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;*
- b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;*
- c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;*
- d) they have not fulfilled their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;*
- e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;*
- f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.*

### **Article 94 :**

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

- a) are subject to a conflict of interest;*

**2) The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in Article 134 of the implementing Rules, confirming the declaration referred to in point 1 above.**

### **Article 134 of the Implementation Arrangements** – Supporting documents

1. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in points (a), (b) or (e) of Article 93 of the Financial Regulations, production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that these requirements are met.

2. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93 of the Financial Regulations, a recent certificate issued by the competent authority of the State concerned.

Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the tenderer or applicant is established, the documents referred to in paragraphs 1 and 2 above shall relate to legal entities and/or physical persons, including, where considered necessary by the awarding authority, company directors or any person with powers of representation, decision-making or control in relation to the tenderer.

***See Annex I (which may be used as a checklist) for the supporting documents accepted by the European Commission to be provided by applicants, tenderers or tenderers to who the contract will be awarded.***

3) The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in Article 134 of the Implementing Rules, if such evidence has already been submitted to it for the purposes of another procurement procedure launched by DG EMPL and provided that the issuing date of the documents does not exceed one year and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

## **12. SELECTION CRITERIA**

All bids must also contain the documents listed below, testifying to the tenderer's financial and economic standing, technical capability and professional qualifications. In particular, the European Commission will verify:

### **12.1. Financial and economic standing: on the basis of the following documents:**

- turnover during the previous financial year (statement on the overall turnover – at least twice the value of the contract) and turnover on assessment services provided during the past three financial years;
- balance sheets and profit and loss accounts for the past three financial years, if the legislation of the country in which the tenderer is established requires them to be published;
- regular accounts for the quarter preceding that in which the notice of invitation to tender was published, if the full accounts for the previous financial year are not yet available.

### **12.2 Technical capability of the tenderer:**

- a description of the tenderer's technical capability and practical experience in the field referred to in section 3, 5 and 6 of these specifications. For consortia of companies or groups of service providers, this description must relate specifically to the tasks to be performed by each of their various members;
- samples of work demonstrating tenderer's practical experience in the field referred to in section 3 of these specifications;
- the tenderer must provide the names and curricula vitae (three pages maximum) of the persons responsible for the specific tasks described in section 5 of these specifications, with a view to ascertaining their practical experience and their ability to communicate with the undertakings and/or establishments;

- a description of the parts of the services to be provided by each consortium of companies or groups of service providers (where applicable).

### 13. AWARD CRITERIA

Taking the bids which meet the requirements of sections 11 and 12 above, the contract will be awarded on the basis of best value for money, taking account of the following criteria:

- |  |     |
|--|-----|
| - understanding of the objectives and tasks:   | 20% |
| - quality and consistency of the technical and methodological approach (including ability to give proper consideration to the actual situation): | 30% |
| - quality of the work plan proposed:   | 30% |
| - organisation of the work and management of the project:  | 20% |

The contract will **not** be awarded to a tenderer whose bid receives less than (70%) for the award criteria.

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

### 14. CONTENT AND PRESENTATION OF BIDS

#### 14.1 Content of bids

Tenders must include:

- a presentation letter duly signed by the legal representative
- the documents required under point 11 above
- all information and documents necessary to enable the Commission to appraise the bid on the basis of the selection and award criteria (see points 12 and 13 above);
- a bank ID form duly completed and signed by the bank;
- a "legal entity" form duly completed;
- the price;
- the detailed CVs of the proposed experts;
- the name and function of the contractor's legal representative (i.e. the person authorised to act on behalf of the contractor in any legal dealings with third parties);
- proof of eligibility: tenderers must indicate the State in which they have their registered office or are established, providing the necessary supporting documents in accordance with their national law.

#### 14.2 Presentation of bids

- Bids must be submitted in triplicate (i.e. one original and two copies).
- They must include all the information required by the Commission (see points 9, 10, 11 and 12 above).
- They must be clear and concise.
- They must be signed by the legal representative. **Unsigned bids will be rejected.**
- They must be submitted in accordance with the specific requirements of the invitation to tender, within the deadlines laid down.

## Annex I

Exclusion criteria (Article 93(1) FR)	Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded		
	Procurement (Article 93(2) FR; Article 134 IR)		
<b>1. Exclusion from a procurement procedure, Article 93(1) FR :</b> « Candidates or tenderers shall be excluded from participation in a procurement procedure if:			
<b>1.1. (subparagraph a)</b> <i>they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations<sup>2</sup>;</i>	<ul style="list-style-type: none"> <li>– Recent extract from the judicial record <b>or</b> recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance</li> <li><b>or</b></li> <li>– Where no such certificate is issued in the country concerned : sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance</li> </ul>	–	–
<b>1.2. (subparagraph b)</b> <i>they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata<sup>3</sup>;</i>	Cf. supporting documents for Article 93(1)(a) FR above		
<b>1.3. (subparagraph c)</b> <i>they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</i>	Declaration by the candidate or tenderer that he is not in the situation described		
<b>1.4. (subparagraph d)</b> <i>they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed<sup>4</sup>;</i>	Recent certificate issued by the competent authority of the State concerned confirming that the candidate is not in the situation described <b>or</b> – Where no such certificate is issued in the country concerned : sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance		
<b>1.5. (subparagraph e)</b> <i>they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests<sup>5</sup>;</i>	Cf. supporting documents for Article 93(1)(a) FR above		
<b>1.6. (subparagraph f)</b> <i>following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations. »</i>	Declaration by the candidate or tenderer that he is not in the situation described		

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

<sup>3</sup> Cf. footnote n° 1.

<sup>4</sup> Cf. footnote n° 1.

<sup>5</sup> Cf. footnote n° 1.



Exclusion criteria (Article 94 FR)	Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded	
	Procurement	Grants
<b>2. Exclusion from a procurement or grant award procedure Article 94 FR :</b> <i>« Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:</i>		
<b>2.1. (subparagraph a)</b>  <i>are subject to a conflict of interest;</i>	Statement by the applicant, tenderer or bidder confirming the absence of conflict of interests, to be submitted with the application, bid or proposal	
<b>2.2. (subparagraph b)</b> <i>are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information»<sup>6</sup>.</i>	<ul style="list-style-type: none"> <li>– No specific supporting documents to be supplied by the applicant, tenderer or bidder</li> <li>– It is the responsibility of the authorising officer, represented by the evaluation committee, to check that the information submitted is complete<sup>7</sup> and to identify any misrepresentation</li> </ul>	

<sup>6</sup> Cf. Article 146(3) of the FR Implementing Rules: «...the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within a specified time-limit.» and Article 178(2) of the FR Implementing Rules: « The evaluation committee may ask an applicant to provide additional proof or to clarify the supporting documents establishing financial and operational capacity, within a specified time-limit. »

<sup>7</sup> Cf. footnote n°1

## **Annex II**

### **DECLARATION ON HONOUR**

I, the undersigned, Mrs./Mr.....  
in the capacity of.....  
certify that the.....  
*name*).

*(indicate your job title),  
(indicate company*

#### **Article 93**

- a) *is not bankrupt or being wound up, does not have their affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, or is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;*
- b) *has not been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;*
- c) *has not been guilty of grave professional misconduct proven by any means which the contracting authority can justify;*
- d) *has fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed*
- e) *has not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;*
- f) *following another procurement procedure or grant award procedure financed by the Community budget, has not been declared to be in serious breach of contract for failure to comply with their contractual obligations. »*

#### **Article 94**

- a) *is not subject to a conflict of interest;*

Date:.....

Signature: .....