



**FRA**

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



# **ANNEX A**

**F-SE-12-T09**

**Photographic Services**

**TENDER SPECIFICATIONS**



## **1. Description of the tender**

The subject of the present call for tender is the provision of pictures, illustrations and artwork in digital format both (a) by photo coverage of events/activities/personalities taking place at the FRA premises in Vienna, Austria and processing/retouching of pictures and (b) by purchasing illustrations, photographs or artwork on specific themes from any available resources/stocks, as described in Annex A.1 Technical Specifications.

The Contract Notice for the present call for tenders was published on 24/10/2012 with reference number 2012/S 205-336446.

## **2. Division into lots**

This tender is not divided into lots.

## **3. Purpose of the tender**

The purpose of this invitation to tender is to award a Framework Services contract for the provision of Photographic Services.

The Contracting Authority intends to award a minimum of three (3) and a maximum of three (3) framework contracts, in cascading and descending order, for the provision of services as specified in Annex A.1 Technical Specifications, provided that there is a sufficient number of economic operators that satisfy the selection criteria or a sufficient number of admissible tenders which meet the award criteria.

The multiple framework contracts will take the form of contracts which are separate but concluded on identical terms with each of the successful tenderers. Framework contracts involve no direct commitment and, in particular, do not constitute orders per se. Instead, they lay down the legal, financial, technical and administrative provisions governing the relations between the Contracting Authority and the Contractor during the period of its validity. Specific contracts or Order Forms will be issued throughout the validity of the Framework contract. Such specific contracts or orders will be attached to the Framework Contract. The draft Framework Contract (Annex B) specifies the basic conditions applicable to any assignment placed under its terms. Signature of a Framework Contract does not oblige the Contracting Authority to place an assignment. The Framework Contract does not preclude the Contracting Authority from assigning tasks in the areas set out above to the other Contractors or from having these tasks carried out by Contracting Authority's staff.

## **4. Place of delivery or performance**

The place of performance of the tasks shall be the Contractor's premises or any other place indicated in Annex A.1 Technical specifications.



## **5. Duration**

The framework contract(s) resulting from the present call for tenders shall enter into force the date on which it is signed by the last contracting party.

The framework contract(s) will have an initial duration of one (1) year from the date of signature and may be renewed up to three (3) times for an additional period of one (1) year each time. The Contract shall be renewed automatically under the same conditions, unless written notification to the contrary is sent by one of the contracting parties and received by the other before expiry of the period indicated in the Draft Framework Contract (Annex B). Renewal does not imply any modification or deferment of existing obligations. The duration of the framework contract(s) shall not exceed four (4) years.

Implementation of the contract(s) may not start before the date on which the contract enters into force.

## **6. Volume**

The indicative volume of the contract has been estimated at 120,000.00 EUR excluding VAT. Depending on the budget availability and the needs of the Contracting Authority, this amount/volume could be increased up to 50%.

## **7. Terms of payment**

Payments shall be executed only if the contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous orders or specific contracts have not yet been executed as a result of default or negligence on the part of the contractor.

The invoicing procedure for extended specific contracts will be 100% on completion of the work, once accepted by the Contracting Authority.

### **Pre-financing:**

No pre-financing payment is foreseen.

### **Interim payment(s):**

No interim payments are foreseen.

### **Payment of the balance**

Requests for payment of the balance by the Contractor in accordance with the instructions laid down in Annex A.1 Technical Specifications shall be admissible if accompanied by:

- the relevant invoices, indicating the reference number of the Contract to which they refer



Within thirty (30) days from reception of the relevant invoices payment of the balance equal to 100% of the total contract value shall be made.

## **8. Financial guarantees**

No financial guarantees are required.

## **9. Participation in the tendering procedure**

Participation in tendering procedures is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Communities in the field of public procurement on the conditions laid down in that agreement.

## **10. Consortia or group of service providers**

Joint tenders submitted by several economic operators (a consortium or a group of companies) are allowed. In such cases, one of the members must be designated as the group leader or group manager. All members of a consortium or a group of companies (i.e. the leader and all other members) are jointly and severally liable towards the Contracting Authority. Changes in the composition of the consortium or group of companies must be expressly authorised by the Contracting Authority.

Tenderers submitting joint bids shall describe how their cooperation will be organised in order to perform the tasks specified in Annex A.1 Technical Specifications.

Joint tenders will be assessed as follows:

- The exclusion criteria will be assessed in relation to each company individually. The Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflict of Interest included in Annex C, duly signed and dated, stating that the tenderer is not in one of the exclusion situations, must be provided by each member of the consortium or the group.
- The selection criteria for technical and professional capacity will be assessed in relation to the consortium or group of companies as a whole.

## **11. Subcontracting**

Any intention to subcontract part of the contract must be clearly stated by the tenderer in Annex C. Tenderers must indicate the maximum percentage of the contract they intend to subcontract and the identity of the subcontractors they intend to work with, and clearly state the nature of their links to those subcontractors.

For each subcontractor identified in the tender, tenderers must provide a Letter of Intent signed by the subcontractor stating their unambiguous undertaking to collaborate with the tenderer.

Offers involving subcontracting will be assessed as follows:



- Where the amount of subcontracting exceeds 20% of the contract, the exclusion criteria will be assessed in relation to all proposed subcontractors. The Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflict of Interest included in Annex C, duly signed and dated, stating that the subcontractor is not in one of the exclusion situations, must be provided by each proposed subcontractor.
- Where the tenderer relies on the technical and professional capacity of the subcontractor(s) to meet the selection criteria, subcontractors shall be treated as if they were partners in a consortium or a group of companies for the purposes of the evaluation of the selection criteria, and therefore, they shall provide proof of technical and professional capacity as well.

Tenderers must inform the subcontractor(s) and include in their Letter of Intent that the provisions referring to checks and audits included in the Draft Contract (Annex B) may be applied to sub-contractors.

Once the contract has been signed, the provisions regarding subcontracting included in the Draft Contract will apply. The Contracting Authority retains the right to approve or reject the proposed subcontractors.

If the tender includes subcontracting, it is recommended that contractual arrangements with subcontractors include mediation as a method of dispute resolution.

## **12. Visits to premises or information meeting**

A visit to the premises/information meeting is not foreseen.

## **13. Date and place of opening of the tenders**

Tenders will be opened at 10:30 hrs on 17/12/2012 at the Contracting Authority's address. An authorised representative of each tenderer may attend the opening of the bids. Companies wishing to attend are requested to notify their intention by sending a fax or e-mail at least 48 hours in advance to the fax or e-mail. This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will attend the opening of the bids on the tenderers behalf.

## **14. Contacts between the tenderer and the Contracting Authority**

In principle, no contact is permitted between the Contracting Authority and the tenderers during the tendering procedure.

However, in exceptional circumstances contact may be made on the tenderers initiative before the final date for the receipt of bids, in order (and only for this reason) to clarify the nature of the contract.

Such requests for further information may be made by fax, e-mail or to the address below:



European Union Agency for Fundamental Rights  
Invitation to tender No: F-SE-12-T09  
Administration  
Schwarzenbergplatz 11  
Vienna 1040 – Austria  
Fax: +43 (0)1 580 30 691 ; e-mail: [procurement@fra.europa.eu](mailto:procurement@fra.europa.eu)

Insofar as it has been requested in good time, the additional information will be sent simultaneously to all economic operators who requested specifications or showed interest in submitting a bid no later than six calendar days before the deadline for the receipt of bids or, in the case of requests for information received less than eight calendar days before the deadline for the receipt of bids, as soon as possible after the request for information has been received.

The answers to the requests for additional information can also be found at the following Internet address: <http://www.fra.europa.eu>.

Similarly, contact may in exceptional circumstances be made on the Contracting Authority's initiative:

- a. before the final date for the receipt of bids, in order to inform interested parties of an error, a lack of precision, an omission or any other material shortcoming in the drawing up of the documents of the invitation to tender; or
- b. after the opening of bids, where a bid requires clarification or in order to correct material errors made in drawing up a bid.

Please note that in any event such contact may not result in a modification of the terms of the bid.

### **15. Alteration or withdrawal of tenders**

Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.

Any such notification of alteration or withdrawal must be prepared and submitted in accordance with the instructions on how to submit tenders included in the Invitation to tender, and the envelope must also be marked with "alteration" or "withdrawal" as appropriate.

### **16. Variants**

Variant solutions will not be taken into consideration.

### **17. Assessment of the tenderers**

Tenderers will be assessed on the basis of the exclusion (Phase I) and selection (Phase II) criteria described below.



## **17.1 Exclusion criteria (Phase I)**

The aim of this phase is to assess if tenderers fall in any of the exclusion situations listed below and therefore, cannot take part in the tender procedure.

### **17.1.1 Exclusion situations**

Tenderers shall be excluded from participation in the present procurement procedure 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 judgment 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 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 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, and
- 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.

Tenderers shall be excluded from the award of the contract if, during the present procurement procedure:

- g. are subject to a conflict of interest, and
- h. 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.

### **17.1.2 Documentary evidence**

At the tendering stage, tenderers shall declare that they are not in one of the situations listed above by submitting a signed Declaration of Honour and Absence of Conflict of Interest, in accordance with the form included in Annex C.



In addition, the tenderer to whom the contract is to be awarded shall provide, within fourteen (14) calendar days and preceding the signature of the contract, the following documents as proof that the tenderer is not in one of the situations described above:

- for points (a), (b) and (e) above, recent extract(s) from the judicial record or, failing that, an equivalent document(s) recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied
- for point (d) above, a recent certificate issued by the competent authority of the State concerned. Where the document or certificate referred to is not 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, and
- for points (c) and (f) above, the tenderer may provide a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

Depending on the national legislation of the country in which the tenderer is established, the document referred to above shall relate to legal persons and/or natural persons including company directors or any person with powers of representation, decision-making or control in relation to the tenderer.

The Contracting Authority may waive the obligation of a tenderer to submit the documentary evidence referred to above if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the documents are not more than one year old starting from their issuing date and that they are still valid.

Administrative or financial penalties may be imposed by the Contracting Authority on tenderers who are in one of the exclusion situations after they have been given the opportunity to present their observations.

These penalties are detailed in Article 96 of the Financial Regulation as amended by Council Regulation No 1995/2006 of 13 December 2006 (OJ L 390, page 1, of 30 December 2006) and Article 134b of the Regulation laying down the rules for the implementation of the Financial Regulation as amended at the latest by Council Regulation No 478/2007 of 23 April 2007 (OJ L 111, page 13, of 28 April 2007). We invite tenderers to read carefully those two articles.

## **17.2 Selection criteria – Phase II**

The aim of this phase is to assess if tenderers have sufficient economic and financial capacity and sufficient technical and professional capacity to perform the contract.

### **17.2.1 Economic and financial capacity**

Non applicable





### 17.2.2 Technical and professional capacity

Proof of the technical and professional capacity of the tenderers shall be furnished by the following documents and minimum requirements:

(a) The educational and professional qualifications of the service provider or contractor and/or those of the firms managerial staff, in particular, those of the person or persons responsible for providing the services or carrying out the works. The tenderer is requested to include the CVs in Europass format of the profile described in Annex A.1 Technical Specifications. The proposed CV must possess the minimum educational and professional requirements stated in Annex A.1.

The tenderer is requested to provide an appropriate certificate issued by the national authorities, proving the registration as photographer.

(b) A list of the principal services provided and supplies delivered in the past three (3) years, with the sums, dates and recipients. Tenderers are required to prove that they have performed at least 2 projects of an amount/nature or scope similar to the services to be carried out under this tender.

(c) A description of the technical equipment, tools to be employed by the firm for performing a service or works contract.

### 18. Assessment of tenders – Phase III

The aim of this phase is to evaluate from the technical and the financial points of view the offers submitted by the tenderers. The award method is based on the most economically advantageous offer.

#### 18.1 Technical evaluation

Tenderers technical offer will be evaluated on the basis of the following technical award criteria and their corresponding weightings:

Technical Award criteria	Weighting in %
Quality and consistency of the proposal in respect of the services requested:  Tenderers shall provide a general description of the approach proposed in order to fulfil the FRA's objectives and provide the services/products requested. They should show that they understand the nature of the assignment, its context and the results to be achieved. Moreover, tenderers shall explain the approach which will be taken to guarantee the quality of the services/products requested.	60
Methodology used for the selection of illustrations, photographs or artwork from third parties.	40



TOTAL	100
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For each criterion a number of points in a range between 0 to 100 points will be given. A tender can reach a maximum of 100 points per criterion and a maximum of 100 points in total. After the application of the corresponding weightings per criterion as per the grid above, tenders scoring less than 60% in the total overall weighted points or less than 50% in the weighted points awarded for a single criterion will be excluded from the rest of the assessment procedure.

## 18.2 Financial evaluation

### 18.2.1 Financial award criteria

Tenderers financial offers will be evaluated on the basis of the following financial award criteria and their corresponding weightings:

Financial Award criteria	Weighting in %
<u>One day</u> (8 hours) photographic services during a FRA event in Vienna, or surroundings (including picture correction, caption and delivery) according to Annex A.1 Technical Specifications	20
<u>Half day</u> (4 hours) photographic services during a FRA event in Vienna or surroundings (including picture correction, caption and delivery) according to Annex A.1 Technical Specifications	30
<u>One</u> (1) <u>hour</u> photographic services during a FRA event in Vienna, or surroundings (including picture correction, caption and delivery) according to Annex A.1 Technical Specifications	30
Services of setting up a temporary photo studio at the FRA premises	5
Service of searching illustrations, photographs or artwork from third parties <u>per picture</u>	7.5
Handling fee - at the stage of purchasing the picture, according to procedure described in Annex A.1 Technical Specifications <u>per picture</u>	7.5
TOTAL	100



The tender with the lowest financial offer will receive 100 points in the financial evaluation. The remaining tenders will receive lower price indicators in proportion to their prices and in accordance with the following formula:

financial score for tender X = (lowest price / price of tender X) \* 100.

### **18.2.2 Information concerning prices**

The financial evaluation of the offers will be based on the prices quoted by the tenderers in their financial proposals. Tenderers must fill in the Financial Offer Form included in Annex C.

When filling in the Financial Offer Form, tenderers must take into consideration that prices shall be:

- expressed in euro. For tenders in countries which do not belong to the euro zone, tenderers shall quote their prices in euro and the price quoted may not be revised in line with exchange rate movements. It is for the tenderer to select an exchange rate and assume the risks or benefits deriving from any variation.
- inclusive of all costs and expenses, directly and indirectly connected with the goods and/or services to be supplied/provided and including all the charges (travel and subsistence), unless otherwise stated in the tender documents.
- free of all duties and taxes (in particular VAT). According to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the European Union Agency for Fundamental Rights is exempt from all charges, taxes and dues, including value added tax; such charges may not therefore be included in the calculation of the price quoted; the VAT amount must be indicated separately.
- The prices cover any fees payable to the Contractor in relation to the vesting of rights in the Union and where applicable the transfer of rights to the Union and any use of the results by the Agency.

Prices shall be fixed and not subject to revision during the first year of performance of the contract. From the beginning of the second year of performance of the Contract, each price may be revised upwards or downwards each year in accordance with the provisions of the Draft Contract in Annex B.

The financial offer is only intended to provide a fair, non-discriminatory basis for evaluation purposes. Consequently, cannot under any circumstances be considered to constitute a commitment on the part of the Contracting Authority to conclude specific contracts for the related services and quantities, and cannot give rise to any right of legitimate expectation on the part of the contractor.

The prices quoted by the tenderer in their financial offer are binding and will be applicable to the requested services/supplies by means of specific contracts or orders. If the tenderer is requested to quote unit prices in the Financial Offer Form included in Annex C, these unit prices



are binding as well, and will be applicable to the services requested by means of specific contracts and orders.

## **19 Contract award – Phase IV**

The contract will be awarded to the tenderer offering the best value for money, on the basis of the following quality-price ratio:

Score for tender X = (lowest price / price of tender X) \* 100 \* 70 % + total quality score (out of 100) for all award criteria of tender X \* 30 %

## **20 Information to tenderers on the outcome of the tender**

The Contracting Authority will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, the Contracting Authority will inform all rejected tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

## **21 No obligation to award the contract**

The tendering procedure shall not involve the Contracting Authority in any obligation to award the contract.

No compensation may be claimed by tenderers whose tender has not been accepted, including when the Contracting Authority decides not to award the contract.

## **22 Cancellation of the tender procedure**

In the event of cancellation of the tender procedure, tenderers will be notified of the cancellation by the Contracting Authority. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes will be returned to the tenderers.

In no event shall the Contracting Authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure even if the Contracting Authority has been advised of the possibility of damages.



## **23 How to submit the tender**

All tenders must be presented in three parts:

### **Part 1 – Administrative Proposal**

In the Administrative Proposal, tenderers must include all the information and documents required by the Contracting Authority for the assessment of tenderers on the basis of the exclusion and selection criteria described above. For that purpose, tenderers must fill and sign the following documents following the forms included in Annex C:

#### **Section A: Tenderers Identification**

- Tenderers identification form (administrative details).
- Legal Entities Form, to be signed by a representative of the tenderer authorised to sign contracts with third parties. There is one form for individuals, one for private entities and one for public entities. If the tenderer is submitting a joint offer, a Legal Entities Form must be submitted by each consortium or group member. It also has to be submitted by each subcontractor when the subcontracting percentage exceeds 20% of the contract value.
- Bank Identification Form filled in and signed by an authorised representative of the tenderer and his or her banker. In case of a joint offer, only one of the members of the consortium or group of companies, usually the leader, must complete the Bank Identification Form.
- Power of Attorney (in case of joint offers).
- Statement on Subcontracting, indicating the intention of the tenderer to subcontract part of the contract and the percentage of subcontracting.
- Letter of Intent of Subcontractors (only if the tenderer intends to subcontract part of the contract).

#### **Section B: Exclusion Criteria information**

- Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflict of Interest. To be submitted by each consortium or group member in case of joint offers, and by each subcontractor when the subcontracting percentage exceeds 20% of the contract value.

#### **Section C: Selection Criteria (Economic and Financial capacity)**

Non applicable

#### **Section D: Selection criteria (Technical and Professional Capacity)**

- Educational and professional qualifications of the profiles requested in Annex A.1 Technical Specifications.
- List of principal services performed or supplies delivered in the last three (3) years.



- Description of technical equipment and tools.

## **Part 2 – Technical proposal**

In the Technical Proposal, tenderers must include all the information required by the Contracting Authority for the evaluation of tenders on the basis of the technical award criteria described in the corresponding sections of these Tender Specifications. Tenderers should elaborate on all points addressed in Annex A.1 Technical Specifications in order to obtain as many points as possible. The mere repetition of mandatory requirements set out in Annex A.1, without going into details or without giving any added value, will only result in a low number of points. In addition, if certain essential points of Annex A.1 are not expressly covered by the tender, the Contracting Authority may decide to give a zero mark for the relevant qualitative award criteria.

The technical offer must be written with a lay person in mind. The style and presentation must, as far as is possible, be simple and clear, and free of jargon that obscures rather than promotes meaning to readers unfamiliar with it.

The technical proposal must be included in a separate envelope clearly marked as “Technical Offer”.

## **Part 3 – Financial Proposal**

In the Financial Proposal tenderers must indicate their financial offers by completing the Financial Offer Forms included in Annex C (Section F). Prices must be given in accordance with the instructions given in the corresponding sections of these Tender Specifications. The Financial Proposal must be included inside a separate envelope clearly marked as “Financial offer”.

## **24 Data protection**

Processing your reply to the invitation to tender will involve the recording and processing of personal data (such as your name, address and CV). Such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the Contracting Authority. You are entitled to obtain access to your personal data on request and to rectify any such data that is inaccurate or incomplete. If you have any queries concerning the processing of your personal data, you may address them to Contracting Authority’s Data Protection Officer. You have the right of recourse at any time to the European Data Protection Supervisor for matters relating to the processing of your personal data.



## **25 Copyrights, other intellectual property rights and image rights**

Compliance with copyright law, other intellectual property legislation and image right rules is of the utmost importance to the Contracting Authority.

The contractor takes all necessary steps to comply with such provisions, in particular to warrant that he is entitled to use all the materials embedded in the results, to grant to the Agency all the necessary rights as described in this call for tenders and to ensure that no third parties' rights are infringed when performing the contract.

The contractor shall transfer to the Contracting Authority all the rights on the results of the contract as from their creation. In case of rights existing prior to the contract being entered into, the contractor shall grant to the Contracting Authority a non-exclusive, worldwide licence valid for the whole duration of protection and allowing all the uses described or necessary for the Agency's activities. If not possible, the contractor shall immediately inform the Agency so that it can give its instructions prior to the commencement of the concerned work.

The contractor holds the Contracting Authority harmless and immediately assists and indemnifies it in case of any action raised by a third party against it due to the contractor having caused damage in the performance of the contract, especially in case the contractor did not hold or obtain the necessary rights and authorisations.

The obligations of the contractor with respect to copyrights, other intellectual property rights and image rights are laid down in Article 2.8 of the framework contract (see Annex B).

