

ANNEX A

F/SE/10/04

Provision of Interim Staff Services

TENDER SPECIFICATIONS

1 Title of the Framework Contract

“Provision of Interim Staff Services”

Contract notice 2010/S 189-287823, published on 29/09/2010.

2 Purpose and context of the Framework Contract

The purpose of the tender is to award one framework service contract for the provision of interim staff services to the European Union Agency for Fundamental Rights (hereinafter ‘the Contracting Authority’).

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 place the Contracting Authority under any obligation to place an assignment.

3 Subject of Framework Contract

The subject of this framework service contract is the provision of interim staff services as set out in Annex A.1 – Technical Specifications. The Agency proposes to award a maximum of three (3) Framework Contracts in a cascade system and in descending order for the provision of the services.

4 Technical Specifications

The tenderer must present an offer, according to Annex A.1 - Technical Specifications and Article 25 of these Tender Specifications.

5 Starting of the Framework Contract and duration

The Framework Contract 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 will have an initial duration of 1 year as from the date of signature, and may be renewed up to 3 times for an additional period of one (1) year each time.

The duration of the Framework Contract shall not exceed 4 years.

Implementation of the Framework Contract may not start before the date on which the contract enters into force.

6 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.

Where the Plurilateral Agreement on Government Procurement concluded within the WTO applies, the contracts are also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down. In that connection, it should be noted that the services under Annex IIB to Directive 2004/18/EC and the R&D services listed in category 8 of Annex IIA to that Directive are not caught by the Agreement.

7 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 (i.e. the leader and all other members) are jointly and severally liable to the Contracting Authority.

In addition, each member of the consortium or grouping must provide the required evidence for the exclusion and selection criteria (see section 18 of these Tender Specifications). Concerning the selection criteria 'technical and professional capacity' the evidence provided by each member of the consortium or grouping will be checked to ensure that the consortium or grouping as a whole fulfils the criteria.

8 Visits to premises or briefing

Not applicable.

9 Volume of the Framework Contract

The maximum volume of the Framework Contract is estimated at 1.500.000,00 EUR (one million five hundred thousand), over four (4) years, excluding VAT. Depending on the budget availability and the needs of the Contracting Authority, this amount could be increased up to 50%.

10 General terms and conditions for the submission of tenders

Submission of a tender implies that the Contractor accepts all the terms and conditions set out in these specifications (including the annexes and the technical specifications) and waives all other terms of business.

Submission of a tender binds the Contractor to whom the contract is awarded during performance of the contract.

Once the Contracting Authority has accepted the tender, it shall become the property of the Contracting Authority and the Contracting Authority shall treat it confidentially.

The Contracting Authority shall not reimburse expenses incurred in preparing and submitting tenders.

11 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.

12 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.

13 Variants

Variants are not accepted.

14 Place of performance

The place of performance of the tasks shall be the Contracting Authority's premises or any other place indicated in the tender.

15 Prices

Prices shall be expressed in euro.

Prices shall be fixed and not subject to revision during the first year of performance of the Framework 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 Article 1.3 of the Framework Contract in Annex B. At the beginning of the second and every following year of the Contract, 80% of each price may be revised upwards or downwards if such revision is requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which it was signed

According to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the Communities are 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 price tendered must be all-inclusive and expressed in euros. For tenderers in countries which do not belong to the euro zone, 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 the benefits deriving from any variation.

Costs incurred in preparing and submitting tenders are borne by the tenderers and cannot be reimbursed.

16 Subcontracting

Any intention to subcontract part of the contract must be clearly stated in the tender (Annex C.1.3 SSF). Tenderers must indicate the maximum percentage of the contract they intend to subcontract and the identity of the partners they intend to work with, and clearly state the nature of their links to those partners.

Where, in a bid, the amount of subcontracting exceeds 20% of the contract, the subcontractor(s) must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria and selection criteria referred to in points 18.1 and 18.2 below as well. Where subcontracting represents less than 20% of the contract, subcontractors shall not be required to provide documents on their financial and economic capacity.

The bid must clearly identify the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set out in article 10 above, in particular article 2.17 of the standard Framework Contract.

Tenderers must inform the subcontractor(s) and include in their subcontracting documents that Article 2.17 of the standard Framework Contract (Annex B) may be applied to sub-contractors.

Once the contract has been signed, Article 2.13 of the above-mentioned Framework Contract shall govern the subcontracting.

17 Date and place of opening of the tenders

Tenders will be opened at **14:30 on 15/11/2010** at the following location:

European Union Agency for Fundamental Rights Schwarzenbergplatz 11 Vienna 1040 - Austria
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An authorised representative of each tenderer may attend the opening of the bids. Tenderers 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 given under article 21. 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 tenderer's behalf.

18 Evaluation of the tender



18.1 Exclusion criteria

Candidates or tenderers shall be excluded from participation in a 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;
- 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.

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

- g) are subject to a conflict of interest;
- 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.

The contracting authority shall accept as satisfactory evidence that the tenderer is not in one of the situations described:

18.1.1 for (a), (b), (c), (d), (e) and (f) above, a declaration on the tenderer's honour, duly signed and dated, stating that they are not in anyone of the situations listed. (Annex C.2.1 of the Standard Submission Form - SSF);

18.1.2 for (g) and (h) above, a declaration on the tenderer's honour, duly signed and dated, stating that they are not in anyone of the situations listed. (Annex C.2.2 of the SSF);



Furthermore, the tenderer to whom the contract is to be awarded shall provide, within fifteen (15) calendar days and preceding the signature of the contract, evidence related to paragraph 18.1.1.

The Contracting Authority shall accept as satisfactory evidence that the tenderer is not in one of the situations described:

18.1.3 for (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.

18.1.4 for (d) above, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in article 18.1.1 and 18.1.2 is not issued in the country concerned and for the other cases of exclusion, 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.

The Contracting Authority waives the obligation of a tenderer to submit the documentary evidence referred to in the paragraph 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.

18.2 Selection criteria

Tenderers will be selected if they can prove that they have sufficient economic and financial capacity, on the one hand, and sufficient technical and professional capacity, on the other hand.

18.2.1 Economic and financial capacity

Proof of economic and financial capacity shall be furnished by the following documents:

a) A statement of the annual overall turnover the last two (2) financial years. The minimum average annual overall turnover of the tenderer (of a single company or of the consortium as a whole) for the last two (2) financial years for which accounts have been closed shall be of €120.000,00 (Annex C.5.1). In case of a consortium, the overall turnover for each of the partners shall be presented. The sum of the average annual turnovers of each partner will be taken into account to reach the minimum average annual turnover of €120.000,00.

b) Copy of the balance sheets or extracts from balance sheets for at least the last two (2) financial years for which accounts have been closed shall be presented where publication of the accounts is required under the company law of the country



in which the economic operator is established (Annex C.5.2). In case of a consortium, each consortium member shall present their own balance sheets or extracts from balance sheets.

It is necessary that the extracts from balance sheets to be dated, signed and stamped by the representatives of the tenderer.

If the tenderer is not obliged to publish its accounts under the law of the state in which it is established, a copy of audited accounts for the last two (2) financial years should be presented (Annex C.5.2 of SSF). In case of a consortium, audited accounts for each consortium partner shall be presented.

If for some exceptional reason which the Contracting Authority considers justified, the tenderer is unable to provide the documentary evidence requested above, he may prove his economic and financial capacity by any other means which the Contracting Authority considers appropriate.

18.2.2 Technical and professional capacity

Tenderers are required to prove that they have sufficient technical and professional capacity to perform the contract. Evidence of the technical and professional capacity of economic operators shall be furnished on the basis of the following documents:

- a) Evidence of registration in a professional register of temporary employment agencies under the conditions laid down in the law of the European Union country where it is established (in the case of Austria, the administrative authorisation referred to regulating temporary employment agencies).
- b) A list of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private. (Annex C.6.2 of SSF);
- c) An indication of the proportion of the contract which the service provider may intend to subcontract. (Annex C.1.3 of SSF).

18.3 Technical Evaluation – Award Criteria

The tenderers must present a technical offer (Annex C.4.1 of the SSF), according to the Technical Specifications.

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.

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

A. Selection and methods of assessing the professional qualifications of the interim staff proposed in order to evaluate their abilities and potentials (60 % weighting)

A1. Tenders should provide information on the range of search area and methods used to find suitable candidates (i.e. availability of candidates per profile in



databases; publication of calls or other search methods in case no available profile in database, etc.); (30%);

- A2. Tenders should provide information on the type of interview and/other methodology used to assess the suitable candidates (i.e. language tests, computer skill tests, etc.). (30%)

B. Contract Management (40% weighting)

- B1. Tenderers should provide information on their availability and flexibilities related to the administrative formalities relative to the entry into service, replacement or conclusion of service of the interim staff (i.e. induction meeting at the entry into service, regular contact with interim staff during the performance of their services, support at the conclusion of services, etc.); number of candidates that will be made available for interviews, for each requested profile, to allow the Contracting Authority to have a sufficient range of options (30%);

- B2. Tenderers should provide information on the maximum time necessary to ensure that the requests from the Contracting Authority are responded to within the time limits in case requested profile are not available in their database; (10%).

The maximum final score a tender offer can reach are 100 points. Tenders scoring less than 60.00% in the overall points total or less than 50.00% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.

Tenders should elaborate on all points addressed by these specifications in order to score as many points as possible. The mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, will only result in a very low score. In addition, if certain essential points of these specifications are not expressly covered by the tender, the Contracting Authority may decide to give a zero mark for the relevant qualitative award criteria

18.4 Financial evaluation

Tenderers must provide the hourly rate per profile as stated in the financial sheet in Annex C.3. The prices for the services are fixed prices and thus include all fees and project related costs (project management, quality control, back-up resources, etc) directly or indirectly connected with the provision of the service. The hourly rates are fixed and include all travel expenses for travelling from the tenderer's place of business to Vienna and from Vienna to the tenderer's place of business.

The following weightings will be applied to the different profiles:

- Category IV: 10 %
- Category III: 20 %
- Category II: 60 %



- Category I: 10 %

The Contracting Authority will calculate the average cost according to the above breakdown. The tender with the lowest cost will receive the maximum points. The remaining offers will be given points in proportion to their prices, compared with the offer with the lowest price (lowest price / price X).

19. Awarding

The contract will be awarded to the most economically advantageous offer on the basis of the following ratio between the total points scored and the price:

Final Evaluation = Quality points * 40.00 % + Price points * 60.00 %

20. Information for tenderers

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 Contacts between the tenderer and the Contracting Authority

In principle, no contact is permitted between the Contracting Authority and the tenderers during the contract award 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 to the address below by fax or e-mail.

<p>European Union Agency for Fundamental Rights Invitation to tender No: F/SE/10/04 Administration Schwarzenbergplatz 11 Vienna 1040 – Austria Fax: +43 (0)1 580 30 91 ; e-mail: procurement@fra.europa.eu</p>



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;
- b. or, 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.

22 Terms of payment

Payments under the Contract shall be made in accordance with Article 1.5 and Article 2.4 of the Framework Contract in Annex B. 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 periods have not been executed as a result of default or negligence on the part of the Contractor.

The services will be invoiced after they have been provided and approved by the Contracting Authority on the basis of timesheets. Only one invoice per month shall be issued.

The Contractor shall invoice the Contracting Authority as follows:

- 100% of the hourly rate for thirty seven and a half (37.5) working hours to forty (40) working hours per week,
- 150% of the hourly rate for more than forty (40) working hours per week,
- 200% of the hourly rate for working hours after 22:00 (Central European Time),
- 200% of the hourly rate for working hours on official holidays of Austria.

23 Contractual terms and guarantees

No guarantees are required.



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 the 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 Structure of the tender

All tenders must be presented as follows:

25.1 Administrative details (Annex C.7 of SSF)

- a) Where a tender involves several suppliers, they may choose between:
 - making a joint bid, in which case all the providers must be considered as tenderers and, if theirs is the successful bid, as contractors (in this case, one of the tenderers must be put forward as coordinator to manage the contract) (Annex C.1.1 or C.1.2 of SSF);
 - or
 - making a bid in the name of only one tenderer, who is then the sole contractor if the bid is successful, the other service providers being considered as subcontractors (see article 16 of the tender specifications) (Annex C.1.3 of SSF).

Whichever type of bid is chosen (joint bid or bid in the name of one tenderer), the tenderer(s) must stipulate the role, qualifications and experience of each service provider and, where relevant, the monitoring arrangements that exist between them.

- b) To identify himself the tenderer must fill in the two forms attached as Annex C.1.4 and C.1.5 of SSF:
 - The Legal Entity File, 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. A standard form is provided in Annex C.1.4 of SSF



- a bank identification form filled in and signed by an authorised representative of the tenderer and his or her banker. A standard form is provided in Annex C.1.5 of SSF

The Legal Entity File must be supported by the following documents relating to each tenderer in order to show its name, address and official registration number:

For private entities:

- A legible copy of the instrument of incorporation or constitution, and a copy of the statutes, if they are contained in a separate instrument, or a copy of the notices of such constitution or incorporation published in the national or other official journal, if the legislation which applies to the tenderer requires such publication;
- If the instruments mentioned in the above paragraph have been amended, a legible copy of the most recent amendment to the instruments mentioned in the previous indent, including that involving any transfer of the registered office of the legal entity, or a copy of the notice published in the relevant national or other official journal of such amendment, if the legislation which applies to the tenderer requires such publication.
- If the instruments mentioned in the first paragraph have not been amended since incorporation and the tenderer's registered office has not been transferred since then, a written confirmation, signed by an authorised representative of the tenderer, that there has been no such amendment or transfer;
- A legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication.
- If the above documents do not show the registration number, 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 their identity card or passport;.
- Where applicable, 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 Public Entities:

- A copy of the resolution decree, law, decree or decision or decision establishing the entity in question or failing that, any other official document attesting to the establishment of the entity.

All tenderers must provide their Legal Entities File as well as the evidence mentioned above.

Subcontractors are only obliged to provide the legal entity file, without the above mentioned evidence.

In case of joint bid, only the co-ordinator must complete the financial identification form.

25.2 Application of exclusion criteria and exclusion of tenderers (Annex C.2.1 of SSF)

To demonstrate there are no grounds for disqualification on the basis of the exclusion criteria, tenderer to whom the contract is to be awarded shall provide, within fifteen (15) calendar days and preceding the signature of the contract, the evidence listed in article 18.1 – Exclusion criteria of the Tender Specifications. Only when such evidence is not available, under the circumstances described in article 18.1 – Exclusion criteria of the tender specifications, can the standard form (Annex C.2.1 of SSF) replace such evidence if it is filled in and signed in front of one of the third parties described in article 18.1 – Exclusion criteria of the tender specifications.

Administrative and financial penalties

By returning the form in Annex C.2.1 of SSF, duly signed, tenderers confirm that they have been notified of the following points.

Administrative or financial penalties may be imposed by the Contracting Authority on tenderers who are in one of the cases of exclusion provided for in Annex A. Tender Specifications under article 18.1 after they have been given the opportunity to present their observations.

These penalties are detailed in Article 96 of the Financial Regulation (OJ L 248, page 1, of 16 September 2002) and Article 133 of the Regulation laying down the rules for the implementation of the Financial Regulation (OJ L 357, page 1, of 31 December 2002). We invite tenderers to read carefully those two articles.



Tenderers' attention is drawn to the fact that any total or partial omission of information for which one or more service providers involved in the tender are responsible may lead the Contracting Authority to exclude the tender from the rest of the procedure.

