

## **ANNEX A**

**F/SE/10/03**

**Data collection and research services on  
fundamental rights issues**

**TENDER SPECIFICATIONS**

## **1. Title of the Framework Contract**

### **Data collection and research services on fundamental rights issues**

Related to 2010/S 134-205087 contract notice of 14/07/2010, amended by corrigendum 2010/S 147-226434 of 31/07/2010.

The European Union Agency for Fundamental Rights (“the FRA”) and the European Institute for Gender Equality (“the EIGE”), in accordance with their respective mandate, launch the present Call for Tender with the aim to identify Contractors to provide the research and analysis services, as described in the Annex A1

This call for tender is divided into 30 Lots. Each tenderer may apply for one or several lots but may submit only one offer per Lot. It is up to the tenderers to ensure that separate folders will be used for each lot.

<i>Lot 1</i>	<i>Belgium</i>
<i>Lot 2</i>	<i>Bulgaria</i>
<i>Lot 3</i>	<i>Czech Republic</i>
<i>Lot 4</i>	<i>Denmark</i>
<i>Lot 5</i>	<i>Germany</i>
<i>Lot 6</i>	<i>Estonia</i>
<i>Lot 7</i>	<i>Ireland</i>
<i>Lot 8</i>	<i>Greece</i>
<i>Lot 9</i>	<i>Spain</i>
<i>Lot 10</i>	<i>France</i>
<i>Lot 11</i>	<i>Italy</i>
<i>Lot 12</i>	<i>Cyprus</i>
<i>Lot 13</i>	<i>Latvia</i>
<i>Lot 14</i>	<i>Lithuania</i>
<i>Lot 15</i>	<i>Luxembourg</i>
<i>Lot 16</i>	<i>Hungary</i>
<i>Lot 17</i>	<i>Malta</i>
<i>Lot 18</i>	<i>Netherlands</i>
<i>Lot 19</i>	<i>Austria</i>
<i>Lot 20</i>	<i>Poland</i>
<i>Lot 21</i>	<i>Portugal</i>
<i>Lot 22</i>	<i>Romania</i>
<i>Lot 23</i>	<i>Slovenia</i>
<i>Lot 24</i>	<i>Slovakia</i>
<i>Lot 25</i>	<i>Finland</i>
<i>Lot 26</i>	<i>Sweden</i>
<i>Lot 27</i>	<i>United Kingdom</i>
<i>Lot 28</i>	<i>Croatia</i>
<i>Lot 29</i>	<i>EU and International level</i>
<i>Lot 30</i>	<i>Comparative analysis</i>

## **2. Purpose and context of the Contract**

Following completion of this procurement procedure, multiple framework contracts are expected to be signed between the FRA, on behalf of the participating agency, and the selected contractors

At least three (3) and maximum five (5) multiple framework service contracts per Lot, in cascading<sup>1</sup> and descending order will be awarded for the provision of the services of Lot 1 – 30 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.

Subsequently, Specific contracts will be concluded between individual agencies and the selected contractors for each purchase of services.

### **3. Subject of Contract**

Subject of the contract is to provide the EU Fundamental Rights Agency (FRA) and the participating agency with data collection and research services on fundamental rights issues.

### **4. Technical Specifications**

The tenderer must present an offer per Lot, according to Annex A.1 Technical Specifications and to section 25 of the present document.

### **5. Starting of the Framework Contract and duration**

The Framework Contract(s) per Lot resulting from the present call for tenders shall enter into force on the date on which it (they) is (are) signed by the last contracting party.

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

The total duration of the Framework Contract(s) per Lot shall not exceed four (4) years.

Implementation of the Framework Contract(s) per Lot 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.

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<sup>1</sup> In a “cascade” multiple framework contract, the contracting authority ranks contractors in descending order representing the sequence in which they will be offered specific contracts. Before placing orders, the contracting authority contacts the contractor at the top of the list and, if they are unavailable, it contacts the second contractor, then, if necessary, and under the same conditions, the third one and so on.

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 II B to Directive 2004/18/EC and the R&D services listed in category 8 of Annex II A 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.

Economic operators may not participate in more than one consortium submitting offers for the same lot.

#### **8. Visits to premises or briefing**

N/A

#### **9. Estimated volume of the contract (indicative)**

The maximum volume of the framework contracts for all thirty (30) Lots, over four (4) years, is estimated at the range of € 12.000.000 (twelve million EUR) up to €15.000.000 (fifteen million EUR) excluding VAT. Depending on the budget availability and the needs of the FRA, this amount could be increased up to 50%.

The part of the maximum volume of the framework contracts, not binding on the participating agency, over a four year period, is € 3.000.000

#### **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 Agency has accepted the tender, it shall become the property of the Agency and the Agency shall treat it confidentially.

The Agency 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 Contractor's premises or any other place indicated in the tender.

## **15. Prices**

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.

Prices shall be fixed and not subject to revision for Specific Contracts or Order Forms placed during the first year of performance of the Contract.

From 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. The Contracting Authority shall purchase on the basis of the prices in force on the date on which orders or specific contracts are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised consumer price index "MUICP" (eurozone) for contracts expressed in euro or "EICP" or for contracts performed in the European Union (outside the euro zone), published for the first time by the Publications Office of the European Union in the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>.

**Revision shall be calculated in accordance with the following formula:**

$$Pr = Po \left( \frac{I_r}{I_o} \right)^{0,2+0,8}$$

where:

- Pr = revised price;
- Po = price in the original tender;
- Io = index for the month corresponding to the final date for submission of tenders;
- Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

According to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Union is exempt from all charges, taxes and dues, including value added tax (VAT); such charges may not therefore be included in the calculation of the price quoted; the VAT amount must be indicated separately.

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

## **16. Subcontracting**

Subcontracting is permitted to subcontractors proposed in the offers submitted in reply to the call for tenders.

One-person companies (or freelancers) may be authorised as subcontractor and added to the list of subcontractors at any time during the execution of the contract.

Additional subcontracting to other than one-person companies (or freelancers) during the execution of the contract will only be accepted in case of a second round of the cascade (when the first round is fruitless) or for some very specialised technical expertise required for the provision of the services.

Any intention to subcontract part of the contract must be clearly stated in the tender. 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 selection criteria.

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 paragraph 10 above, in particular article 2.13 of the standard framework contract.

Tenderers must inform the subcontractor(s) and include in their subcontracting documents that Article 2.13 of the standard Contract (Annex B) may be applied to sub-contractors.

Furthermore, additional levels of subcontracting (e.g. subcontracting of subcontracts) are not allowed during the execution of the contract.

Economic operators may not be proposed as subcontractors by more than one tenderer for the same lot.

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

Tenders will be opened at **11:00 h on 05/10/2010** at the following location:

Contracting Authority's address: 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. 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 given under paragraph 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 Union's financial interests;
- f) following another procurement procedure or grant award procedure financed by the Union's 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 18.1.3 and 18.1.4 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.



Tenderers are informed that the Early Warning System will be consulted.

The tenderers and, if they are legal entities, persons who have powers of representation, decision making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and executive agencies (OJ, L 344, 20.12.2008, p. 125),

or

- the Commission Regulation of 17.12.2008 on the Central Exclusion Database- CED (OJ L, 344, 20.12.2008, p. 12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or execution of a procurement contract or grant agreement or decision.

## **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) the presentation of the balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed shall be presented where publication of the balance sheets is required under the company law of the country in which the economic operator is established; (Annex C.5.2. );

It is necessary that the extracts from balance sheets to be dated, signed and stamped by the representatives of the tenderer where publication of the balance sheets is required under the company law of the country in which the economic operator is established.

- b) a statement of the overall turnover and, where appropriate, of turnover in the area of services covered by the contract during the last two financial years.  
**A minimum of the overall turnover of €50,000.00 for each lot during the last two years is required.**

Tenderers may submit offers for different lots. In such a case their capacity will be analysed for each individual lot, but also globally for the whole lots for which they tender. This means that if a tenderer submits offers for more than one lot, the assessment of its capacity will be based on the sums of the turnover thresholds required for each lot.

In case of participation of group members, e.g. local affiliates of international companies, figures of the entire group will only be taken into account if a written endorsement of the participation by the mother company is provided.

If for some exceptional reason which the contracting authority considers justified, the tenderer is unable to provide the references 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**

- a) Evidence of the the educational and professional qualifications of the service provider or contractor and in particular, those of the person or persons responsible for providing the services or carrying out the works should be in adherence to the profiles described in the Annex A.1 – Technical Specifications (Annex C.6.1 of the SSF).

Detailed CVs of the persons responsible for providing the services must be provided, in EUROPASS format. **A given CV may only be used for one lot and one profile.**

Concerning the CVs requested: Tenderers need to make sure that names of any individual are not indicated on the CV forms. Instead, please use numbers and provide an extra table for staff in attachment to make the connection between numbers and names. In order to protect confidential personal data, CVs will be circulated without the corresponding table.

Tenderers that do not comply with the thresholds indicated in section 18.2.2 (a) will be judged as not having the minimum capacity to deliver the required services.

**Please note that in case of tenders for more than one lot by the same tenderer, staff may only be used for one lot and one profile.**

- b) A list of the principal services provided over the last three years, with the sums, dates and recipients, public or private (Annex C.6.2 of SSF): the minimum requirements as follows shall be met:

For Lots 1-28:

- **National level reports, studies or research** in fundamental rights areas conducted for non-governmental organisations, national or EU institutions or international governmental organisations; minimum three (3) reports. These reports need to be provided. (Abstract in English and full text in any EU language).

For Lot 29:

- **EU/international level legal or policy reports** in fundamental rights areas conducted for non-governmental organisations, national or EU institutions or international governmental organisations; minimum three (3) reports. These reports need to be provided. (Abstract in English and full text in any EU language).

For Lot 30:

- **EU comparative level analyses, reports, studies or research** in fundamental rights areas conducted for non-governmental organisations, national or EU institutions or

international governmental organisations; minimum three (3) reports. These reports need to be provided. (Abstract in English and full text in any EU language).

- 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 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:

<b>Award Criteria</b>		<b>Weighting</b>
<b>Criterion A</b>	<b>Project management and scientific quality: maximum points 50</b>	
	(a) Description of the proposed approach to supplying the deliverables, the organisation of the team and the division of responsibilities among them. How will the work be organised in order to work on 3 different assignments (deliverables) at the same time in parallel, if required.	<b>30</b>
	(b) Description of the proposed approach to how the team will ensure that deadlines are respected, in particular in the case of multiple (up to 3) assignments (deliverables) at the same time in parallel, if required.	<b>10</b>
	(c) Description in detail the methodology of ensuring and applying rigorously the highest scientific standards and of the methodology to ensure that the analysis is neutral and impartial.	
	The proposal must be in proportion to the objectives of the tender.	<b>10</b>

<b>Criterion B</b>	<b>Composition of the proposed team: maximum points 30</b>  Description in detail why and how the professional skill mix of the team as a whole is capable of covering all different areas of fundamental rights issues from a multidisciplinary perspective. The proposed team must be in proportion to the objectives of the tender.	<b>30</b>
<b>Criterion C</b>	<b>Identifying data sources and cooperating with other organisations: maximum points 20</b>  Description in detail how to ensure that all possible sources are explored in data and information collection. Describe in detail how you will ensure the co-operation of relevant organisation(s) and key actors in this respect.	<b>20</b>
	<b>TOTAL:</b>	<b>100</b>

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 providing 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 are required to fill in Annex C.3 – Financial Offer of the SSF. The weighting applicable for each deliverable is specified.

Prices per deliverable/task need to be specified as follows:

#### **Lots 1-28 (National Level)**

<b>Deliverable / Task</b>	<b>Price</b>
Bulletin (see <u>section 5.2.1 of Annex A.1 Technical Specifications</u> )	Fixed price per deliverable

Ad hoc information request (see <u>section 5.2.2 of Annex A.1 Technical Specifications</u> )	Fixed price per deliverable		
Social Thematic Study (see <u>section 5.2.3 of Annex A.1 Technical Specifications</u> )	Fixed price per deliverable		
Social fieldwork research (see <u>section 5.2.4 of Annex A.1 Technical Specifications</u> )	Price per person/work day		
Legal Thematic Study (see <u>section 5.2.5 of Annex A.1 Technical Specifications</u> )	Fixed price per deliverable		
Reports of various sizes (see <u>section 5.2.6 of Annex A.1 Technical Specifications</u> )	Price per person/work day		
Review Service (see <u>section 5.3.1 of Annex A.1 Technical Specifications</u> )	Price per person/work day		
Participation in meetings (see <u>section 5.3.2 of Annex A.1 Technical Specifications</u> )	<table border="1"> <tr> <td><u>Price per day of meeting at FRA premises and per participant</u></td> <td><u>Price per day of meeting at EIGE premises and per participant</u></td> </tr> </table>	<u>Price per day of meeting at FRA premises and per participant</u>	<u>Price per day of meeting at EIGE premises and per participant</u>
<u>Price per day of meeting at FRA premises and per participant</u>	<u>Price per day of meeting at EIGE premises and per participant</u>		

#### Lot 29 (EU and International Level)

Deliverable / Task	Price
Bulletin (see <u>section 5.2.1 of Annex A.1 Technical Specifications</u> )	Fixed price per deliverable
Ad hoc information request (see <u>section 5.2.2 of Annex A.1 Technical Specifications</u> )	Fixed price per deliverable
Legal thematic study (see <u>section 5.2.5 of Annex A.1 Technical Specifications</u> )	Fixed price per deliverable
Reports of various sizes (see <u>section 5.2.6 of Annex A.1 Technical Specifications</u> )	Price per person/work day

Review Service (see <u>section 5.3.1 of Annex A.1 Technical Specifications</u> )	Price per person/work day	
Participation in meetings (see <u>section 5.3.2 of Annex A.1 Technical Specifications</u> )	Price per day of meeting at FRA premises and per participant	Price per day of meeting at EIGE premises and per participant

### Lot 30 (Comparative Level)

Deliverable / Task	Price	
Comparative analysis (see <u>section 5.2.7 of Annex A.1 Technical Specifications</u> )	Fixed price per deliverable	
Review Service (see <u>section 5.3.1 of Annex A.1 Technical Specifications</u> )	Price per person/work day	
Participation in meetings (see <u>section 5.3.2 of Annex A.1 Technical Specifications</u> )	Price per day of meeting at FRA premises and per participant	Price per day of meeting at EIGE premises and per participant

Tenderers must provide the prices including all fees and project related costs (project management, quality control, back-up resources, etc) directly connected with the provision of the service.

### 19. Awarding

The overall financial offer will be taken into account for awarding the Framework Contracts to the most economical advantageous offer (best value for money) on the basis of the quality and the price.

The ranking of tenders in order to determine their relative value for money will be based on the quality/price ratio (70% / 30%) of each tender, calculated as follows:

Final Score for tender X (for Lot X)	=	$\frac{\text{Lowest price (for Lot X)}}{\text{Price (for Lot X)}}$	*	100	*	Price weighting 30 %	+	Total quality score (out of 100) for all criteria of tender	*	Quality criteria weighting
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		of tender X					X (for Lot X)		70 %
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Following an assessment of the successful tenderers on the basis of the quality/price ratio mentioned above, the Contracting Authority may draw up a list of at least (3) and maximum five (5) contractors to be invited “in cascading” for the specific contracts, 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.

## 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 Agency

In principle, no contact is permitted between the Agency 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.

European Union Agency for Fundamental Rights  
**Invitation to tender No: F/SE/10/03**  
 Procurement Section  
 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 Agency'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 the Draft Service 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 yet been executed as a result of default or negligence on the part of the contractor.

For amounts in the initial specific contract below 25,000 EUR, the invoicing procedure for the services will be 100% on completion of the work, once accepted by the Contracting Authority.

For amounts in the initial specific contract between 25,000 EUR and 60,000 EUR, the invoicing procedure for the services will be:

- 30% pre-financing, and
- 70% on completion of the work, once accepted by the Contracting Authority.

For amounts in the initial specific contract over 60,000 EUR, the invoicing procedure for the services will be:

- 30% pre-financing
- 40% interim payment, and
- 30% on completion of the work, once accepted by the Contracting Authority.

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

## **23. Contractual terms and guarantees**

A pre-financing guarantee for the total amount of pre-financing payment exceeding €150,000.00 is 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 Union 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 Agency. 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 Agency'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**

a) Where a tender involves several service providers, 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);

and

- 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).

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:

- 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
- 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

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 return the financial identification form.**

**25.2. Application of exclusion criteria and exclusion of tenderers**

The exclusion criteria will be assessed in relation to the tenderer and each subcontractor.

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 paragraph 18.1 – Exclusion criteria of the Tender Specifications. Only when such evidence is not available, under the circumstances described in paragraph 18.1 – Exclusion criteria of the tender specifications, can the standard form (Annex C.2.1) replace such evidence if it is filled in and signed in front of one of the third parties described in paragraph 18.1 – Exclusion criteria of the tender specifications.

### **Administrative and financial penalties**

By returning the form in Annex C.2.1, 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.1 Tender Specifications under article 0 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), as amended. We invite tenderers to read carefully those two articles.

### **25.3. Application of Selection Criteria (Selection of Tenderers)**

This part of the tender concerns the criteria and evidence relating to the technical, professional, economic and financial capacity of the service provider(s) involved in the bid. It should also contain any other document that the tenderer(s) wish(es) to include by way of clarification.

The proper implementation of the contract requires a multiplicity of skills, capacities and different types of expertise to be combined in the performance of the various tasks and activities.

In the case of a consortium, the selection criteria will be assessed in relation to the consortium as a whole and will be verified on the combined level of the consortium (including subcontractors).

An economic operator may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. In that case, evidence must be provided, that it will have at its disposal the resources necessary for performance of the contract, for example by producing a clear undertaking on the part of those entities to place those resources at its disposal.

If several service providers are involved in the bid, each of them must have and show that they have a) the technical and professional capacity to perform the tasks assigned to them in the tender, and b) the required financial and economic capacity.

This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to be tenderers.

However, if the tender includes subcontractors whose tasks represent less than 20% of the contract, those subcontractors are not obliged to provide evidence of their financial and economic capacity.

Tenderers may submit proposals for several lots. In this case their capacity will be analysed for each individual lot, but also globally for all lots for which they tender. This means that if a tenderer submits an offer for more than one lot, the assessment of its capacity will be based on the sum of the minimum staff values required for each lot applied for.

**Important remark concerning freelancers:**

In relation to freelancers (as subcontractors), please note that they do not have to fill in the identification, exclusion and economic and financial capacity but that the number of freelancers has to be indicated in relation to the technical and professional capacity. A list with the names of the freelancers proposed is requested. Tenderers must fill in the freelancers' names and provide a letter of intent from each freelancer proposed. For offers submitted for more than one lot, please note that the same freelancers cannot be proposed for more than one lot.

**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.**