[FRA, A-1040 Vienna; Schwarzenbergplatz 11]

ANNEX A

D/SU/09/01

Provision and installation of sound absorbing equipment for acoustics and lighting system
TENDER SPECIFICATIONS

1 Title of Contract

Provision and installation of sound absorbing equipment for acoustics and lighting system - D/SU/09/01.

Related to **2009/S 188-269882** contract notice of 30.09.2009

2 Purpose and context of the Contract

The purpose of this tender is to award a contract for the provision and installation of sound absorbing equipment for acoustics and lighting system.

The subject of the contract is the provision and installation of sound absorbing equipment for acoustics and lighting system as described in Annex A.1 - Technical Specifications.

3 Technical Specifications

The tenderer must present the technical offer (Annex C.4 – Technical Offer) according to the Technical Specifications in Annex A.1.

4 Starting of the Contract and duration

The contract will have a duration of 1 year as from the date of signature, and is not renewable.

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

5 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.

6 Consortia or Group of service providers

Joint tenders submitted by several economic operators (a consortium) are allowed. In such cases, one of members must be designated as the group leader or group manager (see points 25.1 and 25.2).

7 Visits to premises or briefing

On-sites visits are possible on the following dates:

09/10/2009 and 23/10/2009 between 9:00 h to 12:00 h.

An authorised representative of each tenderer may request an on-site visit. Interested parties 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 20 of the present document. This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will visit the Contracting Authority's premises on the tenderer's behalf.

8 Volume of the Contract

The maximum volume of the contract, is estimated at EUR 300,000.00.

9 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.

10 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.

11 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.

12 Variants

Variants are not accepted.

13 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.

14 Prices

Prices shall be expressed in euro.

Prices shall be fixed and not subject to revision.

The price tendered must be all-inclusive and expressed in euro. 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.

15 Subcontracting

Any intention to subcontract part of the contract must be clearly stated in the tender (see point 18.2.2 (f). 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 (as a whole). 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 2.18 of the standard Contract.

Tenderers must inform the subcontractor(s) and include in their subcontracting documents that Article 2.18 of the standard Contract (Annex B) may be applied to sub-contractors.

Once the contract has been signed, Article 2.14 of the above-mentioned Contract shall govern the subcontracting.

16 Date and place of opening of the tenders

Tenders will be opened at **11:00 h** on **17/11/2009** at the following location:

FRA address:
European Union Agency for Fundamental Rights Schwarzenbergplatz 11 Vienna 1040 - Austria

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 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.

17 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) appropriate statements from banks or evidence of professional risk indemnity insurance; A minimum coverage of **€100,000** is required (Annex C.5.1 of SSF);

b) the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established; A minimum turnover of **€300,000.00** during the last two years for which accounts have been closed is required (Annex C.5.2 of SSF);

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

18.2.2 Technical and professional capacity

Evidence of the technical and professional capacity of economic operators shall be furnished on the basis of the following documents:

a) The educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff should be in adherence to the profiles described in the Technical Specifications – Annex A.1. (Annex C.6.1 of SSF);

b) A list of the services carried out in the last five years, with sums, dates and place. The service provider(s) must provide references of 3 related projects. Each of the three project must be documented by a two-page note describing the main tasks of the project, the project duration, total project budget and resources used (man-days). (Annex C.6.2 of SSF);

c) An indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control; (Annex C.6.4 of SSF)

d) If the tender intends to subcontract any part of the services, an indication of the proportion of the contract which the service provider may intend to subcontract (Annex C.1.3 of SSF);

e) A statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years. A minimum of 8 technical staff members, is required. (Annex C.6.7 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 maximum final score a tender offer can reach are 100 points. Tenders scoring less than 60% in the overall points total or less than 50% in the points awarded for a single criterion will not be admitted to the next stage of the evaluation procedure.

A) Technical completeness

Tenderes proposel will be evaluated based on their technical completeness. The list technical evaluation gird has to be answered with Yes or No. If tenderes offer an equivalent product to the one listed in the technical specification, the tenderer must provide technical documentations and data sheets in order to proof the equivalence. For services, the tenderer must describe in detail the alternative services.

A) Technical completeness	Mark	Weighting in %	Minimum points to be reached for criterion A)
Technical completeness of the proposal	0-100	50.00	
Total		50.00	25.00

B) Work plan programme

Tenderers should provide a detailed workplan programm, including all works, supplies and services. The workplan shall be based on working steps. The workplan should specify in detail the total steps to be taken from the starting phase to finalisation of the project;

B) Work plan programme	Mark	Weighting in %	Minimum points to be reached for criterion A
Work plan programme	0-100	30.00	
Tota		30.00	15.00

C) Delivery time and installation

Tenderers should provide a detailed project plan based on the workplan programme showing the calender days involved for the delivery, installation of the equipment,

and the total number of calendar days for the implementation. The tenderer providing the shortest project implementation time will get the highest marks.

C) Delivery time and installation	Mark	Weighting in %	Minimum points to be reached for criterion A
Delivery time and installation (project plan)	0-100	20.00	
Total		20.00	10.00

18.4 Financial evaluation

Tenderers are required to fill in Annex C.3 – Financial Offer of the SSF.

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

19 Awarding

The contract will be awarded to the tender that offers the 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 of each tender, calculated as follows:

$$\text{Score for tender X} = \frac{\text{cheapest price}}{\text{price of tender X}} * \text{total quality score (out of 100) for all criteria of tender X}$$

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 FRA

In principle, no contact is permitted between the FRA 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 Procurement Section Invitation to tender No. **D/SU/09/01** Fax: +43 (0)1 580 30 91 ; e-mail: 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 FRA'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 Works 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 de-fault or negligence on the part of the Contractor.

23 Contractual terms and guarantees

The submission of a tender is not subject to lodging a preliminary deposit.

The Contract is subject to the provision of performance guarantee. The guarantee will be released within six (6) months after the final payment under the contract has been made.

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 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**

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 fourteen (14) 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) 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, 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 18.1 after they have been given the opportunity to present their observations.

These penalties are detailed in Article 96 of the Financial Regulation as amended at the latest (OJ L 390, page 1, of 30 December 2006) and Article 133 of the Commission Regulation laying down the rules for the implementation of the Financial Regulation as amended at the latest (OJ L 111, page 1, of 28 April 2007). 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.

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' 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.