



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Resources
The Director

**Submitting an offer in response to a call for
tenders for IT services issued by the Directorate-
General for Taxation and Customs Union
(DG TAXUD):
A Guidebook for Tenderers**

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1. LEGAL FRAMEWORK

This section lists the main legal provisions applicable to calls for tenders issued by the European Commission Taxation and Customs Union Directorate General in the area of information technology.

1.1. Procurement procedure

1.1.1. The procurement procedure is governed by the following statutory provisions:

- Part 1, Title 5 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002, on the **Financial Regulation** applicable to the general budget of the European Union, as last amended by Regulation (EU, Euratom) No 1081/2010 of the European Parliament and of the Council of 24 November 2010.
- Part 1, Title 5 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002, as last amended by Commission Regulation No 478/2007 of 23 April 2007, laying down detailed **rules for the implementation** of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Union.
- The **World Trade Organization Agreement on Government Procurement**, which the European Union joined following Council Decision of 16 November 1987 concerning the conclusion of the Protocol amending the GATT Agreement on Government Procurement.

1.2. Resulting contract

Unless the Tendering Specifications stipulate otherwise, contracts resulting from a call for tenders issued by the European Commission Taxation and Customs Union Directorate General are governed by **Union law**, complemented where necessary by the substantive law of Belgium (see Section 4.4 for further details on the contractual arrangements).

2. BASIC INFORMATION ABOUT THE CALLS FOR TENDERS FOR IT SERVICES ISSUED BY THE TAXATION AND CUSTOMS UNION DIRECTORATE GENERAL

2.1. The calls for tenders described in this document follow the **open procedure** and are awarded to the offer giving the **best value for money**.

Alternatively, calls for tenders may be based on the restricted procedure and/or awarded automatically to the lowest bid. These variations have a certain number of implications, which will be outlined very briefly in the relevant sections.

The contract notice and the Tendering Specifications explicitly mention the procedure and award method used for the call for tenders concerned.

2.2. It is important to be aware of the differences between the various **stages** of a call for tenders and the milestones associated with each stage:

- (1) The **tendering stage** starts with the publication of a **Contract Notice** in the Official Journal of the European Union. This notice contains detailed information about the procurement and triggers the application of a certain number of deadlines, which are binding on both the awarding authority and the tenderers. The Taxation and Customs Union Directorate General makes available the tendering specifications for downloading from its web site (http://ec.europa.eu/comm/taxation_customs/common/tenders_grants/index_en.htm), 1 week after the publication of the notice in the Official Journal of the European Union. Depending on

the type of services required, the Taxation and Customs Union Directorate General may make available any necessary supplementary documentation baseline on CD-ROM (see Section 6) on request. If the contract notice stipulates that there is such additional information available, then requests for it should be addressed to TAXUD-Tenders@ec.europa.eu. Prospective tenderers may raise objections or ask questions about the Tendering Specifications (see Section 6.2). This stage ends on the date indicated as the **deadline for the submission of offers**.

- (2) The **evaluation stage** starts with the **opening of the offers**. During this stage, the Taxation and Customs Union Directorate General assesses the offers in the light of the criteria stated in the contract notice and/or Tendering Specifications.
- (3) The **award stage** starts with the **signature of the award decision** by the authorizing officer. This is followed by the **notification of the results** to all the tenderers. When the **contract** is signed with the successful tenderer, a **contract award notice** is published in the Official Journal of the European Union. This action closes the tender procedure.

3. CONTACTING THE EUROPEAN COMMISSION ABOUT A CALL FOR TENDERS

From the start of the tendering stage and until the end of the award stage, the only contact point for tenderers is as follows:

European Commission, DG Taxation and Customs Union, Att.: Mr Jean-Louis Vergnolle, Office J 79 6/40, B-1049 Brussels. Tel.:+32 2 296.33.32. Fax: +32 2 299.54.44. E-mail: TAXUD-Tenders@ec.europa.eu.

You cannot contact or attempt to contact individual members of the European Commission staff with a view to discussing any aspect of an ongoing call for tenders.

4. CONSIDERING WHETHER OR NOT TO SUBMIT AN OFFER

This section contains important information which will help you to make a decision about whether to submit an offer in response to a call for tenders.

4.1. How to understand the exact scope of the contract

The subject matter of the contract is mentioned in the contract notice, and described more fully in the tendering specifications. In order to understand the exact scope of the contract, you should also consider the aspects mentioned below.

4.1.1. *Volume of the contract*

To guide you in preparing your offer, the tendering specifications contain certain indications on the foreseeable volume of the contract.

However, although the European Commission always tries to give its best estimate, you should be aware that **any information on volume is purely indicative**. The total value of the contract will ultimately depend on the orders which the Commission will place through specific contracts (see Section 4.4).

4.1.2. Lots

When a call for tenders is divided into lots, this is explicitly mentioned in the contract notice and the Tendering Specifications. If this is the case, and unless stated otherwise in the Tendering Specifications, you **may submit offers for one lot only, or any combination of lots, or for all the lots.**

Each individual lot is assessed in its entirety. You may therefore not submit an offer:

- that covers only part of a lot,
- that is declared as depending or being conditional on the award of any of the other lots of the call for tenders.

The European Commission will disregard any statement to this effect contained in an offer, and reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the Tendering Specifications.

4.1.3. Variants

Variants are alternatives to any technical or financial aspects, or to any contractual conditions, described in a call for tenders.

Unless stated otherwise in the contract notice and/or the tendering specifications, **variants are not permitted.**

The European Commission will disregard any variants described in an offer, and reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the Tendering Specifications.

4.1.4. Product names and trademarks

Whenever the tendering specifications mention a specific product name or trademark and a sufficiently precise and fully intelligible description is not possible, such mention should be understood as referring to that product **or its equivalent.**

4.2. Implications of submitting an offer

4.2.1. The very fact of submitting an offer in response to a call for tenders issued by the European Commission implies that you:

- **accept** all the terms and conditions as stipulated in the Tendering Specifications and all other documents related to the procurement procedure, without making any assumption or hypothesis; and
- **waive** your own terms of business.

The European Commission will disregard any qualification or disclaimer to that effect contained in an offer, and reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the Tendering Specifications.

4.2.2. Unless the tendering specifications stipulate a different period, you will be bound by your offer for **twelve months** from the deadline for submission of offers.

4.3. No obligation to award

When awarding a contract, the European Commission undertakes to compare the offers in the light of the criteria laid down in the contract notice and/or the Tendering Specifications.

However, the fact of publishing a call for tenders **does not oblige the European Commission to award** the contract to a tenderer simply because its offer fulfils those criteria. It also reserves the right to decide not to award the contract to any tenderer.

The Commission **is not liable for any compensation** in such circumstances.

4.4. Nature of the contractual relationship resulting from the award of the contract

Unless stated otherwise in the tendering specifications, the contractual relationship between the European Commission and the successful tenderer will be governed by a special type of contract known as a “**framework contract**”.

It should be stressed that 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 relationship between the European Commission and the contractor during their period of validity.

Actual orders will be placed after the framework contract is signed, in the form of “**specific contracts**” concluded in performance of the framework contract.

Unless specified otherwise in the contract notice and/or Tendering Specifications, only one framework contract will be signed for a given lot.

The tendering specifications include:

- (1) a model of the standard framework contract. On completion of the tendering procedure, this document will be modified as necessary in line with the successful offer (e.g. prices);
- (2) the “*General Terms and Conditions for Informatics Contracts*”, which are fully applicable to the framework contract;
- (3) in some cases, additional documents will be annexed to the framework contract (e.g. service-level agreements).

When preparing your offer, **you should take full account of these and any other documents included in the tendering specifications**, as they will define and govern the contractual relationship to be established between the European Commission and the successful tenderer.

4.5. Tax exemption

The European Commission is exempt from all duties and taxes, in accordance with:

- Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union annexed to the Treaty establishing a single Council and a single Commission of the European Union;
- Article 15(10) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the Harmonization of the laws of the Member States relating to turnover taxes (as last amended by Council Directive 2006/98/EC of 20 November 2006).

The Governments of the Member States grant this exemption either through refunds upon presentation of documentary evidence, or by immediate exemption. The European Commission will give the successful tenderer instructions regarding this point.

5. COLLABORATING WITH OTHER COMPANIES

Companies can consider two ways of collaborating in an offer: either as joint partners in the offer or through subcontracting. Unless stated otherwise in the contract notice and/or the tendering specifications, both **joint offers** and **subcontracting** are allowed in response to a call for tenders issued by the European Commission Taxation and Customs Union Directorate General. Offers may even combine both approaches. In the case of joint offers, one of the companies has to be designated as the primary contractor.

In any case, the file must specify very clearly whether each company involved in the offer is acting as a partner in a joint offer or as a subcontractor (this also applies where the various companies involved belong to the same group, or even where one is the parent company of the others). The questionnaires annexed to the tendering specifications include a **tender form** for this purpose.

The implications of these two modes of collaboration are radically different. So that you can understand them both fully, they are outlined below.

5.1. Joint offers

5.1.1. Partners in a joint offer assume **joint and several liability** towards the European Commission for the performance of the contract as a whole.

Statements saying, for instance:

- that one of the partners of the joint offer will be responsible for part of the contract and another one for the rest , or
- that more than one contract should be signed if the joint offer is successful,

are thus incompatible with the principle of joint and several liability. The Commission will disregard any such statement contained in a joint offer, and reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the Tendering Specifications.

5.1.2. Joint offers will be assessed as follows:

- the exclusion criteria (see Section 9.1) will be assessed in relation to each company individually;
- the selection criteria for economic and financial capacity (see Section 9.2.1) will be assessed according to the rules as specified in the contract notice and/or the tendering specifications;
- the selection criteria for technical and professional capacity (see Section 9.2.2) and the evaluation criteria (see Section 9.3) will be assessed in relation to the tendering group as a whole.

5.1.3. If you intend to tender with a partner and have already set up a consortium or similar entity to that end, you should mention this fact in your offer, together with any other relevant

information in this connection (formal status, VAT number, etc.).

If you intend to submit a joint offer but have not yet taken this step, you should be aware that, if you are awarded the contract, the Commission will require you to give formal status to your collaboration before the contract is signed. This can take the form of:

- an entity with legal personality recognized by a Member State; or
- an entity without legal personality but offering sufficient protection for the contractual interests of the European Commission (depending on the Member State concerned, this may be, for example, a consortium or a temporary association); or
- the signature by all the partners of a “power of attorney” which provides for a less onerous form of cooperation whilst still safeguarding the contractual interests of the European Commission.

5.2. Subcontracting

5.2.1. Certain tasks provided for in the contract may be entrusted to subcontractors, but **the main contractor retains full liability** towards the European Commission for performance of the contract as a whole. Accordingly:

- the Commission will treat all contractual matters (e.g. payment) exclusively with the main contractor, whether or not the tasks are performed by a subcontractor;
- under no circumstances can the main contractor avoid liability towards the Commission on the grounds that the subcontractor is at fault.

5.2.2. If your offer envisages subcontracting, your file must include:

- a document
 - mentioning the reasons why you are envisaging subcontracting;
 - stating clearly the roles, activities and responsibilities of subcontractor(s), and;
 - specifying the proportion of the contract value for each subcontractor;
- a letter of intent by each subcontractor stating its intention to collaborate with you if you win the contract.

5.2.3. Offers involving subcontracting will be assessed as follows:

- the exclusion criteria (see Section 9.1) will be assessed in relation to each company individually, including sub-contractors;
- the selection criteria for economic and financial capacity (see Section 9.2.1) will be assessed according to the rules as specified in the contract notice and/or the Tendering Specifications;
- the selection criteria for technical and professional capacity (see Section 9.2.2) and the evaluation criteria (see Section 9.3) will be assessed in relation to the tendering group as a whole. (Sub-contractors do not form part of the "tendering group".)

5.2.4. During execution of the contract, the contractor will need the Commission’s express authorization to replace a subcontractor with another and/or to subcontract tasks for which subcontracting was not envisaged in the original offer.

6. PREPARING YOUR OFFER

This section describes how you should go about preparing your offer.

6.1. Receiving the tendering specifications

The Taxation and Customs Union Directorate General makes available the tendering specifications for downloading from its web site (http://ec.europa.eu/comm/taxation_customs/common/tenders_grants/index_en.htm), 1 week after the publication of the contract notice in the Official Journal of the European Union. The Taxation and Customs Union Directorate General sends any supplementary documentation baseline on CD-ROM (see Section 2.2(1)) on request, if such supplementary material is mentioned in the contract notice. Any request for such supplementary material should be addressed to TAXUD-Tenders@ec.europa.eu.

Answers to questions of general interest and any other important information about the call for tenders arising during the tendering period will be handled in the same way, ie, by publication on the website. Potential tenderers should thus continue to monitor this website during the tendering stage.

6.2. Clarifying the tendering specifications

During the tendering stage, you may ask questions (including requests for clarification) about specific issues arising from the Tendering Specifications.

To this effect you should:

- formulate your questions **in writing, within the applicable deadline**. The deadline is stipulated in the covering letter accompanying the Tendering Specifications. The Commission cannot guarantee a reply to any questions arriving after the applicable deadline;
- send your questions **by letter, fax or e-mail** to the contact address (see Section 3). For administrative reasons, the Commission cannot take questions sent by other means into consideration.
- The Commission will review all questions received with the utmost attention and will publish its reply on the DG TAXUD website. All such questions will first be rendered anonymous, and the Commission reply should thereafter be regarded as an integral part of the Tendering Specifications.

6.3. Drawing up your offer

6.3.1. *Language*

Your offer may be drawn up in **any of the official languages** of the European Union (see Contract Notice).

6.3.2. *Replying to mandatory questions*

You should pay particular attention to questions labelled “Mandatory”. **These questions require an unconditional affirmative answer on your part, without making any assumption or hypothesis.** If no answer is given, if an affirmative answer is qualified in any way (e.g. a “yes,

but ...” answer) or if you include some assumptions or hypotheses, your offer will be disqualified.

If a particular tendering specification is not clear or seems imprecise to you, you can send us a request for clarification (see § 6.2 above).

If you are not in a position to reply affirmatively to all the mandatory questions, you should not submit an offer.

6.3.3. Confidential information

The European Commission undertakes to protect your commercial interests by treating all the information contained in your offer as confidential.

In particular, it will not disclose any information where such disclosure would hinder application of the law, be contrary to public interest, harm your legitimate business interests or distort fair competition.

6.3.4. Protection of personal data

In certain cases, the follow-up of your response to the call for tenders will require the recording and further processing of personal data (for example, name, address or CV of natural persons). These data will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 data¹.

Except if mentioned otherwise, replies to questions and personal data requested are necessary for the purpose of assessing your offer according to the tendering specifications and will only be processed by the Evaluation Committee (see Section 9) for that purpose on a need-to-know basis.

You may, upon request, obtain the communication of your personal data and rectify any inaccurate or incomplete personal data. Should you have any queries concerning the processing of your personal data, please address them to:

European Commission, DG Taxation and Customs Union, Att.: Mr Jean-Louis Vergnolle, Office J 79 6/40, B-1049 Brussels. Tel.:+32 2 296.33.32. Fax: +32 2 299.54.44. E-mail: TAXUD-Tenders@ec.europa.eu.

As regards the processing of your personal data, you have a right to recourse at any time to the European Data Protection Supervisor.

So that we can take appropriate steps to this effect while assessing the offers, any CVs (or similar documents) that you are asked to submit relating to your staff should not indicate any names..

Instead, each CV should bear a number only, and your offer should include a separate list showing the correspondence between these numbers and actual names (see also Section 6.4.3).

¹ Official Journal L 8, 12.1.2001, p. 1.

6.3.5. *Formal aspects*

You should attach great importance to how your offer is presented. The following guidelines lay down a **minimum standard** which must be respected in all cases.

6.3.5.1. You should draw up your offer **by filling in the *ad hoc* questionnaires** included in the tendering specifications. Please do not alter the numbering of the questionnaires.

6.3.5.2. As far as possible, your offer should be drawn up using **word-processing or desktop publishing software**, in a font size giving a **readable** result on paper. Where this is done, an **electronic copy** of your offer should be submitted on separate hard supports which must also be clearly labelled. However, please note that where there is any doubt, **the paper version of the offer will prevail** over the electronic one.

6.3.5.3. Your answers must be **concise and clearly drafted**.

Where possible, you should answer in the space provided on the questionnaire form. However, if you need additional space, your reply should be made on a separate sheet and annexed to the questionnaire. Such replies (which should not exceed two pages per question) must be **clearly referenced**, and the reference noted on the questionnaire in the space provided for the reply.

6.3.5.4. Answers must be **complete**. Where a question has not been answered, the Commission will make no assumption as to what the answer might have been and will award no points for it. Similarly, where only a partial answer is given, the Commission will award points only for the part of the question answered.

6.3.6. *Specific requirements for the financial quotation*

6.3.6.1. Financial quotations must be drawn up **on the *ad-hoc* form** included in the questionnaires annexed to the tendering specifications. If you change this form in any way, your offer will be disqualified (see also Section 6.4.3).

6.3.6.2. Prices **must** be quoted:

1. **in euros**
2. **free of all duties and taxes (in particular VAT)**, for the reasons stated in Section 4.5;
3. **inclusive of all costs and expenses** directly and indirectly connected with the goods and/or services to be supplied.

6.3.6.3. Your financial quotation should be completely **unambiguous**. Your offer will be disqualified if it contains any statements preventing an accurate and complete comparison of the offers (such as “*To be discussed*”, “*Depending on x*”, etc.) or referring to external circumstances (such as an already existing but separate contract) or if it involves any assumption or hypothesis. If a particular tendering specification concerning the price is not clear or seems imprecise to you, you can send us a request for clarification (see § 6.2 above).

6.4. Preparing your offer for submission

6.4.1. *Number of copies*

Your offer must be submitted **in triplicate** (one original and two copies). The original version

must be clearly labelled “*Original*” and the two copies “*Copy 1*” and “*Copy 2*”.

6.4.2. Covering letter

Your offer must include a **covering letter** signed by the person(s) empowered to represent the tenderer and entitled to sign the contract if your offer is successful.

6.4.3. Elements to be separated from the rest of the offer

The following elements of your offer must be submitted **in separate binders or folders**, which must be clearly labelled:

- (1) **Any financial quotation and its supporting documents**,
- (2) the list with **personal data** referred to in Section 6.3.4, where applicable.

An electronic copy of these elements (see Section 6.3.5.2) should be provided **on separate hard supports**, which must also be clearly labelled. Please ensure that the information relating to these elements is given **nowhere else** in your offer.

6.4.4. Sealing your offer

Your offer must be submitted in one or more sealed envelopes, each enclosed inside a second sealed envelope.

The **outer envelope** must read exactly as follows:

European Commission
Call for Tenders - Reference: TAXUD/20xx/AO-xx..(*ref. number to be completed, see contract notice*)
Attn Unit TAXUD/R1
Office J79 6/40
B-1049 Brussels

The **inner envelope** must read exactly as follows:

OFFER
Call for Tenders - Reference: TAXUD/20xx/AO-xx..(*ref. number to be completed, see contract notice*)
Attn Unit TAXUD/R1
Not to be opened by the internal mail service

If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across the tape. You may use boxes instead of envelopes if the size or weight of your offer so requires.

7. SUBMITTING YOUR OFFER

The **deadline for submitting offers** is indicated in the contract notice and/or the covering letter sent with the Tendering Specifications.

You may submit your offer in any of the following **three ways**. You should be aware that each of these ways has different implications as regards the **observance of deadlines**.

7.1. Delivery by hand or by courier service

The tenderer (or an authorized representative) may deliver the offer in person at the European Commission premises.

You may also send the offer through a courier service, i.e. a third party other than the national post office.

In both these cases, the offer must be **deposited** at the European Commission **Central Mail Office** no later than **16h00 hours on the final date for the submission of offers**. When using a courier service, tenderers should instruct the courier service to deposit the offer at the address indicated in the paragraph below.

At the time of writing, the European Commission Central Mail Office is located at the following address: **Avenue du Bourget 1, B-1140 Evère, Brussels** (Phone: +32-(0)2-299.29.21), and is open from 08.00 to 17.00 Monday to Thursday, and from 8.00 to 16.00 on Fridays.

However, we cannot guarantee that the information given above will continue to be accurate in the future and cannot therefore be held liable in the event of any change. You are fully responsible for ensuring that your offer is deposited in time.

A Commission official of the Central Mail Office taking delivery of the offer will issue a receipt stating the date and time of delivery. This receipt will serve as proof of compliance with the deadline.

For security reasons, delivery by hand by the tenderer or a courier service to premises of the Commission other than the Central Mail Office **cannot be accepted as a valid deposit**.

7.2. Through the national post office

You may send your offer by mail through the national post office.

In this case, you must use **registered** mail and your offer must be **posted** no later than **midnight on the final date for the submission of offers**.

Proof of compliance with the deadline will be the **postmark**. Exceptionally, if no postmark has been stamped or if the postmark is not legible, the Taxation and Customs Union Directorate General may accept alternative evidence, such as a receipt issued by the post office, provided that this clearly indicates the date and has been filled in by the post office and not by the tenderer.

8. OPENING OF THE OFFERS

An Opening Committee will open all the offers on the date, and at the time and place, indicated in the contract notice and/or the covering letter attached to the Tendering Specifications.

Each tenderer may send one representative to the opening session. If you choose to do so, you should notify the name of that person by fax or by e-mail to the Taxation and Customs Union Directorate General, no later than two working days before the opening session, failing which the Taxation and Customs Union Directorate General reserves the right to refuse to admit your representative to the opening session.

The public part of the opening session will be strictly limited to the following aspects:

- verification that each offer has been submitted correctly (in particular, that the deadline for submission has been complied with);
- announcement of the names of tenderers for each lot. The names announced will be those of the companies having sent or deposited offers, as they appear on the envelopes, receipts and/or routing slips. These names may or may not correspond to the precise legal identity of the actual tenderers and may not include other companies involved in the offers (e.g. as partners in joint offers).

The tenderers' representatives will be required to sign an attendance sheet.

The Opening Committee will play no further role in the procedure.

9. ASSESSMENT OF TENDERERS AND OFFERS

During the assessment stage, you may not contact the Taxation and Customs Union Directorate General on your own initiative (see also Section 10).

The offers will be assessed by an **Evaluation Committee** working under conditions of confidentiality. Once the assessment is completed, the Evaluation Committee will draw up a report for the competent authorizing officer, who will make the final decision on the award of the contract.

Offers will be assessed in four phases, in the light of the criteria explicitly announced beforehand in the contract notice and/or the Tendering Specifications². Only offers meeting the requirements of each phase of the assessment will be admitted to the next phase.

In addition to the information contained in the offers, the Taxation and Customs Union Directorate General reserves the right to use any other information from public or specialist sources, provided that this use complies with the general principles of transparency, proportionality, equal treatment and non-discrimination.

9.1. Phase 1: Exclusion

Tenderers will be disqualified if:

- (1) 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

² If the **restricted procedure** is used (see Section 2.2), the process is split into:

- Pre-selection stage: candidates submit applications containing only the documentation required for Phase 1 (Exclusion) and Phase 2 (Selection). These applications are then evaluated to select the candidates who will be entitled to submit an offer, hence becoming tenderers.
- Invitation to tender stage: pre-selected candidates submit offers containing the documentation required for Phase 3 (Evaluation). The contract is awarded (Phase 4) once these offers have been assessed.

subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (2) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- (3) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (4) 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;
- (5) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the Union' financial interests;
- (6) following another procurement procedure or grant award procedure financed by the Union budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations;
- (7) they are subject to a conflict of interests. There is a conflict of interests where the tenderer and a person who is a player in the implementation of the Union budget or an internal auditor share interests (including, for example, family, emotional life, political or national affinity and economic interests) which compromise the impartial and objective exercise of that person's functions;
- (8) they commit misrepresentation in supplying the information required by the contracting authority.

Tenderers are required to show that they are not in one or more of the situations listed above by providing the following **evidence** in relation to items mentioned above (in case of a joint offer or an offer with subcontracting, this evidence needs to be provided for each company).

- In relation to items **(1)**, **(2)** and **(5)** above, relevant extract(s) from the judicial record or, failing that, equivalent documentation issued by a judicial or administrative authority in the country where they are established. The extract(s) or equivalent documentation must be the most recent available. Depending on the national legislation of the country in which they are established, these documents must relate to entities with legal personality and/or natural persons; in the latter case, they must relate to the person(s) empowered to represent the tenderer and sign the contract if the offer is successful.
- In relation to item **(4)** above, the most recent certificates issued by the competent social security and tax authorities of the country where they are established. Where no such certificate is issued in that country, this can be replaced by a sworn or solemn statement made before a judicial or administrative authority, a notary or a qualified professional body in that country. The statement provided must be dated less than four months before the final date for submission of offers. Depending on the national legislation of the country in which they are established, these documents must relate to entities with legal personality and/or natural persons; in the latter case, they shall relate to the person(s) empowered to represent the tenderer and sign the contract if the offer is successful.
- In relation to items **(3)**, **(6)**, **(7)** and **(8)** above, an affidavit stating that:
 - they are not guilty of professional misconduct;
 - they have not been declared in serious breach of contract following a procurement procedure or grant award financed by the Union budget;
 - they are not subject to a conflict of interest;
 - they are supplying all the information required for the call for tenders in good faith and without misrepresentation.

This affidavit should be signed by the person(s) empowered to represent the tenderer and sign

the contract if your offer is successful and dated less than four months before the final date for submission of offers.

- In relation to item (7) above, the attention of the tenderer is drawn to the fact that the Commission requires a strict segregation of duties between certain services delivered under current and future contracts signed in the area of taxation and customs IT projects. The tenderer who is already involved in the provision of services under any one or more of these current contracts is required to indicate **the steps that he commits to take** in case that he should be awarded the contract, in order to provide the Commission with the guarantee of absence of a situation of conflict of interest as specified under Article 94 of the Financial Regulation. The attention of the tenderer is drawn to the fact that the contract will be not awarded to a tenderer for whom the measures proposed to avoid the conflict of interest are considered to be insufficient.

The attention of the tenderer is drawn to the fact that the exclusion criteria are applicable to any subcontracting party proposed by the tenderer. Subcontractors will therefore have to supply the evidence that they satisfy those criteria.

9.2. Phase 2: Selection

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.

All the requirements listed in the contract notice and/or the tendering specifications must be met in order to enter the next phase of the assessment.

In the selection phase, assessment focuses on the quality of your track record and not on the quality of your offer. Accordingly, you should not introduce information relating to your technical proposal or your financial quotation in this part of the file.

9.2.1. *Economic and financial capacity*

In order to prove that you have sufficient economic and financial capacity to perform the contract, you will be asked to present the following documentation:

- (1) evidence of **professional risk indemnity**;
- (2) **balance sheets** or extracts from balance sheets for at least the last three financial years for which accounts have been closed, or equivalent documentation (e.g. where company law in the country in which you are established does not require you to publish your balance sheet);
- (3) a **statement that the average overall annual turnover** during the last three years is equal or superior to X € and that the average annual turnover concerning the goods and services to be covered by the contract during the last three years is equal or superior to Y € (X and Y are amounts defined in the Contract Notice).

NB. If the tenderer intends to rely on the capacities of other entities (e.g. his parent company), a **written undertaking** on the part of those entities must be furnished confirming that they will place the resources necessary for performance of the contract at the tenderer's disposal.

In case of a joint offer or an offer with subcontracting, the assessment rules will be specified in the contract notice and/or the Tendering Specifications.

9.2.2. Technical and professional capacity

The criteria used to check whether you have sufficient technical and professional capacity to perform the contract, as well as the evidence required to that effect, will be listed **in the contract notice and/or the Tendering Specifications**. These criteria will relate to your skills, efficiency, experience, reliability and similar circumstances.

Proof of registration in a professional or trade register must be provided by means of a declaration or certificates prescribed in the country of establishment of the company(ies).

9.3. Phase 3: Evaluation

In this phase, offers will be compared with each other by evaluating them both from a technical³ and a financial point of view.

9.3.1. Technical evaluation

The technical evaluation of the offers will be based on the criteria listed **in the contract notice and/or the Tendering Specifications**.

In addition to the list of technical evaluation criteria, the European Commission Taxation and Customs Union Directorate General may adopt additional provisions such as those listed below, to ensure that the technical assessment takes full account of its needs. Accordingly, it may:

- assign a **weighting factor** to each criterion;
- lay down a **minimum threshold** for each criterion and/or for the technical evaluation criteria as a whole (offers not reaching such thresholds would be automatically disqualified).

Unless stated otherwise in the contract notice and/or tendering specifications, no weighting factors or minimum thresholds will be applied.

At the end of the technical evaluation, each offer will be assigned **an overall technical score**.

9.3.2. Financial evaluation

The financial evaluation of the offers will be based on the prices quoted by the tenderer and the volume estimates announced in the contract notice and/or Tendering Specifications. Tenderers must provide a fixed quote for the price calculation rules using the template defined in the Tendering Specifications, without making any assumptions or hypotheses. If a particular tendering specification concerning the price is not clear or seems imprecise to you, you can send us a request for clarification (see § 6.2 above).

The result of the financial evaluation will be a **price** representing:

- either the global cost of the offer over the whole duration of the contract;
- or the cost of a pre-defined scenario which —although it may represent only part of the total cost— is sufficiently significant for the purposes of comparing the offers with each other.

³ If the **automatic award procedure** is used (see Section 2.2), there are no technical evaluation criteria. The contract will be awarded to the offer which, while being admissible and satisfying the terms of the tendering specifications, quotes the lowest price.

9.4. Phase 4: Award

Unless stated otherwise in the contract notice and/or tendering specifications, the offer presenting the **best value for money** will be identified in the following way:

- (1) The offer with the best technical score will receive a quality indicator of 100 points. The remaining offers will receive lower quality indicators in proportion to their technical scores.
- (2) The offer found to be the cheapest will receive a price indicator of 100 points. The remaining offers will receive lower price indicators in proportion to their prices.
- (3) A **quality/price balance** will be calculated for each offer. The highest result will go to the offer presenting the best value for money.

Depending on the nature of the call for tenders, it must be highlighted that a *weighting factor* (60 %:40 % for example) could be specified in the contract notice and/or the tendering specifications.

10. CLARIFYING THE OFFERS

Once the offers have been opened, we may contact you in writing to obtain further clarification on specific points of your offer or to correct obvious clerical errors. You should be prepared to reply to such requests for clarification within a very short deadline.

Such contacts must not lead to any alteration of the terms of the offer. More particularly:

- You must not modify your offer or add any new elements to it (other than purely administrative documentation). Your reply must therefore make clear reference to the relevant information already present in the file.
- Where the financial quotation is concerned, you must not add any new prices but only explain the quotation on the basis of elements already present in the file, which should be explicitly mentioned.

If you fail to observe these restrictions, your reply may be disregarded. If your reply plainly contradicts your original offer, the European Commission Taxation and Customs Union Directorate General reserves the right to disqualify your offer.

11. OUTCOME OF THE CALL FOR TENDERS

During the assessment period, the European Commission Taxation and Customs Union Directorate General will not provide any information on an ongoing call for tenders. The only contacts allowed with tenderers are those mentioned in Section 10. If you are not contacted, you should not regard this as either a positive or a negative sign.

You will be informed of the outcome of the call for tenders in the three ways outlined below.

11.1. Notification of results

As soon as the competent awarding officer has signed the award decision, a **notification letter** will be sent simultaneously to all tenderers. Letters to unsuccessful tenderers will state the grounds on which the decision was made.

Please note, however, that the dispatch of these letters does not constitute the award of the contract. This will not be completed until the contract has been signed by the successful tenderer and the European Commission.

The European Commission undertakes not to sign the contract until a period of at least 14 calendar days has elapsed following the dispatch of the notification letters, so that unsuccessful tenderers can take the steps described in Section 11.2 below.

11.2. Additional information

If you are notified that your offer has not been successful, you may request additional information by fax or mail. This information can be given in a **follow-up letter** providing further details in writing, such as the name of the tenderer to whom the contract is awarded and a summary of the characteristics and relative advantages of the successful offer.

However, the Taxation and Customs Union Directorate General would like to stress that it is not free to disclose any information affecting the commercial interests of other tenderers (see Section 6.3.3).

11.3. Contract Award Notice

When the contract is signed, the European Commission Taxation and Customs Union Directorate General will publish a contract award notice in the Official Journal of the European Union summarizing the results of the call for tenders procedure.

REFERENCES

At the time of writing, the websites listed below contained information mentioned in the present document or relevant for its purposes:

Name or owner of website	URL	Main information to be found
Europa	http://europa.eu/about-eu/institutions-bodies/index_en.htm	List of EU Institutions, Agencies and other Bodies
European Commission	http://ec.europa.eu/education/languages/languages-of-europe/index_en.htm	Official EU languages
European Commission – Contact page	http://ec.europa.eu/contact/index_en.htm	General contact information.
European Commission - Code of conduct	http://ec.europa.eu/civil_society/code/index_en.htm	Code of Good Administrative Behaviour.
European Commission main site	http://ec.europa.eu/	General information about the European Commission.
Taxation and Customs Union Directorate-General web site	http://ec.europa.eu/taxation_customs/index_en.htm	Information about taxation and customs union policies
SIMAP	http://simap.europa.eu/	Public procurement directives. Comprehensive information about procurement in Europe.
TED (Tenders Electronic Daily)	http://ted.europa.eu/TED/main/HomePage.do	Notices published in the Official Journal of the European Union.
EUR-LEX	http://eur-lex.europa.eu/en/index.htm	European Union law.
European Court of Justice	http://curia.europa.eu/	European Court of Justice’s case-law.
World Trade Organisation (WTO)	http://www.wto.org/	WTO Agreement on Government Procurement.