

Specifications attached to the
Open invitation to tender n° TAXUD/2012/AO-05
for the provision of tax and customs information services

1. BACKGROUND AND OBJECTIVES OF THIS CALL FOR TENDERS

In order to support policy formulation and monitoring of implementation of legislation and policy as regards tax and customs aspects of the Internal Market programme, the Commission needs to collect detailed and comparable information on tax systems and various aspects of customs as well as international taxation and customs issues with respect to the EU Member States and candidate countries. Furthermore, the Commission needs to collect detailed and comparable tax and customs information for a number of countries outside the European Union in order to keep up-to-date with worldwide tax and customs developments.

A call for tenders is launched by the European Commission for the signature of a framework contract for the carrying out of studies and comparative analysis in various tax and customs areas.

The studies conducted under this framework contract are considered to be an essential source of information for impact assessment of Commission initiatives.

2. NATURE OF THE CONTRACT AND AWARDING AUTHORITY

The framework contract is awarded to a single contractor by the European Commission, hereinafter referred to as "The Commission".

The tender covers the carrying out of ad-hoc studies and comparative analyses on various taxation and customs issues on specific request from the Commission.

The tenderer should be able to carry out a number of studies per year on specific tax and customs topics as identified by the Commission. The topics to be examined are related either to the analysis of fiscal and customs aspects of the Commission work programme, or to important tax and customs developments at the national, European and international level. The requested information can take various forms ranging from answering specific questions ('Data collection services') and carrying out data analysis to conducting in-depth studies ('Studies and comparative analysis').

The contract is meant for covering ad-hoc studies and analysis services that could arise from unexpected or urgent demands originating from within or outside the European Institutions.

The Commission expects to carry out some 10 tax and customs-related data collection requests and some 20 tax and customs-related studies over the duration of the framework contract. The main users of this framework contract are the

Commission services which carry out tax-related work and those that develop customs policy and legislation. It is estimated that around 30 assignments will be proposed to the contractor under this framework contract.

3. LEGAL BACKGROUND TO ESTABLISHING THE CONTRACT

- According to the Treaty on the Functioning of the European Union (TFEU) and in particular Articles 113 and 115 thereof, the Commission has the competence of preparing legislative acts in the field of taxation.
- According to the Treaty on the Functioning of the European Union (TFEU) and in particular Article 207(2) in conjunction with Articles 289(1), 294(2) thereof, the Commission has the competence of preparing and presenting to Council and EP proposals for EU policy and legislation in the field of customs.
- According to the TFEU, the Commission has the competence of monitoring the compatibility of inter alia national tax legislation with the EU law.
- According to the Commission competences in the field of European economic governance and budgetary surveillance:
 - http://ec.europa.eu/economy_finance/economic_governance/index_en.htm
 - http://ec.europa.eu/economy_finance/articles/eu_economic_situation/2010-09-eu_economic_governance_proposals_en.htm
- The Commission priorities in the field of taxation and customs:

COM(2001)260, COM(2003)614, COM(2003)726, COM(2005)532,
COM(2006)728, COM(2006)823, COM(2006)824, COM(2006)825,
COM(2007)71, COM(2007)140, COM(2007)785, COM (2008) 169
COM(2008)807, COM(2009)20, COM(2009)201, COM(2009)325,
COM(2009)472, COM(2010)135, COM(2010)769, COM(2010)2020, COM
(2011)85.
- Commission Staff Working Documents:

SEC(2010)409, SEC(2010)1576.

4. SPECIFICATIONS FOR THIS CALL FOR TENDERS

On request of the Commission, the contractor shall conduct studies and comparative analyses on various taxation and customs issues. The topics to be covered and the delivery date are determined by the Commission case-by-case following a request for service sent to the contractor.

The taxation-related topics to be examined are related either to the analysis of fiscal aspects of the Commission work programme or to important tax developments on the national, European and international level.

The customs-related topics to be examined are related either to analyzing the existing or expected impact of EU customs policy and legislation, to their practical implementation in Member States, or with a view to proposing new policy. They may relate to the interaction between customs policy and implementation of customs measures in the enforcement of other policies (such as agriculture, health and safety, environment).

At EU-level, these topics may relate to all activities of the Commission in the field of taxation and customs union. More information on the Commission work programme in the field of taxation and customs, including examples of studies previously carried out, can be found on the following web link:

http://ec.europa.eu/taxation_customs/index_en.htm

Requests may require specialist knowledge related to labour taxation, capital taxation, taxation of consumption in the European Union, EU customs legislation and policy, as well as to international and European aspects of taxation and customs. In particular, requests may involve exploiting and/or combining detailed expertise on national, European and international level on topics related to:

- Taxation of individuals;
- Payroll taxes;
- Social security contributions;
- Withholding taxes;
- Taxation of corporations and partnerships;
- Taxation of permanent establishments;
- Tax treatment of groups, holding companies; investment funds, financial intermediaries and trusts;
- Tax treatment of investment income, financial instruments and derivatives, and tax aspects related to intellectual property;
- Taxation in the financial sector;
- Innovative sources of finance (e.g. financial transactions taxes, bank taxes);
- Special tax regimes, schemes and credits;
- Transfer pricing;
- Mergers & acquisitions;
- Exit taxes, inheritance taxes and gift taxes;

- Taxation on consumption (VAT (including import VAT), Excise duties, Energy and environmental taxation, and other);
- Other indirect taxes;
- Administration and management of direct and indirect taxation systems, and customs;
- Administrative burdens and compliance costs;
- Tax and customs aspects related to trade with non-EU countries;
- Tax treaties and trade treaties (e.g. free trade agreements, customs union agreements);
- Administrative cooperation;
- Tax avoidance and fiscal fraud, tax planning and tax havens;
- The application of general principles of international taxation and tax legislation;
- The application of customs legislation;
- Jurisprudence by the European Court of Justice and national enforcement legislation;
- Tax and customs developments in international organisations (e.g. UN, OECD, WTO, WCO) and major countries outside the EU;
- The development of new tax and customs concepts;
- Technical analysis on the impact of initiatives in the field of taxation and customs¹.
- Subjects covered by the Customs 2013 Programme² and its successors.

The requested information can take various forms ranging from answering specific questions and carrying out data analysis to conducting in-depth studies. The analysis may involve detailed legal and/or economic assessment of national tax and/or customs practice in the Member States with respect to existing or planned European tax and/or customs legislation or other initiatives.

¹ Taking into account the Commission Impact Assessment Guidelines:

http://ec.europa.eu/governance/impact/index_en.htm

² Decision No 624/2007/EC (OJ L 154, p.25)

The offer should distinguish between two types of services:

1. Data collection services

Such services are addressing legal, economic, socio-economic and environmental aspects. They involve either the look-up and compilation of information, with respect to certain tax and/or customs aspects or application of legislation on the national level, on the EU level or in a third country. Except for customs-related data collection, the contractor should be able to supply the information within 48 hours following the receipt of the Commission request.

2. Studies and comparative analysis

Such services go beyond the look-up and compilation of data. They vary from interpretation to in-depth analysis, which is not restricted to a legal context, and may require in addition expertise in the economic, socio-economic and environmental context (e.g. distribution of income and wealth, education) as well as one or more of the following fields of expertise: economic, financial and accounting expertise. The contractor undertakes that the different fields of expertise are readily available.

The tenderer shall describe the process for handling requests for the 'data collection services' and the 'studies and comparative analysis' separately. The contractor and the Commission each appoint one central contact person dealing with the specific requests relating to studies.

Geographical coverage is as broad as possible and should include the EU Member States, the candidate and potential candidate countries (Albania, Croatia, former Yugoslav Republic of Macedonia, Montenegro, Serbia, Turkey, Iceland) Norway, Switzerland and Liechtenstein, all countries with which the EU shares a physical border, BRICS countries (Brazil, Russia, India, China, South Africa), Eastern Partnership countries and, preferably, all G20 countries. For customs, a maximum coverage of WTO and WCO members is preferable.

The tenderer shall describe to what extent access to such data can be guaranteed, and present the strategies followed to supply the most recent data. This includes the monitoring of recent developments related to the national legislation; the outcomes of national, European, US and international court cases related to taxation and customs, EU legislation, work-in-progress in international and European private and public organisations dealing with taxation and customs, and discussions in academic and professional fora organised on taxation and customs.

The tenderer subscribes to the urgent character of some requests and will do all in its powers to accommodate the needs of the Commission in such circumstances.

The reports should be presented in a clear and structured format. Where an analysis on the national level is required, the results should be presented in a way that allows for a direct comparison between the countries involved in the analysis. In all cases, the tenderer shall supply an electronic version of the report.

For each request, the contractor shall provide a detailed quotation.

For the data collection services the quotation contains information on the data collection method, including a reference to the data sources used and information on the measures taken to ensure the quality of the information supplied.

For studies and comparative analyses, the quotation contains at least the following elements:

- a justification for the choice of the team composition and attribution of the tasks
- the composition of the team that performs the work, in particular the number of staff deployed and the professional level of each staff member
- a description of the steps taken to achieve the goal
- a detailed work plan, containing the attribution of tasks to each individual member of the team, the time schedule for the work performed by each team member with setting of intermediate deadlines for relevant parts of the work
- information on data collection, including justification of the data sources used
- a description on how the quality control system is organised for the particular study
- a breakdown of the elements described under the previous bullet points for each individual work package as defined by the Commission in the request

All services are to be provided in English. The tenderer assures that the staff appointed has sufficient knowledge of this language.

The tenderer shall provide assurance regarding the quality of all information supplied to the Commission by applying a quality control system. In addition, the tenderer must provide assurance that all information supplied to the Commission is accurate and up-to-date. To this effect, the tenderer has to describe in detail the quality control system applied in the offer.

5. SCOPE AND DURATION

The duration of the framework contract shall be of a maximum period of 4 years from its date of signature. The framework contract shall have an initial duration of 2 years. It may be renewed only with the express written agreement of the parties before the framework contract ends. Only two renewals for a period of 1 year each shall be possible. Each specific contract made under this framework contract shall have its own specific duration.

The overall estimated budget value for the four-year period is 3 500 000 EUR.

6. PRICES

Tenders will specify a price per man-day for each of the categories of experts described in Annex VI. The price per man-day is unique per category of experts and includes all types of overheads.

Based on the prices per man-day provided for in Annex VI 'Data collection services', the tenderer will determine a unique price for the **data collection services** for an estimated number of 10 services of 10 man-days on average. This unique price will constitute the upper ceiling for prices charged under any specific contract concluded under this framework contract. The total price for the **data collection services** is defined as the price per man-day times the average number of man-days per study times the number of services planned for the total duration of the contract.

Based on the prices per man-day provided for in Annex VI 'Studies and comparative analyses', the tenderer will determine a unique price for the **studies and comparative analyses** for an estimated number of 20 studies of 90 man-days on average. This unique price will constitute the upper ceiling for prices charged under any specific contract concluded under this framework contract. The total price for the **studies and comparative analyses** is defined as the price per man-day times the average number of man-days per study times the number of studies planned for the total duration of the contract.

The total price for the services provided under this framework contract is defined as the sum of:

- the total price for the **data collection services**;

and

- the total price for the **studies and comparative analyses**.

The total price for the services provided under this framework contract must cover all expenditure incurred in the performance of the contract including any necessary travel and subsistence costs. The labour cost for each category of staff engaged in the project must be specified. The daily rate for labour of each member of staff and the total number of days each member of staff will contribute to the work should be provided.

Prices must be quoted in EUR using, when needed, the conversion rates published in the C series of the Official Journal of the European Union on the day when the notice of invitation to tender was published.

Prices should be quoted free of all duties, taxes and other charges, including VAT, as the Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union; if any, the amount of VAT should be shown separately.

7. DEPOSITS AND GUARANTEES REQUIRED

The contractor may be requested to provide the Commission with a guarantee equal to the amount of any advance obtained.

8. TENDERS FROM CONSORTIA

Contractors or suppliers must specify and quantify the role, qualifications and experience of each member of the consortium. A prime contractor must be designated.

In case of consortia, the criteria have to be met by the consortia as a whole. Nevertheless, criteria 9.A.I, II, III a) and III b) have to be met by each member of the consortium.

9. EXCLUSION CRITERIA

The Commission reserves its right not to select an offer, which does not conform to the conditions explained in the present document and its annexes.

A. EXCLUSION CRITERIA

I. Any candidate may be excluded from participation who:

- (a) is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, and is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) has been convicted of an offence concerning professional conduct by a judgement which has the force of *res judicata*;
- (c) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (d) has not fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;
- (e) has been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental of the Union's financial interests;
- (f) is the subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under a contract covered by the budget.

Proof must be provided by:

filling in a declaration signed by an authorized officer who certifies that none of the above is the case (see annex VII: Declaration of honour with respect to the Exclusion Criteria).

The Commission reserves its right to request **from the winning tenderer:**

- For situations described in (a), (b) and (e): production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer.
- For the situation described in point (d) above: recent certificates or letters issued by the competent authorities of the State concerned. These documents must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.
- For any of the situations (a), (b), (d) or (e) where any document described in the two paragraphs above is not issued in the country concerned: 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.

II. 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 service provider.

III. Proof of the service provider's financial and economic standing must be furnished by the following:

- (a) evidence of relevant professional risk and/or third party indemnity insurance;
- (b) a copy of the service provider's balance sheets or extracts from balance sheets for at least the last three years for which accounts have been closed, where publication of the balance sheets is required under the company law of the country in which the service provider is established; and
- (c) a statement of the undertaking's overall turnover and the turnover relating to the provision of the services to which this contract relates for the previous three financial years.

B. SELECTION CRITERIA

I. Evidence of the service provider's technical and professional capacities and previous experience in the field

Tenderers must demonstrate that they have the human resources needed to provide the services required:

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 to 4 (below). Such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.
2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the services to be provided, 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 and, in particular, those of the person or persons responsible for providing the services;
 - (b) a list of the principal services provided in the past 3 years, with the sums, dates and recipients, public or private;
 - (c) a description of the measures employed to ensure the quality of services, and a description of the firm's study and research facilities;
 - (d) a statement of the average annual manpower and the number of managerial staff of the service provider in the last 3 years;
 - (e) an indication of the proportion of the contract which the service provider may intend to subcontract.
3. Tenderers have to prove their ability, skills, experience and competence for performing the work by means of:
 - (a) A general description of the tenderer's main activities, previous experience with respect to the services requested under this framework contract, supported by client references. In addition, the description should contain the methodologies used in the previous studies quoted.

Client references: give 3 client reference contacts of companies other than the Commission that are making use of services similar to the service requirements of this call for tenders. Only provide client references and contact data that are relevant to the services in question and that can be consulted and used by the Commission.
 - (b) Availability of human resources: tenderers must include in their tenders the following information:

The summary table attached in Annex VI (identification form for staff) detailing the experts made available for the work. **For the data collection services**, this involves the experience level of tax and customs experts, with a distinction between junior level and expert level. For the **studies and comparative analyses**, this involves tax and customs experts, accounting experts, finance experts and economists, with for each field of expertise a distinction between junior level and expert level.

A curriculum vitae of each of the experts listed in Annex VI specifying:

- Academic qualifications and professional background.
- Expertise and experience relevant to the subject, indicating dates, place of work and recipients of the work (in particular those services implemented on behalf of the tenderer).
- Description of his/her role in the team.

(c) A statement that the experts included in the offer are able to work and produce reports in English.

4. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

II. Declaration of honour on confidentiality and absence of conflict of interest

The tenderer is required to sign a Declaration of honour on confidentiality and absence of conflict of interest (see Annex I) which must be included in the offer.

In case of consortia, each member of the consortia is required to sign this declaration.

Tenders that do not meet the above requirements will not be taken into consideration for evaluation.

10. AWARD CRITERIA

The award of the contract will be made to the economically most advantageous tender: the bid offering the best value for money will be identified as presenting the best quality/price ratio, provided the minimum number of points on technical quality is achieved.

The bids will be assessed according to the following criteria:

- The technical quality of the services offered in the light of the tender specifications
- The price for the Commission

The **technical quality** will be assessed on the basis of the following criteria:

- i. Clarity and coherence of the offer, including understanding the topical and geographical coverage aspects of the tender. (*maximum 20 points*)
- ii. Adequacy of the mechanisms for ensuring quality of service, rapid response and timely availability of the specific expertise required for covering the different services to be implemented under the contract including overall contract management and work organization. (*maximum 40 points*)
- iii. Relevance, quality and depth of the methodologies and multi-disciplinary approaches proposed in order to cope with the variety of tasks to be implemented under the contract. (*maximum 40 points*)

The quality of the offers will be evaluated by the degree to which they fulfill the requirements specified for the work and supply adequate solutions to the tasks to be implemented. The marks in brackets indicate the importance given to each technical criterion. The maximum overall mark is 100.

Selected companies will have to score at least 50% for each technical quality criterion. An overall score of 60 marks or more is also required.

Price assessment

The basis for the price assessment is the total price, defined as the sum of

- the price per man-day times the average number of man-days per study times the number of data collection services planned for the total duration of the contract;

and

- the price per man-day times the average number of man-days per study times the number of studies and comparative analysis planned for the total duration of contract.

Offers for which the technical quality assessment score is less than 60 points or offers for which less than half the points are scored on an individual criterion will not be considered for the price assessment and for the award of the contract.

Quality (70%)/price (30%) ratio

The offer presenting the best value for money will be identified in the following way:

- 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.
- The offer found to be the cheapest (and with a sufficient technical score (i.e. at least 60 points and at least half the points on each technical criterion) will receive a price indicator of 100 points. The remaining offers will receive lower price indicators in proportion to their prices.

A weighting of 70% shall be attributed to the quality criterion and a weighting of 30% shall be attributed to the price criterion. The highest result will indicate the offer presenting the best value for money.

11. RESULTS

The copyright of the services undertaken under this framework contract will reside with the Commission. Models developed under the framework contract will become the ownership of the Commission. The Commission departments will be responsible for deciding the possible dissemination of the studies and analysis performed under this framework contract.

12. QUALITY ASSESSMENT

In addition to the obligatory quality control exercised by the contractor, a quality assessment will be established by the Commission for the assignments implemented under this framework contract. The information obtained from this exercise will be one of the key elements when taking into account a possible extension of the contract.

13. LIQUIDATED DAMAGES

Article II.12 of the framework contract defines the conditions under which liquidated damages are applied.

14. PAYMENTS ARRANGEMENTS

Payments referring to specific contracts shall be made provided that the services to be offered by the contractor have been certified by the Commission in accordance with the conditions laid down in each relevant specific contract.

ADMINISTRATIVE INFORMATION

The tenderer will produce the following documents and information (also to be completed for each member in case of a consortium):

- legal form of tenderer; articles of association of the company,
- date of registration,
- country of registration,
- name, capacity, title and function of the legal representative who will sign the contract on behalf of the company,
- financial details (see also Annex V: to be completed and signed by the Bank and/or by the tenderer representatives):
 - document to be completed and signed by the tenderer, who must attach a bank document indicating the bank account,
 - document to be signed also by a banking establishment in the absence of a bank statement providing identification,
- VAT number,
- names and functions of those responsible as contacts for technical aspects of the contract,
- telephone and fax numbers and e-mail addresses.

The tenderer shall also include the information mentioned hereafter, duly completed and signed, in order to permit tenders to be assessed by means of the criteria for the contract award:

- a) Annex I: Declaration on confidentiality and no conflict of interest.
- b) Annex IV: Legal Entity form
- c) Annex VI: Identification form for staff.

The tenderer may include any other information that he deems important in support to their capacity to implement the work. This additional information will be enclosed as annex to the tender.

ANNEXES

Annex I: Declaration of honour on confidentiality and absence of conflict of interest

Annex II: Specimen framework contract

Annex III: Specimen specific contract

Annex IV: Legal Entity form

Annex V: Financial identification form

Annex VI: Identification form for staff

Annex VII: Declaration of honour with respect to the Exclusion Criteria