

INSTRUCTIONS TO TENDERERS

REFERENCE: IPC-EUI/AO/004/17

When submitting their tenders, tenderers must follow all instructions, forms, terms of reference, contract provisions and specifications contained in this tender dossier. Failure to submit a tender containing all the required information and documentation within the deadline specified may lead to the rejection of the tender.

These instructions set out the rules for submitting, selecting and implementing contracts financed under this call for tenders, in conformity with the Practical Guide, (available on the internet at this address: <http://ec.europa.eu/europeaid/prag/document.do>).

1. Services to be provided

The services required by the Contracting Authority are described in the Terms of Reference. They are set out in Annex II to the draft contract, which forms Part B of this tender dossier.

2. Timetable

	DATE	TIME*
Deadline for requesting clarification from the Contracting Authority	27 July 2017	-
Last date for the Contracting Authority to issue clarification	31 July 2017	-
Deadline for submitting tenders	10 August 2017	17:00 CEST
Interviews (if any)	Not applicable **	-
Completion date for evaluating technical offers	8 September 2017 **	-
Notification of award	15 September 2017**	-
Contract signature	25 September 2017**	-
Start date	01 October 2017**	-

* All times are in the time zone of the country of the Contracting Authority

** Provisional date

3. Participation, experts and subcontracting

- a) Participation in this tender procedure is open to the invited tenderers as well as to the entities which reply to the open call. For the eligibility, please see point 10 of the contract notice.
- b) Natural or legal persons are not entitled to participate in this tender procedure or be awarded a contract if they are in any of the situations mentioned in Section 2.3.3.1. Or 2.3.3.2. Of the **Practical Guide**. Should they do so, their tender will be considered unsuitable or irregular respectively.

- c) In the cases listed in Section 2.3.3.1. of the **Practical Guide** tenderers may be excluded from EU financed procedures and be subject to financial penalties representing 2% to 10% of the total value of the contract in accordance with the conditions set in Section 2.3.4. of the **Practical Guide**. This information may be published on the Commission website in accordance with the conditions set in Section 2.3.4. of the Practical Guide.
- d) The contract between the tenderer/contractor and its experts shall contain a provision that it is subject to the approval of the partner country. It is furthermore recommended that this contract contains a dispute resolution clause.
- e) The tenderer must intend to provide the majority of the services itself except for the tasks entrusted to experts either as natural persons or single-member companies. If the tenderer intends to subcontract one or more parts of the contracted services, this must be clearly stated in the Organisation and Methodology and the Tender submission form.
- f) All subcontractors must be eligible for the contract.
- g) Subcontractors cannot be in any of the exclusion situations listed in Section 2.3.3 of the Practical Guide.
- h) If the offer includes subcontracting, it is recommended that the contractual arrangements between the tenderer and its subcontractors include mediation, according to national and international practices, as a method of dispute resolution.

4. Content of tenders

Offers, all correspondence and documents related to the tender exchanged by the tenderer and the Contracting Authority must be written in English.

Supporting documents and printed literature furnished by the tenderer may be in another language, provided they are accompanied by a translation into the language of the procedure. For the purposes of interpreting the tender, the language of the procedure has precedence.

The tender must comprise of a Technical offer and a Financial offer, which must be submitted in separate envelopes (see clause 8). Each Technical offer and Financial offer must contain one original, clearly marked '**Original**', and **one (1) copy**, marked '**Copy**'. Failure to fulfil the requirements in clauses 4.1, 4.2 and 8 will constitute an irregularity and may result in rejection of the tender.

4.1. Technical offer

The Technical offer must include the following documents:

- (1) **Tender submission form** (see Part D of this tender dossier) including:
 - a) Signed statements of exclusivity and availability (using the template included with the tender submission form), one the key expert, the purpose of which are as follows:
 - The key expert proposed in this tender must not be part of any other tender submitted for this tender procedure. They must therefore commit themselves exclusively to the tenderer.

- ❑ The key expert must also undertake to be available, able and willing to work for the whole period scheduled for his/her input to implement the tasks set out in the Terms of Reference and/or in the Organisation and methodology.

Any expert working on an EU/EDF-financed project, where the input from his/her position to that contract could be required on the same dates as his/her activities under this contract, must not be proposed as a key expert for this contract under any circumstances. Consequently, the dates included by a key expert in his/her statement of exclusivity and availability in your tender must not overlap with dates on which he/she is committed to work as a key expert on any other contract.

The expert may participate in parallel tender procedures but must inform the Contracting Authority of these in the Statement of Exclusivity and Availability. Furthermore, the expert is expected to notify the tenderer immediately if he/she is successful in another tender procedure and he/she is expected to accept the first engagement offered to him/her chronologically.

If a key expert is proposed as a key expert by more than one tenderer with the agreement of the key expert, the corresponding tenders may be rejected. The same applies if the key expert proposed has been involved in the preparation of the project. The expert concerned will be excluded from this tender procedure and may also be excluded from other EU/EDF-financed contracts.

Having selected a firm partly on the basis of an evaluation of the key experts presented in the tender, the Contracting Authority expects the contract to be executed by these specific experts. However, after the award letter, the selected tenderer may propose replacements for the key experts under certain conditions (for further information see point 14).

- b) A signed **declaration** together with a signed "Declaration of honour on exclusion criteria and selection criteria" from each legal entity identified in the tender submission form, using the format attached to the tender submission form.
 - c) A completed **Third Party File** (see Annex VI to the draft contract) to indicate the bank account into which payments should be made if the tender is successful. (If the tenderer has already signed another contract with the European Commission, it may provide instead either its financial identification form number or a copy of the financial identification form provided on that occasion, unless it has changed in the meantime).
 - d) Duly authorised signature: an official document (statutes, power of attorney, notary statement, etc.) proving that the person who signs on behalf of the company/joint venture/consortium is duly authorised to do so.
- (2) **Organisation and methodology** (will become Annex III to the contract), to be drawn up by the tenderer using the format in Annex III to the draft contract.

The 'Estimated number of working days' worksheet (in the budget breakdown spreadsheet for Annex V) must be included in the Organisation and methodology.

- (3) **Key expert** (to become Annex IV to the contract). The key expert is that whose involvement is considered to be instrumental to achieve the contract objectives. His positions and responsibilities are defined in Section 2.2. the Terms of Reference in Annex II, namely in the section "specific work", to the draft contract and they are subject to evaluation according to the evaluation grid in Part C of this tender dossier.

Annex IV to the draft contract contains the templates that tenderers must use, including:

- a) the CV of the key expert. Each CV should be no longer than 3 pages and only one CV must be provided for each position identified in the Terms of Reference.

The qualifications and experience of the key expert must clearly match the profiles indicated in the Terms of Reference. If an expert does not meet the minimum requirements for each evaluation criterion (i.e. qualification and skills, general professional experience and specific professional experience), he/she must be rejected. In such case the entire tender shall be rejected.

Only diplomas and documented experience will be taken into account. Previous experience which would have led to breach of contract and termination shall not be used as reference.

The contracting authority reserves the right of asking at any point in time during the procedure or the implementation of the contract documentary proof of the diplomas and certificates of the professional experience mentioned in the CVs of the experts proposed by the tenderers and the contractor.

In this case, tenderers must provide within 10 days from the request, the following documents for any key experts proposed:

- a copy of the diplomas mentioned in their CVs,
- a copy of employer certificates or references proving the professional experience indicated in their CVs.

- (4) No documentary evidence of the selection criteria in point 16 of the contract notice shall be submitted but no pre-financing will be granted.

If the documentary evidence submitted is not written in one of the official languages of the European Union, a translation into the language of the procedure must be attached. Where the documents are in an official language of the European Union other than the one of the procedure, it is however strongly recommended to provide a translation into the language of the procedure, in order to facilitate the evaluation of the documents. Documentary proof or statements may be in original or copy. If copies are submitted, the originals must be available to send to the Contracting Authority upon request.

Tenderers are reminded that the provision of false information in this tender procedure may lead to the rejection of their tender and to their exclusion from EU-funded procedures and contracts.

The electronic version of the technical offer must be included with the printed version in the separate envelope in which the technical offer is submitted. If there are any discrepancies between the electronic version and the original, printed version, the latter has precedence.

4.2. Financial offer

The Financial offer must be presented in Euro and must include the following documents (using the templates included in the fee-based version of Annex V to part B of this tender dossier. The electronic version of this document 'B8 - Budget breakdown for a fee-based contract' can be found on the website

<http://ec.europa.eu/europeaid/prag/document.do>):

- Budget breakdown

To complete the spread sheet:

- 1) Enter the fee rates for each category of expert in the first worksheet ('Budget breakdown')
- 2) Enter the estimated numbers of working days for each category of expert during the period of implementation of the tasks in the second worksheet ('Working days')

The estimated budget for incidental expenditure and expenditure verification are to be pre-filled in the template budget breakdown in the tender dossier.

Tenderers are reminded that the maximum budget available for this contract, as stated in the contract notice, is **EUR 25,500**. Payments under this contract will be made in the currency of the tender.

The applicable tax and customs arrangements are as follows:

Exemption of taxes

There is no agreement between the EUIPO and India by which taxes are partially or fully exonerated.

Any possible tax liability incurred by the IP Expert must be included in their daily fee rate.

5. Variant solutions

Tenderers are not authorised to tender for a variant in addition to this tender.

6. Period during which tenders are binding

Tenderers are bound by their tenders for 90 days after the deadline for submitting tenders or until they have been notified of non-award.

The selected tenderer must maintain its tender for a further 60 days. A further period of 60 days is added to the validity period irrespective of the date of notification. This period can be further extended when the contracting authority is required to obtain the recommendation of the panel referred to in section 2.3.3.1 of the Practical Guide, up to the adoption of that recommendation.

7. Additional information before the deadline for submitting tenders

The tender dossier should be clear enough to avoid candidates having to request additional information during the procedure. If the Contracting Authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all the tenderers at the same time.

Tenderers may submit questions in writing to the following address up to 15 days before the deadline for submission of tenders, specifying the publication reference and the contract title:

IPC-EUI (Ref IPC-EUI/AO/004/17)
European Union Intellectual Property Office
International Cooperation and Legal Affairs Department
EU-funded_procurement@euiipo.europa.eu
Avenida de Europa, 4, E-03008 Alicante, Spain

The Contracting Authority has no obligation to provide clarification after this date.

Any tenderer seeking to arrange individual meetings with the Contracting Authority and/or the government of the partner country and/or the European Commission concerning this contract during the tender period may be excluded from the tender procedure.

No information meeting or site visit is foreseen.

8. Submission of tenders

Tenders must be delivered to the Contracting Authority for **receipt** before 10 August 2017 17:00 CEST. They must include the requested documents in clause 4 above and be sent:

- **EITHER** by recorded delivery (official postal service) to:

European Union Intellectual Property Office
International Cooperation and Legal Affairs Department
IPC-EUI (Ref IPC-EUI/AO/004/17)
Avenida de Europa, 4, E-03008 Alicante, Spain

In this case, the delivery record makes proof of compliance with the time-limit for receipt.

- **OR** hand delivered (including courier services) directly to the Contracting Authority against a signed and dated receipt to:

European Union Intellectual Property Office
International Cooperation and Legal Affairs Department
IPC-EUI (Ref IPC-EUI/AO/004/17)
Avenida de Europa, 4, E-03008 Alicante, Spain
Deliveries from 8.30 - 13.30 and 15.00 - 17.00

In this case, the acknowledgment of receipt makes proof of compliance with the time-limit for receipt.

Tenders submitted by any other means will not be considered. Tenders must be submitted using the double envelope system, i.e., in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words '**Envelope A — Technical offer**' and the other '**Envelope B — Financial offer**'. All parts of the tender other than the financial offer must be submitted in Envelope A (i.e., including the Tender submission form, statements of exclusivity and availability of the key experts and declarations).

Any infringement of these rules (e.g., unsealed envelopes or references to price in the technical offer) constitutes an irregularity which will lead to rejection of the tender.

The outer envelope should provide the following information:

- a) the address for submitting tenders indicated above;
- b) the reference code of the tender procedure (i.e. **IPC-EUI/AO/004/17**);
- c) the words 'Not to be opened before the tender-opening session';
- d) the name of the tenderer.

The pages of the Technical and Financial offers must be numbered.

9. Amending or withdrawing tenders

Tenderers may amend or withdraw their tenders by written notification prior to the deadline for submitting tenders. Tenders may not be amended after this deadline.

Any such notification of amendment or withdrawal must be prepared and submitted in accordance with Clause 8. The outer envelope (and the relevant inner envelope) must be marked 'Amendment' or 'Withdrawal' as appropriate.

10. Costs for preparing tenders

No costs incurred by the tenderer in preparing and submitting the tender are reimbursable. All such costs must be borne by the tenderer, including the cost of interviewing proposed experts.

11. Ownership of tenders

The Contracting Authority retains ownership of all tenders received under this tendering procedure. Consequently, tenderers do not have the right to have their tenders returned to them.

12. Evaluation of tenders

12.1. Evaluation of technical offers

The quality of each technical offer will be evaluated in accordance with the award criteria and the weighting detailed in the evaluation grid in Part C of this tender dossier. No other award criteria will be used. The award criteria will be examined in accordance with the requirements indicated in the Terms of Reference.

The evaluation of the technical offers will follow the procedures set out in Section 3.3.10 of the Practical Guide (available on the internet at <http://ec.europa.eu/europeaid/prag/document.do>).

12.1.1. Interviews

No interviews are foreseen.

12.2. Evaluation of financial offers

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders that were not eliminated during the technical evaluation will be opened (i.e. those with an average score of 75 points or more). Tenders exceeding the maximum budget available for the contract are unacceptable and will be eliminated.

Any arithmetical errors are corrected without penalty to the tenderer such that, if there is a discrepancy between a fee rate and the total amount derived from multiplying the fee rate by the corresponding number of working days, the fee rate as quoted must prevail, unless the opinion of the Evaluation Committee contains an obvious error in the fee rate, in which event the total amount as quoted must prevail and the fee rate must be corrected.

12.3. Choice of selected tenderer

The best price-quality ratio is established by weighing technical quality against price on an 80/20 basis.

12.4. Confidentiality

The entire evaluation procedure is confidential, subject to the Contracting Authority's legislation on access to documents. The Evaluation Committee's decisions are collective and its deliberations are held in closed session. The members of the Evaluation Committee are bound to secrecy. The evaluation reports and written records are for official use only and may be communicated neither to the tenderers nor to any party other than the Contracting Authority, the European Commission, the European Anti-Fraud Office and the European Court of Auditors.

13. Ethics clauses / Corruptive practices

- a) Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the Evaluation Committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of its tender and may result in administrative penalties.
- b) The tenderer must not be affected by any conflict of interest and must have no equivalent relation in that respect with other tenderers or parties involved in the project.
- c) The European Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or during the execution of a contract and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or execution of a contract already concluded with the Contracting Authority.
- d) Tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.

- e) The Contracting Authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. If substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

14. Signature of contract(s)

14.1. Notification of award

The successful tenderer will be informed in writing that its tender has been accepted.

The successful tenderer shall then confirm availability or unavailability of their key-expert within 5 days from the date of the notification of award.

In case of unavailability the tenderer will be allowed to propose replacement key-expert. The successful tenderer shall give due justification for the exchange of key-expert but the acceptance will not be limited to specific cases. Several replacement key-expert may be proposed but only one time-period of 15 days from the date of the notification of award will be offered. The replacement key-expert(s) cannot be an expert proposed by another tenderer in the same call for tender.

The replacement key-expert's total score must be at least as high as the scores of the key-expert proposed in the tender. It must be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.

If replacement key-expert is not proposed within the 15 days delay or if the replacement experts are not sufficiently qualified, or that the proposal of the replacement key-expert amends the award conditions which took place, the Contracting Authority may decide to award the contract to the second best technically compliant tenderer (also giving them a chance to replace a key-expert should he/she not be available).

Should the Contracting Authority learn that a tenderer has confirmed the availability of a key expert and signed the contract although the tenderer has deliberately concealed the fact that the key-expert is unavailable from the date specified in the tender dossier for the start of the assignment, the Contracting Authority may decide to terminate the contract on the basis of article 36.2 (m) of the General Conditions.

It is reminded that the tenderer/contractor may also be subject to administrative and financial penalties foreseen in section 2.3.4 of the PRAG and article 10.2 of the General Conditions of service contracts. Furthermore it may lead to a tenderer's /contractor's exclusion from other contracts funded by the European Union.

14.2. Signature of the contract(s)

Within 30 days of receipt of the contract already signed by the Contracting Authority, the selected tenderer shall sign and date the contract and return it to the Contracting Authority.

Failure of the selected tenderer to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, the Contracting Authority may award the tender to another tenderer or cancel the tender procedure.

The other tenderers will, at the same time as the notification of award is submitted, be informed that their tenders were not retained, by electronic means or standard letter, including an indication of the relative weaknesses of their tender by way of a comparative table of the scores for the winning tender and the unsuccessful tender. The second best tenderer is informed of the notification of award to the successful tenderer with the reservation of the possibility to receive a notification of award in case of inability to sign the contract with the first ranked tenderer. The validity of the offer of the second best tenderer will be kept. The

second tenderer may refuse the award of the contract if, when receiving a notification of award, the 90 days of validity of their tender has expired.

The Contracting Authority will furthermore, at the same time, also inform the remaining unsuccessful tenderers and the consequence of these letters will be that the validity of their offers must not be retained.

15. Cancellation of the tender procedure

In the event of cancellation of the tender procedure, the Contracting Authority will notify tenderers of the cancellation. 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.

Cancellation may occur, for example, where:

- the tender procedure has been unsuccessful, i.e., no suitable, qualitatively or financially acceptable tender has been received or there is no valid response at all;
- there are fundamental changes to the economic or technical data of the project;
- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been substantial errors, irregularities or frauds in the procedure, in particular if they have prevented fair competition;
- the award is not in compliance with sound financial management, i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market).

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. The publication of a contract notice does not commit the Contracting Authority to implement the programme or project announced.

16. Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. See section 2.4.15 of the Practical Guide.

17. Data Protection

If processing your reply to the invitation to tender involves the recording and processing of personal data (such as names, addresses and CVs), 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 data. The data will be processed only for the purposes of the performance, management and follow-up of the Contract by the Office without prejudice to a possible transmission to the bodies in charge of a monitoring or inspection task in conformity with Union law. The Contractor may, upon request, obtain the communication of his personal data and rectify any inaccurate or incomplete personal data. Any request of this type shall be addressed to Data Controller responsible for the invitation to tender (Procurement.DataProtectionController@euipo.europa.eu). The Contractor also has a right of recourse at any time to the European Data Protection Supervisor concerning the processing of such data.

18. Early Detection and Exclusion System

The tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations of early detection or exclusion, their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the Early Detection and Exclusion System, and communicated to the persons and entities concerned in relation to the award or the execution of a procurement contract.