



CALL FOR TENDERS

Open Procedure

JRC/BRU/2016/I.4/5002/OC

Patent annuities and trade mark renewal services

Tender specifications

Part 1- Administrative Annex

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1. INFORMATION ON TENDERING

1.1. Participation: who may submit a tender

Participation in this procurement procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties.

It is also open to all natural and legal persons established in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the participation to this procedure is open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions it lays down.

1.2. Joint tenders and subcontracting: how economic operators can organise themselves to submit a tender

Economic operators can submit a tender either as a sole tenderer or as a group of tenderers (joint tender, Section 1.2.1). In either case subcontracting is permitted (Section 1.2.2). A tenderer can also rely on the capacities of other entities to fulfil the selection criteria (Section 1.2.3).

The tenderer must clearly specify the role of each economic operator involved in the tender – as a member of a group, a subcontractor or a third party on whose capacity is being relied upon. This also applies where the entities involved belong to the same economic group.

Changes in the composition of the group or change of subcontractors during the procurement procedure (after submission of the tender) or contract execution is subject to the prior written approval of the Contracting Authority.

The Contracting Authority may require the tenderer to remove or replace an entity (a member of the group, a subcontractor or an entity on whose capacity is being relied) which is in an exclusion situation or does not meet a relevant selection criterion.

1.2.1. Joint tenders

A joint tender is a situation where a tender is submitted by a group (with or without legal form) of economic operators (natural or legal persons) regardless of the link they have between them.

All members of the group assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole, i.e. both financial and operational liability.

The joint tender must clearly indicate the role and tasks of each member and designate one legal entity ("the leader") as the single point of contact for the Contracting Authority for administrative and financial aspects as well as operational management of the contract. The leader will have full authority to bind the group and each of its members during contract execution.

If the joint tender is successful, the Contracting Authority will sign the contract either with all members of the group, or with the leader, authorised by the other members to sign the contract on their behalf (e.g. via powers of attorney).

1.2.2. Subcontracting

Subcontracting is the situation where the contractor enters into legal commitments with other legal entities which will perform part of the contract on its behalf. The contractor retains full liability towards the Contracting Authority for performance of the contract as a whole. Freelancing, drawing on the activities or staff of any other entirely different legal entity than the contractor, qualifies as subcontracting, independent of the applicable national law.

All tasks subject of the contract may be subcontracted unless the Technical Specifications reserve the execution of certain critical tasks to the tenderer itself, or in case of a joint tender, to a member of the group.

Tenderers must identify subcontractors:

- on whose capacities the tenderer relies upon to fulfil the selection criteria as described under Section 2.3;
- whose individual share of the contract is above 20%

1.2.3. Reliance on a third party for fulfilment of selection criteria

For the fulfilment of selection criteria under Section 2.3 a tenderer may rely on the capacities of other entities, regardless of the legal nature of the links it has with them. It must in that case prove that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment by those entities to that effect.

If the contract is awarded to a tenderer relying on another entity to provide more than 70% of the minimum requirements for economic and financial capacity, the Contracting Authority will require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.

2. EVALUATION AND AWARD

2.1. Order and basis of evaluation

Tenders received in conformity with the submission modalities of the call for tender will be subject to assessment with regard to the following criteria:

- Exclusion criteria (Section 2.2)
- Selection criteria (Section 2.3)
- Compliance with the minimum requirements of the Tender Specifications (Section 2.4)
- Award criteria (Section 2.5)

The Contracting Authority will assess these criteria in no particular order. A tenderer failing to pass a given category of criteria will not be evaluated under the other categories and will be informed of the ground for rejection without being given feedback on the non-assessed content of the tender.

The contract will be awarded to the tenderer based on the award criteria specified in Section 2.5 provided that:

- the tender complies with the minimum requirements of the Tender Specifications, and
- the tenderer meets the exclusion and selection criteria specified in Sections 2.2 and 2.3 of this document, and is not subject to conflicting interests which may negatively affect the performance of the contract.

The Contracting Authority shall evaluate tenders as follows:

- Exclusion and selection criteria shall be evaluated on the basis of "Declaration(s) on Honour on Exclusion and Selection criteria" (Annex 1) to be provided at tender submission stage as evidence of non-exclusion and fulfilment of selection criteria (Section 3.2).
- Compliance with the minimum requirements shall be evaluated on the basis of documents submitted for identification of the tenderer (Section 3.1), the Technical offer (section 3.3) and the Financial offer (Section 3.4).
- Award criteria shall be evaluated on the basis of the Technical offer (Section 3.3) and the Financial offer (Section 3.4).

The "Declaration on Honour on Exclusion and Selection criteria" (Annex 1), signed and dated by an authorised representative, must be submitted by:

- The tenderer (the leader in case of a joint tender)
- All subcontractors and third parties whose capacity is necessary to fulfil the selection criteria.

Other members of the group in case of a joint tender and subcontractors whose share of the contract is above 50% but whose capacity is not necessary to fulfil the minimum selection criteria need only to provide the duly signed and dated "Declaration on Honour on Exclusion criteria" (Annex 2 to this document).

As the estimated value of the awarded contract is above EUR **135 000**, the successful tenderer **shall** be required to provide before contract signature and within a deadline given by the Contracting Authority the following documentary evidence:

- supporting documents of non-exclusion listed in the "Declaration on Honour on Exclusion and Selection criteria" (see Annex 1 to this document). In case of a joint tender this evidence must be provided by each member of the group.
- evidence of legal and regulatory, financial and economic and technical and professional capacity specified in Section 2.3 of this document.

The Contracting Authority reserves the right to require the above documentary evidence at any time during the procurement procedure and contract execution. Failure to provide the requested evidence may lead to the tender being rejected. If any of the declarations or information provided as a condition for participating in this procedure proves to be false the Contracting Authority may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

Tenderers shall not be required to submit:

- documentary evidence that has already been submitted for the purposes of another procurement procedure, provided that the documents are still valid and, in case of supporting documents of non-exclusion, the issuing date does not exceed one year from the date of the request of the Contracting Authority. In such cases, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous

procurement procedure, indicate the reference of the procedure and confirm that there has been no change in its situation.

- a specific document which the Contracting Authority can access on a national database free of charge. In this case the tenderer shall provide the Contracting Authority with the internet address of the database and, if needed, the necessary identification data to retrieve the document.

International organisations are exempt from the obligation to submit supporting documents of non-exclusion.

2.2. Exclusion criteria

The objective of the exclusion criteria is to assess whether an economic operator is allowed to participate in the procurement procedure or to be awarded the contract.

Tenderers will be rejected from the procurement procedure if they are in any of the situations listed in Article 106 or 107 of the Financial Regulation¹. Where the tenderer is a legal person, certain exclusion situations apply also to the natural persons having power of representation, decision-making or control over the tenderer and to natural or legal persons assuming unlimited liability for the debts of the tenderer. All these situations are explicitly described in the "Declaration on Honour on Exclusion and Selection Criteria" (Annex 1).

2.3. Selection criteria

The objective of selection criteria is to assess the capacity of the tenderer to carry out the work subject to this procurement procedure. This includes legal and regulatory, economic, financial, technical and professional capacity.

To fulfil the selection criteria a tenderer may rely on the capacities of other entities.

2.3.1. Legal and regulatory capacity

Tenderers must prove that they are allowed to pursue the activity necessary to carry out the work that is the subject of this call for tenders.

The legal and regulatory capacity shall be proven by supporting documents provided with the Legal Entity Form (see Section 3).

2.3.2. Economic and financial capacity

The tenderer must have the necessary economic and financial capacity to perform this contract until its end.

In order to prove their capacity, the tenderer must comply with the following selection criterion.

- **Criterion F1:** Average annual turnover of the last two financial years above EUR **800 000,00**; this criterion applies to the tenderer as a whole, i.e. the combined capacities of all members of the group in case of a joint tender, all subcontractors and all entities on whose capacity is relied.

On a request from the Contracting Authority, the tenderer will provide the following evidence at short notice:

¹ Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union - <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32015R1929>

- Copy of the profit and loss accounts and balance sheet for the last two years for which accounts have been closed from each concerned legal entity;
- Failing that, appropriate statements from banks.

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, it may prove its economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

The Contracting Authority reserves the right not to award the contract to a tenderer where the evidence provided gives rise to major concerns on its financial viability to perform the contract and the tenderer has failed to mitigate these concerns by submitting observations or other evidence of financial viability.

2.3.3. Technical and professional capacity

The tenderer must have the necessary technical and professional capacity to perform this contract until its end.

Tenderers must comply with the criteria listed below:

Criterion T1 : A team of at **least 3** persons proposed to carry out the tasks as described in the Technical Specifications, consisting of the following profile:

- Experience in the field of IP rights annuities and renewals management.
- Ability to speak read and write in English.

Minimum Requirements for each person proposed

- At least 2 years of proven experience in the field of IP rights annuities and renewals management
- English (level B2 of the Common European Framework of Reference for Language or equivalent)

Team – Minimum requirements

- At least 1 team member should demonstrate being able to represent clients for the purpose of Intellectual Property (IP) rights annuities and renewals payment and management, at least before one national IP Office, WIPO, EUIPO and EPO (cumulative)

Each proposed CV (in Europass format or equivalent) shall give the name of the related proposed person and shall demonstrate the qualifications and provide evidences on the capabilities of the profile described above.

Criterion T2: provide the contracting authority access to a free-of-charge electronic deadline management system

Minimum Requirements

The electronic deadline management system should at least:

- be accessible online by the contracting authority
- give the possibility to users to retrieve data of all or part of the portfolio

- include the full list of files (by families for inventions, models and brands)
- contain a fully updated situation of the annuities of patents and patent applications
- contain a fully updated situation of the renewals of trademarks

Tenderer shall provide a detailed description of the electronic deadline management system they intend to propose to the contracting authority during the execution of the contract.

Basis for assessment of the above criteria: those criteria apply to the tenderer as a whole - the combined capacities of all members in a group in case of a joint tender, all subcontractors and all entities on whose capacity is relied.

2.4. Verification of compliance with Tender Specifications

The aim of this verification is to assess the compliance of the tender with:

- (1) The administrative formalities of the call for tender set out in the Tender Specifications: Part 1 - Administrative annex.
- (2) The minimum technical requirements set out in the Tender Specifications: Part 2- Technical Specifications.

Tenders may be considered non-compliant with the Tender Specifications if they:

- do not provide the information and documents required for identification of the tenderer (see Section 3),
- contain an incomplete or inconsistent financial offer,
- propose a price exceeding the maximum budget set or an abnormally low price,
- do not cover all or deviate from the minimum requirements of the Technical Specifications,
- propose a solution different from the one prescribed in the Technical Specifications (variants are not allowed),
- do not comply with the applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.
- do not present mandatory options where required.

These tenders may be rejected on the basis of non-compliance with the Tender Specifications and will not be evaluated.

2.5. Award criteria

The objective of the award criteria is to evaluate the technical and financial offer with a view to choosing the most economically advantageous tender in accordance with the award method indicated below.

- Best-price quality ratio award method

The contract shall be awarded to the tender with the best price-quality ratio on the basis of the following criteria:

1. Technical quality (TQ) (max. 30 points)
2. Price (P) (max. 70 points)

The sum of the above criteria will determine the total score (TS) of a tender:

$$TS = TQ + P$$

The highest total score TS will determine the tender with the best price-quality ratio. A maximum of 100 points can be obtained.

2.5.1 Technical quality TQ

The **technical quality** criterion **TQ** is evaluated on the basis of the below criterion (and relevant questions) indicated below and according to the scoring rules indicated in the table.

The Technical Quality points TQ will be given by the sum of the points achieved as described in the sub-criteria grid below. A maximum of 40 points can be obtained by successfully satisfying all sub-criteria.

The TQ points shall be rounded to the nearest one decimal place, (e.g. 15.3, 17.2)

Offers achieving a TQ of less than **18** points (60% of the maximum normalised TQ points) will be rejected and will not be ranked.

2.5.1.1 Technical quality Sub criteria

Evaluation criterion	Maximum score	Scoring rule
Understanding and output	30/30	<p><i>Each answer provided by tenderers from question Q1 to question Q6 shall be evaluated on the basis of the below rating criterion and score points:</i></p> <p><i>Rating criterion:</i></p> <ul style="list-style-type: none"> <i>The answer Identifies all main elements to be considered and shows an understanding of all issues involved.</i> <p><i>Evaluation Scored points per question:</i></p> <ul style="list-style-type: none"> <i>Extremely Poor: 0</i> <i>Poor: 1</i> <i>Fair: 2</i> <i>Satisfactory: 3</i> <i>Good: 4</i> <i>Excellent: 5</i>

For each question the tenderer will provide the information covered at section 3.3 Structure of the offer

Question for evaluation purposes:

- **Q1.** What do you consider to be the main elements for a successful IPR-annuities and renewals management of an IP-portfolio?
- **Q2.** Please describe the workflow/processes proposed for the provision of the described services.
- **Q3.** Please describe the quality control methodology that will be applied for ensuring that the objectives and deadlines for the provision of the services will be met.

- **Q4.** Please describe how your system will make sure that all relevant payment data in your system will be kept up-to-date, and which format for sending data will be supported.
- **Q5.** Until how many days before the deadline for payment will it be possible to correct an order to pay for a renewal or annuity?
- **Q6.** How will you ensure that you get the economically most advantageous conditions from your intermediary and/or partners abroad for managing the tasks?

2.5.2 Price

The **price** criterion **P** shall be evaluated as follows.

A maximum of 70 points will be obtained by the tender offering the lowest price (**P_{o_min}**), which is compliant with the tender specifications and submitted by a tenderer not in an exclusion situation.

The price criterion **P** corresponding to the tender's price score (maximum of 70 points) shall be evaluated as follows:

$$P = (P_{o_min}/P_{o_tot}) \times 70$$

In which:

P_{o_tot} = the quoted price of the tender

P_{o_min} = the lowest quoted price offered among all tenders

The quoted price for each tender shall be determined as follows:

$$P_{o_tot} = \sum \text{column C in "Part 1- Administrative Annex - Annex 4"}$$

Important notice about the prices and orders:

Tenderers are informed that the specific contracts will be based only on the prices listed in the price table (Annex 3 to this document) offered by the winning tenderer.

Travel and accommodation costs and direct reimbursables (national registration fees etc.) shall not be included in the prices offered but shall be reimbursed according to Article I.5.3 of the contract.

2.6. Ranking and award

Tenders shall be ranked according to best price-quality ratio, i.e. the highest ratio shall be first, the second ratio shall be ranked second, etc.

The contract shall be awarded to the tenderer ranked first, who is not in an exclusion situation, whose tender is compliant with the requirements of the tender specifications and who meets the selection criteria.

3. STRUCTURE AND CONTENT OF THE TENDER

Tenders shall be structured as follows.

3.1. Identification of the tenderer

The tender must include:

- A cover letter signed by an authorised representative of the tenderer (in case of joint tenders an authorised representative of each member or only of the leader duly authorised by the other members). The letter must clearly indicate:
 - the name of the tenderer, including the names of all members of the group in case of a joint tender, as well as their tasks during contract execution.
 - the tender reference number and title,
 - if applicable, the names of subcontractors and entities on whose capacity the tenderer relies for meeting the selection criteria, as well as their tasks during contract execution.
 - the period of tender validity (in the absence of such indication the Contracting Authority shall assume that the tender is valid at least for the minimum validity period set in the Invitation letter),
 - contact details for communications with the Contracting Authority (including contact person and email),
 - confirmation of acceptance of all terms and conditions of the Tender Specifications and the Draft Contract,
 - indication whether the tenderer is a Small or Medium Size Enterprise in accordance with [Commission Recommendation 2003/361/EC](#) (this information is used for statistical purposes only).
- Evidence confirming that the person signing the cover letter and other documents on behalf of the tenderer is so authorised (e.g. copy of notice/publication of appointment or extract from trade register). Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
- (if applicable) Evidence that the leader of the joint tender is authorised to sign the cover letter and, if the joint tender is successful, the contract on behalf of the other members of the group.
- (if applicable) Document proving the commitment of subcontractors/third parties on whose capacity the tenderer relies for fulfilling the selection criteria and confirming that the tenderer will have at its disposal the resources necessary for the performance of the contract.
- Legal Entity Form signed by an authorised representative of the tenderer (each member of the group in case of joint tender) and the supporting documents indicated in the form.

The form is available at the following link:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been contractors of the Commission) must provide the form but are not obliged to provide the supporting documents.

- Financial Identification Form signed by an authorised representative of the tenderer (only the leader in case of joint tender) and the supporting documents indicated in the form.

The form is available at the following link:

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial-id_en.cfm

3.2. Non-exclusion and selection

- "Declaration on Honour on Exclusion and Selection criteria" (Annex 1), signed and dated by an authorised representative of the tenderer (the leader in case of a joint tender) and subcontractors/third parties whose capacity is necessary to fulfil the selection criteria
- "Declaration on Honour on Exclusion criteria" (Annex 2) signed and dated by the authorised representatives of all members of the group in case of a joint tender (except for the leader who must sign the Declaration in Annex 1) and all subcontractors whose individual share of the contract is above 50 % but whose capacity is not necessary to fulfil the selection criteria.

3.3. Technical offer

For the purpose of this procedure, the technical offer will correspond to the document submitted by tenderers answering to the above questions (Q1 to Q6). The document must cover all aspects of the technical quality criteria and provide all the information needed to apply the award criteria.

3.4 Financial offer

The financial tender must contain the price offer quotations on an **all-inclusive basis**:

The price tendered must be **all-inclusive**, expressed in Euro and be fixed and not subject to revision. Under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Union is exempt from all charges, taxes and dues, including value added tax; such charges may not therefore be included in the calculation of the price quoted.

The tenderer is required to include his financial offer in the form of the price table in Annex 3 to this document, duly filled and signed by the authorised representative of the tenderer.

The tenderer is also required to include the financial scenario duly filled (Annex 4 to this document), column B has to be filled according to the data provided by tenderers in the above mentioned Annex 3, column C has to be filled by tenderers according the formula " column A multiplied by column B". The document has to be signed by the authorised representative of the tenderer.

The financial offer must be:

- **fixed** (during contract execution the prices may be revised only under the terms set out in the Draft Contract).
- **free of all duties, taxes (e.g. VAT) and charges** (the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union)
- **expressed in Euro** (the price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the risks or the benefits deriving from any

variation.).

4. ANNEXES

Annex 1: Declaration on honour on exclusion and selection criteria

Annex 2: Declaration on honour on exclusion

Annex 3: Financial offer – Price Table

Annex 4: Financial scenario