



EUROPEAN COMMISSION  
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

## **CALL FOR TENDERS**

**No 690/PP/GRO/IMA/18/1133/10358**

### **TITLE**

**Study on the transposition by Member States of  
Directive 2016/943 on Trade Secrets**

**Open procedure**

**TENDER SPECIFICATIONS**

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## **1. TECHNICAL SPECIFICATIONS**

### **1.1. DESCRIPTION OF TASKS**

The objective of this tender is to evaluate Member States' transposition and implementation of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (the “Trade Secrets Directive”)<sup>1</sup>.

The tasks of the Contractor will be as follows:

- 1) Conduct a “completeness check”, i.e. verify whether the relevant national measures of the EU Member States transpose all provisions of the “Trade Secrets Directive”.
- 2) Provide high quality translation into English of the national measures of the EU Member States related to the transposition and implementation of the “Trade Secrets Directive”.
- 3) Conduct a “conformity check”, i.e. verify whether the relevant national measures of the EU Member States are consistent with EU law and with the “Trade Secrets Directive” in particular.
- 4) Assess “accompanying provisions”, i.e. identify national provisions that go beyond the respective requirements of the “Trade Secrets Directive”, assess their consistency with EU law and with the “Trade Secrets Directive” in particular and comment on their practical impact and legal consequences.
- 5) Identify “best practices” in the implementation of the “Trade Secrets Directive”.

In order to carry out the tasks identified above, the Contractor shall examine all national provisions of the EU Member States, including laws, regulations, administrative practices and instructions and case-law, relevant to the complete and correct transposition and implementation of the “Trade Secrets Directive”. The national provisions will also include not only provisions at the central level but also sub-central levels, where applicable (e.g. states of a federation such as the German *Länder*). Any amendments to those national provisions until the date of submission of the Contractor's draft final report shall be reflected in the latter report.

The Commission shall provide to the Contractor the notification letters it receives from the Member States. The Contractor shall carry out the tasks listed above based on national provisions notified to the Commission, as well as on other national provisions (a) to which reference is made in those notifications and / or (b) which appear necessary to ensure that thorough and reliable conclusions are presented to the Commission. The Contractor shall carry out research on its own to satisfy those conditions. If a Member State has not made a notification, or if the notification made is incomplete, the Contractor shall identify the relevant national provisions or lack thereof.

For the conformity check and the assessment of the accompanying provisions the Contractor shall examine in addition the relevant decisions of national review bodies, including courts. The Contractor shall likewise take into account existing national interpretative guidelines, as available in the respective Member States. The Contractor shall take into account, when available and appropriate, case-law of the Court of Justice of the European Union (CJEU). Recourse to the CJEU

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<sup>1</sup> OJ L 157, 15.6.2016, p. 1–18

jurisprudence and the decisions of the national appeal bodies, including courts, will be particularly needed when compliance of national provisions is doubtful and the provisions are not clear.

The tender must comply with 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 the Directive 2014/24/EU.

### 1.2. BACKGROUND

On 8 June 2016, following a proposal from the European Commission, the European Parliament and the Council adopted the Trade Secrets Directive<sup>2</sup> that aims to standardise the national laws in EU Member States against the unlawful acquisition, disclosure and use of trade secrets.

The Directive harmonises the definition of trade secrets in accordance with existing internationally binding standards. It also defines the lawful and unlawful acquisition, use and disclosure of trade secrets.

The Directive harmonises as well civil measures, procedures and remedies through which victims of trade secret misappropriation can seek protection, such as provisional and precautionary measures, corrective measures, damages and the publication of judicial decisions.

EU Member States must bring into force the laws and administrative provisions necessary to comply with the Directive by 9 June 2018.

The results of the work of the Contractor will be the basis for the completeness and conformity checks to be carried out by the Commission that may lead to action under Article 258 TFEU, including potential referrals to the EU Court of Justice.

### 1.3. REPORTS AND DOCUMENTS

The Contractor is to provide the required reports and documents in accordance with the conditions of the standard service contract.

The project is divided in the following steps:

#### a) Kick-off meeting

The Contractor shall present its plan for the execution of the project and the intended structure of its reports. The Contractor shall clearly identify its information needs and how it intends to gather the required information if it is not in the possession of the Commission.

The Commission will provide the Contractor with useful sources of information on the Directive and any relevant public documents that aim at clarifying its content to the extent it is aware of and in possession of that information.

The parties will identify and discuss an action plan on any difficulties that may affect the execution of the project.

The kick-off meeting shall take place within two weeks from the date of signing the contract. If the Contractor has questions on the project, it may send those questions a week in advance of the kick-off meeting for discussion.

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<sup>2</sup> OJ L 157, 15.6.2016, p. 1–18

**b) Report on completeness and translations for each Member State**

The completeness reports shall include for each EU Member State:

- a general description of the transposition method;
- a list of the national provisions as defined in Point 1.1. “Description of Tasks” by which the Trade Secrets Directive is implemented;
- clear conclusions concerning the completeness or not of the relevant national provisions and the concrete reasons for being considered so;
- a table listing all provisions of the Trade Secrets Directive, the corresponding national provisions and the national provisions that go beyond the requirements of the Trade Secrets Directive. If there are no corresponding provisions, it should be indicated so in the table. The table shall clearly reflect the correspondence - article-by-article or paragraph-by-paragraph or indent by indent when appropriate - between both the Trade Secrets Directive and the national provision(s). The content, structure and layout of the table shall be approved by the Commission.

High quality translation of all relevant national provisions shall be attached to the completeness report. The translations shall be reviewed by an English native speaker or equivalent (C2 level in the Common European Framework for Reference for Languages<sup>3</sup>).

The reports shall identify, if there are differences in transposition and implementation between the central and sub-central levels.

The Contractor shall submit each report within 10 weeks from the date on which the Commission provides the Contractor with the notification of transposition of a Member State. If a Member State sends more than one notification to the Commission and on different dates, the contractor shall submit the report for the Member State in question within 10 weeks from the last notification sent by the Commission to the Contractor.

The Commission shall provide comments to the reports within 30 days from their submission by the Contractor. The Contractor shall consider these comments and reflect them in the draft Final Completeness Report.

**c) Report on conformity, assessment of accompanying provisions and best practices for each Member State**

This report shall be prepared for each EU Member State and include:

- Analysis of conformity;
- Analysis of the conformity of the accompanying provisions;

The Contractor shall provide detailed explanation of the reasons, if identifiable, as to why the accompanying provisions were deemed necessary at national level. The Contractor shall also provide a qualitative assessment and comments on the practical impact and legal consequences of those measures for the Member State concerned and eventually for other EU Member States.

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<sup>3</sup> <https://www.coe.int/en/web/common-european-framework-reference-languages/table-1-cefr-3.3-common-reference-levels-global-scale>

- Identification of best practices, if any;
- Addition to the table submitted for the completeness check with an indication whether the relevant provisions are consistent with the Trade Secrets Directive and a reference to the assessment of that consistency.

For each Member State the Contractor shall submit the report within 7 months from the date on which the Commission provides the Contractor with the last notification of transposition by the Member State in question.

As specified in article I.5.2 of the service contract, the report on the 18<sup>th</sup> Member State should be accompanied by the interim invoice. The contracting authority must approve any submitted documents or deliverables by that time and pay within 60 days from receipt of the invoice.

The interim invoice may otherwise be presented 12 months after the signature of the contract provided that the contractor has delivered and the Commission has accepted, all the completeness reports and all conformity reports concerning the Member States that have notified implementation measures before 28 February 2019.

If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 20 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

### **d) Draft Final Report**

The draft Final Report shall include all reports under points 2 and 3 above and shall consider the comments provided by the Commission. It shall reflect the results of all the tasks set out in Point 1.1. "Description of Tasks".

The draft Final Report shall be reviewed by a lawyer with substantial experience in legal issues related to trade secrets.

The Contractor shall submit the report within 10 months from the date on which the Commission provided the Contractor with the notification of the last Member State to transpose the Trade Secrets Directive

In any case, the Contractor shall provide a draft of the final report on 1 November 2020 covering all Member States regardless of whether or not the Trade Secrets Directive was transposed by all Member States.

The Commission shall provide comments to the draft Final Report within 30 days from its submission by the Contractor. The Contractor shall consider these comments and reflect them in the Final Report.

### **e) Discussion of key issues**

The Contractor will present, together with the Commission's services, the key issues related to the implementation of the Trade Secrets Directive, in a meeting, workshop or conference (hereinafter "the event") to be organised by the Commission's services. The event will take place in Brussels before the acceptance of the final report by the Commission. The

Commission will provide the venue and catering – if any - for the event. The Commission will determine the participants in the event and may decide to invite additional speakers.

The contractor will be responsible for:

1. Preparing a presentation of the key issues related to the implementation of the Trade Secrets Directive.
2. Delivering the presentation at the event in English.
3. Answering the questions on the project and the draft final report.
4. Submitting to the Commission a report of the event within seven days after the day of the event.

### f) **Final Report**

The Final Report shall be the draft Final Report as amended to reflect the comments of the Commission and the results from the event. The Contractor shall provide a clean and a track-changed version to indicate the differences from the draft Final Report.

The Final Report shall also contain an abstract of no more than 200 words and an executive summary with a least 1800 words and a maximum of 6 pages. The Contractor shall provide a version of the Executive summary in French.. The Commission may publish the executive summary.

The Contractor shall submit the Final Report within 2 months from the date of the comments sent by the Commission on the draft final report

As specified in article I.5.3 of the service contract, this report should be accompanied by the final invoice. The contracting authority must approve any submitted documents or deliverables and pay within 60 days from receipt of the invoice.

If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 20 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it

Video and audio conferences can be organised by the parties at the request of any of them and at any time for the duration of the project. The Commission Services shall be able to discuss any issue related to the project with any member of the team and with any sub-contractor.

The Contractor shall submit all written documents in Word format. Those documents shall be in high quality English, checked by an English native speaker or equivalent (C2 level in the Common European Framework for Reference for Languages<sup>4</sup>). The Final Report shall be submitted in both Word and PDF format.

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<sup>4</sup> <https://www.coe.int/en/web/common-european-framework-reference-languages/table-1-cefr-3.3-common-reference-levels-global-scale>



## 1. Technical specifications

The deadlines for the different steps relating to each Member State are set out in the Table below for easiness of reference.

Time-line	Meetings	Reports	Approval of reports	Payments
X Notification per Member State				
X + 10 weeks		Completeness Report and Translations per Member State		
X + 10 weeks + 1 month			Comments on the Report and Translations	
X + 7 months		Report on conformity, etc. per Member State		
X + 9 months			Comments on the report*	

\*Comments should be taken into account in the draft final report

The deadlines for the steps relating to the final report are set out in the Table below for easiness of reference.

Time-line	Meetings	Reports	Approval of reports	Payments
10 months from the notification for the last Member State or 1 November 2020 whichever is earlier		Draft Final Report		
1 month from the date of submission of the Draft Final Report			Comments on the Draft Final Report	
2 months from the Comments on the Draft Final Report		Final Report		

## **2. CONTRACTUAL CONDITIONS**

### **2.1. NATURE OF THE CONTRACT**

An open call for tenders for a service contract is launched by the European Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs for a "*Study on the transposition by Member States of Directive 2016/943 on Trade Secrets*".

### **2.2. STARTING DATE OF THE CONTRACT AND DURATION OF THE TASKS**

The contract shall enter into force on the date on which it is signed by the last contracting party.

It is expected to be signed in **November 2018**.

The duration of the tasks shall not exceed **30 months**.

The execution of the tasks may not start before the contract has been signed. The period of execution of the tasks may be extended, only with the written agreement of the contracting parties, before the end of the period originally stated in the contract

### **2.3. TERMS OF PAYMENT**

Payments shall be made in accordance with Articles I.4, I.5 & II.21 of the draft service contract.

The payment scheme will consist of

- one pre-financing of 30 %,
- One interim payment of 30 %
- and the balance.

The schedule and the procedure for the approval of payments and the documents to be submitted are described in Articles I.5, II.21, II.22 and II.23 and in Annex I to the draft contract referred to above.

### **2.4. GUARANTEES**

The Contractor may be required to provide a guarantee for pre-financing of 30% of the amount specified under I.4.1 of the contract, in compliance with article II.21.5 of the draft contract. The Commission reserves the right to cancel the pre-financing foreseen, according to its management risk analysis or in the case the awarded tenderer refuses such pre-financing guarantee, and to modify the final version of the contract accordingly.

A model guarantee is provided in annex 6.2 of these tendering specifications.

### **2.5. PLACE OF PERFORMANCE**

The place of performance of the tasks shall be the Contractor's premises or any other place indicated in the tender, with the exception of the Commission's premises.

### 2.6. SUBCONTRACTING

Subcontracting is defined as the situation where a contract has been or is to be established between the Commission and a contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other legal entities for performing part of the service. However, the **Commission has no direct legal commitment with the subcontractor(s).**

At the level of the liability towards the Commission, tasks provided for in the contract may be entrusted to subcontractors, but **the contractor retains full liability towards the Commission for performance of the contract as a whole.**

Accordingly:

- The Commission will treat all contractual matters (e.g. payments) exclusively with the contractor, whether or not the tasks are performed by a subcontractor;
- The Commission will privilege direct contacts with the contractor, who is responsible for executing the contract;
- Under no circumstances can the contractor avoid liability towards the Commission on the grounds that the subcontractor is at fault. The contractor remains notably fully responsible for timely execution.

A contract which includes subcontracting is subject to certain general conditions in particular the provisions on subcontracting, checks and audits, and confidentiality. Where justified by the subject matter of the contract, a statement of confidentiality may be required to be submitted to the Commission. **The subcontracting arrangement between the contractor and his subcontractor is supposed to render directly applicable all those contractual obligations with regard to the Commission to the subcontractor.**

Consequently, the bid must clearly identify the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set out in paragraph 3.2, in particular article II.24 of the standard service contract by submitting the form in annex 6.4, filled in and signed.

Tenderers must inform the subcontractor(s) and include in their sub-contracting documents that Article II.24 of the standard service contract may be applied to sub-contractors.

Once the contract has been signed, Article II.10 of the above-mentioned service contract shall govern the subcontracting.

Special attention of tenderers is brought to Article II.10.4, according to which the contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

### 2.7. JOINT OFFERS

A joint offer is a situation where an offer is submitted by a group of tenderers. If awarded the contract, the tenderers of the group will have an equal standing towards the Commission in executing a supply, service or works contract.

The Commission will not request consortia to have a given legal form in order to be allowed to submit a tender, but reserves the right to require a grouping to adopt a given legal form **before the**

**contract is signed** if this change is necessary for proper performance of the contract. This can take the form of an entity with or without legal personality but offering sufficient protection of the Commission's contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

The documents required and listed in the present specifications must be supplied by every member of the grouping; the checklist in annex 6.6 will help verifying the level of information to be provided according to the role of each entity in the tender.

Each member of the grouping assumes a joint and several liability towards the Commission.

To this end all members of the grouping should sign a **power of attorney** (see models in annex 6.5). This document must be scanned and included in the offer. For groupings not having formed a common legal entity, model 1 should be used, and for groupings with a legal entity in place model 2.

**The offer (Tender Preparation Report) has to be signed by the joint tender leader (hand or electronic signature, as explained in section 1 of the invitation to tender).**

Partners in a joint offer assume joint and several liability towards the 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.

<p><b>An economic operator can only participate once as a tenderer</b>, whether as sole tenderer, leader in a joint tender or partner in a joint tender. <b>The economic operator may however agree to act as a subcontractor in a distinct bid</b> from which it is participating as either of the aforementioned options. However, such a situation is not advisable for the high potential of conflicts of interest it may generate.</p>
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### **3. GENERAL TERMS AND CONDITIONS FOR THE SUBMISSION OF TENDERS**

These specifications follow the publication of a contract notice in OJ S.

#### **3.1. HOW TO SUBMIT A TENDER: REGISTRATION IN THE PARTICIPANT REGISTER AND VALIDATIONS BY THE EU VALIDATION SERVICES**

In order to submit a tender using eSubmission, tenderers (each member of the group in the case of a joint tender) will need to register in the European Commission's Participant Register - an online register of organisations participating in EU calls for tenders or proposals. On registering, each organisation obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the above register. Instructions on how to create a PIC can be found in the [PIC-management Quick Guide for Economic Operators](#). Tenderers already registered in the Participant Register shall reuse their existing PICs when preparing tenders in e-Submission.

In the course of the procedure the EU Validation Services (at Research Executive Agency) may contact tenderers (each member of the group in the case of a joint tender) via the Participant Register and ask for supporting documents with respect to the legal existence and status. The notifications concerning the legal status validation will be sent to the e-mail address of the contact person indicated in the Participant Register. It is the responsibility of the tenderer (each member of the group in the case of a joint tender) to provide a valid e-mail address and to check it. Please note that a request for supporting documents in no way implies that the tenderer has been successful.

The documents that may be requested by the EU Validation Services in the course of the procedure are listed in Annex 6.7

The documents that shall be submitted with the tender in eSubmission are listed in the checklist available in Annex 6.6.

#### **3.2. ACCESS TO THE MARKET**

The present procurement documents are drawn up in respect of the Financial Regulation applicable to the general budget of the European Union (Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, as amended by Regulation (EU, Euratom) No 2015/1929 of the European Parliament and the Council of 28 October 2015., as well as its Rules of Application (Commission Delegated Regulation (EU, Euratom) No 1268/2012 of 29 October 2012, amended by Commission Delegated Regulation (EU) C(2015)7555 of 30 October 2015.

Participation in procurement procedures is open on equal terms to all natural and legal persons from one of the EU Member States and to all natural and legal persons in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. It is also open to international organisations.

Where the Plurilateral Agreement on Government Procurement (GPA) concluded within the WTO applies, the contracts are also open to nationals of the countries that have ratified this Agreement, on the conditions laid down therein.

The parties to the GPA can be consulted on the following web page:  
[https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).

### 3. General terms and conditions for the submission of tenders



For British tenderers:

Please be aware that after the UK's withdrawal from the EU, the rules of access to EU procurement procedures of economic operators established in third countries will apply to tenderers from the UK depending on the outcome of the negotiations. In case such access is not provided by legal provisions in force, tenderers from the UK could be rejected from the procurement procedure.

Operators in third countries which have signed a bilateral or multilateral agreement with the European Union in the field of public procurement must be allowed to take part in the tendering procedure on the conditions laid down in this agreement. The Commission refuses tenders submitted by operators in third countries which have not signed such agreements for the present call for tender.

The Protocol on the Privileges and Immunities or, where appropriate, the Vienna Convention of 24 April 1963 on Consular Relations shall apply to this invitation to tender.

**Variants are not allowed.**

#### 3.3. OPPORTUNITIES FOR SMALL AND MEDIUM SIZED ENTERPRISES

The Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs has the task to promote opportunities for Small and Medium sized Enterprises (SMEs) and is aiming in its activities to facilitate the activities of SMEs. In this context, **SMEs are particularly encouraged to submit tenders** either on its own if feasible or by constituting a bid using either of the options mentioned in paragraphs 2.6 and 2.7.

The **Enterprise Europe Network** provides advice on tender opportunities and training in relation to procurement, which may be of assistance to newly initiated tenderers. Please refer to the following web-site for further details:

<https://een.ec.europa.eu/content/advice-support>

The Commission has further published a brochure on "Doing business with the European Commission – Tips for potential contractors":

[http://ec.europa.eu/budget/library/biblio/publications/business/doing\\_business\\_en.pdf](http://ec.europa.eu/budget/library/biblio/publications/business/doing_business_en.pdf)

## **4. FORM AND CONTENT OF THE TENDER**

### **4.1. STRUCTURE OF THE TENDER**

- Tenders shall be perfectly legible so there can be no doubt as to words and figures.
- Tenders shall be clear and concise.
- Tenders shall be written in one of the official languages of the European Union.
- Tenders shall include the information and documents requested by the Commission in order to assess the tender. In order to help tenderers presenting a complete tender, a checklist of the documents to be submitted is provided in annex 6.6. This checklist does not need to be included in the tender, but it is encouraged to use it in order to ease the assessment of the tenders;
- Prices shall be established in euros.

All tenders must be submitted using the eSubmission application and shall contain all the following information:

#### ***4.1.1. Administrative information***

**Tenderers** may choose between presenting a **joint tender** (see 2.7) and introducing a tender as a **sole economic operator**, in both cases with the possibility of having one or several subcontractors (see 0).

Whichever type of bid is chosen, the tender shall stipulate the legal status and role of each legal entity in the tender proposed and the monitoring arrangements that exist between them and, failing this, the arrangement they foresee to establish if they are awarded the contract (see 0 and 2.7).

In the e-Submission application the tenderers should fill out the required identification information in line with the instructions in the e-Submission Quick Guide available at: [https://webgate.ec.europa.eu/esubmission/assets/documents/manual/quickGuide\\_en.pdf](https://webgate.ec.europa.eu/esubmission/assets/documents/manual/quickGuide_en.pdf). The sole tenderer or all members of a joint tender must be identified with a PIC – Participant Identification Code. No PIC is needed for subcontractors.

It is not required at the level of the tender submission, to attach neither Legal Entity Form nor Financial Identification Form.

#### ***4.1.2. The Exclusion and Selection Criteria Form***

Tenderers or their representatives shall provide a declaration on their honour, duly signed and dated in which they:

1. state whether or not they are in one or more of the situations referred to in Articles 106 and 107 of the Financial Regulation and detailed in the form;
2. state whether they fulfil the selection criteria
3. undertake to submit to the Commission any additional document relating to the exclusion/selection criteria, that the Commission considers necessary to perform its checks, within fifteen calendar days following the receipt of the Commission's request.

To this end, tenderers must fill in and sign the form in Annex 6.1 to these specifications.

The declaration(s) shall be signed by an authorised representative either with advanced electronic signature based on qualified certificates or by scanning and uploading a hand signed copy.

The hand-signed originals of the declaration on honour must be sent by letter to the contracting authority's postal address indicated under Heading I.1 of the contract notice at the latest on the first working day following the electronic submission of tender.

**Where the bid involves more than one legal entity (including subcontractors), each entity must provide the form.**

##### ***4.1.3. Evidence relating to the selection criteria***

Tenderers shall provide proof of their economic and financial capacity by submitting the documents stated under paragraph 5.2.2 below. In case of a joint tender/tender with subcontractors, the documents concerning each economic operator shall be submitted under the respective party name.

Tenderers shall equally provide the proof of their professional and technical capacity by submitting the documents required under paragraph 5.2.3 below.

If evidence has already been provided for another procurement procedure and if the documents are up to date, reference can be made to the earlier procedure. The declaration on honour stating the reference of the procedure and the confirmation that there has been no change in the situation must be uploaded in the eSubmission application.

##### ***4.1.4. Technical proposal***

The technical proposal needs to be uploaded in the step "Tender Data" of the wizard of the e-Submission application. The e-Submission application allows attachment of as many documents as necessary.

Tenderers shall include in their bids a **technical proposal addressing the aspects detailed in the technical specifications** in section 1.1.

The technical proposal shall comply with the technical specifications and provide, as a minimum, the information specifically requested.

The following aspects should in particular be taken into consideration when drafting the tender:

- (a) methodology for implementation;
- (b) reasons for the proposed methodology;
- (c) project management and procedures for internal evaluation;
- (d) level of involvement and activity of other stakeholders;
- (e) role of each partner in case of a joint bid and/or use of subcontractors, the role of each partner and subcontractor in the implementation of the contract;
- (f) team proposed for implementation of the contract. The composition of the team, which will be implementing the project must be properly described. Team staff should be singled out by function (E.g. project managers, administrator, secretary, expert, technical assistant);
- (g) a plan of action with description of activities and their timing.



#### 4. Form and content of the tender

Due consideration should be given to the award criteria and method as stipulated under section 5.3 in this document.

Please note that, to grant equal treatment of all tenders, **it is not possible to modify offers after their submission in relation to the technical and financial proposals.**

Please note that incomplete financial or technical proposals may have a considerable negative impact the evaluation on award criteria. Proposals deviating from the technical specifications risk to be considered as non-conform to the specifications.

**The technical specifications and the tenderer's bid shall be integral parts of the contract and will constitute annexes to the contract.**

##### **4.1.5. Financial proposal**

A complete financial proposal, including the breakdown of the price, to be provided per category, as indicated in the tender specifications needs to be uploaded in step "Tender Data" of the wizard of the e-Submission application.

The total price (including any options and renewals) needs also to be encoded directly in the e-Submission application (Total amount).

It is the responsibility of each tenderer to ensure that the total amount of the tender inserted in the relevant tab of the eSubmission application corresponds exactly to the value reflected in the uploaded financial proposal. In case of discrepancies, only the value reflected in the financial proposal will be taken into account.

**Tenderers must use the following format to formulate their financial proposal**

<i>Price component</i>	<i>Unit price</i>	<i>Quantity</i>	<i>Total</i>
Human resources			
Person X (role)			
Person Y (role)			
.....			
Subtotal (1)			
Other			
Item X			
Item Y			
.....			
Subtotal (2)			
<b>Overall total</b>			

The tenderer's attention is drawn to the following points:

- (1) Prices must be expressed in euros;
- (2) **Prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT.** The European Union Institutions are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 (OJ 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT;

- (3) Prices shall not be conditional and be directly applicable by following the technical specifications.
- (4) **Prices shall be fixed** and not subject to revision
- (5) The reference price for the award of the contract shall consist of **the price payable**, as stated in Article I.4.1 of the contract.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately.

For each category of staff to be involved in the project, the tenderer must specify:

- the total labour costs;
- the **daily rates** and **total number of days** (man-days) each member of staff will contribute to the project;
- other categories of costs indicating the nature of the cost, the total amount, the unit price and the quantity. Flat-rate amounts should be avoided. If, exceptionally, they are used, specimen quotations for the flat-rate amounts must be provided;
- **Meetings with the Commission:** the tenderer should foresee travel expenses for up to 3 representatives for each meeting in Brussels (one kick off meeting and one presentation of the final report).

**Bids involving more than one legal entity must specify the amounts for each legal entity.**

**The Commission will reject tenders where no technical offers or financial offers are proposed. Non-compliance with the minimum requirements in section 1.1 will also result in rejection from award.**

**The Commission reserves the right, however, to request clarification of the tender after the opening. It may furthermore require (additional) evidence in relation to the administrative information, exclusion and selection criteria. The information required shall be provided within a time-limit stipulated in its request and under the conditions explained in section 3.3.**

## **5. ASSESSMENT AND AWARD OF CONTRACT**

The assessment will be based on the information provided in the tender. The Commission reserves the right to use any other information from public or specialist sources. This assessment will be performed by applying the criteria set out in these specifications. To award the contract, the assessment of admissible bids (see paragraph 1 of the Invitation to tender) will be carried out under exclusion, selection and award criteria in no particular order.

The aim of this assessment is:

- 1) to verify compliance with the exclusion criteria as defined in article 106 and 107 of the Financial Regulation, in order to determine whether the tenderer can take part in the procedure and, where applicable, be awarded the contract;
- 2) to verify compliance with the selection criteria, technical and professional capacity and economic and financial capacity required by these specifications;
- 3) to verify compliance with the minimum requirements specified in the tender documents and to assess the technical and financial offer in relation to the award criteria..

### **5.1. APPLICATION OF EXCLUSION CRITERIA AND EXCLUSION OF TENDERERS**

#### ***5.1.1. Declaration***

As mentioned above under paragraph 4.1.2 tenderers or their representatives shall provide the form in Annex 6.1 duly signed and dated in which they declare:

1. not to be in one or more of the situations referred to in Articles 106 and 107 of the Financial Regulation and detailed in the form;
2. to undertake to submit to the Commission any additional document relating to the exclusion criteria, that the Commission considers necessary to perform its checks, within 15 days following the receipt of the Commission's request.

#### ***5.1.2. Grounds for disqualification***

In accordance with Article 107 of the Financial Regulation, a contract for a given procedure may not be awarded to an economic operator who:

- is in an exclusion situation established in accordance with Article 106;
- has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information;
- was previously involved in the preparation of procurement documents where this entails a distortion of competition that cannot be remedied otherwise.

#### ***5.1.3. Evidence***

The tenderer to whom the contract is to be awarded shall provide, within the 15 days following the receipt of the letter informing him of the proposed award of the contract and preceding the signature of the contract, the evidence confirming the declaration referred to in paragraph 5.1.1,(for the details of requested documents please see directly the text of the declaration).

The Commission may waive the obligation of a tenderer to submit the documentary evidence referred to above if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided to the Commission in a previous procurement procedure and confirm that no changes in his situation have occurred. He shall indicate in its tender all the references necessary to allow the Commission services to check this evidence.

You may refer to the e-Certis web-site listing the certificates available in EU Member States:

<http://ec.europa.eu/markt/ecertis/login.do>

### 5.2. APPLICATION OF SELECTION CRITERIA (SELECTION OF TENDERERS)

This part of the tender concerns the criteria and evidence relating to the technical and professional capacity and economic and financial capacity of the service provider(s) involved in the bid. It should also contain any other document that the tenderer(s) wish(es) to include by way of clarification.

**An economic operator may rely on the capacities of other entities**, regardless of the legal nature of the links which it has with them. In that case, evidence must be provided that it will have at its disposal the resources necessary for performance of the contract, for example by producing a clear undertaking on the part of those entities to place those resources at its disposal.

If the economic and financial selection criteria are fulfilled by relying on a third party, the contracting authority may demand, if that tender wins the contract, that this third party signs the contract (becomes a contractor) or, alternatively, provides a joint and several first-call guarantee.

If the third party chooses to sign the contract, the contracting authority should ensure that it is not in exclusion situation and it has access to the market.

**If several service providers are involved in the bid**, each of them must have the professional and technical capacity to perform the tasks assigned to them in the tender and have the necessary economic and financial capacity.

This rule applies to all legal entities once they have chosen to be tenderers. If the tender includes subcontractors, the Commission reserves the right to request evidence of their economic and financial capacity, where the tasks subcontracted represent a substantial part of the contract.

#### 5.2.1. Selection criteria

<b><u>SELECTION CRITERIA</u></b>	
<b>1. FINANCIAL AND ECONOMIC CAPACITY</b>	
1.1	Economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract.
1.2	Sufficient financial capacity in relation to the pre-financing foreseen under the contract.
<b>2. TECHNICAL AND PROFESSIONAL CAPACITY</b>	
<b>2.1. Project Management</b>	
-	The project manager shall be qualified to manage projects in multiple jurisdictions and

shall have at least 10 years of professional experience.

- The project manager shall be fluent in English. Fluency means at least C1 level in the Common European Framework for Reference for Languages<sup>5</sup>.

## 2.2. Team Members

- The team of the Tenderer shall have at least one qualified expert per Member State. These experts shall have university degree in law of at least three years duration. They shall also have at least four years of experience in law of which at least two in the field of intellectual property either as a practicing lawyer or as a university teacher. Furthermore, the experts shall have thorough knowledge of the law and practice of the Member State whose provisions are being assessed and be fluent in the language of that Member State.
- The team of the Tenderer shall have at least at least two members fluent in English with C2 level in the Common European Framework for Reference for Languages who are responsible for the language quality of the Final Report.
- The Tenderer shall also have supervisory staff to ensure high-quality reports delivered within the deadlines. The supervisory staff shall be composed of lawyers with university degree and practical experience in the field of intellectual property and civil law of at least seven years. Supervisory staff shall have in-depth knowledge of EU intellectual property rules. All members of the supervisory staff shall be fluent in English.

## 3. SUPPLEMENTARY TECHNICAL CAPACITY

### 3.1 Access to relevant research tools

The Tenderer shall demonstrate that it has access to the main legal research tools in each EU Member States, which enable the research of not only law but also case law and practice.

### 3.2 Translations

The Tenderer shall demonstrate its capacity to make comprehensive, precise, legally and grammatically correct translation of the national provisions in English. Qualified experts shall verify all translations.

Any sub-contractors shall satisfy the criteria set out above for the part of the work they are assigned to.

These criteria will be assessed on the basis of the documents referred to in 5.2.2 and 5.2.3.

### 5.2.2. *Evidence of the economic and financial capacity of the service provider(s)*

All tenderers shall provide proof of their economic and financial capacity by submitting the following documents:

- a) A full copy of the concerned legal entities' annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) of the last two years, as approved by the general assembly of the company and, where applicable, audited

<sup>5</sup> <https://www.coe.int/en/web/common-european-framework-reference-languages/table-1-cefr-3.3-common-reference-levels-global-scale>

and/or published. These documents must be signed by the authorised representative of the tenderer;

- b) Alternatively to a), a filled out Annex 6.3. This document must be signed by an authorised representative of the tenderer.
- c) a statement of overall turnover and turnover concerning the tasks, supplies or services covered by this contract for the last three financial years;
- d) Appropriate statements from banks or evidence of professional risk indemnity insurance, for legal entities facing the impossibility to fully present evidence a).

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

The Commission may waive the obligation of a tenderer to submit the documentary evidence referred to in paragraph 1 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that it complies with the requirements of the present call for tenders. In such a case, the tenderer shall indicate in the tender reference to the contract and Commission service for which the evidence has been provided, in order to allow the Commission services to check this evidence.

### **5.2.3. Evidence of the technical and professional capacity of the service provider(s)**

The ability of service providers to perform services will be assessed in particular with regard to their know-how, efficiency, experience and reliability as specified in paragraph 5.2.1.

Evidence of the technical and professional capacity of the providers involved in the tender may be furnished on the basis of the following documents:

- a) the educational, professional and linguistic qualifications of the managers, the supervisory staff and the experts involved in Europass curriculum vitae format. The Europass curriculum vitae format (<http://europass.cedefop.europa.eu/en/documents/curriculum-vitae>) shall be filled in and signed, by each person involved in the execution of the tasks foreseen in the tender. The precise contractual link with the tenderer will also be described.

The language skills of the managers, the supervisory staff and the team members responsible for the language quality of the report shall be demonstrated by a relevant certificate or past experience of working in English and presenting and delivering results in English. Any claim of past experience should be supported by at least one document written in English by the person claiming the language skills.

This evidence refers to selection criteria 2.1 and 2.2.

- b) a list of the principal projects conducted by the managers and their recipients, public or private. This refers to projects in which the managers were personally involved whether working for the Tenderer or another legal or natural person. The list of the most important projects may be accompanied by certificates of satisfactory execution;

## **5. Assessment and award of contract**

This evidence refers to selection criterion 2.1.

- c) List of relevant projects on which the supervisory staff worked demonstrating its capacity to perform the tasks. This refers to projects in which the supervisory staff was involved whether working for the Tenderer or another legal or natural person.

This evidence refers to selection criterion 2.2.

- d) List of legal research databases per Member State accessible to the tenderer.

This evidence refers to selection criterion 3.1

- e) List of translators or translating companies per Member State. In addition, list of persons who will verify the translation with a CV for those persons only demonstrating their capacity to conduct such verification.

This evidence refers to selection criterion 3.2

- f) an indication of the proportion of the contract which the service provider may intend to subcontract.

By submitting a tender, each legal entity involved therein accepts the possibility of a check being carried out by the Commission on its technical capacities and, if necessary, on its research facilities and quality control measures.

In addition, all tenderers are informed that they may be asked to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a professional or trade register, by a sworn declaration or certificate, by membership of a specific organisation, by express authorisation, or by entry in the VAT register.

**5.3. APPLICATION OF AWARD CRITERIA (ASSESSMENT OF TENDERS)**

The contract will be awarded to the **most cost-effective tender**. The following award criteria will be applied:

No	Qualitative award criteria	Weighting (maximum points)
1.	<b>Quality of the proposed methodology to collect and analyse data.</b> <i>Methodology to collect all data necessary to complete the project</i> <i>Methodology for the legal assessment of the national provisions, including the quality check of the legal assessment</i> <i>The above should include any methodology for the work with sub-contractors, if applicable.</i>	<b>40</b>
2	<b>Quality and efficiency of the proposed project management</b> <i>Methodology to ensure comprehensive, precise, legally and grammatically correct translations in English</i> <i>Methodology for the coordination of the work of the different members of the team both horizontally (across EU Member States and vertically in relation to junior and senior contributors), including continuity of the service in case of absence of the member of the team</i> <i>Methodology for the work of the supervisory staff, including level of involvement of senior experts and related allocation of human resources</i> <i>The above should include any methodology for the work with sub-contractors, if applicable</i>	<b>40</b>
3.	<b>Quality control measures</b> <i>Quality of the control system to ensure the quality of the substance of the reports, the quality of the language, and the respect for the time limits of the project. The quality system should be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a low score.</i>	<b>20</b>
<b>Total number of points</b>		<b>100</b>

The selected tender is assessed according to the above qualitative award criteria and the weighting applicable to each criterion.

**Tenders scoring**

- \* less than 70 % in the overall points total or
- \* less than 50% in the points awarded for a single criterion

**will be excluded from the rest of the assessment procedure.**



Price Award criterion
Total price

Tenders presenting a total price superior to the maximum amount of **250.000 €** will be excluded from the rest of the assessment procedure.

The contract will be awarded to the tender which is the most economically advantageous on the basis of the ratio between the total points scored and the price.

Final Evaluation
<p><b>Score for Tender X = (Technical Score X 0.7) + [(Lowest price/Price of Tender X) x 100] x 0.3</b></p> <p><i>Where the "lowest price" refers to the lowest price among the tenders having passed the quality threshold</i></p>

**Tenders should elaborate on all points addressed by these specifications in order to score as many points as possible. The mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, may result in a significantly lower score. Where essential elements of these specifications are not expressively covered by the tender, the Commission may decide to give a zero mark for the relevant qualitative award criteria.**

**The tender may be rejected as non-compliant, when the minimum requirements set in the specifications are not met.**

#### **5.4. INFORMATION FOR TENDERERS**

The Commission will notify all tenderers of decisions reached concerning the outcome of the procedure, indicating the grounds on which the decision was taken. This also applies to a decision not to award a contract or to cancel the procedure.

The Commission will inform the rejected tenderers of the reasons for their rejection. Each tenderer who is not in an exclusion situation and whose tender is compliant with the procurement documents and who makes a request in writing, shall be informed of the characteristics and relative advantages of the selected tender, of the name of the successful tenderer and of the price or contract value.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

#### **5.5. AWARD OF THE CONTRACT**

The procurement procedure is concluded by a contract signed by the parties. In this case, the General Terms and Conditions applicable to service contracts referred to above shall apply.

## **5. Assessment and award of contract**

After the period of validity of the tender has expired, conclusion of the contract shall be subject to the tenderer's agreement in writing.

The Commission shall not sign the contract or framework contract with the successful tenderer until a standstill period of 10 calendar days has elapsed, counting from the day after simultaneous dispatch of the notification by electronic means to all tenderers (successful and unsuccessful).

After the award, during standstill period, the Commission will request to the tenderer proposed for award the evidence on exclusion criteria defined in section 5.1.3. If this evidence was not provided or proved to be unsatisfactory the Commission reserves the right to cancel the award procedure or to change the award decision to the benefit of the next best ranked tenderer on condition that he satisfies with the provision of the evidence on exclusion.

**6. ANNEXES**

**ANNEXES**

## 6.1. Exclusion and selection criteria form

INVITATION TO TENDER No 690/PP/GRO/IMA/18/1133/10358

### Declaration on honour on exclusion criteria and selection criteria

The undersigned [*insert name of the signatory of this form*], representing:

<i>(only for natural persons)</i> himself or herself	<i>(only for legal persons)</i> the following legal person:
ID or passport number:  (‘the person’)	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number:  (‘the person’)

### I – Situation of exclusion concerning the person

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>

(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
d) it has been established by a final judgement that the person is guilty of the following:		
(i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the legal provisions of the country where the contracting authority is located, the country in which the person is established or the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant is subject to: <ul style="list-style-type: none"> <li>i. facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;</li> <li>ii. non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;</li> <li>iii. decisions of the ECB, the EIB, the European Investment Fund or international organisations;</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

iv. decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or		
v. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.		

## **II – Situations of exclusion concerning natural persons with power of representation, decision-making or control over the legal person**

**Not applicable to natural persons, Member States and local authorities**

(2) declares that a natural person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers company directors, members of management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations:	YES	NO	N/A
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **III – Situations of exclusion concerning natural or legal persons assuming unlimited liability for the debts of the legal person**

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations:	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **IV – Grounds for rejection from this procedure**

(4) declares that the above-mentioned person:	YES	NO
h) has distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure.	<input type="checkbox"/>	<input type="checkbox"/>

## **V – Remedial measures**

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

## VI – Evidence upon request

Upon request and within the time limit set by the contracting authority the person must provide information on the persons that are members of the administrative, management or supervisory body. It must also provide the following evidence concerning the person itself and concerning the natural or legal persons which assume unlimited liability for the debt of the person:

For situations described in (a), (c), (d) or (f), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (a) or (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

## VII – Selection criteria

(5) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	YES	NO	N/A
(a) Not Applicable - It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section 5.2.1 of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section 5.2.1 of the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(6) if the above-mentioned person is the <b>sole tenderer</b> or the <b>leader in case of joint tender</b> , declares that:	YES	NO	N/A
(d) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## VII – Evidence for selection

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender specifications and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

***The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.***

Full name

Date

Signature



## 6.2. MODEL GUARANTEE

### [MODEL] LETTER FOR PRE-FINANCING FIRST DEMAND GUARANTEE<sup>6</sup>

[Financial institution/Bank (Letterhead)]  
[Place/Date]

European Community  
Represented by the European Commission  
Directorate-General for Internal Market, Industry,  
Entrepreneurship and SMEs – [Unit]  
B – 1049 Belgium

**Reference: Contract [Insert number and exact title]**

#### ARTICLE 1 – DECLARATION ON GUARANTEE, AMOUNT AND PURPOSE

We, the undersigned [*insert name and address of the financial institution or bank*] ('the Guarantor') hereby confirm that we give the European Union, represented by the European Commission ('the Commission'), an unconditional, irrevocable and independent first-demand guarantee consisting in the undertaking to pay to the Commission a sum equivalent to the amount of:

EUR [*insert amount in figures and in words*]

upon simple demand, for guarantee of the pre-financing(s) stipulated in the contract [*insert number and exact title*], [*Option 1*: ('the grant agreement') signed between the Commission and [*insert name and address*]<sup>7</sup>, ('the Beneficiary')] [*Option 2*: ('the grant decision') taken by the Commission and addressed to the [*insert name and address*], ('the Beneficiary')] [*Option 3*: ('the contract') concluded between the Commission and [*insert name and address*], ('the Contractor')].

#### ARTICLE 2 – EXECUTION OF GUARANTEE

If the Accounting Officer of the Commission gives notice that the Contractor has for any reason failed to reimburse pre-financings paid by the Commission, we, acting for account of the Contractor, shall pay immediately up to the above amount, in EUR, without exception or objection, into [ a bank account designated by the Commission] [the following bank account: [*insert number*]], on receipt of the first written request from the Commission. We shall inform the Commission in writing as soon as the payment has been made.

#### ARTICLE 3 – OBLIGATIONS OF THE GUARANTOR

1. We waive the right to require exhaustion of remedies against the Contractor, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the Commission under the contract or in connection with it or on any other grounds.

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<sup>6</sup> The footnotes are internal instructions for the authorising officers only and must be deleted before the guarantee is signed. [Plain text]: items to be filled in. [Text in italics]: these items are optional and may be deleted depending on the context of the guarantee.

<sup>7</sup> In case of multi-beneficiaries arrangements please refer to the name and address of the coordinator if the coordinator is solely responsible for repayment to the Commission at the time of payment of the balance (see e.g. article II.26.1 of the model grant agreement with multiple beneficiaries).

2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by the Commission with the Contractor which may concern its obligations under the contract.
3. We shall inform immediately the Commission in writing, by registered letter or by courier with written receipt or equivalent, in the event of a change of our legal status, ownership or address.

#### ARTICLE 4 – DATE OF ENTRY INTO FORCE

This guarantee shall come into force upon its signature. If, on the date of its signature, the [first] pre-financing has not been paid to the Contractor, this guarantee shall enter into force on the date on which the Contractor receives the [first] pre-financing.

#### ARTICLE 5 – END DATE AND CONDITIONS OF RELEASE

1. We may be released from this guarantee only with the Commission's written consent.
2. This guarantee shall expire on return of this original document by the Commission to our offices.
3. [Option 1: This must occur at the latest 30 days after the payment of the balance under the contract or four months after the notification of the corresponding debit note.]

[Option 2: This must occur at the latest 30 days after the pre-financing under contract has been cleared through interim payment[s].]

[Option 3 to be used only if the law applicable to the guarantee imposes a precise expiry date: This must occur, in any case, at the latest, on [indicate a precise date].]

4. After expiry, this guarantee shall become automatically null and no claim relating thereto shall be receivable for any reason whatsoever.

#### ARTICLE 6 – APPLICABLE LAW AND COMPETENT JURISDICTION

[Option 1: Any dispute concerning this guarantee shall be governed by and construed in accordance with the law of [insert law applicable to the contract] and shall fall within the sole competence of the Courts of [insert the corresponding national courts as indicated in the contract].]

[Option 2: Any dispute concerning this guarantee shall be governed by and construed in accordance with the law of [insert country of establishment of the Contractor or Bank] and shall fall within the sole competence of the [insert the corresponding national] Courts.

#### ARTICLE 7 - ASSIGNMENT

The rights arising from this guarantee may not be assigned.

Done at [insert place], on [insert date]

[Signature]

[Signature]

[*Function at the Financial Institution/Bank*]

[*Function at the Financial Institution/Bank*]

### 6.3. FINANCIAL AND ECONOMIC CAPACITY OVERVIEW FORM

INVITATION TO TENDER NO 690/PP/GRO/IMA/18/1133/10358

Financial and Economic Capacity Overview			
Currency : <i>EURO</i>		Figures (000)	
	N* (* most recent figures available)	N-1	N-2
<b>Total Balance Sheet</b>			
TRADE DEBTORS <i>Amounts due by commercial customers</i>			
CAPITAL and RESERVES (Equity) <i>Amounts owned by the company</i>			
TRADE CREDITORS <i>Amounts due to commercial suppliers</i>			
SHORT TERM DEBT			
LONG TERM DEBT			
LIQUIDITY <i>Bank accounts, cash at hand</i>			
<b><u>About PROFIT &amp; LOSS</u></b>			
TURNOVER			
ORDINARY RESULT			
EXTRAORDINARY RESULT			
INCOME TAX			
NET RESULT			

**You may add any data that you would consider of vital relevance for your organisation and for the understanding of the above figures.**

Comments: Please explain BRIEFLY important variations from one year to another if appropriate. In case of negative equity or repeated losses, please explain how the future of the organisation will be ensured.

#### 6.4. SUBCONTRACTOR / LETTER OF INTENT

INVITATION TO TENDER NO 690/PP/GRO/IMA/18/1133/10358

Study on the transposition by Member States of Directive 2016/943 on Trade Secrets

The undersigned: .....

Name of the company/organisation: .....

Address: .....

Declares hereby the intention to collaborate in the execution of the tasks subject to the above call for tender, in accordance with the terms of the offer to which the present form is annexed, if the contract is awarded to ... .... *(name of the tenderer)*.

Declares hereby accepting the general conditions attached to the tendering specifications for this call for tender, and in particular art. II.24 in relation with checks and audits.

**Full name**

**Date**

**Signature**

.....

## 6.5. POWER OF ATTORNEY

### POWER OF ATTORNEY – MODEL 1

# Agreement / Power of Attorney

## (DESIGNATING ONE OF THE COMPANIES OF THE GROUP AS LEADER AND GIVING A MANDATE TO IT)

We the undersigned:

- Signatory 1 (Name, Function, Company, Registered address, VAT Number)
- Signatory 2 (Name, Function, Company, Registered address, VAT Number)
- .....
- Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company, HEREBY AGREE AS FOLLOWS:

In case the European Commission awards Contract .... (« **the Contract** ») to Company 1, Company 2, ..., Company N (« **the Group Members** »), based on the joint offer submitted by them on ... ..... for the supply of ..... and/or the provision of services for ... (« **the Supplies and/or the Services** »).

(1) As co-signatories of the Contract, all the Group Members:

- (a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.
- (b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(2) To this effect, the Group Members designate Company X as **Group Leader**. *[N.B.: The Group Leader has to be one of the Group Members]*

(3) Payments by the European Commission related to the Supplies or the Services shall be made through the Group Leader's bank account .*[Provide details on bank, address, account number, etc.].*

(4) The Group Members grant to the Group Leader all the necessary powers to act on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks:

- (a) The Group Leader shall sign any contractual documents—including the Contract, **[Specific Agreements]** and Amendments thereto—and issue any invoices related to the Supplies or the Services on behalf of the Group Members.
- (b) The Group Leader shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. It shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present agreement / power of attorney shall be subject to the European Commission's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the European Commission in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in ..... on .....

Name

Function

Company

Name

Function

Company

Name

Function

Company

Name

Function

Company

## POWER OF ATTORNEY – MODEL 2

# Agreement / Power of Attorney

### (CREATING THE GROUP AS SEPARATE ENTITY, APPOINTING A GROUP MANAGER AND GIVING A MANDATE TO HIM/HER)

We the undersigned:

- Signatory 1 (Name, Function, Company, Registered address, VAT Number)
- Signatory 2 (Name, Function, Company, Registered address, VAT Number)
- .....
- Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company, HEREBY AGREE AS FOLLOWS:

In case the European Commission awards Contract .... (« **the Contract** ») to Company 1, Company 2, ..., Company N (« **the Group Members** »), based on the joint offer submitted by them on ..... for the supply of ..... and/or the provision of services for ... (« **the Supplies and/or the Services** »).

(1) As co-signatories of the Contract, all the Group Members:

- (a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.
- (b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(2) To this effect, the Group Members have set up under the laws of ..... the Group ..... (« **the Group** »). The Group has the legal form of a ..... [*Provide details on registration of the Group: VAT Number, Trade Register, etc.*].

(3) Payments by the European Commission related to the Supplies or the Services shall be made through the Group's bank account . [*Provide details on bank, address, account number, etc.*].

(4) The Group Members appoint Mr/Ms ..... as **Group Manager**.

(5) The Group Members grant to the Group Manager all the necessary powers to act alone on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks :

- (a) The Group Manager shall sign any contractual documents—including the Contract, **[Specific Agreements]** and Amendments thereto—and issue any invoices related to the Supplies or the Services on behalf of the Group Members.
- (b) The Group Manager shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. He/she shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the European Commission, and shall see to a proper administration of the Contract.



Any modification to the present agreement / power of attorney shall be subject to the European Commission's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the European Commission in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in ..... on ..... ..

Name  
Function  
Company

Name  
Function  
Company

Name  
Function  
Company

Name  
Function  
Company

## 6.6. CHECKLIST OF DOCUMENTS TO BE SUBMITTED IN THE E-SUBMISSION APPLICATION

The purpose of the table below is to facilitate the preparation of the tender by providing an overview of the documents that must be included (marked by ■) depending on the role of each economic operator in the tender (joint tender leader in joint bid, partner in joint bid, sole tenderer, subcontractor).

Some of the documents are only relevant in cases of joint bids or when subcontractors are involved. Additional documents might be necessary depending on the specific characteristics of each tender.

Description	Joint tender leader in joint bid	Partners in joint bid	Sole tenderer	Sub-contractor(s)
Power of attorney of partners in joint bid indicating the group leader ( <a href="#">see annex 6.5</a> )		■		
Evidence that the person signing the documents is an authorised representative of the tenderer	■	■	■	
Letter of intent of subcontractor ( <a href="#">see annex 6.4</a> )				■
Exclusion and selection Criteria form ( <a href="#">see section 5.1.1</a> and <a href="#">annex 6.1</a> )	■	■	■	■
Evidence of Economic and financial capacity ( <a href="#">see section 5.2.2</a> and <a href="#">annex 6.3</a> )	■	■	■	
Evidence of Technical and professional capacity ( <a href="#">see section 5.2.3</a> )				
Go to the following page to fill in the CV: <a href="http://europass.cedefop.europa.eu/en/documents/curriculum-vitae">http://europass.cedefop.europa.eu/en/documents/curriculum-vitae</a>	■	■	■	■

The following sections must be provided in the bid, their absence would mean rejection of the bid for incompleteness:

Description	Joint tender leader or sole tenderer
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Technical Offer (see section <a href="#">4.1.4</a> and <a href="#">1.</a> )	■
Financial Offer (see section <a href="#">4.1.5</a> )	■

Once all information and documents have been encoded and uploaded in the e-Submission application and you consider that the tender is complete, the application will require you to download the Tender Report generated by the e-Submission application. It will have to be signed (hand signature or electronic signature) and uploaded, as explained in the [eSubmission Quick Guide for economic operators](#).

Description	Joint tender leader in joint bid	Partners in joint bid	Sole tenderer	Sub-contractor	Where to upload a document in e-Submission
Tender Report	■		■		In Step "Tender Report" of the e-Submission wizard

## 6.7. DOCUMENTS WHICH MAY BE REQUESTED BY THE EU VALIDATION SERVICES IN THE COURSE OF THE PROCEDURE

- Signed **legal entity identification form**<sup>8</sup> :

- Natural Person

- Private Law Body

- Public Law Body

- **Official VAT document** or — if the entity is not registered for VAT — the proof of VAT exemption, not older than 6 months.
- Signed **Financial Identification Form**, and
- the following additional documents, where relevant:

Private body	Registration extract (not older than 6 months).
Public body	Copy of the act, law, decree or decision that established the organisation as a public body (or, if this doesn't exist, any other official legal document that proves this).
Non-profit organisation	<p>Copy of an official document attesting that the organisation has a legal or statutory obligation not to distribute profits to shareholders or individual members.</p> <p>The certificate of tax exemption may only constitute an indication of the non-profit status of the entity which has to be assessed together with other elements.</p>
Research organisation	Copy of an official document attesting that one of the main objectives of the entity is carrying out research or technological development.
Secondary or higher education establishment	Copy of an official document attesting that the organisation is recognised such as 'secondary or higher education establishment' by the national education system and is entitled to

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<sup>8</sup> Available at [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

	deliver diplomas recognized by the State.
International organisation  International organisation of European interest	Copy of the relevant international treaty creating the organisation under international public law.
Natural person	Copy (legible) of valid identity card or passport
Entities without legal personality	<p>- Copy of an official document attesting that the representatives of the entity have the capacity to undertake legal obligations on its behalf.</p> <p>- Copy of an official document attesting that the entity has the same operational and financial capacity as that of a legal entity: i.e.</p> <ul style="list-style-type: none"> <li>• a document showing patrimony/asset/capital that is separated and different from those of the members/owners of the entity, and</li> <li>• a copy of the rules providing that creditors can rely on this patrimony/asset/capital and — in case of liquidation/insolvency — are reimbursed before the patrimony/asset/capital is divided between the owners/members.</li> </ul>