



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

Office for Harmonization in the Internal Market

**Submitting a tender in response to an invitation to tender issued
by the Office for Harmonization in the Internal Market**

Guidebook for tenderers

Disclaimer

This document is designed to help tenderers to submit their tenders in response to an invitation to tender issued by the Office for Harmonization in the Internal Market ("the Office").

However, the information contained in this document is of a general nature only and is not intended to address the specific circumstances of any particular individual or entity.

Therefore the Office accepts no responsibility or liability whatsoever with regard to it.

Likewise, any information, questions or observations, of whatever kind, contained in this document can in no way be regarded as a commitment on the part of the Office to enter into any Specific Contract. No binding commitment will be entered into until the procurement procedure is completed and the relevant contract signed.

1 LEGAL FRAMEWORK

This section lists the main legal provisions applicable to invitations to tender issued by the Office for Harmonization in the Internal Market.

1.1 Procurement procedure

1.1.1 The procurement procedure for the EU institutions, agencies and other bodies is governed, in particular, by the following provisions:

- 1) Title V of Part 1 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the **Financial rules applicable to the general budget of the Union** and repealing Council Regulation (EC, Euratom) No 1605/2002.
- 2) Title V of Part 1 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the **rules of application** of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.
- 3) The **World Trade Organization's Agreement on Government Procurement**, to which the European Union is party following Council Decision 94/800/EC of 22 December 1994 concerning the conclusion, on behalf of the European Community, as regards matters within its competences, of the agreement reached in the Uruguay Round multilateral negotiations (1986-1994).

1.1.2 In addition to the above-mentioned legislation, it is worth noting that:

- principles arising from **case-law of the European Court of Justice** in the field of procurement are binding on the Office;
- prospective tenderers are legitimately entitled to expect the Office to manage its invitations to tender in accordance with the principles arising from the **European Ombudsman's** decisions;

- the Office's staff is bound by a “**Code of Good Administrative Behaviour**” in their relations with the public. This includes the management of invitations to tender, subject to the restrictions laid down in the above-mentioned legal provisions.
- according to Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, the applicable **calendar** for the Office is published on the Office's website at: <http://oami.europa.eu/ows/rw/pages/OHIM/contact.en.do>.

1.2 Resulting contract

Unless the tender specifications stipulate otherwise, contracts resulting from an invitation to tender issued by the Office are governed by **European Union law**, complemented, where necessary, by **Spanish law** (see §4.4 for further details on the contractual arrangements).

2 BASIC INFORMATION ABOUT INVITATIONS TO TENDER ISSUED BY THE OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET

2.1 The invitations to tender described in this document refer to the open procedure and to contracts awarded to the tender giving the best value for money.

Occasionally, invitations to tender may be based on the restricted procedure and/or awarded automatically to the lowest tender.

The contract notice and the tender specifications explicitly indicate the procedure and award method for the invitation to tender concerned.

2.2 It is important to be aware of the differences between the various stages of an invitation to tender and of the milestones associated with each stage:

- 1) The **preliminary stage**, which is optional, starts with the publication of a **prior information notice** in the Official Journal of the European Union, in which the Office announces its intention to issue an invitation to tender at a later date and gives basic information about the subject matter of the future contract. The aim is to give potential tenderers advance notice that an invitation to tender is going to be issued and to allow them to prepare for it. Prior information notices can be global or specific:
 - **Global** prior information notices are published during the first quarter of each year and contain a list of the invitations to tender which the Office plans to issue during the calendar year;
 - **Specific** prior information notices relate to a specific invitation to tender.

- 2) The **tendering stage** starts with the publication of a contract notice in the Official Journal of the European Union. This notice contains detailed information about the procurement and triggers a certain number of deadlines, which are binding both on the Office, as contracting authority, and on the tenderers. All the information concerning the invitation to tender will be made available exclusively on the Public Procurement page of the Office's website:

<http://oami.europa.eu/ows/rw/pages/OHIM/publicProcurement/publicProcurement.en.do>

Economic operators may request additional information or clarification about the tender specifications (see §6.2). This stage ends on the date indicated as the deadline for the submission of tenders.

- 3) The **evaluation stage** starts with the **opening of the tenders** received in response to the invitation to tender. During this stage, the Office evaluates the tenders against the requirements and criteria specified in the contract notice and/or tender specifications.
- 4) The **award stage** starts with the **signature of the award decision** by the responsible authorising officer, representing the Office. This is followed by the **notification of the results** to all the tenderers. When the **contract** is signed with the successful tenderer, an **award notice** is published in the Official Journal of the European Union. This action closes the procurement procedure.

3 CONTACTING THE OFFICE ABOUT AN INVITATION TO TENDER

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

Office for Harmonization in the Internal Market (Trade Marks and Designs)
Procurement
Avenida de Europa 4
E-03008 Alicante
Spain
e-mail: procurement@oami.europa.eu
fax: +34 96 513 85 00

Tenderers may not contact or attempt to contact members of the Office's staff with a view to discussing any aspect of an on-going invitation to tender.

4 CONSIDERING WHETHER OR NOT TO SUBMIT A TENDER

This section contains important information which aimed at helping economic operators to take an informed decision on whether or not to submit a tender in response to an invitation to tender.

4.1 How to understand the exact scope of the contract

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

4.1.1 Volume of the contract

To guide tenderers in preparing their tender, the tender specifications contain certain indications on the foreseeable volume of the contract.

However, although the Office always tries to give its best estimate, tenderers should be aware that **any information on volume is purely indicative**. The total value of the contract will ultimately depend on the actual orders which the Office will place through Specific Contracts or purchase order forms (see §4.4).

4.1.2 Lots

When an invitation to tender is divided into lots, this is explicitly mentioned in the contract notice and the tender specifications. In this case, and unless stated otherwise in the tender specifications, tenderers **may submit tenders for one lot only, or any combination of lots, or for all the lots**.

Each individual lot is assessed in its entirety. Tenderers may therefore not submit a tender that:

- covers only part of a lot,
- is declared as depending or being conditional on the award of any of the other lots of the invitation to tender.

The Office will disregard any statement to this effect contained in a tender, and reserves the right to reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

4.1.3 Variants

Variants are alternatives to any technical or financial aspects, or to any contractual conditions, described in an invitation to tender.

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

The Office will disregard any variants described in a tender, and reserves the right to reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

4.1.4 Product names and trade marks

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

4.2 Implications of submitting an tender

4.2.1 The submission of a tender in response to an invitation to tender issued by the Office implies that the tenderer:

- **accepts** all the terms and conditions as stipulated in the tender specifications and all other documents related to the procurement; and
- **waives** its own terms of business.

The Office will disregard any qualification or disclaimer to that effect contained in a tender, and reserves the right to reject such tenders without further evaluation on the grounds that they do not comply with the tender specifications.

4.2.2 Unless the tender specifications stipulate a different period, tenderers will be bound by their tender for **nine months** from the deadline for the submission of tenders.

4.3 No obligation to award

When awarding a contract, the Office undertakes to evaluate the tenders against the requirements and criteria laid down in the contract notice and/or tender specifications.

However, the fact of publishing an invitation to tender **does not oblige the Office to award** the contract to a tenderer simply because its tender fulfils those requirements and criteria. The Office also reserves the right to decide not to award the contract to any tenderer.

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

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

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

It should be stressed that framework contracts involve **no direct commitment** and, in particular, do not constitute orders *per se*. Instead, they lay down the legal, financial, technical and administrative provisions governing the relationship between the Office and the contractor during their period of validity.

Actual orders will be placed after the framework contract is signed and in force, through “purchase order forms” or “**Specific Contracts**” concluded to implement the framework contract.

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

The tender specifications include a draft contract made up of:

- 1) *Special Conditions*: on completion of the tendering procedure, this draft will be modified as necessary in line with the successful tender (e.g. prices)
- 2) *General Terms and Conditions applicable to Contracts with the Office for Harmonization in the Internal Market*.

When preparing a tender, **tenderers should take full account of these and all other documents included in the tender specifications**, as they define and will govern the contractual relationship to be established between the Office and the successful tenderer.

4.5 Tax exemption

The Office is exempt from all taxes and duties, including VAT, pursuant to the provisions of:

- Articles 3, 4 and 18 of the Protocol on the Privileges and Immunities of the European Union (n°7) annexed to the Treaty of Rome and which apply to the Office by virtue of Article 117 of Council Regulation (EC) n° 207/2009 of 26 February 2009 on the Community trade mark.
- With regard to Spain, according to Article 151.1.a.b. of Directive 2006/112/CE within the limits and conditions established in the Seat Agreement between the Kingdom of Spain and the European Union, signed in Madrid on the 20/09/2011 and published in the “Boletín Oficial del Estado” of the 21/10/2011.

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

4.6 Further information on the Office’s environment

Tenderers will find a number of documents which may be of interest on the Office’s website (<http://oami.europa.eu>).

5 COLLABORATION WITH OTHER COMPANIES

Companies may consider two ways of collaborating in a tender: either as joint partners in the tender or through subcontracting. Both **joint tenders** and **subcontracting** are allowed in response to an invitation to tender issued by the Office. Tenders may even combine both approaches.

In any case, the tender must specify very clearly whether each company involved in the tender is acting as a partner in a joint tender or as a subcontractor (this also applies where the various companies involved belong to the same group, or even where one is the parent company of the others). The Standard Reply Form annexed to the tender specifications includes **forms specifically** for this purpose.

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

5.1 Joint tenders

5.1.1 Partners in a joint tender assume **joint and several liability** towards the Office for the performance of the contract as a whole.

Statements saying, for instance:

- that one of the partners of the joint tender 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 tender is successful,

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

5.1.2 Joint tenders will be evaluated as follows:

- the exclusion criteria (see §9.1) will be evaluated in relation to each company individually,
- the selection criteria for economic and financial capacity (see §9.2.1) will be evaluated in relation to the tendering group as a whole (certified balance sheets and audit reports must be presented by all the companies participating in a joint tender).
- the selection criteria for technical and professional capacity (see §9.2.2) will be evaluated in relation to the tendering group as a whole.
- the technical and financial proposals (see §9.3) will be evaluated in relation to the tendering group as a whole.

If companies intend to submit a joint tender, they should be aware that, if awarded the contract, the Office will require them to give a formal status to the proposed association before the contract is signed. This can take the form of:

- an entity with legal personality recognised by a Member State; or
- an entity without legal personality but offering sufficient protection of the Office's contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association); or
- the signature by all the partners of a "written undertaking form" based on the model provided by the Office.

If companies intend to tender with a partner and have already set up a consortium or similar entity to that end, they should mention this fact in the tender, together with any other relevant information in this regard.

5.2 Subcontracting

5.2.1 Some tasks foreseen in the contract may be entrusted to subcontractors, but **the contractor retains full liability** towards the Office for performance of the contract as a whole. Accordingly:

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

5.2.2 If a tender envisages subcontracting, it must include:

- 1) a document
 - mentioning the reasons why the tenderer is envisaging subcontracting;
 - stating clearly the roles, activities and responsibilities of subcontractor(s), and;
 - specifying the volume / proportion to be assigned to each subcontractor
- 2) a letter of intent by each subcontractor stating its intention to collaborate with the tenderer, if awarded the contract.

5.2.3 Tenders involving subcontracting will be evaluated as follows:

- the exclusion criteria (see §9.1) will be evaluated in relation to the tenderer and each proposed subcontractor individually.
- the selection criteria for economic and financial capacity (see §9.2.1) will be evaluated in relation to the tenderer and all proposed subcontractors together. The Office reserves the right to request the certified balance sheets and audit reports of the subcontractors.
- the selection criteria for technical and professional capacity (see §9.2.2) will be evaluated in relation to the tenderer and all proposed subcontractors together.
- the technical and financial proposals (see §9.3) will be evaluated in relation to the tenderer and all proposed subcontractors together.

5.2.4 During performance of the contract, the contractor will need the Office's prior authorisation to replace a subcontractor and/or to subcontract tasks for which subcontracting was not envisaged in the original tender.

6 PREPARATION OF TENDERS

This section describes how tenderers should prepare their tender.

6.1 Publication of the tender specifications

Immediately after the contract notice is published in the Official Journal of the European Union, the following documents will be available on the Public Procurement page of the Office's website:

(<http://oami.europa.eu/ows/rw/pages/OHIM/publicProcurement/publicProcurement.en.do>):

- an invitation to tender;
- the tender specifications with all their annexes containing important information (in particular about the deadlines);
- a draft framework contract with model specific contracts.

6.2 Clarification of the tender specifications

During the tendering stage, economic operators may request additional information or clarification arising from the tender specifications.

To this effect tenderers should:

- formulate their questions **in writing, within the applicable deadline**. The Office cannot guarantee a reply to any questions arriving after the applicable deadline;
- send their questions **by e-mail or fax** to Procurement (see §3) using the model form attached to the invitation to tender. For administrative reasons, the Office cannot take into consideration questions sent by other means or to other addresses.
- The Office will review all the questions received with the utmost attention before taking one of the following courses of action:
- If the Office decides that a question is of general interest to potential tenderers, all such questions will first be rendered anonymous, and the Office's reply should thereafter be regarded as an integral part of the tender specifications.
- **Important information**: Any additional information and all answers to questions concerning this invitation to tender will be made available exclusively on the Public Procurement page of the Office's website: (<http://oami.europa.eu/ows/rw/pages/OHIM/publicProcurement/publicProcurement.en.do>).

6.3 Drawing up of tenders

6.3.1 Language

Tenders may be drawn up in **any of the official languages** of the European Union.

6.3.2 Replying to mandatory questions

Tenderers should pay particular attention to questions labelled “Mandatory”. **These questions require an unconditional affirmative answer.** If no answer is given or if an affirmative answer is qualified in any way (e.g. a “yes, *but* ...” answer), the tender will be rejected.

Economic operators not in a position to answer affirmatively to all the mandatory questions should not submit a tender.

6.3.3 Confidential information

The Office undertakes to protect tenderers’ commercial interests by treating all the information contained in their tenders as confidential.

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

6.3.4 Protection of personal data

In certain cases, the follow-up of responses to the invitation to tender will require the recording and further processing of personal data (for example, name, address or CV of natural persons).

These data will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Except if otherwise mentioned, replies to questions and personal data requested are necessary for the purpose of evaluating tenders and will only be processed by the Evaluation Committee (see §9) appointed for that purpose on a need-to-know basis.

Tenderers have the right to access their personal data and to rectify such data. Should tenderers have any queries concerning the processing of their personal data, they may address them to the Office. As regards the processing of personal data, tenderers have a right to recourse at any time to the European Data Protection Supervisor.

So that the Office can take appropriate steps to this effect while evaluating the tenders, any CVs (or similar documents) tenderers are asked to submit relating to their staff should not indicate any names. Instead, each CV should bear a number only, and the tender should include a list showing the correspondence between these numbers and actual names (see also §6.4.3).

6.3.5 Formal aspects

Tenderers should attach great importance to how their tender is presented. The following guidelines lay down **the minimum standards** which must be respected in all cases.

- 1) Tenderers should draw up their tender **by filling in the specific Standard Reply Form** included in the tender specifications, which are made available as described in §6.1. The numbering of the Standard Reply Form must not be altered.
- 2) As far as possible, tenders should be drawn up using **word-processing or desktop publishing software**, in a font size giving a **readable** result on paper. Where this is done, submission must include **an electronic copy** of the tender. However, where there is any doubt, **the paper version of the tender will prevail** over the electronic version.

If the tender, or any part of it, is hand-written, it must be perfectly **legible**, so as to rule out any doubt whatsoever as to the words or figures used.

- 3) Answers must be concise and clearly drafted.

Where possible, tenderers should answer in the space provided on the Standard Reply Form. However, if additional space is needed, the reply may be made on a separate sheet and attached to the Standard Reply Form. Such replies must be clearly referenced, and the reference noted on the form in the space provided for the reply.

- 4) Answers must be complete. Where a question has not been answered, the Office will make no assumption as to what the answer might have been.

Similarly, where only a partial answer is given, the Office will consider only the part of the question answered.

6.3.6 Specific requirements for the financial proposal

- 1) Financial proposals must be drawn up on the specific form included in the Standard Reply Form annexed to the invitation to tender. Changes to this form may lead to the rejection of the tender (see also §6.4.3).
- 2) Prices **must** be quoted:
 - **in euro**;
 - **free of all duties and taxes (in particular VAT)**, for the reasons stated in §4.5;
 - **inclusive of all costs and expenses** directly and/or indirectly connected with the goods and/or services to be supplied.
- 3) The financial proposal must be completely **unambiguous**. The tender will be rejected if it contains any statements preventing an accurate and complete evaluation (such as *"To be discussed"*, *"Depending on x"*, etc.) or referring to external circumstances (such as an already existing but separate contract).

6.4 Preparing your tender for submission

6.4.1 Number of copies

Unless otherwise stated in the tender specifications, tenders must be submitted **in duplicate** (one original and one copy). The original version must be clearly labelled “*Original*” and the copy, “*Copy*”.

An electronic version of the tender documents on CD-ROM or USB would be desirable. If a CD-ROM or USB is provided, it must be placed in the inner envelope (see §6.4.4) with the other tender documents. Any information presented in tabular form on a CD-ROM should be in a usable format such as a spreadsheet. In the event of discrepancies between the paper and electronic versions, the paper version will be considered authentic.

6.4.2 Cover letter

Tenders must include a **cover letter** signed by the person(s) empowered to represent the tenderer and entitled to sign the contract, if successful.

6.4.3 Elements to be separated from the rest of the tender

The following elements of the tender must be submitted **in separate envelopes or binders**, which must be clearly labelled:

- 1) the financial proposal and its supporting documents,
- 2) where applicable, the list with the personal data referred to in §6.3.4,
- 3) the third party file form.

An electronic copy of these elements (see §6.4.1) should also be provided.

Tenderers should ensure that the information relating to these elements is **not provided elsewhere** in the tender.

6.4.4 Sealing tenders

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

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

Office for Harmonization in the Internal Market (Trade Marks and Designs)
Invitation to tender OHIM No
Procurement
Avenida de Europa 4
E-03008 Alicante
Spain

The **inner envelope(s)** must read exactly as follows:

TENDER

Tender from:
Invitation to tender OHIM No
Title:.....
THIS ENVELOPE IS NOT TO BE OPENED BY THE INTERNAL MAIL SERVICE

If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across the tape.

Tenderers may use boxes instead of envelopes if the size or weight of the tender so requires. However, they must be sealed as indicated above.

7 SUBMISSION OF THE TENDER

The **deadline for the submission of tenders** is indicated in the contract notice and/or invitation to tender.

Unless otherwise indicated in the invitation to tender, tenderers may submit their tender in either of the **two ways** indicated below. Tenderers should be aware that each of these ways has different implications as regards the **observance of deadlines**. Tenderers are fully responsible for ensuring that the tender is submitted on time.

7.1 Delivery by hand

The tenderer (or an authorised representative) may deliver the tender in person to the Office's premises.

The tender must be **deposited** at the address indicated in §6.4.4 no later than **the final date and hour for the submission of tenders**.

A staff member of the Office, taking delivery of the tender, will issue a receipt stating the date and time of delivery. This receipt will serve as proof of compliance with the submission deadline.

Delivery by hand by the tenderer to the premises of the Office at an address other than the one indicated in §6.4.4 will not be accepted as a valid submission.

7.2 Through the national post service or by courier service

Tenderers may submit their tender by mail through the national post service or through a courier service, i.e. a third party other than the national post service. When

using a courier service, tenderers should instruct the courier service to deliver the tender to the address indicated in §6.4.4.

When using the national post service, tenderers must use **registered** mail and the tender must be **posted** no later than **the final date and hour for the submission of tenders**.

Proof of compliance with the submission deadline will be the **postmark**, in the case of the national post service. Exceptionally, if no postmark has been stamped or if the postmark is not legible, the Office may accept alternative evidence, such as a receipt issued by the post service, provided that this clearly indicates the date and the hour and has been filled in and stamped by the national post service and not by the tenderer.

If a courier service is used, proof of compliance with the submission deadline will be the deposit slip, signed and stamped by the courier service.

8 OPENING OF TENDERS

An Opening Committee will be appointed to open all the tenders.

In the case of an open procedure only, the opening of the tenders is public and the date, time and place of the opening session will be indicated in the contract notice and/or the invitation to tender.

Each tenderer may send a maximum of two representatives to the opening session. If tenderers choose to do so, they must, for security reasons, notify the names and identity document numbers of those persons by fax to the Office, no later than two working days before the opening session, failing which the Office reserves the right to refuse to admit the representative(s) to the opening session. The tenderers' representatives will be required to identify themselves and sign an attendance sheet.

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

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

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

9 EVALUATION OF TENDERERS AND TENDERS

The tenders will be evaluated by an **Evaluation Committee** specifically appointed for this purpose and working under conditions of strict confidentiality. The identity of the members of the Evaluation Committee will not be disclosed.

Once the evaluation is completed, the Evaluation Committee will draw up a report for the responsible authorising officer, who will take the final decision on the award of the contract.

Tenders will be evaluated in four phases, in the light of the requirements and criteria explicitly announced beforehand in the contract notice and/or the invitation to tender. Only tenders meeting the requirements of each phase of the evaluation will be admitted to the next.

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

During this stage, contact with any department or member of staff of the Office in relation to this invitation to tender is prohibited (see also §10).

9.1 Phase 1: Exclusion

Tenderers will be excluded from the procedure if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the European Investment Bank and international organisations;
- d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- e) they or persons having powers of representation, decision making or control over them have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;
- f) they are currently subject to an administrative penalty referred to in Article 109(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union;

- g) they are subject to a conflict of interests;
- h) they are guilty of misrepresenting the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply that information.

Tenderers must prove that they are not in any of the situations listed above.

Tenderers must provide together with their tender a solemn declaration, duly signed and dated and presented before a judicial or administrative authority, a notary or a qualified professional body in their country of origin or provenance, certifying that they are not in one of the situations referred to above.

At the end of the award procedure, the tenderer to whom the contract is to be awarded must, as an obligation, and to avoid being excluded from the invitation to tender, provide evidence that it is not in any of the situations referred to above. The successful tenderer shall have a 15 calendar day time limit (which may be extended in exceptional cases) to provide the requested documentary evidence.

However, where the tenderer has already submitted the above-mentioned documentary evidence in the framework of another procurement procedure with the Office and provided that the issuing date of these documents does not exceed one year and that they are still valid, the tenderer may request the re-use of such documentary evidence by indicating in Annex V of the Standard Reply Form the exact reference of the previous OHIM procurement procedure.

Nevertheless, the Office reserves the right to request the tenderer to whom the contract is to be awarded to submit the relevant documentary evidence afresh should the Office deem it necessary.

Only the tenderers complying with the requirements of phase 1 will be admitted to phase 2.

9.2 Phase 2: Selection

Tenderers will be selected if they can prove that they have, on the one hand, sufficient economic and financial capacity and, on the other, sufficient technical and professional capacity to perform the contract.

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

In the selection phase, evaluation focuses on the capacity of the tenderer and not on the quality of the tender. Accordingly, tenderers should not include information relating to the technical or financial proposal in this part of the tender.

9.2.1 Economic and financial capacity

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

- evidence of relevant **professional risk indemnity insurance**;

- **certified financial statements and audit reports** for the last three financial years for which accounts have been closed, or equivalent documentation (e.g. where company law in the country in which the tenderer is established does not require him to publish his balance sheet);
- a statement of overall **turnover** and turnover concerning the goods and/or services to be covered by the contract during the last three financial years;
- if a tenderer relies on the capacities of other entities (e.g. its parent company), **a written undertaking** on the part of those entities confirming that they will place the resources necessary for performance of the contract at the tenderer's disposal.

However, where the tenderer has already submitted the above-mentioned documentary evidence in the framework of another procurement procedure with the Office and provided that the issuing date of these documents does not exceed one year and that they are still valid, the tenderer may request the re-use of such documentary evidence by indicating in Annex V of the Standard Reply Form the exact reference of the previous OHIM procurement procedure.

Nevertheless, the Office reserves the right to request the tenderer to whom the contract is to be awarded to submit the relevant documentary evidence afresh should the Office deem it necessary.

9.2.2 Technical and professional capacity

The criteria used to check whether a tenderer has sufficient technical and professional capacity to perform the contract, as well as the evidence required to that effect, will be listed in the contract notice and/or the tender specifications. These criteria will relate to the tenderer's skills, efficiency, experience, reliability, etc., in relation to the subject of the contract.

Only the tenderers complying with the requirements of phase 2 will be admitted to phase 3.

9.3 Phase 3: Evaluation

In this phase, tenders will be evaluated to check compliance with the requirements and criteria indicated in the contract notice and/or the tender specifications, both from a technical and a financial point of view.

9.3.1 Technical evaluation

The technical evaluation of the tenders will be against the requirements and criteria listed **in the contract notice and/or the tender specifications**.

In addition to the list of technical evaluation criteria, the Office may indicate in the tender specifications additional provisions aimed at ensuring that the technical evaluation takes full account of the Office's needs, such as:

- assign a **weighting factor** to each criterion;

- lay down a **minimum threshold** for each criterion and/or for the technical evaluation criteria as a whole (tenders not reaching such thresholds would be automatically rejected).

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

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

9.3.2 Financial evaluation

The financial evaluation of the tenders will be based on the prices quoted by the tenderer and the volume assumptions announced in the contract notice and/or tender specifications.

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

- either the global cost of the tender over the whole duration of the contract, or
- the cost of a pre-defined scenario which - although it may represent only part of the total cost - is sufficiently significant for the purposes of evaluating the tenders.

9.4 Phase 4: Award

Unless stated otherwise in the contract notice and/or tender specifications, the tender which offers the **best value for money** will be identified in the following way:

- 1) The tender with the best technical score will receive a quality indicator of 100 points. The remaining tenders will receive lower quality indicators in proportion to their technical scores.
- 2) The tender which quotes the lowest price will receive a price indicator of 100 points. The remaining tenders will receive lower price indicators in proportion to their prices.
- 3) A quality/price ratio will be calculated for each tender. The tender presenting the best value for money will receive the highest score.

10 CLARIFICATION OF TENDERS

Once the tenders have been opened and during the evaluation phase, tenderers may be contacted in writing to obtain further clarification on specific points of their tender or to correct obvious clerical errors. Tenderers should be prepared to reply to such requests for clarification in writing within a very short deadline. **Replies received after the deadline indicated in the request for clarification will not be taken into account.**

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

- Tenderers must not modify their tender or add any new elements to it (other than purely administrative documentation). Their reply must

therefore make clear reference to the relevant information already present in the file.

- Where the financial proposal is concerned, tenderers must not add any new prices, but only explain the proposal on the basis of elements already present in the file, which should be explicitly mentioned.

If tenderers fail to observe these restrictions, their reply may be disregarded. If a reply plainly contradicts the original tender, the Office reserves the right to reject the tender.

11 OUTCOME OF THE INVITATION TO TENDER

During the evaluation stage of an invitation to tender, the Office will not provide any information whatsoever about the procedure. The only contacts allowed with tenderers are those mentioned in §10. If a tenderer is not contacted, this should not be regarded as a positive nor negative sign.

Tenderers will be informed of the outcome of the invitation to tender as indicated below.

11.1 Notification of results

As soon as the responsible authorising officer has signed the award decision, a **notification letter** will be sent simultaneously to all tenderers.

The letter sent to the successful tenderer(s) is informing it/them of the next steps to be taken and any documents that must be provided to the Office.

Letters to the unsuccessful tenderers will state the grounds on which the decision was taken and the available means of redress.

It should be noted that the dispatch of these letters does not constitute the award of the contract. This will not be completed until the contract has been signed by both the successful tenderer and the Office.

The Office undertakes not to sign the contract until:

- **a period of at least 14 calendar days has elapsed following the dispatch of the notification letters**, so that unsuccessful tenderers may take the steps described in §11.2 below.
- **the documentary evidence required in relation to the exclusion criteria has been received from the successful tenderer.**

11.2 Additional information

Tenderers that are notified that their tender has not been successful may request additional information by fax or e-mail. However, the Office would like to stress that it is not free to disclose any information affecting the commercial interests of other tenderers (see §6.3.3).

11.3 Contract signature

If the successful tenderer fails to sign and return the contract, together with any documentary evidence and/or performance guarantee required **within 30 calendar days after the date of dispatch of the cover letter accompanying the contract**, the Office may consider the acceptance of the tender to be cancelled and reserves the right either to award the tender to the next best tenderer or to cancel the tender procedure altogether, without prejudice to its right to retain the tender guarantee, if any, claim compensation or pursue any other remedy in respect of such failure, and the successful tenderer will have no claim whatsoever on the Office. The date of return is considered to be the date of receipt at the Office.

11.4 Award notice

Once the contract is signed, the Office will publish an award notice in the Official Journal of the European Union summarising the results of the invitation to tender.

12 REFERENCES

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

Name or owner of website URL Main information to be found

Office for Harmonization in the Internal Market

<http://oami.europa.eu>

General information about the Office.

European Commission

http://ec.europa.eu/languages/languages-of-europe/eu-languages_en.htm

Official EU languages

SIMAP

<http://simap.europa.eu>

Public procurement directives.

Comprehensive information about procurement in Europe.

TED (Tender Electronic Daily)

<http://ted.europa.eu>

Notices published in the Official Journal of the European Union.

EUR-LEX

<http://eur-lex.europa.eu>

European Union law.

Court of Justice of the European Union

<http://curia.europa.eu>

Court of Justice of the European Union's case-law.

European Ombudsman

<http://www.ombudsman.europa.eu>

European Ombudsman's decisions.

World Trade Organization (WTO)

<http://www.wto.org>

WTO Agreement on Government Procurement.