



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR COMPETITION

## **CALL FOR TENDERS COMP/2017/012**

Technical expertise to support the Commission on issues relating to an antitrust case in the IT sector

# **TENDER SPECIFICATIONS**

**Accelerated restricted procedure in two steps**

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## 0. Procurement procedure

This procurement is published under the accelerated restricted procedure. This means that the procedure is conducted in two steps, but with shorter deadlines.

- Step I – Candidates submit requests to participate with the documents requested for the assessment of the exclusion and selection criteria.
- Step II – Candidates who passed Step I are invited to submit a tender with the information requested for the assessment of the award criteria.

The accelerated procedure is justified by the need for the Commission to contract external experts within a very short timeframe in order to ensure that it has at its disposal all necessary technical expertise to monitor Google's implementation of, and compliance with, the Decision of 27 June 2017 in Case AT.39740 – Google Search (Shopping) (the "Decision"<sup>1</sup>), in line with the deadline set out in the Decision.

The Decision provides (Article 3) that Google shall implement measures that bring its infringement effectively to an end within 90 days from the date of the notification of the Decision.

## 1. Purpose and context of the contract

The Commission seeks to contract expertise (i) to advise on technical and economic issues relating to the monitoring of Google's implementation of, and the compliance with, the Decision, as well as (ii) to advise on technical and economic issues necessary for the Commission's defence before the Union Courts in relation to actions for annulment of the Decision or of any subsequent Commission decision related to the implementation of the Decision.

## 2. Background

### 2.1. The Decision

The Decision finds that Google Inc. and Alphabet Inc. (hereafter jointly referred to as "Google") committed an infringement of Article 102 of the Treaty on the Functioning of the European Union by positioning and displaying more favourably in Google's general search results pages Google's own comparison shopping service compared to competing comparison shopping services.<sup>2</sup>

<sup>1</sup> More information about the case can be found here: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39740](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740).

<sup>2</sup> A "Comparison Shopping Service" is a specialised search service that: (i) allows users to search for products and compare their prices and characteristics across the offers of several different online retailers (also referred to as online merchants) and merchant platforms (also referred to as online marketplaces); and (ii) provides links that lead (directly or via one or more successive intermediary pages) to the websites of such online retailers or merchant platforms. A merchant platform (or online marketplace) is an online platform which allows users to buy online items from different sellers without leaving the platform. The Alternative Dispute Resolutions Directive 2013/11/EU defines "online marketplace" as "a service provider [...], which

Article 3 of the Decision provides that within 90 days from the date of the notification of the Decision, Google shall bring to an end the infringement referred to above in so far as it has not already done so, and shall refrain from repeating any act or conduct described above, and from any act or conduct having the same or equivalent object or effect.

As there is more than one way of complying with the Decision and bringing that infringement to an end, it is for Google to choose between those various ways.

Any measure chosen by Google must, however, ensure that it treats competing comparison shopping services no less favourably than its own comparison shopping service within its general search results pages. The above-mentioned principles should apply irrespective of whether Google chooses to display a Shopping Unit<sup>3</sup> or another equivalent form of grouping of links to or search results from comparison shopping services.

In particular, any measure chosen by Google:

- (a) should apply to all devices, irrespective of the type of device on which the search is performed;
- (b) should apply to all users of Google situated in the thirteen EEA countries in which the Conduct takes place, irrespective of the Google domain that they use (including Google.com);
- (c) should subject Google's own comparison shopping service to the same underlying processes and methods for the positioning and display in Google's general search results pages as those used for competing comparison shopping services. Such processes and methods should include all elements that have an impact on the visibility, triggering, ranking or graphical format of a search result in Google's general search results pages, including:
  - i. processes and methods or relevance standards determining the triggering of comparison shopping services on the general search results pages in response to a query;
  - ii. processes and methods determining the positioning and display of comparison shopping services in response to a query, including relevance standards, ranking algorithms, adjustment or demotion mechanisms and their respective conditions, parameters and signals;
  - iii. type of landing pages for clicks on comparison shopping services;
  - iv. visual appearance on comparison shopping services and branding possibilities;
  - v. type and granularity of information on the results of comparison shopping services available to users; and
  - vi. the possibility of interaction with users.

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*allows consumers and traders to conclude online sales and service contracts on the online marketplace's website".*

<sup>3</sup> A "Shopping Unit" is set of specialised search results from Google's comparison shopping service displayed in a group within Google's general search results page, as illustrated in the screenshot in Annex B.



- (d) should not lead to competing comparison shopping services being charged a fee or another form of consideration that has the same or an equivalent object or effect as the infringement established by this Decision.

The Decision provides that Google must provide the Commission with periodic reports on the way it complies with it. The first of these reports must be sent on the day when Google brings the infringement to an end. The next reports must be sent every four months, for a period of five years.

### **3. Subject of the contract and task description**

#### **3.1. Subject**

The subject of the contract is to provide the Commission with technical expertise in the field of:

- i. Search Engine Optimisation ("SEO");
- ii. Search Engine Marketing ("SEM"); and
- iii. statistical and economic analysis related to the above-mentioned subject matters.

That expertise is necessary in the context of:

- i. the monitoring by the Commission of Google's implementation of the Decision; and
- ii. the Commission's defence before the Union Courts in relation to actions for annulment of the Decision, or any other action against the Commission in relation to the Decision, or of any subsequent Commission decision related to the implementation of the Decision.

#### **3.2. Task description**

The Services to be provided consists of advising the Commission, on Google's compliance with the order to put an end to the infringement defined by the Decision and to treat competing comparison shopping services no less favourably than its own comparison shopping service within its general search results pages.

In general terms, this entails advising the Commission on: (i) the assessment of processes and methods determining the display and positioning of generic search results,<sup>4</sup> and (ii) the assessment of processes and methods determining the display and positioning of results from comparison shopping search services.

In particular, the Services shall consist of advising the Commission on the application of the equal treatment principles set out in Section 12 of the Decision in relation to the following areas of work:

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<sup>4</sup> "Generic search results" are also known as "organic search results" or "natural search results".

- i. the processes and methods and/or relevance standards determining the triggering of Google's comparison shopping service, as well as of competing comparison shopping services<sup>5</sup> in Google's general search results pages in response to a query;
- ii. the processes and methods deciding the positioning and display of Google's comparison shopping service, as well as of competing comparison shopping services in Google's general search results pages<sup>6</sup> in response to a query, including relevance standards, ranking algorithms, adjustment or demotion mechanisms and their respective conditions, parameters and/or signals;
- iii. the types of landing pages for clicks on Google's comparison shopping service, as well as on competing comparison shopping services;
- iv. the visual appearance of comparison shopping services, including the type and granularity of information on the results of the comparison shopping services available to users and the possibility of interaction with the user; and
- v. the determination of the fee or any other form of consideration for the display of competing comparison shopping services in Google's general search results pages (if applicable), and any economic or accounting expertise aimed at providing information on whether such a fee has an equivalent object or effect as the infringement established by the Decision.

The tasks will be the following:

- i. advising the Commission on the type of information and data to gather to assess the implementation of the above-mentioned principles;
- ii. advising the Commission on the quantitative and qualitative technical analyses to be conducted, as well as methodologies and analytical tools to be used to assess the implementation of the above-mentioned principles;
- iii. advising the Commission on particular implementation risks that may arise in relation to the technical solutions proposed by Google to comply with the Decision;
- iv. advising the Commission on substantiated complaints by third parties about Google's compliance with the Decision;
- v. assisting the Commission in preparing requests for information relating to the implementation of the above-mentioned principles;
- vi. upon request of the Commission, devising ways and means of rebutting arguments by Google or third parties and/or highlighting their weaknesses in a manner appropriate for presentation in the Union Courts; and
- vii. upon request of the Commission, assisting it in interventions in the Union Courts in relation to the implementation of remedies for compliance with the Decision.

The delivery of the Services may require travel, e.g. to the Commission's premises in Brussels, the Union Courts in Luxembourg, to Google's headquarters in Mountain View, USA, or to other locations within the European Economic Area (EEA) for meetings. Meetings may also be held through conference calls.

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<sup>5</sup> This should include links to comparison shopping services, as well as any other display and positioning formats in Google's general search results pages, such as the current Shopping Units, which benefit a comparison shopping service.

<sup>6</sup> Idem.

### 3.3. Reporting and deliverables

The contractor must deliver the reports and other deliverables as indicated in the specific contract.

For each specific contract, the contractor will provide (i) a draft report, followed by (ii) a final report that takes account of the Commission's comments formulated in relation to the draft report. Both reports must be addressed to the contracting authority and more precisely, the project manager and the contact person for the specific task.

The reports must meet the following requirements:

- i. contain the advice, answers, information, data and/or analyses as requested by the Commission;
- ii. describe the methodologies used in the analyses and contain the underlying raw data, codes and/or information necessary for replicating the analyses by the Commission or any third party, including, if applicable, before the Union Courts; and
- iii. be supported by relevant, accurate and verifiable data and evidence.

All material (e.g. notes, research) produced by the contractor and any third party research used by the contractor to underpin the advice and answers in the report must be annexed to the reports.

All material produced (e.g. reports, notes, research) must be submitted electronically, in English and in a format (e.g. word, excel, stata files) agreed with the Commission.

The copyright of all material produced will belong to the contracting authority.

The contractor must provide regular updates to the contracting authority on the progression of each specific task. The frequency of each update will be determined on a case by case basis and will be stipulated in the specific contract.

If any problems occur at any stage of the execution of the specific contract, the contracting authority must be informed immediately so that it can take appropriate action without delay.

### 3.4. Case scenario – theoretical offers to be submitted

In order to assist the potential tenderers in understanding the type of Services that they can be expected to provide during the execution of the Framework Contract ("FWC") and to provide a common basis for the evaluation of their tenders, a case scenario is described below.

It should be stressed that the tasks mentioned in the scenario will not necessarily be the subject of specific contracts under the FWC. Moreover, the scenario described below is merely used as an example of how Google might wish to implement the remedies provided for in the Decision. It is in no way prescriptive and/or exhaustive.

The tenderers must present for the scenario described below a description of their understanding of the tasks and of the way in which they would carry out the work. The tenderers should consider that at the end of the specific contract they will have to provide the



Commission with a written report describing in detail their findings. As regards the theoretical time line for the preparation of the report requested under this scenario, please assume that (i) such a report would have to be prepared within a three-month period<sup>7</sup> and (ii) a draft report and a final report would be required. The requested description should include:

- a) a technical part consisting of
  - i) a technical note on the methodology used for the scenario, detailing the approach, methodologies and preliminary solution and the structure of the report to be prepared; type of information and data to be gathered (including the information sources); and the technical analyses to be conducted to assess the principles mentioned in section 3.2.

The technical note, of maximum 7,000 words, to be preferably drafted in English, will address the tasks of the scenario mentioned below.

- ii) a technical note on organisation of the work of the scenario, detailing the project planning, the composition of the team, allocation of time, roles and responsibilities, with names of the experts who will carry out the tasks (corresponding to the CVs submitted in Step I, see section 7.1.6. B).

The technical note, of maximum 2,000 words, to be preferably drafted in English, will address the tasks of the scenario mentioned below.

- 2) a financial part consisting of
  - a price offer for the scenario, detailing the number of person-days to be multiplied by the "Expert Person Day" prices to be indicated in Annex A. The "Expert Person Day" price shall be fixed and will correspond to the "Expert Person Day" price defined in section 8.7. of these specifications.

The form in Annex A will be used for the price offer.

***Case scenario: Google maintains the Shopping Unit, or displays an equivalent hereof***

In this scenario, Google would maintain the Shopping Unit in response to product-related queries, or would display an equivalent of the Shopping Unit, grouping results from, or links to, comparison shopping services. Comparison shopping services (both Google's own and competing services) would therefore appear in that Shopping Unit or equivalent, but also potentially in generic search results (in the form of blue links with or without enriched graphical features) and/or AdWords results<sup>8</sup>. In such a context the technical expertise subject to the FWC could cover any topic related to the application of the equal treatment principles set out in the Decision concerning in particular:

<sup>7</sup> Please note that this timeline applies to the theoretical scenario. Services to be requested under the FWC may be subject to shorter or longer deadlines.

<sup>8</sup> In response to a user's query on Google Search, Google's general search results pages may return search advertisements drawn from Google's auction-based online search advertising platform, AdWords ("AdWords results").



- (a) the processes and methods and/or relevance standards determining the triggering of comparison shopping services within generic search results in response to a query, including relevance standards and their respective conditions, parameters and/or signals;
- (b) the processes and methods deciding the positioning of the comparison shopping services within generic search results in response to a query, including relevance standards, ranking algorithms, adjustment or demotion mechanisms and their respective conditions, parameters and/or signals;
- (c) the visual appearance of the comparison shopping services within generic search results, including the type and granularity of information on the results of the comparison shopping services available to users and the possibility of interaction with the user;
- (d) the processes and methods determining the triggering of the Shopping Unit or the equivalent thereof on the general search results pages, including the algorithms and/or underlying process(es) and methods for (i) the triggering of the Shopping Unit or equivalent thereof on the general search results pages in response to a query; (ii) the visibility, positioning and ranking of the Shopping Unit or the equivalent thereof vis-à-vis all other results in the general search results page;
- (e) in instances where a Shopping Unit or the equivalent thereof is triggered on the general search results pages, the processes and methods determining the selection and ranking mechanisms of elements displayed within the Shopping Unit or equivalent thereof, including: (i) the type of landing pages for clicks on different items of the Shopping Unit or equivalent thereof; (ii) the type and granularity of information available to the user within the Shopping Unit or equivalent thereof (iii) all graphical features of elements related to comparison shopping services within the Shopping Unit or equivalent thereof, including their visual appearance (including enriched graphical features and possibility of interaction with the user), branding possibilities, and type of landing pages for links; and
- (f) the determination of the fee or of any other form of consideration for the display of competing comparison shopping services in the Shopping Unit or the equivalent thereof, and in particular any economic or accounting expertise aimed at providing information on whether such a fee is economically sustainable for competing comparison shopping services.

The related tasks could encompass any activity related to the gathering, analysis of information, data and/or statistics on the conditions, parameters and/or signals for the application of all elements mentioned above. As regards the determination of the fee, the tasks could encompass the analysis of the economic sustainability for comparison shopping services competing with Google of participating in the Shopping Unit or equivalent therefore.

### **3.5. Confidentiality of information**

1. The provisions regarding the handling of confidential information applicable to this FWC are included under Article I.14.2 and Article II.8 of the FWC.
2. All information and data provided under this FWC are confidential. The tenderers must ensure adequate protection of the information and data they will receive in the performance of the Services under this FWC and shall not disclose confidential information to anyone other than the Commission. The information provided in

performance of the Services shall be used solely for the purpose of performing the tasks, duties and obligations specified in these Specifications and FWC.

3. In particular, the candidate's attention is drawn to Article I.14.2, which provides as follows:

**"I.14.2** In addition to what is stated in Article II.8 of the FWC, the following special conditions concerning confidentiality of information must be ensured by the contractor:

- (a) The contractor and any authorised subcontractor(s) must establish specific safeguards to ensure the protection of confidential information in the workplace, including taking the delivery of, tracking the dissemination of, monitoring the use of, protecting against the disclosure of and determining the safe disposal of confidential information. The Commission, the contractor and any authorised subcontractor will exchange any information through secured channels, such as encrypted emails (preferred option) or carriers (DVDs or USB sticks and hard disks). Consequently, the tenderer will obtain certificates allowing encrypted and signed email exchanges at the highest security standard (S/MIME at the time of drafting). The Commission will provide the contractor the information needed to obtain this certificate. When using encrypted carriers the password or certificate to decrypt the carrier will be sent by separate email. The Commission will provide to the tenderer any data, and the tenderer will return to the Commission any data, by the same secured means.
- (b) The contractor or any authorised subcontractor(s) must handle information only within a secure environment which is not accessible to persons not involved in the execution of the FWC. Only the contractor or any authorised subcontractor(s) and their staff involved in the execution of the specific contracts will work on the data. Neither the contractor nor any authorised subcontractor(s) nor their staff will share the data with any third party. Disclosure of the advice given to the Commission in any form (unless authorised by the European Commission in writing) is also strictly forbidden.
- (c) Following the finalisation of the work on each specific contract, the contractor and any authorised subcontractor(s) will ensure the data is securely deleted from the computer(s) on which it was stored in such a way that the data cannot be retrieved, including retrieved from temporarily stored data or backups, even by using the most advanced forensic IT techniques. Also encrypted emails containing the data will be permanently deleted. If the data sets were transmitted on DVD or USB stick, the contractor will personally hand back the original carrier at DG Competition's premises. The contractor in his name and in the name of any authorised subcontractor(s) will declare to the European Commission that the delete of any stored data and emails has been executed as requested and also confirm that he/she no longer has any copy of the data (wholly or in part) in whichever form that could be restore or reused later.
- (d) The contractor takes the full responsibility for the protection of the submitted data until complete delete or return of the data received. The obligation to respect the confidentiality provisions by the contractor and any authorised subcontractor(s) continues for ever after the end of the Framework Contract.

In addition to what is determined in Article II.13.1 of the FWC<sup>9</sup>, the following shall also apply:

- (e) The data sets made available to the contractor and any authorised subcontractor(s) under the FWC should be used by the contractor and any authorised subcontractor(s) exclusively for the fulfilment of the tasks set out in the tender specifications (Annex I) to the FWC.

The contractor must ensure that any expert working for the contractor or any authorised subcontractor for the purpose of execution of the contract signs a Declaration of Confidentiality on honour, Annex V, regarding the protection of confidentiality of information managed under the FWC. All the Declarations on Confidentiality signed by the experts that will participate in the work of any specific contract under the FWC must be submitted to the contracting authority together with their corresponding offers.

The Commission reserves the right to have the processes put in place by the contractor to ensure the protection of the confidential information audited.

The contracting parties will endeavour to adapt in the light of technological developments their respective processes to handle confidential information and to exchange securely so as to ensure effective protection of such information throughout the duration of the contract.

By signing the FWC, the contractor accepts the obligations stemming from the rules on confidentiality of information indicated in the FWC. In the case where any of the rules or obligations is not respected by the contractor or by any of its authorised subcontractors, the contracting authority shall take all appropriate legal action in case of breach of these rules, including but not limited to damage actions."

4. Each expert and/or subcontractor contracted by the tenderer for the purpose of execution of the contract must sign a declaration on honour regarding confidentiality of information, in Annex V to the FWC.

### 3.6. Conflict of interest

1. The provisions regarding conflict of interest applicable to this FWC are included under Article I.14.1 and Article II.7 of the FWC.
2. In particular, the attention of the candidate/tenderer is drawn to Article I.14.1 of the FWC, which provides as follows:

**"I.14.1** In addition to what is stated in Article II.7 of the FWC, the contractor and any authorised subcontractor(s) shall neither have, nor have become exposed to a Conflict of Interest<sup>10</sup> before, during the term of the FWC or thereafter. In particular:

<sup>9</sup> Article II.13.1 – Ownership of the results – Intellectual and Industrial property rights.

<sup>10</sup> "Conflict of Interest" means any conflict of interest that influences or impairs or could influence or impair the expert's objectivity and independence in discharging its duties under the Decision.



(a) For a period of three years prior to the submission of the tender, contractor and any authorised subcontractor(s) must not:

- have been employed or appointed as a member of the Board or as a member of other management bodies of Google, of complainants<sup>11</sup>, or of companies admitted in accordance with Article 13(1) of Commission Regulation (EC) No 773/2004 as interested third parties in Case AT.39740 – Google Search (Shopping)<sup>12</sup> - or any companies that have made spontaneous or substantiated informal submissions to the Commission that relate to the proceedings leading to the Decision in the Case AT.39740, as well as of any affiliated undertakings thereof;<sup>13</sup> and
- have executed work in the field of SEO and SEM for or had any personal or financial interests in or gains that may, in view of the circumstances of the particular case, be regarded as influencing or impairing the expert's objectivity and impartiality from Google, complainants, and companies admitted in accordance with Article 13(1) of Commission Regulation (EC) No 773/2004 as interested third parties in Case AT.39740 – Google Search (Shopping) - or any companies that have made spontaneous or substantiated informal submissions to the Commission that relate to the proceedings leading to the Decision in the Case AT.39740, as well as of any Affiliated Undertakings thereof.

(b) The contractor and any authorised subcontractor(s) must not, as from the date of submission of the tender and until the termination of the FWC:

- have or accept any employment by or any appointment as Member of the Board or member of other management bodies of Google, complainants, companies admitted in accordance with Article 13(1) of Commission

<sup>11</sup> The following companies or associations filed complaints related to Case AT.39740 – Google Search (Shopping) : Indefederation Ltd ('Foundem'), Ciao GmbH ('Ciao'), 1PlusV, Verband freier Telefonbuchverleger ('VfT'), Bundesverband Deutscher Zeitungsverleger ('BDZV') and Verband Deutscher Zeitschriftenverleger ('VDZ'), Euro-Cities AG ('Euro-Cities'), nntp.it, Microsoft Corporation ('Microsoft'), Streetmap EU Ltd ('Streetmap'); Expedia Inc. ('Expedia'); Odigeo Group ('Odigeo'); TripAdvisor Inc. ('TripAdvisor'); Hot Maps Medien GmbH ('Hot Maps'), Elf B.V. ('Elf'), Twenga SA ('Twenga'), Nextag Inc. ('Nextag') and Guentiger.de GmbH ('Guentiger'), Visual Meta GmbH ('Visual Meta'); the Initiative for a Competitive Online Marketplace ('iCOMP'), AEDE, Bureau Européen des Unions de Consommateurs AISBL ('BEUC'), Deutsche Telekom AG ('Deutsche Telekom'), Yelp Inc. ('Yelp'); HolidayCheck AG ('HolidayCheck'); Trivago GmbH ('Trivago'), Open Internet Project ('OIP'), News Corporation ('News Corp'); Tradecomat.com Ltd and Tradecomat LLC (together, 'Tradecomat'); VG Media Gesellschaft zur Verwertung der Urheberund Leistungsschutzrechte von Medienunternehmen mbH ('VG Media'), Getty Images Inc. ('Getty'); and Promt GmbH ('Promt').

<sup>12</sup> The following interested third persons were admitted by the Hearing Officer in Case AT.39740 – Google Search (Shopping): MoneySupermarket.com Group PLC ('MoneySupermarket'); Organización Europea de Consumidores y Usuarios ('OCU'); FairSearch Europe ('FairSearch'); SARL Acheter moins cher ('Acheter moins cher'); S.A. LeGuide.com ('LeGuide'); Kelkoo SAS ('Kelkoo'); Myriad International Holdings B.V. ('MIH'); the European Technology & Travel Services Association ('ET TSA').

<sup>13</sup> "Affiliated Undertakings" means undertakings controlled by any of the undertakings mentioned in Article I.14.1 of the FWC and/or by their ultimate parent company. "Control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.



Regulation (EC) No 773/2004 as interested third parties, any companies that have made spontaneous or substantiated informal submissions to the Commission that relate to the proceedings leading to the Decision in Case AT.39740 – Google Search (Shopping), and any comparison shopping services, as well as of any Affiliated Undertakings thereof, other than appointments pertaining to the establishment and performance of the FWC; and

- execute work in the field of SEO and SEM for or have any personal or financial interests in or gains that may, in view of the circumstances of the particular case, be regarded as influencing or impairing the expert's objectivity and impartiality from Google, complainants, companies admitted in accordance with Article 13(1) of Commission Regulation (EC) No 773/2004 as interested third parties, any companies that have made spontaneous and substantiated informal submissions to the Commission that relate to the proceedings leading to the Decision on the Case AT.39740 – Google Search (Shopping), and any comparison shopping services, as well as of any Affiliated Undertakings thereof that might lead to a Conflict of Interest.
- (c) For a period of one year after termination of the FWC, the contractor and any authorised subcontractor(s) shall not take on any of the functions set out in Article I.14.1 of the FWC with Google, complainants, companies admitted in accordance with Article 13(1) of Commission Regulation (EC) No 773/2004 as interested third parties, any companies that have made spontaneous and substantiated informal submissions to the Commission that relate to the proceedings leading to the Decision in Case AT.39740 – Google Search (Shopping), and any comparison shopping services, as well as of any Affiliated Undertakings thereof.

Each expert and/or authorised subcontractor contracted by the tenderer for the purpose of execution of the contract must sign a declaration on honour regarding non-conflict of interest, in Annex IV to the FWC.

If it comes to the Commission's attention at any stage of the procurement procedure or during contract implementation that the candidate/tenderer/contractor has misrepresented the information contained in the declaration of non-conflict of interest, the Commission will exclude the candidate/tenderer in accordance with Article 107(1)(b) of the Financial Regulation or terminate the framework contract in accordance with Article II.18 of the Framework contract and may also impose damages."

#### **4. Implementation of the contract**

The contracting authority intends to conclude a FWC with one contractor.

The FWC will be concluded with the successful tenderer, setting out the legal, financial, technical and administrative terms that will apply and govern the commercial relations between the contracting authority and the contractor. The draft FWC is part of the procurement documents published on e-Tendering. In drawing up their requests to participate and tenders, tenderers should bear in mind the provisions of this draft FWC, as it will be

proposed to the successful tenderer. By submitting a tender, tenderers accept the conditions of this draft FWC.

Following the conclusion of the FWC, the contracting authority will order services by signing a specific contract/order form as described in Article I.4.3 of the draft FWC.

The Commission may use the services of an independent bench marker for the Specific Contracts.

Signature of the FWC does not commit the contracting authority to placing orders and does not give the contractors any exclusive rights regarding the services covered by the FWC. The contracting authority reserves the right to contract services described in this call for tender outside the FWC.

## **5. Timetable**

The duration of the FWC is specified in Article I.3.

The total duration of the FWC will not exceed 8 years. The 8 year maximum duration is justified by the reporting period of 5 years imposed by the Decision in Case AT.39740 – Google Search (Shopping), which is a reasonable time period over which it is estimated to monitor Google's compliance with the Decision, and a subsequent period of 3 years estimated as the time needed to conclude possible Court proceedings.

The FWC shall be renewed automatically up to 7 times under the same conditions, each time for a further period of 12 months, unless written notification to the contrary is sent by one of the contracting parties and received by the other at least one month before expiry of the FWC. Renewal does not implicitly or expressly amend or defer any of the existing obligations.

The contracting authority expressly reserves the right not to renew the FWC.

Implementing the FWC, each specific contract will have a duration which varies according to the task at hand. The deadlines will be adapted to reflect the scope and complexity of the work to be carried out.

## **6. Volume**

The estimated value of the FWC, including all costs, travel and incidental expenses, is maximum EUR 10 million (ten million) for its total duration, including renewals. The contracting authority is under no obligation to order services for the maximum amount.

The contracting authority reserves the right to use the negotiated procedure for similar services in accordance with Article 134(1)(e) of the Rules of Application<sup>14</sup> of the Financial Regulation<sup>15</sup>, with a maximum of 50% of the initial estimated total value, if the volume is used up faster than expected.

<sup>14</sup> Rules of application - 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 (OJ L 362, 31.12.2012, p.1), as amended.

<sup>15</sup> Financial Regulation - Commission Delegated Regulation (EU, Euratom) No 1268/2012 of 29 October 2012 (OJ L 298 of 26.10.2012, p. 1), as amended.

## **7. Evaluation in two steps**

The FWC will be awarded following a restricted procedure in two steps; 1) requests to participate; and 2) tenders and award.

The requests to participate and the tenders will be assessed in the order indicated below in section 7.1 and 7.2. Only requests to participate and tenders meeting the requirements of one step will pass on to the next step.

The contracting authority may reject abnormally low tenders, particularly if it is established that the tenderer or an identified subcontractor does not comply with applicable obligations in the fields of environmental, social and labour law or confidentiality.

### **7.1. Step I –Verification of requests to participate**

In Step I, candidates shall submit a request to participate together with the evidence required related to the exclusion and selection criteria.

The evaluation is based solely on the information provided in the submitted request to participate. It involves the following:

- (1) verification of non-exclusion of candidates on the basis of the exclusion criteria;
- (2) verification of non-conflict of interest; and
- (3) selection of candidates on the basis of selection criteria.

The candidates that do not pass Step I will be notified.

The candidates that pass Step I will receive the invitation to tender (see section 7.2 regarding Step II).

#### **7.1.1. Step I - Verification of non-exclusion**

All candidates must provide a declaration on honour (see Annex III), signed and dated by an authorised representative, stating that there are no circumstances requiring exclusion as listed in that declaration on honour.

In case of joint tender, each member of the group must provide a declaration on honour signed by an authorised representative.

In case of subcontracting, all identified subcontractors must provide a declaration on honour signed by an authorised representative.

The Contracting Authority reserves the right to verify whether there are any circumstances requiring exclusion of the successful tenderer by requiring the supporting documents listed in the declaration on honour.

The successful tenderer must provide the documents mentioned as supporting evidence in the declaration on honour before signature of the FWC and within a deadline given by the contracting authority. This requirement applies to each member of the group in case of joint tender and to all identified subcontractors.



The obligation to submit supporting evidence does not apply to international organisations.

A candidate/tenderer (or a member of the group in case of joint tender, or an identified subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year before the date of the request by the contracting authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that there has been no change in its situation.

A candidate/tenderer (or a member of the group in case of joint tender, or an identified subcontractor) is not required to submit a specific document if the contracting authority can access the document in question on a national database free of charge. In such cases, the tenderer must inform the contracting authority where the information can be found.

### **7.1.2. Step I - Verification of non-conflict of interest**

Candidates (including each member of the group in case of a joint tender, as well as any identified subcontractor) and each expert in accordance with section 7.1.6 B, must provide a declaration signed by an authorised representative that none of the Conflict of Interest situations described in Article I.14.1 of the FWC applies to them.

The Contracting Authority reserves the right to verify whether the successful tenderer is in one of the Conflict of Interest situations by requiring further supporting documents in addition to those listed below.

Evidence to be provided:

- (1) declarations on non-conflict of interest;
- (2) the evidence provided for criterion A1 under section 7.1.6 below; and
- (3) the evidence provided for criterion B1 under section 7.1.6 below.

### **7.1.3. Step I - Selection criteria**

Candidates must prove their legal, regulatory, economic, financial, technical and professional capacity to carry out the work subject to this procurement procedure.

The candidates may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the FWC, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

The request to participate or tender must include the proportion of the FWC that the tenderer intends to subcontract.

### **Declaration of evidence**

The candidates (and each member of the group in case of joint tender) and identified subcontractors whose capacity is necessary to fulfil the selection criteria must provide the declaration on honour (see Annex III), signed and dated by an authorised representative,



stating that they fulfil the selection criteria applicable to them. In case of joint tender or subcontracting, the criteria applicable to the tenderer as a whole will be verified by combining the various declarations for a consolidated assessment.

This declaration is part of the declaration used for exclusion criteria (see section 7.1.1) so only one declaration covering both aspects should be provided by each concerned entity.

The Contracting Authority will evaluate selection criteria on the basis of the declarations on honour and on the basis of the evidence submitted. **Evidence related to the selection criteria (economic and financial capacity, and technical and professional capacity) must be submitted with the request to participate.** This requirement applies to each member of the group in case of joint tender and to identified subcontractors whose capacity is necessary to fulfil the selection criteria.

The Contracting Authority reserves the right to require evidence of the legal and regulatory, economic and financial, and technical and professional capacity of the candidates or tenderers at any time during the procurement procedure and contract performance. In such case the candidate or tenderer must provide the requested evidence without delay.

A candidate (or a member of the group in case of joint tender, or an identified subcontractor) is not required to submit the documentary evidence if it has already been submitted for another procurement procedure and provided the documents were issued not more than one year before the date of the request by the contracting authority and are still valid at that date. In such cases, the tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, indicate the reference of the procedure and confirm that there has been no change in its situation.

A candidate (or a member of the group in case of joint tender, or an identified subcontractor) is not required to submit a specific document if the contracting authority can access the document in question on a national database free of charge. In such cases, the candidate must inform the contracting authority where the information can be found.

#### **7.1.1. Step I - Legal and regulatory capacity**

Candidates must prove that they are allowed to pursue the professional activity necessary to carry out the work subject to this call for tenders. The candidate (including each member of the group in case of joint tender) must provide the following information if it has not been provided with the Legal Entity Form (see section 8.6.1).

- For legal persons, a legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation applicable to the legal person requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
- For natural persons, if required under applicable law, a proof of registration on a professional or trade register or any other official document showing the registration number.

### **7.1.2. Step I - Economic and financial capacity criteria**

The candidate must have the necessary economic and financial capacity to perform this FWC until its end. In order to prove its capacity, the candidate must comply with the following selection criteria.

- Criterion F1: Total turnover of the last two financial years of minimum EUR 1 000 000 per year; this criterion applies to the tenderer as a whole, i.e. the combined capacity of all members of a group in case of a joint tender.
- Criterion F2: The tenderer must have a professional risk indemnity insurance of EUR 2 000 000 covering the whole period of the FWC. This criterion applies to the leader in case of a joint tender.

#### **Evidence (to be provided with the request to participate):**

- (1) copy of the profit and loss accounts and balance sheet for the last two years for which accounts have been closed from each concerned legal entity;
- (2) failing that, appropriate statements from banks; and
- (3) evidence of professional risk indemnity insurance and if necessary a letter of intent that the candidate will subscribe to/renew the insurance until the end of the contract.

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

### **7.1.3. Step I - Technical and professional capacity criteria and evidence**

#### **A. Criteria relating to tenderers**

Candidates (in case of a joint tender the combined capacity of all members of the group and identified subcontractors) must comply with the criteria listed below. The evidence must be provided with the request to participate.

The project references indicated below consist in a list of relevant services provided in the past three years, with the sums, dates and clients, public or private, accompanied by statements issued by the clients.

The candidates must provide evidence of employing directly or being readily capable of constituting a team of experts capable of carrying out in a professional and timely manner the tasks that may be requested under the FWC, i.e. Services in all three areas: expertise related to (i) SEO, (ii) SEM, as well as (iii) statistical and economic analysis, and with a balanced composition of relevant education and professional experience in the areas of expertise of the Services.

Candidates must therefore have a sound professional experience in all areas. They shall have a proven professional track record in providing results to the highest standards of industry/research.

For the above purposes, the candidates who do not fulfil the following criteria will not be selected:

**Criterion A1:** The candidate must have provided services in each of the three areas of expertise in the past two years: (i) SEO - the total value of the contracts provided amounted to at least EUR 900 000 or SEO related services counted for at least a total of 110 working days per year, (ii) SEM - the total value of the contracts provided amounted to at least EUR 900 000 or SEM related services counted for at least a total of 110 working days per year, as well as (iii) statistical and economic analysis - the total value of the contracts provided amounted to at least EUR 200 000 or statistical and economic analysis related services counted for at least a total of 110 working days per year.

**Evidence A1:** A list and description of the services provided in the past two years and relevant to this call for tender, with the identification of the clients, the value of the services (contract) or the time sheets or equivalent documents. This list should identify at minimum Services provided in each of the three areas of expertise: (i) SEO, (ii) SEM, as well as (iii) statistical and economic analysis.

**Criterion A2:** The candidates must be able to perform the critical tasks without recourse to subcontractors. Such critical tasks consist of: (i) the assessment of processes and methods determining the display and positioning of generic search results, and (ii) the assessment of processes and methods determining the display and positioning of paid search results (such as online search advertising). In particular, the critical tasks consist of advising the Commission on the application of the equal treatment principles set out in Section 12, of the Decision in relation to the following areas of work:

- (a) the processes and methods and/or relevance standards determining the triggering of Google's comparison shopping service, as well as of competing comparison shopping services<sup>16</sup> in Google's general search results pages in response to a query;
- (b) the processes and methods deciding the positioning and display of Google's comparison shopping service, as well as of competing comparison shopping services in Google's general search results pages<sup>17</sup> in response to a query, including relevance standards, ranking algorithms, adjustment or demotion mechanisms and their respective conditions, parameters and/or signals;
- (c) the types of landing pages for clicks on Google's comparison shopping service, as well as on competing comparison shopping services; and
- (d) the visual appearance of comparison shopping services, including the type and granularity of information on the results of the comparison shopping services available to users and the possibility of interaction with the user.

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<sup>16</sup> This should include links to comparison shopping services, as well as any other display and positioning formats in Google's general search results pages, such as the current Shopping Units, which benefit a comparison shopping service.

<sup>17</sup> Idem.



**Evidence A2:**

- (1) a report of the number of experts/consultants working for the candidate (by means of employment or otherwise), broken down by categories (see Part B. below), and field of expertise;
- (2) a copy of employment contracts and/or other appointment or cooperation contract signed between the tenderer and each of the foreseen members of the team that would be expected to work on the execution of the FWC, together with an indication of the proportion or areas of the FWC, which the service provider intends to subcontract, together with the identity of the subcontractors; and
- (3) letters of intent from each member of a group in case of joint tender and from each sub-contractor.

**Criterion A3:** The candidate must have experience in data collection techniques, drafting reports and recommendations on (i) SEO, (ii) SEM, as well as (iii) statistical and economic analysis and/or use of analytical tools for the assessment of large internet traffic data samples.

**Evidence A3:** A list and description of the Services provided in the past three years that entailed the use of data collection techniques, drafting of reports and (i) SEO, (ii) SEM, as well as (iii) statistical and economic analysis, and/or the use of analytical tools for the assessment of large internet traffic data samples.

**Criterion A4:** The candidate must have adequate information security management system.

**Evidence A4:** Certificate of ISO/IEC 27001:2013 or equivalent document which proves adequate information security levels.

## **B. Criteria relating to the team delivering the service**

The team delivering the service should include, as a minimum, the profiles below.

Evidence should be provided in the form of the CVs of the team responsible for delivery of the service. Each CV should indicate the intended function of the person in question in the delivery of the service.

**Criterion B1:** The experts constituting the team delivering the Services (also in connection with the case scenario mentioned under section 3.4), must meet the following requirements:

1. The team shall cover at least the following categories of experts:
  - (a) *Category 1:* SEO expertise. Expert with at least 8 years of professional experience in SEO with focus on technical optimization. In the past two years the expert must have provided the equivalent of not less than a total of 110 working days per year of services / contributed to projects requiring:
    - i. knowledge of ranking factors and search engine algorithms;
    - ii. analysis of traffic and analytics;
    - iii. analysing ranking strategies;



- iv. researching the latest SEO practices; and
  - v. enhancing natural search visibility.
- (b) *Category 2: SEM expertise.* Expert with at least 8 years of professional experience in SEM with focus on performance marketing strategies for e-commerce providers. In the past two years the expert must have provided the equivalent of not less than a total of 110 working days per year of services / contributed to projects requiring:
- i. managing PPC campaigns;
  - ii. e-commerce; and
  - iii. enhancing paid search visibility.
- (c) *Category 3: Expert in micro-economic analysis:* At least 8 years of professional experience. Relevant higher education degree or equivalent professional experience and at least 8 years of professional experience in the field.
- (d) *Category 4: Project Manager:* At least 7 years of experience in project management, including overseeing project delivery, quality control of delivered service, client orientation and conflict resolution experience in project of a similar size (at least € 1 million) and coverage (at least 2 EEA countries), with experience in management of a team of at least 3 people.
- (e) *Category 5: Expert in data collection and/or data mining:* At least 5 years of professional experience. Relevant higher education degree or equivalent professional experience and at least 5 years of professional experience in the field.
- (f) *Category 6: Junior expert:* Expert with at least 3 years of professional experience in any of the following areas: (i) SEO or (ii) SEM or (iii) micro-economic analysis or (iv) data collection and/or data mining.
2. The experts shall cover all areas of expertise defined in section 3.1. The same person can be counted for two or more fields and/or areas of expertise, provided that he/she has the required experience in connection with the fields and/or areas of expertise concerned.

#### **Evidence B1:**

- (1) a detailed Curriculum Vitae for each of the team members, which shows educational, professional and language qualifications. The CVs shall be presented, preferably, in accordance with the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:079:0066:0072:EN:PDF>
- (2) a list of services delivered in the past two years including: an accurate description of the scope of the service delivered and major achievements, the total amount of

each service, the dates the service was carried out, and the names of the clients (it must be stated whether the clients were public or private entities); and

- (3) a list of the clients' contact details so the contracting authority can contact them if necessary.

**Criterion B2 - Language quality check:** at least 1 member of the team should have at least C1 level in the Common European Framework for Reference for Languages<sup>18</sup> in English.

**Evidence B2:** a language certificate or past relevant experience.

For the Specific Contracts, changes or additions to the members of the team proposed in the specific tender must be notified to the Commission in writing. The Commission will have the right to object to any changes of members of the team from those proposed in the specific tender, provided that those changes would have a negative impact on the quality of the team with regard to the selection criteria under 7.1.6. or the award criteria under 7.2.1. In case that the original team is no longer available, the Commission will have the right to cancel the Specific Contract.

## **7.2. Step II - Tenders and award**

Only the candidates who passed Step I and received an invitation to tender may submit a tender.

The evaluation is based solely on the information provided in the submitted tender. It involves the following:

- (1) verification of compliance with the minimum requirements set out in the tender specifications; and
- (2) evaluation of tenders on the basis of the award criteria.

### **7.2.1. Step II - Award criteria**

The FWC will be awarded on the best value for money and the tenders will be evaluated according to the criteria below and points will be scored.

In order to allow for the evaluation of the tenders, tenderers shall consider the theoretical scenario indicated above under section 3.4.

The total quality criterion is composed of 3 main quality criteria. The maximum total number of quality points is one hundred.

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<sup>18</sup> See [http://www.coe.int/t/dg4/linguistic/Cadre1\\_en.asp](http://www.coe.int/t/dg4/linguistic/Cadre1_en.asp)

No	Quality criteria	Quality points
	<i>Criteria related to the case scenario:</i>	
1.	<p><b>Quality of the proposed methodology</b></p> <p>This criterion will assess the quality of the proposed approach, methodologies and preliminary solution.</p> <p>This criterion evaluates the tenderers' understanding of what is required under the scenario and the appropriateness and completeness of the methodologies and of the preliminary solution envisaged, as well as of the suggested structure of the report.</p> <p>This criterion will be evaluated against a technical note on methodology of maximum 7,000 words presenting and discussing, among others, the elements mentioned under the two sub-criteria below.</p>	50 points

	<p><b><i>Sub-criterion 1.1: Type of information and data to be gathered to assess the implementation of the principles mentioned in section 3.2. above, considering the specifics of and the parameters related to the case scenario described in section 3.4</i></b></p> <p>This sub-criterion will be evaluated in consideration of the following elements to be presented and discussed by the tenderer in the above-mentioned technical note:</p> <ol style="list-style-type: none"> <li>the information and data that the tenderer considers the Commission should obtain from Google and/or third parties for each of the parameters mentioned in section 3.4. through potential requests for information;</li> <li>the information and data in relation to the parameters mentioned in section 3.4. that the tenderer considers the Commission should obtain and analyse from other sources, including open sources;</li> <li>other parameters related to the case scenario than the ones listed in section 3.4 that the tenderer considers relevant for the Commission's assessment of Google's compliance with the Decision in that particular scenario;</li> <li>the methodologies and tools which the tenderer proposes to be used for cross-checking the data provided by Google.</li> </ol>	25 points
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	<p><b><i>Sub-criterion 1.2: The technical analyses to be conducted to assess the implementation of the principles mentioned in section 3.2. above, considering the specifics of and the parameters related to the case scenario described in section 3.4</i></b></p> <p>This sub-criterion will be evaluated in consideration of the following elements to be presented and discussed by the tenderer in the above-mentioned technical note:</p> <ul style="list-style-type: none"> <li>i. the quantitative and qualitative analyses involving the data and information referred to in the context of sub-criterion 1.1. that the tenderer suggests to be conducted, as well as methodologies and analytical tools to be used to assess each of the parameters mentioned in section 3.4;</li> <li>ii. the analytical tools the tenderer suggests to be used for the above-mentioned analyses;</li> <li>iii. the implementation risks that the tenderer considers that may arise in relation to the technical solution proposed by Google in this case scenario and the tenderer's proposal for mitigating measures and for preventing and addressing such risks;</li> <li>iv. the analysis, including the methodology thereof, that the tenderer suggests to be conducted to determine whether the fee for the display of competing comparison shopping services in the Shopping Unit has an equivalent object or effect as the infringement established by the Decision.</li> </ul>	25 points
2.	<p><b>Organisation of the work</b></p> <p>This criterion will be evaluated against a technical note on organisation of the work of maximum 2000 words discussing how the roles and responsibilities of the proposed team and of the different economic operators (in case of joint tenders, including identified subcontractors if applicable) are distributed for each task. It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work. The tender should provide details on the allocation of time and human resources and the rationale behind the choice of this allocation. Details should be provided as part of the technical offer; a budget requested as part of the financial offer is not sufficient.</p>	20 points
	<b><i>Case scenario total points:</i></b>	<b><i>/70</i></b>



	<b>Criteria related to control measures:</b>	
<b>3.</b>	<p><b>Quality control measures</b></p> <p>This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the language quality check, continuity of the service in case of absence of the member of the team and the measures put in place to ensure the confidentiality of information received.</p> <p>Quality Control measures will be evaluated against a technical note of a maximum of 2000 words describing:</p> <ul style="list-style-type: none"> <li>i. the concrete hands-on measures employed to ensure the quality of the performance;</li> <li>ii. terms of availability of the resources dedicated to the Contract, as well as the capacity to mobilize these in line with the requirements of the specific tasks (which may include participation in meetings at the Commission's premises and/or in other premises defined in the specific contracts at short notice, working over weekends and holiday periods);</li> <li>iii. proposed working arrangements to deliver advice and execute the tasks within very short deadlines when necessary (e.g. through the possibility of deploying additional resources);</li> <li>iv. the specific measures that will be put in place to ensure the confidentiality of the information received and to prevent any personal or financial gain in the context of the performance of the services under this FWC;</li> <li>v. the specific measures that will be put in place to ensure an effective prevention and detection of conflicts of interest.</li> </ul> <p>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.</p>	<b>30 points</b>
Tenders must score minimum 50% for each criterion and sub-criterion, and minimum 65 % in total. Tenders that do not reach the minimum quality levels will be rejected and will not be ranked.		
<b>Overall total number of points:</b>		<b>/100</b>

### 7.2.2. Ranking of tenders

The FWC will be awarded to the most economically advantageous tender, i.e. the tender offering the best price-quality ratio determined in accordance with the formula below. A weight of 70/30 is given to quality and price, in view of the highly specialised and nature of the Services required under this FWC.

The total price of the case scenario will be considered as the price of the tender.

overall score for tender X	=	$\frac{\text{cheapest price}}{\text{price of tender X}}$	*	100	*	price weighting (in 30%)	+	overall total quality score (out of 100) for all award criteria of tender X	*	quality criteria weighting (in 70%)
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The tender ranked first after applying the above formula will be awarded the FWC.

## 8. Information on tendering

### 8.1. Participation

In Step I, Participation in this procurement procedure is open on equal terms to all natural and legal persons coming from one of the EU Member States, as well as to international organisations.

It is also open to all natural and legal persons established in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the plurilateral Agreement on Government Procurement<sup>19</sup> concluded within the World Trade Organisation applies, the participation to this procedure is also open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions it lays down.

In Step II, participation is limited to the candidates that passed Step I. The successful candidates will receive an invitation to tender from the Commission.

### 8.2. Contractual conditions

The tenderer should bear in mind the provisions of the draft FWC which specifies the rights and obligations of the contractor, particularly those on payments, performance of the FWC, confidentiality, and checks and audits.

<sup>19</sup> See [http://www.wto.org/english/tratop\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gp_gpa_e.htm)

### 8.3. Compliance with applicable law

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 Directive 2014/24/EU<sup>20</sup>.

### 8.4. Joint tenders

A joint tender is a situation where a tender is submitted by a group of economic operators (natural or legal persons). Joint tenders may include identified subcontractors in addition to the members of the group.

In case of joint tender, all members of the group assume joint and several liability towards the Contracting Authority for the performance of the FWC as a whole, i.e. both financial and operational liability. Nevertheless, tenderers must designate one of the economic operators as a single point of contact (the leader) for the Contracting Authority for administrative and financial aspects as well as operational management of the FWC.

After the award, the Contracting Authority will sign the FWC either with all members of the group, or with the leader on behalf of all members of the group, authorised by the other members via powers of attorney.

### 8.5. Subcontracting

Subcontracting is permitted but the contractor will retain full liability towards the Contracting Authority for performance of the FWC as a whole.

The following critical tasks must however be performed by the contractor and cannot be subcontracted:

- i. the assessment of processes and methods determining the display and positioning of generic search results; and
- ii. the assessment of processes and methods determining the display and positioning of paid search results (such as online search advertising).

In particular, the critical tasks referred to above consist of advising the Commission on the application of the equal treatment principles set out in Section 12 of the Decision in relation to the following areas of work:

- i. the processes and methods and/or relevance standards determining the triggering of Google's comparison shopping service, as well as of competing comparison shopping services<sup>21</sup> in Google's general search results pages in response to a query;

<sup>20</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>21</sup> This should include links to comparison shopping services, as well as any other display and positioning formats in Google's general search results pages, such as the current Shopping Units, which benefit a comparison shopping service.



- ii. the processes and methods deciding the positioning and display of Google's comparison shopping service, as well as of competing comparison shopping services in Google's general search results pages<sup>22</sup> in response to a query, including relevance standards, ranking algorithms, adjustment or demotion mechanisms and their respective conditions, parameters and/or signals;
- iii. the types of landing pages for clicks on Google's comparison shopping service, as well as on competing comparison shopping services;
- iv. the visual appearance of comparison shopping services, including the type and granularity of information on the results of the comparison shopping services available to users and the possibility of interaction with the user.

Tenderers are required to identify all subcontractors.

During contract performance, the change of any authorised subcontractor identified in the tender or any additional subcontracting will be subject to prior written approval of the Contracting Authority.

#### **8.6. Step I - Structure and content of the request to participate**

The request to participate to be submitted by candidates in Step I must be presented as follows:

Part A: Identification of the tenderer as described below

Part B: Non-exclusion (see section 7.1.1)

Part C: Non-conflict of interest (see section 7.1.2)

Part D: Selection (see section 7.2.1)

#### **Identification of the candidate**

The candidate must include a cover letter signed by an authorised representative presenting the name of the candidate (including all entities in case of joint tender) and identified subcontractors if applicable, and the name of the single contact point (leader) in relation to this procedure.

In case of joint tender, the cover letter must be signed either by an authorised representative for each member, or by the leader authorised by the other members with powers of attorney. The signed powers of attorney must be included in the request to participate as well. Identified subcontractors must provide a letter of intent signed by an authorised representative stating their willingness to provide the services in line with the present tender specifications.

All candidates (including all members of the group in case of joint tender) must provide a signed Legal Entity Form with its supporting evidence. The form is available on:

[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)

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<sup>22</sup> Idem.

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

The candidate (or the leader in case of joint tender) must provide a Financial Identification Form with its supporting documents. Only one form per request to participate should be submitted. No form is needed for identified subcontractors and other members of the group in case of joint tender. The form is available on:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm)

The candidate (and each member of the group in case of joint tender) must declare whether it is a Small or Medium Size Enterprise in accordance with [Commission Recommendation 2003/361/EC](#). This information is used for statistical purposes only.

## **8.7. Step II - Structure and content of the tender**

The tender to be submitted by invited candidates in Step II must be presented as follows:

### **Part E: Technical offer**

The technical offer must cover all aspects and tasks required in the technical specifications and provide all the information needed to apply the award criteria. Offers deviating from the requirements or not covering all requirements may be rejected on the basis of non-compliance with the tender specifications and will not be evaluated.

### **Part F: Financial offer**

Tenderers must provide a table of unit prices, as provided in Annex A of these specifications and expressed in "Expert Person Days"<sup>23</sup> for each of the six expert profile categories (as indicated in section 7.1.3 B) the tenderer proposes to use for the performance of the services required under the FWC. These prices will form the basis for the pricing of the Specific Contracts and is an integral part of the FWC.

The six unit prices must be fixed and include all costs (project management, quality control, training of the contractor's staff, support resources, etc.) and all expenditure (management of the firm, secretariat, social security, salaries, etc.) incurred directly and indirectly by the contractor, including travel and subsistence expenses for travel to Brussels, Luxembourg and any other location within the EEA, the tenderer intends to use for the provision of the Services under this FWC, in performance of the Services which may be entrusted to him. Travel and subsistence expenses for travel to Brussels, Luxembourg and any other location within the EEA, will not be refundable separately.

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<sup>23</sup> One "Expert Person Day" consists of 8 working hours.

In the event the contractor would be required, in a Specific contract, to travel for meetings to the USA, costs for travel, subsistence, and accommodation will be reimbursed separately in accordance with Article I.5.3 of the Framework contract.

In order to facilitate the assessment of the price, the tenderer should specify for each category of staff to be involved in the project referred to in the case scenario: the total labour costs; the daily rates and total number of days (man-days) each member of staff will contribute to the project.

The contracting authority will only pay for the number of days (or parts thereof) actually worked.

The price for the tender must be quoted in euro, including for tenderers from countries outside the euro zone. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to bear the effects deriving from any variation.

Prices must be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

Costs incurred in preparing and submitting tenders are borne by the tenderers and cannot be reimbursed.



**ANNEX A- Financial offer**

Name of tenderer: .....

1.- Price "Expert Person Day" \*)

The price table below will become an annex to the FWC. The prices shall be fixed and shall be the basis for the calculation of the prices for the Specific Contracts. These specific unit prices shall also be applied to the theoretical scenario as fixed prices.

Category	Category 1	Category 2	Category 3	Category 4	Category 5	Category 6
Price (Expert Person Day)						

2.- Scenario

EUR

1. Staff cost	Category 1	Category 2	Category 3	Category 4	Category 5	Category 6	Total
Number of working days							
Total fee / category							


<b>Total price for Scenario</b>	
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.....  
Signature of authorized person

\*) Prices must be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.


ANNEX B - *Screenshot of the Shopping Unit* taken on [www.google.be](http://www.google.be) on 21 June 2017.






ANNEX B - Screenshot of the Shopping Unit taken on [www.google.be](http://www.google.be) on 21 June 2017


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