



## **ANNEX A**

D-SE-16-T03

2nd independent External Evaluation of the European  
Union Agency for Fundamental Rights

TENDER SPECIFICATIONS





## 1. Description of the tender

The overarching objective of the contract is to deliver an independent External Evaluation Report (hereinafter "the Report") for the Management Board of the Agency. The external evaluation shall cover the five-year period of 2013-2017. Progress shall be measured by comparing to the situation prior to the reporting period by assessing the progress made in the implementation of the recommendations of the first independent external evaluation in 2012. Special account should also be given to the strategic priorities, thematic objectives and operational activities implemented in 2013-2017.

The contract notice for the present call for tenders was published on 27/07/2016 with reference number 2016/S 143-258097.

## 2. Division into lots

This tender is not divided into lots. Submission of a tender for only some of tasks to be performed under the contract will lead to the rejection of the tender.

## 3. Purpose of the tender

The purpose of this invitation to tender is to award a Direct Services contract for the provision of 2nd independent External Evaluation of the European Union Agency for Fundamental Rights.

## 4. Place of delivery or performance

The place of performance of the tasks shall be the contractor's premises or any other place indicated in Annex A.1 Technical Specifications.

## 5. Duration

The contract(s) resulting from the present call for tenders shall enter into force the date on which it is signed by the last contracting party.

The duration of the performance of the contract must not exceed ten (10) months. Performance of the contract starts from the date of entry into force of the contract. The period of performance of the contract may be extended only with the express written agreement of the parties before the expiration of such period.

## 6. Volume

The indicative volume of the contract has been estimated at 245,000.00 EUR excluding VAT.

## 7. Contractual conditions

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





## **8. 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>1</sup>.

## **9. Terms of payment**

The payment arrangements governing the contracts resulting from the present call for tenders are detailed in the relevant articles of Annex B – draft contract. Tenderers are strongly advised to carefully read those articles before submitting their tenders.

## **10. Financial guarantees**

Based on a risk assessment, the contracting authority may request a pre-financing guarantee in the amount of the pre-financing and in the form set out in Annex C.

## **11. Participation in the tendering procedure**

Participation in this procurement procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties, 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<sup>2</sup>.

## **12. 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 subcontractors in addition to the members of the group. Changes in the composition of the consortium or group of companies must be expressly authorised by the contracting authority.

In case of joint tender, all members of the group assume joint and several liability towards the contracting authority for the performance of the contract as a whole, i.e. both financial and operational liability. 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 contract.

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<sup>1</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>2</sup> Please note that the European Union Agency for Fundamental Rights is not part of the Agreement on Government Procurement (GPA) concluded within the World Trade Organisation. Therefore, the Agency's procurement procedures are not open to tenderers from GPA countries.





All members of the consortium or group of companies must provide a declaration on honour on exclusion and selection criteria duly dated and signed by an authorised representative.

After the award, the contracting authority will sign the contract 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.

Joint tenders will be assessed as follows as regards the exclusion and selection criteria:

- The exclusion criteria will be assessed in relation to each economic operator individually.
- The selection criteria for economic and financial capacity will be assessed in relation to each economic operator individually. However, economic and financial criteria that shall be achieved above a certain minimum threshold (as specified in the selection criteria mentioned below) will be assessed in relation to the consortium or group of companies as a whole.

The selection criteria for technical and professional capacity will be assessed in relation to the consortium or group of companies as a whole.

### **13. Subcontracting**

Subcontracting is permitted but the contractor will retain full liability towards the contracting authority for performance of the contract as a whole. During contract performance, the change of any subcontractor identified in the tender or additional subcontracting will be subject to prior written approval of the contracting authority.

Any intention to subcontract part of the contract must be clearly stated by the tenderer in Annex C. Tenderers must indicate the maximum percentage of the contract they intend to subcontract and the identity of those subcontractors they intend to work with.

For each subcontractor identified in the tender, tenderers must provide a Letter of Intent signed by the subcontractor stating their unambiguous undertaking to collaborate with the tenderer.

Offers involving subcontracting will be assessed as follows:

- The exclusion criteria of all identified subcontractors whose intended share of the contract is above 10% will be assessed. The declaration on honour on exclusion criteria and selection criteria included in Annex C, duly signed and dated, stating that the subcontractor is not in one of the exclusion situations, must be provided by each identified subcontractor.
- Where the tenderer relies on the economic, financial, technical and professional capacity of the identified subcontractor(s) to meet the selection criteria, subcontractors shall be treated as if they were partners in a consortium or a group of companies for the purposes of the evaluation of the selection criteria, and therefore, they shall provide proof of economic, financial, technical and professional capacity as well.



- Subcontractor(s) should select the 'N/A' option in their individual declaration when the tenderer does not rely on their economic, financial, technical and professional capacity.

Tenderers must inform the subcontractor(s) and include in their Letter of Intent that the provisions referring to checks and audits included in the Draft Contract (Annex B) may be applied to them.

Once the contract has been signed, the provisions regarding subcontracting included in the Draft Contract will apply. The contracting authority retains the right to approve or reject the proposed subcontractors.

If the tender includes subcontracting, it is recommended that contractual arrangements with subcontractors include mediation as a method of dispute resolution.

#### **14. Visits to premises**

A visit to the premises is not foreseen.

#### **15. Date and place of opening of the tenders**

Tenders will be opened at 10:30 hrs on 22/09/2016 at the contracting authority's address. An authorised representative of each tenderer may attend the opening of the bids. Companies wishing to attend are requested to notify their intention by sending a fax or e-mail at least three (3) working days in advance to the fax or e-mail. This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will attend the opening of the bids on the tenderers behalf.

#### **16. Contacts between the tenderer and the contracting authority**

In principle, no contact is permitted between the contracting authority and the tenderers during the tendering procedure.

However, in exceptional circumstances contact may be made on the tenderers initiative before the final date for the submission of bids, in order (and only for this reason) to clarify the nature of the contract.

Such requests for further information may be made by fax, e-mail or to the address below:

<p>European Union Agency for Fundamental Rights Invitation to tender No: D-SE-16-T03 Administration Schwarzenbergplatz 11 Vienna 1040 – Austria Fax: +43 (0)1 580 30 691 ; e-mail: <a href="mailto:procurement@fra.europa.eu">procurement@fra.europa.eu</a></p>
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The contracting authority is not bound to reply to requests for additional information provided less than six working days before the date of receipt of tenders. The answers to the requests for additional information will be posted on <http://fra.europa.eu/en/about-fra/procurement>. The website will be updated regularly



and it is the tenderers' responsibility to check for updates and modifications during the tendering period.

Similarly, contact may in exceptional circumstances be made on the contracting authority's initiative:

- a. before the final date for the submission of bids, in order to inform interested parties of an error, a lack of precision, an omission or any other material shortcoming in the drawing up of the documents of the invitation to tender; or
- b. after the opening of bids, where a bid requires clarification or in order to correct material errors made in drawing up a bid.

Please note that in any event such contact may not result in a modification of the terms of the bid.

## **17. Alteration or withdrawal of tenders**

Tenderers may alter or withdraw their tenders by written notification prior to the deadline for submission of tenders. No tender may be altered after the deadline for submission. Withdrawals must be unconditional and will end all participation in the tender procedure.

Any such notification of alteration or withdrawal must be prepared and submitted in accordance with the instructions on how to submit tenders included in the Invitation to tender, and the envelope must also be marked with "alteration" or "withdrawal" as appropriate.

## **18. Variants**

Variant solutions are not allowed and will not be taken into consideration.

## **19. Evaluation and award**

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

- phase I: verification of non-exclusion of tenderers on the basis of the exclusion criteria
- phase II: selection of tenderers on the basis of compliance with the selection criteria
- phase III: verification of compliance with the minimum requirements set out in Annex A.1 Technical Specification and evaluation of tenders on the basis of the award criteria
- phase IV: contract award on the basis of the award method

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

The tenders will be assessed in the order indicated above. Only tenders meeting the requirements of one step will pass on to the next step.





### **19.1 Verification of non-exclusion (Phase I)**

All tenderers must provide a declaration of honour on exclusion criteria and selection criteria (see Annex C), signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in that declaration of honour.

The successful tenderer must provide the documents mentioned as supporting evidence in the declaration on honour before signature of the contract 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 subcontractors whose share of the contract is above 10 % and whose capacity is necessary to fulfil the selection criteria.

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

The successful tenderer (or a member of the group in case of joint tender, or a subcontractor) will not be 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 their request by the contracting authority and are still valid at that date. In such cases, the successful 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. If a specific document can be accessed by the contracting authority on a national database free of charge, the successful tenderer (or a member of the group in case of joint tender, or a subcontractor) will need to include the link to the source and will not be required to submit the document.

### **19.2 Selection of tenders on the basis of compliance with selection criteria – Phase II**

The aim of this phase is to assess if tenderers have sufficient economic and financial capacity and sufficient technical and professional capacity to perform the contract.

#### **19.2.1 Economic and financial capacity**

Tenderers must have the necessary economic and financial capacity to perform this contract until its end. In order to prove their capacity, tenderers must comply with the following selection criteria:

(a) Copy of the financial statements (balance sheets, and profit and loss accounts) for the last two (2) financial years for which accounts have been closed. In case of a consortium, each consortium member shall present their own financial statements.

(b) A statement of the annual average turnover for the last two (2) financial years for which accounts have been closed. The minimum average annual turnover of the tenderer shall be of 490,000.00 EUR. In case of a consortium, the annual average turnover for each of the partners shall be presented. The sum of the annual average turnovers of each partner will be taken into account to reach the minimum annual average turnover of 490,000.00 EUR.







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

An economic operator may, where appropriate and for a particular contract, rely on the economic and financial capacities of other entities, regardless of the legal nature of the links 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 the performance of the contract, for example by producing a commitment by those entities to that effect. In that case, the contracting authority may require that the economic operator and the entities referred to above are jointly liable for the performance of the contract.

### **19.2.2 Technical and professional capacity**

Tenderers (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:

(a) The educational and professional qualifications, skills, experience and expertise of the persons responsible for the performance of the contract. Tenderers are requested to include the CVs in Europass format of the profiles described in Annex A.1 Technical Specifications. The proposed CVs must possess the minimum educational and professional requirements stated in Annex A.1.

(b) Tenderers are required to prove that they have performed at least 2 projects of an amount, nature or scope similar to the services to be carried out under this contract in the past three (3) years. The list of the principal services shall be accompanied by certificates of satisfactory performance and completion of the services.

An economic operator may, where appropriate and for a particular contract, rely on the technical and professional capacities of other entities, regardless of the legal nature of the links 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 the performance of the contract, for example by producing a commitment by those entities to that effect.

An economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.

## **20. Assessment of tenders – Phase III**

The aim of this phase is to verify the compliance of the tenders with the minimum requirements set out in Annex A.1 Technical Specifications and to evaluate, from the technical and the financial points of view the offers submitted by the tenderers.





## 20.1 Verification of compliance with the minimum requirements set out in Annex A.1 Technical Specifications.

The compliance of the technical offers with the minimum requirements set out in Annex A.1 Technical Specifications will be assessed. Offers deviating from the minimum requirements or not covering all the minimum requirements may be rejected on the basis of non-compliance and will not be evaluated further.

## 20.2 Technical evaluation

The quality of the tender will be evaluated based on the following criteria and their corresponding weightings:

Technical Award criteria/sub-criteria	Weighting in %
<b>1. Quality of the multidisciplinary approach</b>	<b>75</b>
1.1. Organization and structure of the proposed team. To which extend the organizational set-up is suitable for the implementation of the assignment (i.e distribution of responsibilities within the proposed team, internal communication within the team and interaction with FRA)	30
1.2. Disclose the technical approach and the proposed methodology for the present assignment in the field of surveying techniques, collection of data, statistics, quantitative analysis, qualitative analysis and their direct compliance with the objective of the evaluation and the suggested questions correlated to the key indicators	40
1.3. Disclose how the results of point 1.2 will allow the contractor to formulate recommendations with specific, measurable, achievable, realistic and time bound action plan in order to best respond to the objectives and task to be performed at short and long term, including highlighting the experience the tenderer will build on to design action oriented recommendations	30
<b>2. Efficiency of the project management plan and quality of the work programme</b>	<b>15</b>
2.1. Project management plan	65

2.2 Proposed work programme	35
<b>3. Quality of the document provided by the contractor</b>	<b>10</b>
3.1.Logical structure	40
3.2 Completeness	20
3.3 Readability/layout	20
3.4. Absence of errors or incoherence	20
<b>TOTAL</b>	<b>100</b>

For each criterion (and sub-criterion) a number of points in a range between 0 to 100 points will be given. A tender can reach a maximum of 100 points per criterion and a maximum of 100 points in total. After the application of the corresponding weightings per criterion and sub-criterion as per the grid above, tenders scoring less than 60% in the total overall points or less than 50% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.

## 20.3 Financial evaluation

### 20.3.1 Financial award criteria

The tender with the lowest financial offer will receive 100 points in the financial evaluation. The remaining tenders will receive financial points in proportion to their financial offer and in accordance with the following formula:

$$\text{financial points for tender X} = (\text{lowest financial offer} / \text{financial offer of tender X}) * 100$$

Financial award criteria Weighting 100
Item
Global Price

### 20.3.2 Information concerning prices

The financial evaluation of the offers will be based on the prices quoted by the tenderers in their financial offers. Tenderers must fill in the Financial Offer Form included in Annex C.



When filling in the Financial Offer Form, tenderers must take into consideration that prices shall be:

- expressed in euro. For tenders in countries which do not belong to the euro zone, tenderers shall quote their prices in euro and the price quoted may not be revised in line with exchange rate movements. It is for the tenderer to select an exchange rate and assume the risks or benefits deriving from any variation.
- inclusive of all costs and expenses, directly and indirectly connected with the goods and/or services to be supplied/provided and including all the charges (travel and subsistence), unless otherwise stated in the tender documents.
- free of all duties and taxes (in particular VAT). According to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the European Union Agency for Fundamental Rights is exempt from all charges, taxes and dues, including value added tax; such charges may not therefore be included in the calculation of the price quoted; the VAT amount must be indicated separately.

Prices are fixed and not subject to revision.

## **21. Contract award – Phase IV**

The contract 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 quality-price ratio:

Score for tender X = (financial score of tender X \* 40 %) + (total quality score (out of 100) for all award criteria of tender X \* 60 %)

## **22. Information to tenderers on the outcome of the tender**

The contracting authority will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

The contracting authority will inform as soon as possible all tenderers whose tenders are rejected of the reasons for their rejection. If a written request is received, the contracting authority will inform, within not more than 15 calendar days from the date on which the written request is received, all tenderers who meet the exclusion and selection criteria, of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details may not be disclosed where disclosure would hinder application of the law, would be contrary to public interest or would harm the legitimate commercial interests of public or private undertakings or could distort fair competition between those undertakings.

## **23. No obligation to award the contract**

The tendering procedure shall not involve the contracting authority in any obligation to award the contract.





No compensation may be claimed by tenderers whose tender has not been accepted, including when the contracting authority decides not to award the contract.

## **24. Cancellation of the tender procedure**

In the event of cancellation of the tender procedure, tenderers will be notified of the cancellation by the contracting authority. If the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes will be returned to the tenderers.

In no event shall the contracting authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure even if the contracting authority has been advised of the possibility of damages.

## **25. How to submit the tender**

All tenders must be presented in three parts:

### **Part 1 – Administrative Proposal**

In the Administrative Proposal, tenderers must include all the information and documents required by the contracting authority for the assessment of tenderers on the basis of the exclusion and selection criteria described above. For that purpose, tenderers must fill and sign the following documents using the forms included in Annex C:

#### **Section A: Tenderers Identification**

- Tenderers identification form (administrative details). If the tenderer is a consortium or a group of companies, only the leader must fill in the form.
- Legal Entities Form, to be signed by a representative of the tenderer authorised to sign contracts with third parties. There is one form for individuals, one for private entities and one for public entities. If the tenderer is submitting a joint offer, a Legal Entities Form must be submitted by each consortium or group member. It also has to be submitted by each identified subcontractor whose intended share of the contract is above 10% of the total contract value.
- Bank Identification Form filled in and signed by an authorised representative of the tenderer and its banker. In case of a joint offer, only one of the members of the consortium or group of companies, usually the leader, must complete the Bank Identification Form.
- Power of Attorney (in case of joint offers). In case of a joint offer, the power of attorney has to be signed by the leader and all consortium partners, preferably in a single document.
- Statement on Subcontracting, indicating the intention of the tenderer to subcontract part of the contract and the percentage of subcontracting per identified subcontractor.



- Letter of Intent of identified subcontractors (only if the tenderer intends to subcontract part of the contract).

**Section B: Exclusion Criteria information**

- Declaration of Honour with respect to the Exclusion Criteria and Absence of Conflict of Interest. To be submitted by each consortium or group member in case of joint offers and by each identified subcontractor whose intended share of the contract is above 10% of the total contract value.

**Section C: Selection Criteria (Economic and Financial capacity)**

- Copy of the financial statements (balance sheets, and profit and loss accounts) for the last two (2) financial years.
- Statement on the annual average turnover for the last 2 years.

**Section D: Selection criteria (Technical and Professional Capacity)**

- Educational and professional qualifications of the profiles requested in Annex A.1 Technical Specifications.
- Prove that tenderers have performed at least 2 projects of an amount, nature or scope similar to the services to be carried out under this contract in the past three (3) years.

**Part 2 – Technical proposal**

In the Technical Proposal, tenderers must include all the information required by the contracting authority for the evaluation of tenders on the basis of the technical award criteria described in the corresponding sections of these Tender Specifications. Tenderers should elaborate on all points addressed in Annex A.1 Technical Specifications in order to obtain as many points as possible. The mere repetition of mandatory requirements set out in Annex A.1, without going into details or without giving any added value, will only result in a low number of points. In addition, if certain essential points of Annex A.1 are not expressly covered by the tender, the contracting authority may decide to give a zero mark for the relevant qualitative award criteria.

The technical offer must be written with a lay person in mind. The style and presentation must, as far as is possible, be simple and clear, and free of jargon that obscures rather than promotes meaning to readers unfamiliar with it.

The technical proposal must be included in a separate envelope clearly marked as "Technical Offer". Please note that there is no specific form to present your Technical Offer. However, it should be drawn up following the instructions above.

**Part 3 – Financial Proposal**

In the Financial Proposal tenderers must indicate their financial offers by completing the Financial Offer Forms included in Annex C (Section F). Prices must be included in accordance with the instructions given in the corresponding sections of these Tender



Specifications. The Financial Proposal must be included inside a separate envelope clearly marked as “Financial offer”.

## **26. Data protection**

Processing your reply to the invitation to tender will involve the recording and processing of personal data (such as your name, address and CV). Such data will be processed pursuant to Regulation (EC) No 45/2001 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. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the contracting authority. You are entitled to obtain access to your personal data on request and to rectify any such data that is inaccurate or incomplete. If you have any queries concerning the processing of your personal data, you may address them to contracting authority’s Data Protection Officer. You have the right of recourse at any time to the European Data Protection Supervisor for matters relating to the processing of your personal data.

## **27. Intellectual Property Rights (IPR)**

The tenderer is strongly advised to carefully read the IPR clauses included in Annex B Draft Contract regarding modes of exploitation of the results and ownership and transfer of pre-existing rights.

In the tender, all quotations or information originating from other sources and to which third parties may claim rights have to be clearly marked (source publication including the date and place, creator, number, full title, etc.) in a way allowing easy identification.

