

**PROVISION OF LEGAL AND ECONOMIC ASSISTANCE IN THE
FIELD OF ENERGY REGULATION
FOR THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS**

LOT 1: Legal assistance in the field of energy regulation

LOT 2: Economic assistance in the field of energy regulation

Multiple Framework Contracts with re-opening of competition

TENDER SPECIFICATIONS

OPEN CALL FOR TENDERS

ACER/OP/DO/13/2017

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1. TITLE OF THE INVITATION TO TENDER

Provision of legal and economic assistance in the field of energy regulation for the Agency for the Cooperation of Energy Regulators, invitation to tender no. ACER/OP/DO/13/2017.

The tender is divided into two (2) lots:

- Lot 1: Legal assistance in the field of energy regulation
- Lot 2: Economic assistance in the field of energy regulation

Tenderers may submit offers for one or two lots. Tenderers wishing to apply for more than one lot must submit **a separate tender for each lot**.

2. BACKGROUND INFORMATION

The Agency for the Cooperation of Energy Regulators (the “Agency”) is a European Union body, established in 2009 by Regulation (EC) No 713/2009¹ and operational since 2010. Based in Ljubljana, Slovenia, the Agency is central to the liberalisation of the EU's electricity and natural gas markets.

The Agency works towards a competitive, sustainable, secure and transparent Internal Energy Market for the benefit of all consumers in the European Union (EU). Its overall mission is to assist national energy regulatory authorities (NRAs) to perform their duties at the EU level and to coordinate their actions whenever necessary. The Agency thus cooperates closely with NRAs, but also with EU institutions, European associations of stakeholders and market participants, especially the European Networks of Transmission System Operators (ENTSOs), to deliver a series of instruments for the completion of a single EU energy market.

The main areas on which the Agency's activities focus are:

- supporting the European market integration: this is mainly done through the development of common network and market rules, as well as through the coordination of regional initiatives which are concrete efforts from market participants to work towards greater integration;
- advising the EU institutions on trans-European Energy infrastructure issues: the Agency issues opinions on ten-year network development plans with a view to making sure that these are in line with the priorities set at EU level. Additional tasks in this area have been assigned to the Agency by the Regulation (EU) No 347/2013² on guidelines for trans-European energy infrastructure;
- energy market monitoring: the Agency has a general mission in terms of market monitoring at the EU level and has, since the end of 2011, a very specific responsibility when it comes to monitoring wholesale energy trading under Regulation (EU) No 1227/2011³ of the European Parliament and the Council on wholesale energy market integrity and transparency ('REMIT').

More information on the Agency can be found on the website www.acer.europa.eu.

¹ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, OJ L 211, 14.8.2009, p. 1

² Regulation (EC) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115, 25.04.2013, p.39.

³ Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency, OJ L 326, 08.12.2011, p.1

3. PURPOSE OF THE CONTRACT

The Agency intends to enter into Framework Contracts with re-opening of competition (hereinafter referred as the 'FWC') according to which the selected Contractor(s) (hereinafter referred as the 'Contractor') shall provide the Agency with highly qualified external expertise to support the Agency in its activities in the field of energy regulation.

The services covered by the tender are divided into two (2) lots in order to group the requested services into coherent batches corresponding to different professional expertise.

The requested services are of intellectual nature in the areas of legal assistance (**LOT 1**) and economic assistance (**LOT 2**) in the field of energy regulation.

The requested services will involve a number of different tasks concerning the electricity and gas sector in the fields of competence of the Agency. These notably include the following areas.

- Assistance in the preparation of individual decisions, in particular in the cases referred to in Articles 7, 8 and 9 of Regulation (EC) No 713/2009, including their specification in network and guidelines developed in accordance with Regulations (EC) No 714/2009⁴ and (EC) No 715/2009⁵, and in Article 12 of Regulation (EU) No 347/2013.
- Assistance in the preparation of opinions concerning the compliance of decisions of NRAs with relevant EU electricity and gas legislation and on the application of relevant EU electricity and gas legislation, in accordance with Article 7(4) and (6) of regulation (EC) No 713/2009.
- Assistance in the preparation of non-binding framework guidelines to be submitted to the European Commission and assistance in the preparation of the opinions, recommendations and statements on network codes and guidelines developed pursuant to Regulations (EC) No 714/2009 and (EC) No 715/2009.
- Assistance in the implementation of the Agency's tasks under network codes and guidelines developed pursuant to Regulations (EC) No 714/2009 and (EC) No 715/2009.
- Assistance in monitoring the implementation of the above-mentioned network codes and guidelines and in the preparation of possible amendments of those network codes and guidelines.
- Assistance in the implementation of Regulation (EU) No 1227/2011 including (i) the assessment of the operation and transparency of different categories of market places and ways of trading, (ii) the preparation of recommendations to the European Commission as regards market rules, standards and procedures which could improve market integrity and the functioning of the internal electricity and gas markets, (iii) the evaluation of whether any minimum requirements for organised markets could contribute to enhanced market transparency and (iv) the analysis of the powers of the Agency and of other bodies and persons under Regulation (EU) No 1227/2011.

⁴ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211, 14.8.2009, p. 15–35.

⁵ Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (Text with EEA relevance), OJ L 211, 14.8.2009, p. 36–54.

- Assistance in monitoring activities related to congestion at Interconnection Points (e.g. collecting data, analysing the market situation, etc.).
- Assistance in the preparation of opinions and recommendations addressed to the European Parliament and the Council of the European Commission concerning the Agency's tasks.
- Assistance in the defence of acts of the Agency which have been challenged by a legal remedy.
- Assistance in market monitoring activities as referred to in Article 11 of Regulation (EC) No 713/2009.

4. SUBJECT OF THE CONTRACT

The subject of the FWC is the provision of services for the assistance to the Agency in legal and economic matters in the areas of the Agency's competences for electricity and gas regulation.

The key tasks to be provided under each lot are specified below.

4.1 LOT 1: Legal assistance in the field of energy regulation

The scope of any specific contract may include one or more of the following tasks:

- Legal analysis and advice concerning the interpretation and application of relevant EU electricity and gas legislation and other relevant EU legislation, including both substantive and procedural law issues.
- Legal analysis and advice concerning specific issues on which the Agency has to adopt a decision.
- Legal analysis and advice concerning specific situations with regard to their compatibility with relevant EU electricity and gas legislation.
- Legal analysis and advice concerning submissions which the Agency receives from NRAs, TSOs, other market participants or any other person.
- Legal analysis and advice concerning the implementation of EU energy legislation, including the network codes and guidelines developed pursuant to Regulations (EC) No 714/2009 and (EC) No 715/2009 and their possible amendments, as well as Regulation (EU) No 1227/2011.
- Legal analysis and advice concerning legal remedies challenging acts of the Agency and concerning the related review proceedings.
- Legal support in the preparation of legal documents of the Agency.

4.2 LOT 2: Economic assistance in the field of energy regulation

The scope of any specific contract(s) may include one or more of the following tasks:

- Economic assistance with the implementation of measures aimed at improving the operation of the internal energy market.
- Economic (empirical) analysis, including surveys and benchmarking studies of the EU energy markets covering wholesale and retail markets and consumer protection and empowerment aspects, including questions relating to market access, market conduct, market outcome, transparency, integrity, market efficiency, market integration and consumer behaviour.
- Research, analysis and the provision of recommendations concerning the operation of the internal energy market, including the evaluation of the performance of (certain) rules that govern the EU market integration process and of the compatibility of EU Members States market designs.
- Economic/statistical analyses and market studies relating to the use and performance of (cross-border) energy networks and infrastructures.
- Gathering/analysis of statistics and forecasts concerning the utilisation of commercial data and data relating to energy supply and demand.
- Analysis of EU energy network and market data submitted to the Agency and of reports based on such data.
- Analysis of the cost and benefits resulting from proposed regulatory measures in the domain of energy and related networks.
- Assistance in the monitoring of the economic performance of the provisions set out in network codes developed pursuant to Article 6 of Regulations (EC) No 714/2009 and (EC) No 715/2009 and in the economic assessment of possible amendments to the concerned network codes.
- Assistance in the assessment of costs and benefits of infrastructure investment projects in the electricity and gas sectors and in the determination of principles for cross-border cost allocation for new infrastructure investment projects.
- Analysis and studies concerning the operation and transparency of different categories of market places and ways of trading and making recommendations as regards market rules, standards, procedures and requirements which could improve market integrity and transparency.
- Analysis and studies concerning the development of financial markets and its impact on wholesale energy markets, in particular the impact of changes in financial market regulation on the monitoring of wholesale energy markets.

5. REPORTING

Except where the specific contracts provide for otherwise, the Contractor must report in English on the services rendered in performance of each specific contract.

The specific contracts under the FWC will lay down the number and type of reports to be produced.

The Contractor can usually expect the following having to be delivered:

- a) an inception report;
- b) a progress report to be produced and submitted at least every two (2) months (different timing or type of report might be agreed in the specific contracts);
- c) a draft final report one (1) month before the contractual end of the tasks (different timing or type of report might be agreed in the specific contracts);
- d) a final report in accordance with the format established by the Agency.

The approval procedure for each of the reports mentioned above shall be defined in each specific contract.

All the reports shall be delivered by electronic mail (in MS Word format or Excel format in case of a significant number of numerical data and graphic presentations) and in paper copy. The number of paper copies of the final report to be delivered shall be defined in each specific contract. Each specific contract may establish other reports to be delivered. The reports shall be addressed to the Agency. They have to be drafted in a proper literate manner and must be fully comprehensible in terms of grammatical structure (complete sentences, punctuation, explanation of abbreviations, etc.), using simple and non-technical language also for a non-specialised audience. Technical explanations shall be presented in annexes.

The Agency may make the reports public and may reproduce or use all documentation and reports in full or in part at its discretion and with no additional fee being due to the Contractor.

6. PARTICIPATION IN THE CALL FOR TENDER

Participation in the Agency's procurement procedure is open on equal terms to all natural and legal persons or groupings of such persons (consortia) falling within the scope of the Treaties. It includes all economic operators registered in the EU and all EU citizens.

Pursuant to Article 119 of the Financial Regulation, the participation is also open to all natural and legal persons from non-EU countries that have a ratified agreement with the European Union in the field of public procurement on the conditions laid down in that agreement. The Agency can therefore accept offers from and sign contracts with tenderers from 36 countries, namely: the 28 EU Member States, 3 European Economic Area (EEA) Countries (Lichtenstein, Norway, Iceland) and 5 Stabilisation and Associations Agreements (SAA) Countries (the Former Yugoslav Republic of Macedonia, Albania, Montenegro, Serbia and Bosnia and Herzegovina). The Agency's procurement procedures are not open to tenderers from other countries covered by the Agreement on Government Procurement (GPA).

7. VARIANTS

No variants are permitted.

8. DURATION AND SIZE OF THE CONTRACTS

Each FWC shall have an initial duration of two (2) years as from date of signature and may be renewed up to two (2) times, each time for an additional period of one (1) year. The total duration of the FWCs shall not exceed four (4) years. The Agency reserves the right to cancel the FWC with any Contractor whose services are deemed to be of a quality below the required standards and procedures.

The total maximum value of the services per lot for the total duration of the FWC (up to four (4) years) is as follows:

- **For Lot 1:** Legal assistance in the field of energy regulation: **EUR 350,000** excluding VAT. Specific contracts will not be signed once the budget is consumed.
- **For Lot 2:** Economic assistance in the field of energy regulation: **EUR 650,000** excluding VAT. Specific contracts will not be signed once the budget is consumed.

The estimated date for signature of the FWCs is December 2017.

9. DOCUMENTS AVAILABLE TO THE TENDERER

- Contract notice published in the Official Journal of the European Union (OJ EU) 2017/S 165-339166 on 30.08.2017.
- Call for Tender documents and annexes.
- Other documents, as mentioned in these tender specifications.

10. CONTRACTUAL FRAMEWORK

10.1 Type of contract

For each lot the services described above will be the subject of **a multiple Framework Contract with re-opening of competition.**

The FWC will lay down the legal, financial, administrative and technical conditions applicable throughout its period of validity, including price indexation.

Any limitation, amendment or denial of any of the terms and conditions set in the draft FWC (Annex III to the invitation to tender) shall lead to automatic exclusion from the procurement procedure.

FWCs do not constitute orders. Orders shall be placed through requests for services (see Section 10.2 below for the *modus operandi* of the FWC), resulting in specific contracts.

The draft FWC is attached as Annex III to the invitation to tender. Signature of the FWC does not commit the Agency to placing orders and does not give the Contractor any exclusive rights regarding the services covered by the FWC. In any case, the Agency reserves the right, at any time during the validity of the FWC, to cease placing orders, without the Contractor having the right to any compensation.

10.2 Modus Operandi

For each lot, the FWCs shall be awarded to a minimum of three (3) and a maximum of five (5) tenderers provided that a sufficient number of tenderers satisfy the exclusion and selection criteria and enough tenders satisfy the award criteria.

Each time the Agency will ask for legal or economic assistance a request for services shall be sent to all the Contractors for the relevant lot.

All Contractors under the lot concerned will be invited to submit an offer for the services described in the invitation.

Within five (5) calendar days, the Contractors shall notify the Agency in writing, by post or e-mail whether he/she intends to submit the offer. Should the Contractor be unavailable, he/she shall give reasons for refusal within the same period.

Within the deadline set by the Agency, which shall not be shorter than twenty (20) calendar days and shall not exceed forty (40) calendar days following the date of sending the request for services, the Agency shall receive the offers from the available Contractors which shall include all the details as specified in the request for services, including the methodology, the list of deliverables, the composition of the team, the duration of work and the total price on the basis of the price quoted in the financial offer, Annex II to this invitation to tender (which forms an integral part of the FWC).

The offers received will be evaluated according to the Agency's procurement procedures and the offers will be ranked on the basis of the best quality/price combination as described in Section 21 of these tender specifications. A specific contract will be awarded to the Contractor who has submitted the best-ranked offer.

Performance of the tasks starts from the date on which a specific contract is signed by the last contracting party.

Contractors undertake to treat in the strictest confidence and not make use of or divulge to third party any information or documents which are linked to the performance of the assignments and they shall continue to be bound by this undertaking after completion of the tasks.

In case of failure by the Contractor to fulfil his/her obligations, the Agency may terminate the specific contract at any time by registered letter without formal notice or payment of any compensation.

The award of a specific contract will be conditioned by the availability of sufficient funds.

If a Contractor fails to notify the Agency in writing, by e-mail, whether he intends to submit the offer and/or if a Contractor completes work for one specific contract more than ten (10) calendar days later than stipulated in the specific contract or is found to have executed an order inadequately, the Agency may automatically suspend, by registered letter, the award of any further work to the Contractor in question for a period of up to six (6) months.

The Contractor must work in close and regular cooperation with the responsible units within the Agency. The Contractor and their experts work under their own capacity and responsibility and do not represent the Agency. The staff of the Contractor works under the instructions of the Contractor.

10.3 Changes in the team

For the specific contracts, changes or additions to the team initially proposed must be notified to the Agency in writing.

The Contractor is obliged to provide the team with an equivalent level of qualification and experience, as defined in these tender specifications.

The Agency will have the right to object to any changes of members of the team from those initially proposed.

In case the original team is no longer available, the Agency will have the right to cancel a specific contract.

10.4 Subcontracting

Special attention will be paid to the approach proposed by the Contractor for managing his/her subcontractors. Tenderers will be required to indicate the kind of work which they plan to subcontract and the name of any companies to which they are intending to subcontract part of the work.

In case of subcontracting the Contractor shall retain full liability towards the Agency for the implementation of the FWC.

Any change in subcontracting during the procurement procedure may lead to the rejection of the tender.

Any change in subcontracting after the signature of the FWC is permitted only with the prior written consent of the Agency and may lead to the termination of the contract.

10.5 Joint tender

A joint tender is a situation where a tender is submitted by a group of economic operators (natural or legal persons). The FWC shall be signed by one of them which has been duly authorised by the others (in this case a power of attorney (see Annex I.F to these tender specifications) shall be attached to the FWC. Each legal entity of the group shall assume joint and several liability towards the Agency for the fulfilment of the terms and conditions of the FWC.

Any change in the composition of the group during the procurement procedure may lead to the rejection of the tender. Any change in the composition of the group after the signature of the FWC may lead to the termination of the FWC.

The group shall nominate one legal entity ('the leader') who will have full authority to bind the group and each of its members, and will be responsible for the administrative management of the FWC (invoicing, receiving payments, etc.) on behalf of all other entities.

11. CONTRACTORS' OBLIGATIONS

11.1 Compliance with applicable law

The tenderers 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 of the European Parliament and Council of 26 February 2014 on public procurement and repealing Directive 2014/18/EC⁶.

Further, the tenderers are reminded that their offer must be established in conformity with the applicable national and European employment legislation regarding the transfer of undertakings, and specifically Directive 2001/23/EC⁷ and its national implementing measures. In particular, tenderers should take note of the provisions on safeguarding employees' rights in the event of a change of employer as a result of a legal transfer.

11.2 Copyright and other intellectual property rights

Copyright and other intellectual or industrial property rights and any other right of ownership will vest in the Agency, except where one or more of these rights already exists.

The Contractor must specify any parts of the services performed that are covered by copyright or any other rights of ownership. The Contractor must confirm that it has obtained the authorisation of the holder of these rights to use these parts. Any costs arising from obtaining this authorisation will be borne by the Contractor and clearly identified on the relevant invoice.

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the FWC and specific contracts, shall be owned solely by the Agency, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the FWC being entered into force.

Should the title of the copyright or intellectual property rights belong to a third party, the Contractor shall guarantee that it has requested and obtained those third parties' written authorisation to grant a license or assign to the Agency their copyright or intellectual property rights to the extent necessary for performing the services subject of this invitation to tender, and to the extent where the results/works obtained under the FWC are to be re-used in the context of another Agency's project/programme with another Contractor(s) working under a FWC(s) and/or specific contract(s).

This applies to all products, documentation, distribution media and methods.

If subcontractors are used, the main Contractor will be required to obtain a guarantee from them on this point.

11.3 Confidentiality – personal data

When processing personal data in provisioning services under the FWC the Contractor shall be obliged to respect Regulation (EC) No 45/2001 of the European Parliament and of the

⁶ 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).

⁷ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or part of undertakings or businesses, OJ L 82 of 22.03.2001, p. 16.

Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁸.

However, it should be emphasised that in January 2017, the European Commission has published a proposal for a new Regulation⁹ governing the processing of personal data by the EU institutions, bodies and agencies, based on the data protection reform package for the Member States adopted in spring 2016¹⁰. This proposal is currently advancing through the legislative process¹¹. It is the EU legislator's stated intention to have it become applicable to the Agency in May 2018, as the package for the Member States.

Since the new Regulation will become applicable during the implementation of the services under the FWC, the Contractor shall be required to adhere to its provisions with regards to personal data processing, as appropriate.

12. PLACE OF PERFORMANCE OF THE SERVICES AND WORKING HOURS

12.1 Place of work

The principal place of performance of the FWC shall be at the Contractor's premises (*working off-site*).

The principal place of performance of specific contract(s) shall depend on the nature of each specific contract and shall be indicated in the relevant request for services (the place may either be at the Agency's premises in Ljubljana, Slovenia or at the Contractor's premises).

In cases, where the performance of a specific contract shall take place outside the country where the Contractor's premises are located (e.g. at the Agency's premises), this shall be considered as *working on-site*.

Working on-site includes also participation in meetings, presentations, awareness raising campaign(s) etc. organised at the Agency's premises in Ljubljana, Slovenia.

12.2 Meetings

Meetings between the Agency's staff and the Contractor shall take place at the Agency's premises in Ljubljana, Slovenia, and only exceptionally and with the agreement of the Agency, at the Contractor's premises.

If deemed appropriate and at the sole discretion of the Agency, meetings between the Agency and the Contractor could be organised using a video conference systems, telephone conferences and/or any other communication means.

Meetings between the Agency and third parties (NRAs, EU institutions and other stakeholders), to which the Contractor may be invited, will be mainly organised in Ljubljana, Slovenia but may take place also in other EU Member States.

⁸ OJ L 8/1, 12.1.2001.

⁹ COM (2017)8 final.

¹⁰ Regulation (EU) 2016/679 (OJ L 119/1, 04/05/2016) and Directive (EU) 2016/679 (OJ L 119/89, 04/05/2016).

¹¹ The European Parliament's plenary vote on its first reading position is scheduled for October 2017; the Council adopted its general approach in June 2017.

All meetings will be notified to the Contractor, by e-mail, in reasonable time and in any case at least ten (10) calendar days prior to the meeting, or at least two (2) calendar days prior to the meeting if video/telephone conferencing systems are used. The Contractor shall confirm by e-mail the attendance to the meeting.

The Contractor shall prepare minutes of these meetings, indicating the participants, agenda, and main issues of discussion and conclusions/action points.

Any expenses incurred by the Contractor as a result of these meetings (i.e. travel costs, subsistence allowance or any other related costs) shall not be reimbursed separately by the Agency. Quoted prices should be all inclusive.

12.3 Working time of the Agency

The normal working hours of the Agency is between 8:00 hours and 18:00 hours with core hours from 9:30 hours to 12:00 hours and from 14:00 hours to 16:00 hours.

The Agency's public holidays are published on the Agency's website and are updated yearly.

The information for the public holidays of the Agency is published at:

http://www.acer.europa.eu/Official_documents/Director/Pages/Decisions.aspx

The information for the public holidays of the Agency in 2018 is available at:

http://www.acer.europa.eu/Official_documents/Director/Directors%20Decision/Director%20Decision%202017-15.pdf

13. LANGUAGE

The working language of the Agency is English. All communication, all the required services and all documentation must be provided in English. All meetings shall be held in English.

All documentation (e.g. reports, presentation, etc.) must be provided in English in the highest drafting quality.

FOR LOT 1 ONLY: A part of the services might be required in another EU official language than English which shall be announced in the request for services.

14. PAYMENT METHODS

Payments will be made exclusive of VAT, as the Agency is exempt from all duties and taxes, including value added tax (VAT) under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union. Invoice(s) presented by the Contractor must specify the amount(s) exclusive of VAT.

14.1 Terms of payment

Payments shall be made in accordance with the provisions laid down in the draft FWC (Annex III to the Invitation to Tender) and in line with the payment schedule described in the relevant specific contract.

- For specific contracts with the total value of **less than EUR 30,000:**
Payments shall be made after full delivery and approval of the report(s) by the Agency within sixty (60) days from the receipt of the report(s) and the relevant invoice.

- For specific contracts with the total value of **EUR 30,000 or higher:**
The Contractor may claim interim payment as stipulated in the draft FWC (Annex III to the Invitation to Tender). The balance will be paid after full delivery and approval of the final report by the Agency within sixty (60) days from the receipt of the final report and the relevant invoice.

15. PRICES

- The prices should be quoted in Euro.
- Under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union the Agency is exempt from all duties and taxes, including value added tax (VAT). VAT should be indicated separately and will not be taken into account when considering prices.
- The unit prices quoted must be firm and not subject to revision for the first year of the FWC.

From the beginning of the second year prices may be revised upwards or downwards according to the monetary union index of consumer prices (MUICP index) for Eurozone and the method laid down in the FWC.

- The prices quoted shall be all inclusive and shall include all charges and all administrative costs (such as but not limited to backstopping costs, insurance, reports, communication costs, any travel and/or subsistence expenses, etc.).

No expenses incurred in relation to the preparation of the offer will be reimbursed.

16. SUBMISSION OF OFFERS

The tenderer's offer should include:

- A. **A dated cover letter signed by the tenderer.**
- B. **A duly completed reference table** related to the exclusion and selection criteria (form provided in Annex I.B to these tender specifications).
- C. **A duly filled in, signed and dated declaration on honour on exclusion criteria** listed in Section 17 of these tender specifications (form provided in Annex I.C to these tender specifications).
- D. All the **documents relating to the selection criteria** listed in Section 18 of these tender specifications.
- E. **The technical tender**, as described in Section 19 of these tender specifications.
- F. **The financial offer** based on the model in Annex II to the invitation to tender, signed and dated by the tenderer.

Tenders may be drafted in any of the official languages of the European Union.

The working language of the Agency is English.

In case the offer involves subcontracting or the tender is submitted by a consortium or grouping of service providers, the tender must contain additional information as specified in Sections 17 and 18 of these tender specifications.

17. EXCLUSION CRITERIA

Tenderers must prove that they are not in one of the situations giving rise to exclusion as in Annex I.C (situation of exclusion concerning the legal person, situations of exclusion concerning natural persons with power of representation, decision-making or control over the legal person and situations of exclusion concerning natural or legal persons assuming unlimited liability for the debts of the legal person).

17.1 Exclusion from participation

The tenderer must prove that he/she is not in one of the situations giving ground to rejection from this procedure as listed in Annex I.C – Declaration on honour on exclusion criteria.

17.2 Exclusion from award of contracts

The FWC shall not be awarded to tenderers who, during the procurement procedure for this FWC:

- (a) has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information;
- (b) was previously involved in the preparation of procurement documents where this entails a distortion of competition that cannot be remedied otherwise.

Evidence

1. Tenderers shall provide a declaration on their honour, **duly signed** and **dated**, stating that they are not in one of the situations referred to in points 17.1 and 17.2 of the present tender specifications using the form provided in Annex I.C – Declaration on honour on exclusion criteria – to these tender specifications.
2. The tenderer to whom the FWC is to be awarded shall provide, within a time-limit specified by the Contracting Authority and prior to the signature of the FWC, the following evidence in support of their declarations:

The contracting authority shall accept as satisfactory evidence that the tenderer to whom the contract is to be awarded is not in one of the situations described in (a), (c), (d) or (f) of Annex I.C – Declaration on honour on exclusion criteria, a **recent extract from the judicial record** or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the tenderer is not in the situation described in point (a) or (d) of Annex I.C – Declaration on honour on exclusion criteria a **recent certificate issued by the competent authority of the State concerned**.

The extract from the judicial record and administrative certificates can be regarded as recent if they are not more than one (1) year old starting from their issuing date and are still valid at the date of their request by the contracting authority.

Where the document or certificate referred to in the paragraph above is not issued in the country concerned the tenderer, may provide a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

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

3. Depending on the national legislation of the country in which the tenderer is established, the documents referred to in the paragraph above shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the tenderer.

The Agency reserves the right to check the information provided by tenderers.

17.3Tenders submitted by consortia or groups of service providers – tenders involving subcontracting

In the case of tenders submitted by consortia or groups of service providers, each of the economic operators involved in the tender must provide a dated and signed declaration on honour, based on the form provided in Annex I.C – Declaration on honour on exclusion criteria – to these tender specifications, confirming that none of the exclusion criteria for participation in or award of the FWC apply to them.

The tenderers proposed for award of the FWC must furnish, within the time-limit specified by the Agency and prior to the signature of the FWC, the evidence listed above, corroborating the declaration on their honour, in respect of each economic operator forming part of their consortium or group of service providers.

In the case of tenders involving subcontracting, the tenderer proposed for award of the FWC must furnish, within the time-limit specified by the Agency and prior to the signature of the FWC, the declaration on their honour and/or the evidence listed above regarding exclusion criteria for participation in or award of the FWC, in respect of each of the subcontractors in respect of whom the Agency requests such evidence.

The Agency reserves the right to check the information provided by tenderers.

18. SELECTION CRITERIA

Tenderers must demonstrate that they have the necessary economic, financial, technical and professional capacity to perform the tasks described in these tender specifications in accordance with the payment schedule specified in the draft FWC at Annex III to the Invitation to Tender.

If any selection criterion is fulfilled by relying on the capacity of a third party (regardless of the link it has with the tenderer), the tenderer must prove to the contracting authority that it will have at its disposal the resources necessary for performance of the FWC by producing a commitment on the part of those entities to this effect.

If the tenderer relies on the capacity of a third party for economic and financial capacity, the contracting authority may require the third party to be jointly liable for performance of the FWC.

If the tenderer relies on the capacity of a third party for technical and professional capacity, it can only do so for the tasks for which this particular capacity is required, for example by providing a document stating clearly the allocation of tasks between entities.

Tenderers must provide proof of their legal, economic and financial and technical and professional capacity by enclosing with their tender the following information and documents, accompanied by the reference table shown in Annex I.A to these tender specifications.

18.1 Legal capacity

FOR EACH LOT

- Duly completed and signed identification form (see Annex I.B to these tender specifications).
- Duly completed and signed financial identification form (see Annex I.D to these tender specifications) – the form can be downloaded from:
http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm.
- Duly completed and signed legal entity form (see Annex I.E to these tender specifications) – the form can be downloaded from:
http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm.
- Certificate of enrolment on the professional or trade register in accordance with the legislation of the Member State in which the tenderer is established.

18.2 Economic and financial capacity

18.2.1 For LOT 1: Legal assistance in the field of energy regulation

The turnover concerning the services covered by the FWC should amount to **at least EUR 400,000.00** for the last three (3) years combined.

Evidence to be provided: A statement of turnover concerning the services covered by the FWC during the last three (3) years.

18.2.2 For LOT 2: Economic assistance in the field of energy regulation

The turnover concerning the services covered by the FWC should amount to **at least EUR 730,000.00** for the last three (3) years combined.

Evidence to be provided: A statement of turnover concerning the services covered by the FWC during the last three (3) years.

18.3 Technical and professional capacity

Proof of the technical and professional capacity of the tenderers shall be furnished on the basis of the documents listed below (for joint applications, the capacities of all members of the joint application, including subcontractors, shall be taken into account).

The tenderer must prove that he/she fulfils the following criteria:

18.3.1 For LOT 1: Legal assistance in the field of energy regulation

18.3.1.1 The average annual number of at least ten (10) legal staff employees over the last three (3) years.

Evidence to be provided: A statement of the average annual number of legal staff broken down by their status (e.g. partner, associate ...) and the jurisdiction concerned for the last three (3) years.

18.3.1.2 Provision of services of the type as requested in this Lot (listed in points 3 and 4 of these tender specifications) for a total invoiced amount (i.e. total amount effectively invoiced to the client(s)) of **EUR 400,000.00** in the last three (3) years combined.

Evidence to be provided: Name(s) of client(s), stating whether the service was rendered to public or private clients, a description of services undertaken indicating the scope of the service, the price of the service, starting and ending date(s) of each project listed, total financial volume of the contract(s) effectively delivered (i.e. total amount effectively invoiced to the client(s) in the last three (3) years combined). In the event of client confidential issue, the tenderer shall note this circumstance and provide the required evidence without indicating the name of the client.

18.3.1.3 The team delivering the services shall include as a minimum **at least one (1) A-level expert and two (2) B-level experts as defined below**. Each of the proposed experts must fulfil the minimum levels of qualifications and professional experience applicable for a respective profile as described below.

Each member of the proposed team must have the following minimum levels of qualification:

A-level expert's minimum levels of qualification:

- completed university studies of at least three (3) years attested by a diploma in law;
- at least seven (7) years' professional experience in EU law relating to electricity and gas markets regulation or any related issue;
- at least five (5) years' professional experience of the European Union's regulatory framework in the field of energy;
- excellent command of the English language (level C2 according to the Common European Framework of Reference for Languages (CEFR)¹²);

B-level expert's minimum levels of qualification:

- completed university studies of at least three (3) years attested by a diploma in law;
- at least five (5) years' professional experience in EU law relating to electricity and gas markets regulation or any related issue;
- at least one (1) year professional experience of the European Union's regulatory framework in the field of energy;
- excellent command of the English language (at least level C2 according to CEFR).

Evidence to be provided: The tenderer shall include Curricula Vitae (CVs)¹³ showing clearly their qualifications, professional experience within the relevant business area

¹² <http://europass.cedefop.europa.eu/sites/default/files/cefr-en.pdf>

¹³ Preferably, in accordance with the European CV format:

and the linguistic skills. The tenderer shall provide **one (1) CV for A-level expert and two (2) CVs for B-level expert** as described above, clearly indicating the profile on each CV.

18.3.2 For LOT 2: Economic assistance in the field of energy regulation

Proof of the technical and professional capacity of the tenderers shall be furnished by the following documents and minimum requirements:

18.3.2.1 The average annual number of at least twenty-five (25) employees over the last three (3) years.

Evidence to be provided: A statement of the average annual manpower, indicating separately the managerial staff and indicating the number of staff at senior and junior level, broken down by managerial level, data handling, surveying, research, economic, legal and statistical analyst staff, for the last three (3) years.

18.3.2.2 The provision of services of the type as requested in this Lot (listed in points 3 and 4 of these tender specifications) for a total invoiced amount (i.e. total amount effectively invoiced to the client(s)) of **EUR 730,000.00** in the last three (3) years combined.

Evidence to be provided: Name(s) of client(s) stating whether the service was rendered to public or private clients, a description of services undertaken indicating the scope of the service, the price of the service, starting and ending date(s) of each project listed, total financial volume of the contract(s) effectively delivered (i.e. total amount effectively invoiced to the customers) in the last three (3) years combined.

18.3.2.3 The team delivering the services shall include as a minimum **at least two (1) A-level experts, two (2) B-level experts and two (2) C-level experts as defined below**. Each of the proposed experts must fulfil the minimum levels of qualifications and professional experience applicable for a respective profile as described below.

Each member of the proposed team must have the following minimum levels of qualification:

A-level expert's minimum levels of qualification:

- completed university studies at master level attested by diploma relevant to the scope of the services requested (i.e. economics or sciences);
- at least seven (7) years' professional experience in economic or statistical analysis;
- at least five (5) years' professional experience in the European Union's regulatory framework in the field of energy;
- at least five (5) years' professional experience in the functioning of energy markets in the EU which has to include experience gained with several European national markets or non-EU markets with similar regulatory structure;
- professional experience with at least five (5) projects covering multiple national markets;
- has written and published at least three (3) publications (e.g. reports, blogs, articles in professional regulatory magazines, etc.);
- excellent command of the English language (level C2 according to the Common European Framework of Reference for Languages (CEFR)¹⁴);
- very good writing and communication skills.

<http://europass.cedefop.europa.eu/en/documents/curriculum-vitae/templates-instructions>

¹⁴ <http://europass.cedefop.europa.eu/sites/default/files/cefr-en.pdf>

B-level expert's minimum levels of qualification:

- completed university studies of at least three (3) years' duration attested by a diploma relevant to the scope of the services requested (i.e. economics or sciences);
- at least five (5) years' professional experience in economic or statistical analysis;
- at least one (1) year professional experience in the European Union's regulatory framework in the field of energy;
- at least one (1) year professional experience in the functioning of energy markets in the EU which has to include experience gained with several national markets
- professional experience with at least three (3) projects;
- excellent command of the English language level C2 according to CEFR);
- very good writing and communication skills.

C-level expert's minimum levels of qualification:

- completed university studies of at least three (3) years' duration attested by a degree relevant to the scope of the services requested (i.e. economics or sciences);
- at least two (2) years' professional experience in economic or statistical analysis;
- at least six (6) months' professional experience in the functioning of energy markets in the EU;
- professional experience with at least two (2) projects;
- excellent command of the English language (at least C1 according to CEFR);
- very good writing and communication skills.

Evidence to be provided: The tenderer shall include Curricula Vitae (CVs)¹⁵ showing clearly their qualifications, professional experience within the relevant business area, a list of publications (where applicable), a list of projects and the linguistic skills. The tenderer shall provide **two (2) CVs for A-level expert, two (2) CVs for B-level expert and two (2) CVs for C-level expert** as described above, clearly indicating the profile on each CV.

18.4 Subcontracting

FOR EACH LOT

For those tenders including subcontracting, the tenderer must submit:

- A declaration of the tenderer, duly signed and dated, stating clearly the identity and roles of the subcontractor(s) as well as the description of the quality control measures the tenderer intends to apply on the tasks to be carried out by (each of) the subcontractor(s).
- A letter of intent by (each of) the subcontractor(s), duly signed and dated, stating the unambiguous undertaking to collaborate with the tenderer if the latter wins the FWC and the extent of the resources that it will put at the tenderer's disposal for the performance of the FWC.

In the **absence of subcontracting**:

- A declaration of the tenderer, duly signed and dated, stating he does not intend to subcontract and that he will inform the Agency about any change in this situation. The Agency reserves the right to judge if such change would be acceptable.

¹⁵ Preferably, in accordance with the European CV format:

<http://europass.cedefop.europa.eu/en/documents/curriculum-vitae/templates-instructions>

Offers involving subcontracting will be assessed as follows:

- Where the tenderer relies on the economic, financial, technical and professional capacity of the 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.

18.5Tenders submitted by a consortium or grouping of service providers

FOR EACH LOT

For those tenders submitted by a consortium or grouping of service providers, the tender must contain:

- A document stating clearly the composition and constitution of the grouping or similar entity (company/temporary association/...), or the legal form their cooperation will take, should they be awarded the FWC.
- A letter **dated and signed** by each member stating its commitment to execute the services in the tender clearly indicating its role, qualifications and experience.
- A document **dated and signed** by all members specifying the lead of the consortium or grouping of service providers and authorising the appointed lead of the consortium or grouping of service providers to submit the offer.

Joint tenders will be assessed as follows:

- The exclusion criteria will be assessed in relation to each company individually. The declaration on honour on exclusion criteria included in Annex I.C, duly signed and dated, stating that the tenderer is not in one of the exclusion situations, must be provided by each member of the consortium or the group.
- The selection criteria for economic and financial capacity will be assessed in relation to each company individually. However, economic and financial criteria that shall be achieved above a certain minimum threshold (i.e. annual turnover) 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.

Tenders which do not meet the exclusion criteria will not be considered. Tenders which do not meet the selection criteria will not be considered.

Tenderers who do not provide the documents required in these tender specifications with regard to the exclusion and/or selection criteria may be excluded.

The Agency will decide whether the substantiating documents provided constitute compliance with the exclusion and/or selection criteria.

19. TECHNICAL TENDER

Tenderers shall include in their offer a technical tender detailing how they intend to perform the tasks covered by the FWC, in compliance with all the requirements of these tender specifications. Tenders that fail to comply with this requirement will be rejected.

The technical tender should not include any of the documents referred to under the exclusion and/or selection criteria, nor should it refer to matters already covered by the exclusion and/or selection criteria.

FOR LOT 1: Legal assistance in the field of energy regulation

Technical tender, in line with the requirements of services as described in these tender specifications, must include:

- A.** A presentation of the methodology (i.e. organisation of work; manner in which the work is carried out, including the approach to an efficient and comprehensive legal analysis and advice; control of the quality of the work carried out; management of risks; etc.) proposed by the tenderer for the set of tasks described in Point 4.1.
- B.** A description of the methodology proposed by the tenderer for two (2) specific tasks described in point 4.1; this can be either a case based on previous experience of the tenderer or a fictitious case. Each example shall include planning details, deliverables, milestones, and the composition of the proposed team.

FOR LOT 2: Economic assistance in the field of energy regulation

Technical tender, in line with the requirements of services as described in these tender specifications, must include:

- A.** A presentation of the methodology which shall include as a minimum the approach to carrying out economic analysis (e.g. models, frameworks, examples and solutions, organisation of work, quality control applied by the tenderer, etc.) reflecting the tasks described in point 4.2.
- B.** A description of the methodology proposed by the tenderer to implement three (3) specific tasks described in point 4.2. These shall be based on previous experience or on a fictitious case with at least two (2) energy related projects whereas one (1) may be a telecommunication project on regulatory matters. Each project should pertain to minimum two (2) different EU Member States. The examples must cover services similar to one of those listed in Point 4.2
- C.** Each example, presented by the tenderer under point B above, should include detailed planning details, organisation for each of the experience based and/or fictive project as described above including deliverables and major project milestones as well as the composition of the team and resources dedicated to each project. At least one (1) of the projects must relate to a project requiring the tenderer to work in three (3) different EU official languages and must describe how the tenderer mobilizes, manages and coordinates such a team.

20. AWARD CRITERIA

For each lot, the FWC(s) will be awarded to the tender(s) offering the best value for money on the basis of the criteria specified below.

20.1 Technical quality, with 60% weighting

Tenders scoring less than 60 overall points will be excluded from further evaluation. Tenders scoring less than 60% of the points awarded for each of the single criterion will be excluded from further evaluation.

The technical quality criteria, their importance factor and system of scoring are presented in detail below:

20.1.1 FOR LOT 1: Legal assistance in the field of energy regulation

- A.** Relevance, comprehensiveness and efficiency of the methodology proposed by the tenderer (i.e. organisation of work; manner in which the work is carried out, including the approach to a legal analysis and advice; control of the quality of the work carried out and management of risks) for the set of tasks described, taking into account the specifics of the subject of these tender specifications.
A maximum of 30 points will be assigned for this criterion.
- B.** Relevance, comprehensiveness and efficiency of the methodology proposed by the tenderer (i.e. planning details, deliverables, milestones, and the composition of the responsible team) for two (2) specific tasks described, taking into account the specifics of the subject of these tender specifications.
A maximum of 70 points will be assigned for this criterion.

20.1.2 FOR LOT 2: Economic assistance in the field of energy regulation

- A.** Relevance and comprehensiveness of the methodology proposed by the tenderer for the main categories of tasks described in terms of models, frameworks, examples and solutions, taking into account the specifics of the subject of these tender specifications.
A maximum of 30 points will be assigned for this criterion.
- B.** Relevance, comprehensiveness and completeness of the methodology applied to three (3) projects, experience based and/or fictive, taking into account the specifics of the subject of these tender specifications.
A maximum of 40 points will be assigned for this criterion.
- C.** Relevance and effectiveness of the detailed planning and organisation for each of the projects proposed by the tenderer, including the deliverables, project milestones and the composition of the team.
A maximum of 30 points will be assigned for this criterion.

20.2 Price, with 40% weighting

In order to evaluate the offers, the Agency will calculate for each lot separately a total reference price, based on the financial offer submitted by the tenderer in Annex II to the invitation to tender.

The total reference price has no contractual value and will be used solely for the purpose of the evaluation.

IMPORTANT:

The unit prices quoted shall include all services as described in Section 4, including any charges and all administrative costs (such as but not limited to backstopping costs, insurance, reports, communication costs, any travel and/or subsistence expenses, etc.), and shall specify the cost of person/day per expert as indicated in the table below.

FOR LOT 1 – Formulae for calculating the total reference price:

	SERVICES	All-inclusive price in EUR without VAT	UNIT	MULTIPLIER COEFFICIENT	VALUE
A	B	C	D	E	F = C * E
1	A-level expert (<i>working off-site</i>)		person-day	* 0.40	
2	A-level expert (<i>working on site</i>)		person-day	* 0.10	
3	B-level expert (<i>working off-site</i>)		person-day	* 0.40	
4	B-level expert (<i>working on-site</i>)		person-day	* 0.10	
<u>TOTAL REFERENCE PRICE</u> = VALUES 1 + 2 + 3 + 4					

FOR LOT 2 – Formulae for calculating the total reference price:

	SERVICES	All-inclusive price in EUR without VAT	UNIT	MULTIPLIER COEFFICIENT	VALUE
A	B	C	D	E	F = C * E
1	A-level expert (<i>working off-site</i>)		person-day	* 0.15	
2	A-level expert (<i>working on site</i>)		person-day	* 0.10	
3	B-level expert (<i>working off-site</i>)		person-day	* 0.17	
4	B-level expert (<i>working on-site</i>)		person-day	* 0.12	
5	C-level expert (<i>working off-site</i>)		person-day	* 0.25	
6	C-level expert (<i>working on-site</i>)		person-day	* 0.21	
<u>TOTAL REFERENCE PRICE</u> = VALUES 1 + 2 + 3 + 4 + 5 + 6					

20.3 Final evaluation

FOR EACH LOT

The FWC will be awarded to the tenderer who has submitted the economically most advantageous offer, according to the following formula:

$$\text{Final score for tender X} = \frac{\text{cheapest total reference price}}{\text{total reference price of tender X}} * 40 + \frac{\text{total technical quality of tenderer X}}{100} * 60$$

Tenders will be ranked according to the criterion of the economically most advantageous tender that is with the highest technical quality/price combination, obtained on the basis of the formula indicated above.

Provided that there is a sufficient number of admissible tenders (those that satisfy the exclusion and selection criteria) that satisfy the award criteria, the FWC for each lot will be awarded to a minimum of three (3) tenderers and a maximum of five (5) tenderers who have obtained the highest scores.

If only one eligible tender is received for any of the two lots, the tender procedure for this lot shall be cancelled.

When the number of admissible tenders for any of the two lots is lower than three (3), the Agency reserves the right not to award the FWC(s) for the relevant lot.

21. AWARD OF SPECIFIC CONTRACTS

FOR EACH LOT

Once the FWC(s) have been signed with the best-ranked tenderers of each lot, the Agency, when the need arises, may send a request for services for carrying out an individual assignment. The Agency will select a contractor for a specific assignment on the basis of the submitted offers.

The offers must contain:

- a) a technical part, detailing the methodology, deliverables, project milestones, resources, the composition, skills and experience of the team, the experts and the responsible team leader for the specific assignment;
- b) a financial part, detailing the number of person-day per the expert level to be multiplied by the person-day price as defined in the FWC.

The specific contract will be awarded according to the criteria given below, on the basis of the most economically advantageous tender.

21.1 Technical quality, with 60% weighting

FOR LOT 1: Legal assistance in the field of energy regulation

The technical quality criteria, their importance factor and system of scoring are presented in detail below¹⁶:

- A. Relevance, comprehensiveness and efficiency of the proposed methodology, taking into account the specifics of the request for services. *This criterion receives maximum 50 points.*
- B. Relevance, comprehensiveness and efficiency of the proposed planning of the implementation of the specific contract with deadlines, including deliverables, project milestones, team composition, resources, etc. dedicated to the project. *This criterion receives maximum 50 points.*

Only offers with a total score of at least 60 overall points will be taken into consideration for awarding a specific contract. Only offers with at least 60% of the points awarded for each of the single criterion will be taken into consideration for awarding a specific contract.

FOR LOT 2: Economic assistance in the field of energy regulation

The technical quality criteria, their importance factor and system of scoring are presented in detail below¹⁷:

- A. Relevance and comprehensiveness of the proposed methodology and solution(s) offered, taking into account the specifics of the request for services. *This criterion receives maximum 50 points.*
- B. Relevance and comprehensiveness of the proposed planning and organisation of the implementation of the specific contract with deadlines, including deliverables, project milestones, team composition and distribution of tasks, resources, etc. dedicated to the project. *This criterion receives maximum 50 points.*

Only offers with a total score of at least 60 overall points will be taken into consideration for awarding a specific contract. Only offers with at least 60% of the points awarded for each of the single criterion will be taken into consideration for awarding a specific contract.

21.2 Price, with 40% weighting

FOR EACH LOT

The financial offer shall detail the number of person-day per the expert level and shall include the price per person-day as defined in the FWC; the price per person-day per the expert level can be lower than the one in the FWC but it cannot exceed it.

In order to evaluate the offers, the Agency will use the total all-inclusive price, based on the financial offer submitted by the tenderer.

¹⁶ These terms may be formulated more precisely in the relevant request for services.

¹⁷ These terms may be formulated more precisely in the relevant request for services.

21.3 Final evaluation

FOR EACH LOT

The formula to calculate economically the most advantageous offer is:

$$\text{Final score for tender X} = \frac{\text{cheapest total all-inclusive price}}{\text{total all-inclusive price of tender X}} * 40 + \frac{\text{total technical quality of tenderer X}}{100} * 60$$

Tenders will be ranked according to the criterion of the economically most advantageous tender that is with the highest technical quality/price combination, obtained on the basis of the formula indicated above.

The tenderer with the highest mark for the final score will be awarded the specific contract.

Specific contracts will not be awarded to contractors who, during the procurement procedure for a specific contract:

- are subject to a conflict of interest;
- are guilty of misrepresentation in supplying the information required by the Agency as a condition for participation in the procurement procedure, or fail to supply this information.