

**PROVISION OF TEMPORARY AGENCY WORKERS TO
THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**

MULTIPLE FRAMEWORK CONTRACT IN CASCADE

TENDER SPECIFICATIONS

OPEN CALL FOR TENDERS
ACER/OP/ADMIN/10/2014

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1. Title of the invitation to tender

Provision of temporary agency workers to the Agency for the Cooperation of Energy Regulators, invitation to tender no. ACER/OP/ADMIN/10/2014.

This tender is not divided into lots.

2. Background information

The Agency for the Cooperation of Energy Regulators (hereinafter referred to as “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 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. Subject of the contract

The subject of the Framework Contract (hereinafter referred to as “the FWC”) is the provision of temporary agency workers (hereinafter referred to as “interim services” or “interim support services”) to the Agency, namely to provide the Agency with the necessary temporary agency workers (hereinafter referred to as “interim staff”) in a timely fashion and in line with the profiles requested.

The Agency shall conclude a multiple FWC in cascade with maximum three (3) contractors for the provision of interim support services.

4. Scope of services

4.1. Description of services

The Agency may need interim staff, in its various departments (Director’s Office, Administration, Electricity, Gas and/or Market Monitoring Departments), as a complement to its statutory staff, under the following circumstances (the list is indicative and not exhaustive):

- Support to the Agency in cases of absence of staff member(s) due to illness, maternity leave, parental or family leave or other reasons;
- Periods of heavy workload, which requires additional support for a fixed period of time;
- Support to specific tasks, to be performed on a temporary basis;
- Assisting in the organisation of events, meetings and workshops, organised by the Agency;
- Receptions and welcoming events.

4.2. Profile requirements

The Agency may need to procure services of temporary employment agencies that will work in this capacity and are duly authorised to operate in the Republic of Slovenia to perform the activity of covering temporary job requirements as described below.

The Agency may request interim support services in a variety of activities within two (2) categories. The following profiles are not exhaustive, they are indicative of the type of assignments likely to arise:

| Interim staff category | Profiles | Minimum educational requirements |
|--|---|--|
| Category I Technical support level | Tasks and duties in the areas of: <ul style="list-style-type: none">– Receptionist and switchboard operator;– Hostess;– Incoming and outgoing correspondence handler;– Logistical meetings support;– Support in facility management related tasks. | Completed compulsory education and appropriate professional experience of at least one (1) year. |
| Category II Technical assistant level | Tasks and duties in the areas of: <ul style="list-style-type: none">– Support in organisation of events;– Clerical and secretarial support;– Support in communication preparation and dissemination;– Document management, filing and archiving;– Data input and maintenance thereof;– IT and logistics related support. | Secondary education attested by a diploma giving access to postsecondary education and appropriate professional experience of at least one (1) year. |

In addition to the minimum requirements, the interim staff will be required to have a very good command of English (both written and oral, corresponding to C2 level of the Common European Framework of Reference for Languages⁴). For specific activities, the knowledge of other EU languages might also be required.

For both categories computer literacy and in particular a good knowledge of Ms Outlook, Ms Office and Internet (i.e. search tools, etc.) are requested.

Additional profiles may be requested if the Agency considers this necessary during the implementation of the FWC and its specific contracts (hereinafter referred to as "the Contract").

In the request for services the Agency shall define the job description for the assignment, the skills and qualifications required, and the expected timeframe (starting date and duration).

4.3. Place of delivery of the services

The services will be delivered at the Agency's premises in Ljubljana, Slovenia. In exceptional cases interim staff might be requested to participate in the activities of the Agency outside its premises.

4.4. Working hours and public holidays of the Agency

Interim staff will be subject to the working hours and the working calendar in force at the Agency. Any changes in the working hours and/or the working calendar of the Agency will be communicated to the Contractor(s) in due time.

Normal duration of a working week at the Agency is forty (40) hours, i.e. eight (8) hours per day from Monday to Friday. The presence of interim staff will be required from 9 am to 5.30 pm with a lunch break of 30 minutes. Lunch break does not count into working hours and is not paid by the Agency.

According to the needs of the service, on occasional basis interim staff may be subject to special working hours required by the functions they perform.

While working at the Agency, interim staff shall be present at the Agency's premises according to the schedule of public holidays of the Agency, which differs from the schedule of Slovenian public holidays to a certain extent. The Agency has from seventeen (17) to nineteen (19) public holidays per year.

The public holidays of the Agency are published on the Agency's website and are updated yearly⁵.

4.5. Remuneration of interim staff

The hourly rate set for interim staff refers to the remuneration for corresponding levels of contractual agents as set by the Staff Regulations⁶ (i.e. the table of basic monthly salaries as set in Article 93 of the Conditions of Employment of Other Servants⁷), taking into account Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008

⁴ <http://europass.cedefop.europa.eu/en/resources/european-language-levels-cefr>

⁵ The information on the public holidays of the Agency in 2014 is available at:
http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Directors%20decision/15_Director%20Decision%202013.pdf

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1962R0031:20140101:EN:PDF>

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0423&from=EN>

on temporary agency work⁸. Furthermore, the hourly rate set for interim staff takes into account the correction coefficient⁹ applicable for Slovenia (for 2014 the applicable correction coefficient is 0,854¹⁰) and is obtained by dividing the annual remuneration as mentioned above by a number of working hours per year (e.g. there are 1.936 working hours in 2014 that are calculated after subtracting Saturdays, Sundays and the public holidays of the Agency¹¹).

The following table indicates the gross remuneration for the Agency interim staff applicable for 2014, which is subject to update (upwards/downwards) each year¹²:

| Description | Reference category | Reference level (grade) | EUR / hour (gross) for 2014 |
|------------------|--------------------|-------------------------|-----------------------------|
| Junior Assistant | Group I | 1 | 10,43 |
| Senior Assistant | Group II | 4 | 11,99 |

This gross hourly rate must be broken down, on the pay slip of the interim staff, into the payment items. The Contractor must be able to justify, at any time and upon the request of the Agency and/or the interim staff, that the gross monthly payment shown on the pay slip or, if appropriate, the total gross remuneration paid throughout the Contract by an interim staff is consistent with the gross hourly rate.

The gross hourly rate shall cover **exclusively** the following expenses of interim staff: gross salary (this shall include all employee's contributions), food-, travel- and vacation allowance, seniority bonus and employer's contributions. No other expenses shall be covered (i.e. the Agency will not pay the cost of the medical exam, the exam from safety and health at work etc.; thus such payments are not the responsibility of the Agency).

4.6. Replacement due to temporary incapacity of interim staff

Interim staff falling in a situation of temporary incapacity due to illness must notify both the Contactor and the Agency of his/her unavailability on the first day of absence. The notification shall include information on the first day of absence and the estimated duration of absence. Interim staff in a situation of temporary incapacity will continue to receive their salary as laid down in the relevant laws of the Republic of Slovenia. The Contractor will be responsible for paying the salary without any repercussions on the invoicing (the Contractor shall invoice the Agency only for the actual working hours delivered to the Agency).

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0009:01:EN:HTML>

⁹ The remuneration expressed in euros shall be weighted at a rate above, below or equal to 100 %, depending on living conditions in the various places of employment. The correction coefficients shall be created or withdrawn as well as annually updated in accordance with Annex XI of the Staff Regulations.

¹⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1416&qid=1406822160425&from=EN>

¹¹ See Annex I.A: List of public holidays of the Agency for 2014 (for information).

¹² The gross remuneration of the Agency interim staff for 2015 is not yet available. The gross remuneration is influenced each calendar year by the correction coefficient applicable for Slovenia, the number of working hours and the basic monthly salaries as set by the Conditions of Employment of Other Servants. Any changes related to these will be communicated by the Agency and shall apply as of 01.01. for the corresponding calendar year.

When it is estimated that the incapacity will last fifteen (15) subsequent working days or more, the Contractor must make a replacement available to the Agency. From the moment the Contractor becomes aware of these circumstances, the Contractor shall, within five (5) working days, submit to the Agency at least three (3) CVs of potential replacements with the required qualifications and experience, and, once a candidate has been chosen by the Agency, the Contractor must make him/her available within a maximum of three (3) working days.

In case of incapacity due to personal or professional contingencies (e.g. leaving the interim post, maternity leave, etc.), the Contractor is obliged to provide a competent replacement person. For such replacements the same selection procedure and deadlines as described above shall apply.

Any above mentioned replacement will not involve any additional costs to the Agency.

4.7. Replacement due to underperformance of interim staff

Following a written request from the Agency, the Contractor must replace within seven (7) working days the personnel who prove incapable of carrying out the specified tasks to the required standards. Any such replacement will not involve any additional cost to the Agency.

In case of replacement, the Contractor must propose a minimum of three (3) CVs of potential replacement candidates with the required qualifications and experience. For replacements the same selection procedure and deadlines shall apply as described in point 4.6.

4.8. Interim staff service provider

The Contractor shall:

- Perform with high level of professionalism, human resources competence, and good service manner. The Contractor must ensure that any staff performing under the FWC and the Contracts has the professional qualifications and experience.
- Comply with all the relevant Slovenian labour law, taxes, health insurance, social and pension contributions.
- Ensure the fulfilment of all legal and financial obligations towards the interim staff. The Agency may not under any circumstances be considered the interim staff's employer.
- Be able to communicate in a timely manner. The Contractor shall nominate a contact person. The Contractor's response time shall not exceed two (2) working days.
- Possess very good command of English language (C1 level).
- Be in touch with the Agency on any interim staff issues.
- Give at least one (1) month's notice to the Agency of any change in the Contractor's team, i.e. contact person, responsible person for signature of the FWC etc.

4.9. Occupational risk prevention

Before any interim staff is made available to the Agency, the Contractor must provide him/her with a training on health and safety at work. Certificate(s) providing evidence of this training, duly signed by the Contractor, must be submitted by the interim staff when he/she starts work.

The Contractor shall undertake, for the duration of the FWC, to comply with the relevant laws of the Republic of Slovenia on the health and safety of workers in the workplace and any rules established by the Agency on health and safety at work. The Agency reserves the right to terminate the FWC and/or Contract unilaterally if it becomes aware that the Contractor is not complying with the obligations imposed by the relevant laws of the Republic of Slovenia on the health and safety of workers in the workplace and also any rules established by the Agency on health and safety at work that apply to its own staff.

The Agency may impose, at the Contractor's expense and without the need for any request to be made, any measures it considers appropriate to guarantee the health and safety of the interim staff if the Contractor fails to comply with health and safety rules in force within the Agency. The Contractor shall not dispute the appropriateness of these measures. In particular, it may not refuse to be held liable for the costs incurred for whatever reason. The Agency is entitled to stop the service immediately if it deems this to be necessary.

The Contractor undertakes to inform the Agency in writing, as quickly as possible, of any occupational accident suffered by its workers during the performance of the services covered by the Contract. It shall enclose a report stating the causes of the accident and explaining whether the measures laid down in the applicable law on the subject were adopted to avoid it.

5. Personal data

While implementing the services, and especially when data is electronically processed, the Contractor shall respect the applicable legislation concerning data protection as stated in Regulation (EC) No 45/2001 on personal data protection.

The processing of personal data by the Agency for the purpose of implementing this procurement procedure is subject to Regulation (EC) No. 45/2001¹³.

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 Regulation¹⁴, 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 35 countries, namely: the 28 EU Member States, 3 European Economic Area (EEA)

¹³ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

¹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:298:0001:0096:EN:PDF>

Countries (Lichtenstein, Norway, Iceland) and 4 Stabilisation and Associations Agreements (SAA) Countries (the Former Yugoslav Republic of Macedonia, Albania, Montenegro and Serbia). The Agency's procurement procedures are not open to tenderers from countries covered by the Agreement on Government Procurement (GPA).

7. Variants

No variants are permitted.

8. Size of the contract

The initial duration of the FWC shall be one (1) year as from the date of the signature and may be renewed up to three (3) times, each time for an additional period of one (1) year. The total duration of the FWC shall not exceed four (4) years.

The total maximum value of the services for the whole duration of the FWC (up to four (4) years) is EUR 750.000,00 excluding VAT.

The estimated date for signature of the FWC is December 2014.

9. Documents available to the tenderer

- Contract notice published in the Official Journal of the European Union (OJ EU) S 168 on 03.09.2014;
- Call for tender documents and annexes;
- Other documents, as mentioned in these tender specifications.

10. Contractual framework

10.1. Type of contract

The services described above will be a subject of **a multiple FWC in cascade**.

The FWC will lay down the legal, financial, administrative and technical conditions applicable throughout its period of validity, including price indexation. The draft FWC is attached in Annex III to the invitation to tender.

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

FWC(s) do not constitute orders. Orders shall be placed through requests for services (see point 10.3 below for the modus operandi of the FWC(s), resulting in Contract(s).

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. Number of selection procedures for interim staff

Request for interim staff can occur at any given time throughout the implementation of the FWC(s). The estimated indicative number of selection procedures, which the selected Contractor(s) will need to carry out during the contract period, not taking into account replacements due to temporary incapacity of interim staff and/or case(s) of 'force majeure' or other reasons for the replacement request(s) from the Agency, combined for all interim staff categories, is up to five (5) selection procedures per each twelve (12) months of FWC(s) duration.

10.3. Modus Operandi

The FWC(s) shall be awarded to a maximum of three (3) tenderers provided that a sufficient number of tenderers satisfy the exclusion and/or selection criteria and/or enough tenders satisfy the award criteria. These operators will be ranked in priority based on the ratio offering the best value for money on the basis of the award criteria.

In the event of failure to observe any of the below mentioned deadlines or disagreement related to the interpretation and/or execution of the FWC and/or Contract(s), the Contractor shall be considered unavailable.

If a Contractor fails to notify the Agency in writing, by post or e-mail, whether he/she intends to submit an offer and/or if a Contractor is found to have executed the services inadequately and/or if the total gross remuneration paid throughout the Contract by an interim staff is not consistent with the gross hourly rate for an interim staff in question, 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 department within the Agency. The Contractor works under his own capacity and responsibility and does not represent the Agency. The Contractor's staff works under the instructions of the Contractor.

a) Request for services

The Agency shall send, by email, the request for services for interim staff to the first ranking Contractor, to the e-mail address as specified in Article I.6 of the FWC.

The request shall include the job requirements for the position to be filled, the category level, the estimated duration, experience, etc. The request shall also indicate the maximum time limit for the submission of documents for each candidate (as a rule the time limit for the submission of candidates shall not be shorter than ten (10) and not longer than twenty (20) calendar days, depending on the profile). As a minimum requirement, the Contractor shall, for each candidate, submit the Curriculum Vitae (CV) using the EUROPASS CV format¹⁵.

Within two (2) working days of a request for services sent by the Agency to the Contractor, the Contractor shall inform the Agency whether he/she intends to submit a specific tender (offer).

In case of no reply or negative reply from the Contractor, the Agency shall send the request for services to the second ranking Contractor in cascade. In case of no reply or negative

¹⁵ The CV format can be downloaded from:
<http://europass.cedefop.europa.eu/en/documents/curriculum-vitae>

reply from the second ranking Contractor, the Agency shall send the request for services to the third ranking Contractor in cascade.

On receipt of a positive Contractor's reply to submit a specific tender (offer), the Contractor shall identify suitable candidates. The Contractor may advertise the requested profile(s), using media adverts, newspapers, websites, and/or online job portals. The Contractor must present candidates that match the requested profile description. The Contractor must ensure that the interim staff possesses the necessary professional qualifications for the duties to be carried out.

Within the deadline laid down in the request for services (this shall not be shorter than ten (10) and not longer than twenty (20) working days from receiving the request for services), the Contractor shall submit a minimum of three (3) and a maximum of five (5) candidates who meet the job requirements.

Unsolicited applications by the Contractor are not permitted. The Contractor(s) must refrain from submitting candidates unless they have received a request from the Agency.

b) Selection of interim staff

Within five (5) working days from receiving the offer the Agency shall notify the Contractor of the names of the candidates that the Agency wishes to interview and the dates and times of the interviews. The candidates must be available for interviews at the Agency premises within a short notice (minimum one (1) working day and maximum 3 (three) working days).

The Agency shall assess the quality of the candidates interviewed, based on the CVs, performance at the interview, suitability of the candidate for the profile, requirements and knowledge set out in the request for services.

Candidates proposed must be available at the start of the assignment and also be able to work at the Agency premises, for the required period.

The Agency will inform to the Contractor of its choice of the candidate(s) for the assignment within three (3) working days after the interviews took place.

If no suitable candidate is considered after the interviews, the Agency will inform the Contractor by e-mail and send the request for services to the second ranking Contractor. The procedure will start with the second ranking Contractor. The same procedure shall apply to the second ranking Contractor. If the second ranking Contractor also fails to submit a suitable candidate, the cascade will apply to the third ranking Contractor.

The Agency is not obligated to select a candidate and reserves the right to reject all proposed candidates if he/she does not meet the requirements.

c) Signature of a Contract

Once a person has been selected for the job, the Agency and the Contractor will agree on the salary scale that shall be in applicable to the Agency for the particular interim staff category.

The Agency will then prepare a Contract based on the model form (Annex IIII of the FWC) and send it to the Contractor for signature.

The Contractor shall return to the Agency a duly signed and dated Contract within two (2) working days. In the event of failure to observe this deadline, the Contractor shall be considered unavailable.

Interim staff cannot begin work in the execution of the Contract and/or at the Agency's premise until the Contract between the Agency and the Contractor has been signed by both parties.

10.4. Subcontracting

If the tenderer intends to either subcontract a part of the work or realise the work in co-operation with other partners he/she shall indicate in his offer which part will be subcontracted, as well as the name and qualifications of the subcontractor and/or partner. The lead tenderer (Contractor) remains solely liable for proper performance of the FWC and Contracts.

Subcontracting during the performance of the FWC is permitted only with the prior written consent of the Agency. The Contractor remains solely liable for proper performance of the FWC and the specific contract(s).

11. Contractors' obligations

Employment law applicable to transfers of undertakings:

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/EC¹⁶ 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.

12. Language

The working language of the Agency is English. English shall be used throughout the implementation of the FWC for all communication, all the required services, reports and other documentation. All meetings shall be held in English.

13. Payment methods

Except where the Contracts provide for otherwise, provisions related to payment are laid down in the draft FWC (Annex III to the invitation to tender).

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.

¹⁶ 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.

The services will be invoiced on the basis of the services provided after full delivery and approval of monthly time sheets and/or reports and against invoice(s), in line with the payment schedule described in the draft FWC (Annex III) to the invitation to tender.

14. Submission of tenders

The offer bid must be accompanied by a **cover letter by the tenderer, duly signed and dated**, and the **duly completed reference table** related to the exclusion and selection criteria (see Annex I.B of these tender specifications).

The tenderer's offer should include:

- A. A cover letter by the tenderer, duly signed and dated.**
- B. Duly completed reference table** related to the exclusion and selection criteria (see Annex I.B of these tender specifications).
- C. Duly signed and dated declaration of honour on exclusion criteria and absence of conflict of interest** listed in Section 15 of these tender specifications (form provided in Annex I.D to these tender specifications) fully completed.
- D. All the documents relating to the selection criteria** listed in Section 16 of these tender specifications.
- E. The technical tender**, as described in Section 17 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 15 and 16 of these tender specifications.

15. Exclusion criteria

Tenderers must prove that they are not in one of the situations giving rise to exclusion as described below, by providing the following information, evidence and documents with their offer.

15.1. Exclusion from participation

Tenderers shall be **excluded from participation** in this procurement procedure if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- b) they have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of res judicata;
- c) they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify including by decisions of the European Investment Bank and international organisations;
- d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established, or with those of the country of the Contracting Authority, or with those of the country where the contract is to be performed;
- e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the European Union's financial interests;
- f) they are a subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in a procurement procedure or failing to supply this information, or having been declared to be in serious breach.

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 above, using the form provided in Annex I.D to these tender specifications.
2. The tenderers to whom it is proposed to award the FWC(s) shall furnish, within a time-limit specified by the Contracting Authority and prior to the signature of the FWC(s), the following evidence in support of their declarations:

The Contracting Authority will accept as satisfactory evidence that the tenderer is not in one of the situations described in points (a), (b) and (e) above, a recent extract from the judicial record, issued less than ninety (90) days prior to the deadline for the submission of the tender, or, failing this, a recent equivalent document, issued less than ninety (90) days prior to the deadline for the submission of the tender, issued by a judicial or administrative authority in the country of origin or provenance, showing that those requirements are satisfied. Where the tenderer is a legal person and the national legislation of the country in which the tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the tenderer. The Contracting Authority will accept, as satisfactory evidence that the tenderer is not in one of the situations described in point (d) above, a recent certificate (i.e. less than ninety (90) days old on the date of the deadline for the submission of the tender) issued by the competent authority of the state concerned. The document must provide evidence covering all taxes and social security contributions for which the tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

Where no document or certificate of the type referred to in the paragraph above is issued in the country concerned, and for the other cases of exclusion referred to in points (c) and (f), it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in the country of origin or provenance.

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the Contracting Authority.

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

15.2. Exclusion from award of contracts

The FWC will not be awarded to tenderers who, during the procurement procedure:

(a) are subject to a conflict of interests.

The Agency must ensure that, on the date on which the tender is submitted, no tenderer is subject to a conflict of interests; such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family, emotional life, or any other shared interest.

The Agency reserves the right to judge whether such a conflict of interests exists.

Tenderers are asked to declare:

- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
 - that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, or has not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to the award of the contract;
 - that they will inform the contracting authority without delay of any situation considered a conflict of interests or which could give rise to a conflict of interests.
- (b) are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition for participation in the procurement procedure, or fail to supply this information.

Evidence:

Tenderers shall provide a declaration on their honour, **duly signed and dated**, stating that they are not in one of the situations referred to above, using the form provided in Annex I.D to these tender specifications.

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

15.3. Tenders 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 model provided in Annex I.D 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 awarding authority 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 Contracting Authority 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.

16. 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.

Where the tender is submitted by a consortium or group of service-providers, the economic and financial capacity must be ascertained at the level of each economic operator forming part of the consortium or group. Technical and professional capacity may be ascertained at consortium or group level, or at the level of each member of the consortium or group.

Where the tender is submitted by a tenderer who intends to subcontract part of the tasks or entrust them to another economic operator, the subcontractors or economic operators involved must demonstrate that they have the requisite economic, financial, technical and professional capacity.

An economic operator may, if necessary and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links he has with them. He must in this case prove to the awarding authority that he will have at its disposal the resources necessary for performance of the FWC, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Tenderers must provide proof of their professional, economic, financial, and technical capacity by enclosing with their tender the following information and documents:

16.1. Professional capacity

- Duly completed, dated, and signed identification form (see Annex I.C to these tender specifications).
- Duly completed, dated, and signed financial identification form (see Annex I.E 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
- Certificate of enrolment on the professional or trade register in accordance with the legislation of the Member State in which the tenderer is established.
- Valid certificate for the performance of the temporary employment agency (according to Article 167 of the Labour Market Regulation Act) issued by the Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities.
- Duly completed and signed legal entity form (see Annex I.F 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

16.2. Financial and economic capacity

Evidence of financial and economic capacity must be provided by means of the following documents:

- Balance sheets or extracts from balance sheets for at least the last two (2) years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established.

In case of a consortium, audited accounts for each consortium partner shall be presented.

- A statement of turnover that tenderer's total financial turnover for the services referred to this procedure (interim support services) during the last 3 (three) financial years are **not less than EUR 300.000,00** (three hundred thousand euro) per each year.

16.3. Technical and professional capacity

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

- A statement of the average annual manpower and the number of managerial staff over the last two (2) years.
- Evidence that the tenderer has provided the services as requested in this tender (i.e. interim support services) for the total amount of **at least EUR 500.000,00** (five hundred thousand euro) in 2012 and 2013 combined.
- At least three (3) references of international institutions and/or companies with operations in Slovenia to which the tenderers are/have provided interim services during the last three (3) years.
- The number of interim staff provided in 2011, 2012 and 2013.

16.4. For tenders including subcontracting, the tenderer must submit:

- A **duly signed and dated declaration** stating clearly the identity, roles, activities and responsibilities of the subcontractor(s) and specifying the volume/proportion of the tasks of (each of) the subcontractor(s), as well as the description of the quality control measures he/she intends to apply on the tasks to be carried out by (each of) the subcontractor(s).
- A **duly signed and dated** letter of intent by (each of) the subcontractor(s) stating its unambiguous undertaking to collaborate with the tenderer if he wins the FWC and the extent of the resources that it will put at the tenderer's disposal for the performance of the Contract.
- **In the absence of this**, a **duly signed and dated** declaration stating that the tenderer does not intend to subcontract and that he/she will inform the Agency about any change in this situation. The Agency reserves the right to judge if such change would be acceptable.

Offers involving subcontracting will be assessed as follows:

- Where the amount of subcontracting exceeds or equals 20% of the contract, the exclusion criteria will be assessed in relation to all proposed subcontractors. The declaration of honour on exclusion criteria and absence of conflict of interest included in Annex I.D, **duly signed and dated**, stating that the subcontractor is not in one of the exclusion situations, must be provided by each proposed subcontractor.
- 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.

16.5. For 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 Contract;
- 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 of honour on exclusion criteria and absence of conflict of interest included in Annex I.D, 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. average 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 and/or 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 might be excluded from further evaluation. The Agency will decide whether the substantiating documents provided constitute compliance with the exclusion and/or selection criteria.

17. Technical tender

Tenderers should 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.

The technical tender shall include:

- A. A description of the methodology for the selection of interim staff, including (a) the assessment of the abilities and potentials of individuals for different categories of interim staff; (b) range of the potential candidate search area, by means of a specific description of the methods applied (IT methods, databases, structure, type, format, frequency of updates, etc.); (c) presenting the candidates for interviews at the Agency per each requested category and profile, including the minimum number of candidates for each requested profile.
- B. Detailed information on the CVs currently available in the tenderer's database, indicating the category and the profile as described in point 4.2 of the tender specifications, including the language skills.
- C. A description of the methodology for the implementation of the contract, including steps relative to the entry into service (e.g. administrative formalities, etc.), management of interim staff during the implementation of a Contract (i.e. management of absences, conditions of employment, employment contracts, etc.), replacement and exit procedures of interim personnel with detailed timeframe for each step.

18. Financial offer

- The financial offer must be drawn up using the Financial Offer model form (Annex II to the invitation to tender). The financial offer must be constituted by **Contractor's fees expressed in percentages on the gross hourly rate** (hereinafter referred to as "the fee").

The fees payable to the Contractor **shall include the following**: the cost of the selection of interim staff, placement and administration of interim staff (including the cost of the exam from safety and health at work as well as the cost of medical exam to be performed before the start of the assignment) as well as all indirect costs related to the services provided (e.g. services of HR specialist, legal advisor, translations, accounting, insurance, material cost, contribution for overhead costs, etc.).

The price for interim services, payable to the Contractor, will be a result of multiplying the fees, offered by the tenderer, to the gross salary of the interim staff, indicated per working hour. For informative purposes the indicative gross hourly rates (for 2014) are given in point 4.2. The gross hourly rates and gross monthly salaries are subject to change (upwards/downwards) each year¹⁷ as described in point 4.6.

¹⁷ The gross remuneration of the Agency interim staff for 2015 is not yet available.

The salaries shall be adapted yearly taking into account the annual adaptation of the salaries of the staff of the European Union and other agents. The Agency shall inform the Contractor(s) of the adapted salaries each year.

Fees shall be fixed throughout the duration of the FWC and any possible renewals up to the maximum possible term of four (4) years. The fees offered may be different depending on the category of interim staff requested. Fees will be applied to each working hour of interim staff.

The Agency will reject a tender where no financial offer is included.

- 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 shall not be included in the financial offer (i.e. in the fees).
- No expenses incurred within the framework of the preparation of the offer will be reimbursed.

19. Award criteria

The FWC will be awarded to the tender offering the best value for money on the basis of the criteria specified below.

19.1. Technical quality, with weighting for technical quality: 50 %

- A.** Relevance, comprehensiveness, quality and clarity of the proposed methodology on selection of interim staff, including (a) the assessment of the abilities and potentials of individuals for different categories of interim staff; (b) range of the potential candidate search area, by means of a specific description of the methods applied (IT methods, databases, structure, type, format, frequency of updates, etc.); (c) presenting the candidates for interviews per each requested profile, including the minimum number of candidates for each requested category and profile, allowing the Agency to have a sufficient range of options. *A maximum of 40 points will be assigned for this criterion.*
- B.** Relevance, quality and quantity of CVs currently available in the tenderer's database, indicating the category and the profile as described in point 4.2 of the tender specifications, including the language skills. *A maximum of 30 points will be assigned for this criterion.*
- C.** Relevance, quality and flexibility of the proposed methodology and timeframes for the implementation of the FWC and/or Contract(s) (including steps relative to the entry into service, management of interim staff during the implementation of a Contract, replacement and exit procedures of interim personnel). *A maximum of 30 points will be assigned for this criterion.*

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

19.2. Financial offer - price, with weighting for price: 50 %

The financial offer must be drawn up using the Financial Offer model form (Annex II to the invitation to tender). The financial offer must be constituted by two (2) fees (A and B) and by "Average Fee" that shall be calculated as described below.

Tenderers should fill-in the table attached in Annex II to the invitation to tender, indicating two (2) fees to be applied to each working hour of interim staff depending on the interim staff category, as explained in point 4.2 (i.e. for interim staff Category I – fee A and for interim staff Category II - fee B).

Each fee (A and B) quoted by the tenderer cannot exceed 0,150. Tenders with higher fees will be rejected. The tenderer(s) must indicate fees with maximum three (3) decimal digits (i.e. X,XXX). Based on the provided fees A and B the tenderer(s) must calculate the "Average Fee" as described below.

In order to evaluate the offers, the Agency will use the "Average Fee", based on the financial offer submitted by the tenderer in Annex II to the invitation to tender. The "Average Fee" has no contractual value and will be used solely for the purpose of the evaluation.

FORMULA FOR CALCULATING the "Average Fee":

| | Interim staff category | Maximum fee to be applied |
|--------------|---|----------------------------------|
| 1. | Category I - Technical support level | [Fee (A): X.XXX] |
| 2. | Category II - Technical assistant level | [Fee (B): X.XXX] |
| Average Fee: | | [Average Fee: X.XXX] [(A+B) / 2] |

19.3. Final evaluation

The formulae to calculate economically the most advantageous offer is:

$$\text{Final score for tender X} = \frac{\text{Lowest "Average Fee" of tender X}}{\text{"Average Fee" of tender X}} * 50 + \frac{\text{Total technical quality of tenderer X}}{100} * 50$$

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(s) will be awarded to a maximum of three (3) tenderers who have obtained the highest scores.

When the number of admissible tenders is lower than three (3), the Agency reserves the right not to award the FWC(s).

Tenders will be ranked in priority according to the criterion of the economically most advantageous tender that is with the highest technical quality/financial offer-price combination, obtained on the basis of the formula indicated above, and will thus thereafter be entitled to be consulted for each specific request for services, via the cascade (see point 10.3) (the tenderer with the highest mark for the final score will be proposed as the FIRST Contractor in the cascade; the tenderer with the second highest mark for the final score will be proposed as the SECOND Contractor in the cascade and the tenderer with the third highest mark for the final score will be proposed as the THIRD Contractor in the cascade).