

ANNEX I

Provision of temporary agency workers to the Agency for the Cooperation of Energy Regulators

Framework Service Contracts in cascade

TENDER SPECIFICATIONS

OPEN CALL FOR TENDERS

ACER/OP/ADMIN/12/2017

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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/12/2017.

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 the 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 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 on wholesale energy market integrity and transparency ('REMIT').

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

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

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 profiles requested.

The Agency shall conclude a multiple FWC in cascade with maximum three (3) selected Contractors (hereinafter referred to as ‘the Contractor’) for the provision of interim support services.

4. SCOPE OF SERVICES

4.1. Description of services

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 its various Departments (Director's Office, Administration, Electricity, Gas, Market Integrity and Transparency and/or Market Surveillance Department) in order to facilitate the Agency in carrying out tasks of temporary nature and as a complement to its statutory staff, under the following circumstances (the list is indicative and not exhaustive):

- To support the Agency's staff by providing assistance, secretarial and administrative support;
- To carry out, on a temporary basis, additional tasks to the ordinary ones resulting from specific projects;
- To reinforce staff shortages in cases of maternity/parental leave, long-term illness, other long term absences or other reasons;
- To cope with peak periods which require additional workforce for a fixed period of time.

4.2. Profile requirements

The Agency may request interim support services in a variety of activities within three (3) categories.

Interim staff category	Profiles	Minimum educational requirements
Category I Technical support level	Support in the areas of: <ul style="list-style-type: none">- Reception;- Data entry;- Other facility tasks.	Completed compulsory education.
Category II Technical assistant level	Support in the areas of: <ul style="list-style-type: none">- Clerical and secretarial support;- Document management, filling and archiving;- IT and logistic technical support;- Travel and mission arrangements.	Secondary education attested by a diploma giving access to post-secondary education and appropriate professional experience of one (1) year.

Interim staff category	Profiles	Minimum educational requirements
Category III Assistant level	Support in the areas of: <ul style="list-style-type: none"> - Human Resources; - Administration; - IT; - PR and/or Communication; - Finance, Procurement and/or Legal. 	Post-secondary education attested by a diploma or secondary education attested by a diploma giving access to post-secondary education and appropriate professional experience of three (3) years.

The above list of profiles is not exhaustive and therefore the Agency may request additional profiles of interim staff within the specified categories to execute other tasks not listed above. However, the above set minimum requirements for each category shall be respected.

In addition to the minimum requirements, the interim staff will be required to have a very good command of English (written and oral, corresponding to C1 level of Common European Framework Reference for Languages⁴). For specific activities, the knowledge of other EU languages may also be required.

For all three (3) profiles computer literacy and in particular a good knowledge of MS Office, MS Outlook and Internet (i.e. search tools, etc.) are required.

In the request for services the Agency shall define the job description for the assignment, the skills and requirements 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 required to participate in 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 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 40 hours, i.e. 8 hours per day from Monday to Friday, from 9 am to 5 pm with a lunch break of 30 minutes. Lunch break is not paid by the Agency.

Working hours performed over and above 37.5 per week are not authorised, unless requested by the Agency and agreed in advance in writing. 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

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

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 updated yearly and are published on the Agency's website⁵.

4.5. Absences

In case of absence due to illness, interim staff must inform the Contractor and the Agency HR representative on the first day of the 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 to the Agency** (i.e. the Contractor shall invoice the Agency only for the actual working hours delivered to the Agency).

If interim staff would like to request an absence they must receive an approval from their supervisor and inform HR and the Contractor a reasonable period in advance.

Any unjustified absence of an interim staff shall be considered by the Agency to be an interruption of the service provided by the Contractor and as a "fault" on the Contractor's part. In the event of such absence of more than five consequent (5) working days or in total five (5) working days during the implementation of a Specific Contract, the Agency reserves the right to replace interim staff.

4.6. Replacement of interim staff due to temporary incapacity

Interim staff falling in a situation of temporary incapacity due to illness must notify both the Contractor and the Agency of his/her unavailability on the first day of absence. 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 shall apply as described in point 9.3.

4.7. Replacement of interim staff due to underperformance

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 9.3.

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

⁵http://www.acer.europa.eu/Official_documents/Director/Directors%20Decision/18_Director%20Decision%202016-18.pdf

4.8. Security and confidentiality considerations

Interim staff shall comply with the Agency's security rules. The Agency may request interim staff to provide a certificate of good conduct or equivalent (e.g. police conduct certificate). In such case, the Agency will specify this requirement in the request for services.

In all cases the interim staff will be requested to sign an absence of conflict of interest and confidentiality declaration.

4.9. Remuneration of interim staff

The gross 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 on temporary agency work⁸. Furthermore, the gross hourly rate set for interim staff takes into account the correction coefficient⁹ applicable for Slovenia (for 2017 the applicable correction coefficient is 0,807¹⁰) and is obtained by dividing the annual remuneration as mentioned above by a number of working hours per year (e.g. there are 1,807.5 working hours in 2017 that are calculated after subtracting Saturdays, Sundays and the public holidays of the Agency).

The following table indicates the gross remuneration for the Agency contractual agents **applicable for 2017**, which is subject to update (upwards/downwards) each year¹¹ and the corresponding gross hourly rate of the interim staff, based on the above remuneration calculation:

Function Group	Gross monthly salary in EUR (80.7% correction coefficient applied)	Gross yearly salary in EUR	Price per hour (gross) in EUR for 2017
FG I (corresponding to category I - Technical support level)	1,580.08	18,961.01	10.49
FG II (corresponding to category II - Technical assistant level)	1,641.16	19,693.88	10.90
FG III (corresponding to category III - Assistant level)	2,101.14	25,213.63	13.95

The Agency will determine the category of each position based on the nature and responsibility of the functions.

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:52016XC1214%2801%29&from=EN>

⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0104&from=EN>

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:52016XC1214%2801%29&from=EN>

¹¹ The gross remuneration for 2018 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.

The Contractor shall employ and pay the interim staff assigned to the Agency in line with the national employment legislation and any applicable collective labour agreement(s). The provision of interim staff to the Agency shall in no way lead to an employment relationship between the interim staff and the Agency. Hence, the regulations applicable specifically to the Agency's statutory staff (i.e. Staff Regulations of Officials of the European Union, the Conditions of Employment of Other Servants of the European Unions) shall not at any stage apply to interim staff.

Throughout the duration of the FWC, the Contractor remains the employer of the interim staff. To that end, the Contractor shall comply with the relevant Slovene legislation on employment, taxes, social and pension contributions, etc. The Contractor shall ensure the fulfilment of all legal and financial obligations towards the interim staff. Any irregularities will be the sole responsibility of the Contractor, who will assume the consequences vis-à-vis the Slovenian authorities. Such irregularities may lead to termination of the FWC as well as the Specific Contract(s) between the Agency and the Contractor.

The **gross hourly rate** shall **cover exclusively** the gross salary which shall include net salary of the interim and all employees' contributions (i.e. employees' social security contributions (contributions for pension and disability insurance, health insurance, employment, parenthood) and advance on income tax.

The gross hourly rate shall **NOT** include any cost related to food- and travel- allowance, holiday bonus, seniority bonus, employer's contributions, any risk related to absences (illness, holidays, maternity leave, etc.), etc. It shall also **NOT** cover any other expenses such as the cost of the pre-employment medical exam, annual medical exam, the exam for safety and health at work etc.; thus such payments are not the responsibility of the Agency.

4.10. Responsibilities of the Contractor

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 Specific Contracts has the professional qualifications and experience.
- Comply with all the relevant Slovenian labour law, taxes, health insurance, social and pension contributions
- Provide the Agency with updates on any relevant changes in labour legislation.
- 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 (at least C1 level).
- Be in touch with the Agency on any interim staff issues.
- Give at least one (1) month notice to the Agency of any change in the Contractor's team, e.g. contact person, responsible person for signature of the FWC etc.

4.11. 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 provided by the interim staff to the Agency when he/she starts work if requested by the Agency.

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 Specific 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 Specific 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. 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 Regulation¹², 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 countries covered by the Agreement on Government Procurement (GPA).

6. VARIANTS

No variants are permitted.

¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:298:0001:0096:EN:PDF>

7. DURATION AND SIZE OF THE CONTRACT

The FWC shall have an initial duration of one (1) year as from date of 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 maximum budget available for the total duration of the FWC (up to four (4) years) shall be EUR 2,000,000.00 excluding VAT.

The estimated date for signature of the FWC is August 2017.

8. DOCUMENTS AVAILABLE TO THE TENDERER

- Contract notice published in the Official Journal of the European Union (OJ EU) 2017/S S101-200018 on 27.05.2017.
- Invitation to tender and annexes.
- Other documents, as mentioned in these tender specifications

9. CONTRACTUAL FRAMEWORK

9.1. 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 9.3 below for the *modus operandi* of the FWC(s), resulting in Specific 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.

9.2. 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.

9.3. 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 selection criteria and 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 Specific 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 Specific 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.

In case of violation of the remuneration rights (including payments, allowances and other benefits and social security contributions listed in point 14. f) of the present tender specifications) of any interim staff, the Agency may terminate by registered letter, without applying notice period, the Specific Contract in question and send the request for services to the next Contractor in cascade. In case such violation of the remuneration rights of the interim staff is done to at least three (3) interim staff regardless of the number of Specific Contract(s) the interim staff in question is a part of, this may lead to the automatic termination of the FWC.

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.8 of the FWC.

The request shall include the job requirements for the position to be filled, the category level, the estimated duration, experience, functions and duties to be performed by an interim staff, 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 format¹³.

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 the requested CVs..

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 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 the requested CVs, the Contractor shall identify suitable candidates. The Contractor may advertise the requested profile(s), using

¹³ <http://europass.cedefop.europa.eu/documents/curriculum-vitae>

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, based on a written justification sent to the Contractor in question.

c) Signature of a Specific Contract

Once a person has been selected for the job, the Agency shall inform the Contractor in written.

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

The Contractor shall return to the Agency a duly signed and dated Specific 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 Specific Contract and/or at the Agency's premise until the Specific Contract between the Agency and the Contractor has been signed by both parties.

9.4. 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 all legal entities, or by one of them which has been duly authorised by the others (in this case a power of attorney shall be attached to the FWC). Each legal entity of the group shall assume joint and several liability towards the contracting authority 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.

9.5. Subcontracting

Special attention will be paid to the approach proposed by the Contractor for managing its 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 contracting authority for 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 FWC.

10. CONTRACTOR'S OBLIGATIONS

10.1. 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/EC¹⁴.

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/EC¹⁵ and its national implementing measures. In particular, the Contractor 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.

¹⁴ 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).

¹⁵ 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.

10.2. Copyright and other intellectual property rights

Copyright and other intellectual or industrial property rights and any other right of ownership related to the products provided and services performed by the Contractor will be vested in the Agency, except where one or more of these rights already exists.

The Contractor must specify any parts of the products provided and services performed that are covered by copyright or any other rights of ownership prior to the execution of each Specific Contract. 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 his 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 under the FWC and the Specific Contracts, 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 with another Contractor(s) working under a FWC or Specific Contracts. Costs will be covered by the Contractor.

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

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

10.3. Confidentiality - 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 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 data¹⁶.

11. PLACE OF PERFORMANCE OF THE SERVICES

11.1. Place of work

The principle place of performance of the FWC(s) shall be at the Agency premises.

The principal place of performance of Specific Contract(s) shall depend on each Specific Contract and shall be indicated in the relevant request for services.

11.2. 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,

¹⁶ OJ L 8/1, 12.1.2001

at the Contractor's premises.

Any expenses incurred by the Contractor within the framework of these meetings (i.e. travel costs, subsistence allowance or any other related costs) shall not be reimbursed separately by the Agency.

Within twenty (20) calendar days following the entry into force of the FWC(s) a **kick-off meeting** with the Agency shall take place at the Agency's premises.

12. 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.

13. PAYMENT METHODS

Except where the Specific Contract 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.

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

The timesheets will be approved by the Agency and sent to the Contractor at the beginning of the month for the previous month.

Each invoice shall be based on the number of actual hours worked during the relevant month and shall include as a minimum the following information:

- Name and surname of the interim staff;
- Job profile / category;
- Invoicing period;
- Total number of hours worked per interim staff;
- Unit price and the total amount per interim staff;
- Number of the applicable Specific Contract.

14. PRICES

- (a) The prices should be quoted in euro.
- (b) The unit price consists of the gross hourly rate per category¹⁷ (set by the Agency), multiplied by the **Contractor's fee expressed in a coefficient** (hereinafter referred to as "the fee").

Unit price	=	Gross hourly rate per category	x	Contractor's fee expressed in a coefficient
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- (c) The fee shall be fixed throughout the duration of the FWC and any possible renewals up to the maximum possible term of four (4) years.
- (d) There shall be **only one (1) fee** which shall apply to all categories of interim staff requested.
- (e) At the beginning of each calendar year, the gross hourly rate may be revised upwards or downwards as explained in Section 4 which may result in the revision of the unit price.
- (f) The **fee** payable to the Contractor **shall cover all Contractor's expenses**, including:
- Material cost, namely reimbursement for food shall be set at EUR 6.12 per working day. The same level of reimbursement for food shall apply to all interim staff;
 - Material cost, namely reimbursements for transport shall be set at 100% of the cost for the cheapest public transport;
 - Holiday bonus which shall amount to 70% of the average gross salary in Slovenia for the month March and shall be paid to the interim staff entitled to the holiday bonus in June of the corresponding year;
 - Seniority bonus;
 - Employers' contributions (e.g. all social security contributions which need to be paid by the employer);
 - Any other contributions and payments established by the law;
 - Pre-employment medical check;
 - Annual medical exam as applicable by the law;
 - The exam for safety and health at work,
 - Annual leave and illness absences, maternity leave, etc.;
 - Selection of interim staff.
- (g) The prices quoted shall be all inclusive and shall include all charges and all administrative costs (such as but not limited to backstopping and administrative costs, insurance, reports, communication costs, etc.).
- (h) 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 can be indicated separately but will not be taken into account when considering prices.

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

¹⁷ For informative purposes the indicative gross hourly rates (for 2017) are given in point 4.9. The gross hourly rates and gross monthly salaries are subject to change (upwards/downwards) each year¹⁷ as described in point 4.9.

15. SUBMISSION OF TENDERS

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 (see Annex I.B of these tender specifications).
- C. A duly filled in, signed and dated declaration on honour on exclusion criteria** listed in Section 16 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 17 of these tender specifications.
- E. The technical tender**, as described in Section 18 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 16 and 17 of these tender specifications.

16. EXCLUSION CRITERIA

Tenderers must prove that they are not in one of the situations giving rise to exclusion as in Annex I.D (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).

16.1. 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.D – Declaration on honour.

16.2. 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 16.1 and 16.2 of the present tender specifications using the form provided in Annex I.D – Declaration on honour.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 FWC is to be awarded is not in one of the situations described in (a), (c), (d) or (f) of Annex I.D – Declaration on honour, 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.D – Declaration on honour 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 person 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 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.

16.3. 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 – 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 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 awarding 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.

17. 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 that the third party 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, financial technical and professional capacity by enclosing with their tender the following information and documents, accompanied by the reference table shown in Annex I.B to these tender specifications.

17.1. Legal capacity

- Duly completed and signed identification form (see Annex I.C to these tender specifications);
- Duly completed 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
- 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
- Certificate of enrolment on the professional or trade register in accordance with the legislation of the Member State in which the tenderer is established proving that the contractor is authorised to perform the medical services required in the tender under the Slovenian law.

- Valid certificate for the performance of the temporary employment agency (according to Article 167 of the Labour Market Regulation Act¹⁸) issued by the Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities.

17.2. Economic and financial capacity

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

- A statement of overall turnover and turnover concerning the services covered by the FWC during the last two (2) years. The turnover concerning the services covered by the FWC should amount to **at least EUR 500,000.00** for each of the years 2015 and 2016.

17.3. 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 applications, including subcontractors, shall be taken into account).

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

- Provision of services of the type as requested in this tender for a total invoiced amount (i.e. interim support services) of **at least EUR 500,000.00** for each of the years 2015 and 2016.

Evidence to be provided: Name(s) of customer(s), a brief description of services undertaken, total financial volume of the contract(s) effectively delivered (i.e. total amount effectively invoiced to the customers) for each of the years 2015 and 2016.

- 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 two (2) years.

Evidence to be provided: The references duly signed by the customer indicating the start and end date of the contract(s), detailing interim services provided (e.g. the level and number of interim staff provided) for each of the years 2015 and 2016.

17.4. Subcontracting

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.

¹⁸ Zakon o urejanju trga dela (ZUTD): <https://zakonodaja.com/zakon/zutd>

In the absence of subcontracting:

- A declaration of the tenderer, **duly signed and dated**, stating that 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.

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.

17.5. Tenders submitted by a consortium or grouping of service providers

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.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 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 may be excluded.

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

18. TECHNICAL TENDER

Tenderers should include in their offer a technical tender detailing how they intend to perform the tasks covered by the FWC(s), in compliance with all the requirements of these tender specifications. Tenders that fail to comply with this requirement may 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 relevant for these tender specifications, including (a) the assessment of the abilities and potentials of individuals for different categories of interim staff relevant for these tender specifications; (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.) relevant for these tender specifications; (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 relevant for these tender specifications, 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 FWC and Specific Contracts, including steps relative to the entry into service (e.g. administrative formalities, etc.), management of interim staff during the implementation of a Specific 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.

The information of the technical tender proposal must be consistent with the tender specifications.

19. AWARD CRITERIA

The FWC(s) will be awarded to the tenders offering the best value for money on the basis of the criteria specified below.

19.1. Technical quality, with weighting for technical quality: 60 %

- A. Relevance, comprehensiveness and clarity of the proposed methodology on selection of interim staff relevant for these tender specifications, including (a) the assessment of the abilities and potentials of individuals for different categories of interim staff relevant for these tender specifications; (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.) relevant for these tender specifications; (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 and quantity of CVs currently available in the tenderer's database relevant for these tender specifications, 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 and flexibility of the proposed methodology and timeframes for the implementation of the FWC and/or Specific Contract(s) (including steps relative to the entry

into service, management of interim staff during the implementation of a FWC and Specific Contracts, 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 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.

19.2. Financial offer - price, with weighting for price: 40 %

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 the **Contractor's fee expressed with a coefficient** - "the fee" - as explained in Section 14.

The tenderers must indicate the fee with maximum three (3) decimal digits (i.e. X.XXX).

In order to evaluate the financial offers, the Agency will use the 'Fee', based on the financial offer submitted by the tenderer in Annex II to the invitation to tender.

19.3. Final evaluation

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

$$\text{Final score for tender X} = \frac{\text{Lowest 'Fee'}}{\text{'Fee' of tenderer X}} \times 40 + \frac{\text{Total technical quality of tenderer X}}{100} \times 60$$

Tenderers will be ranked according to the criterion of the economically most advantageous tender, i.e. starting from the tender achieving 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(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 two (2), the Agency reserves the right to assess the risk linked to the security of supply, and may decide to cancel the procedure or sign a single FWC instead of a cascade.

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 9.3) (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).