

Call for tenders

N 2016-BEREC-OT-02

**PROVISION OF REGULATORY INFORMATION SERVICES ON
ISSUES RELATED TO ELECTRONIC COMMUNICATIONS AND
OTHER TOPICS WITHINN THE SCOPE OF BEREC ACTIVITIES**

Tender Specifications

1. INFORMATION ON TENDERING

1.1. INTRODUCTION

Brief description of BEREC; its composition and structure

BEREC is composed of a **Board of Regulators** consisting of the **heads or nominated high-level representatives** of the NRAs from all EU Member States with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services.

The European Commission, the EFTA Surveillance Authority, the heads of the NRAs from the EFTA States and from the States that are candidates for accession to the EU also participate in the work of BEREC at a high level. Currently BEREC has in total 38 members and observers.

The Board of Regulators appoints its Chair and Vice-Chairs from among its members. The term of office of the Chair and of the Vice-Chairs is one year. Before serving her/his term as Chair for one year, (s) he has firstly to serve one year as a Vice-Chair. For ensuring continuity of BEREC's work, the Chair has to serve as a Vice-Chair for the year following her/his term as Chair. In general, the incoming BEREC Chair acts as the Appointing Authority vis-à-vis the BEREC Office staff.

Composition and structure of the BEREC Office

The BEREC Office is managed by an **Administrative Manager** under the supervision of a **Management Committee** composed of the Heads of EU Member States' NRAs who form the Board of Regulators and a representative of the European Commission. The Office is financed by EU subsidy and financial contributions from Member States or from their NRAs made on a voluntary basis.

More information about BEREC and the BEREC Office can be found on the BEREC website at: www.berec.europa.eu

1.2. SUBJECT AND OBJECTIVES

The objective of this tender is a conclusion of a direct service contract by the BEREC Office for acquiring of regulatory information services that are within the scope of topics related to BEREC activities.

A contractor shall ensure the content of the services to be provided in full accordance with the Technical Specification of this tender.

1.3. DURATION

The direct service contract will be concluded for an initial period of 1 year. The contract shall be renewed automatically up to three times under the same conditions, unless written notification to the contrary is sent by one of the contracting parties in accordance with the provisions set out in the contract.

1.4. PARTICIPATION AND CONTRACTUAL CONDITIONS

Participation in this tender procedure is open on equal terms to all natural and legal persons or groupings of such persons (consortia) coming within the scope of the Treaties. It includes all natural and legal persons established in the European Union.

Pursuant to Article 119 of the General Financial Regulation the participation is also open to all natural and legal persons from a third country which has a special agreement with the European Union (EU) in the field of public procurement on the conditions laid down in that agreement. The Contracting Authority can therefore accept tenders from and sign contracts with tenderers from 35 countries, namely: the countries, which are parties to the Agreement on the European Economic Area (EEA) (the 28 EU Member States, Liechtenstein, Norway and Iceland) and 4 Stabilisation and Association Agreements (SAA) Countries (FYROM, Albania, Montenegro and Serbia).

This tender procedure is not open to tenderers from countries which have ratified the Multilateral Agreement on Government Procurement (GPA).

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

1.5. JOINT TENDERS

A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

In case of joint tender, all economic operators in a joint tender assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole. Nevertheless, tenderers must designate a single point of contact for the Contracting Authority.

After the award, the Contracting Authority will sign the contract either with all members of the group, or with the member duly authorised by other members via a power of attorney.

1.6. SUBCONTRACTING

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

Tenderers are required to identify all subcontractors whose share of the contract is above 10 %.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.

1.7. CONTENT OF THE TENDER

The tenders must be presented as follows:

Part A: Administrative part

- Identification of the tenderer (see section 1.8.);
- Declaration on honour for exclusion and selection criteria (see sections 2.2. and 2.3.);

Part B: Technical offer (see section 2.5.);

Part C: Financial offer (see section 2.6.).

1.8. IDENTIFICATION OF THE TENDERER: LEGAL CAPACITY AND STATUS

The tender must include the name of the tenderer (including all entities in case of joint offer) and identified subcontractors if applicable, and the name of the single contact person in relation to this tender.

If applicable, the tender must indicate the proportion of the contract to be subcontracted.

In case of joint tender, the tender must be signed by a duly authorised representative for each tenderer, or by a single tenderer duly authorised by other tenderers (with power of attorney).

Subcontractors must provide a letter of intent stating their willingness to provide the service foreseen in the offer and in line with the present tender specification.

In order to prove their legal capacity and their status, all tenderers must provide a signed Legal Entity form with its supporting evidence. The form is available online at the following link:

http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

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

The tenderer (or the single point of contact in case of joint tender) must provide a Financial Identification form and supporting documents. Only one form per offer should be submitted (no additional forms are needed for subcontractors and other joint tenderers).

The form is available on:

http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

Tenderers must provide the following information if it has not been included with the Legal Entity Form:

- For legal persons, a legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

- For natural persons, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.

Tenders not meeting each of the minimum capacity levels shall not be selected.

2. EVALUATION AND AWARD

2.1. Evaluation steps

The evaluation is based on the information provided in the submitted tender. It takes place in three steps:

- Verification on non-exclusion of tenderers on the basis of the exclusion criteria;
- Selection of tenderers on the basis of selection criteria;
- Evaluation of tenders on the basis of the award criteria.

Only tenders meeting the requirements of one step will pass on to the next step.

2.2. Exclusion criteria

In accordance with the terms set in Article 141 of the Rules of Application¹ of the Financial Regulation², candidates are asked to declare on their honour that they are not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation by returning a declaration on their honour (see **Annex II**) duly filled in and signed.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 10%.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex II before the signature of the contract and within a specific deadline given by the contracting authority. This requirement applies to all members of the consortium in case of joint tender and identified subcontractors whose intended share of the contract is above 10 %.

2.3. Selection criteria

Tenderers must prove their economic, financial, technical and professional capacity to carry out the work subject to this call for tender.

The evidence requested shall be provided by the tenderers. In case of joint tender and identified subcontractor whose intended share of the contract is above 10%, the evidence shall be provided by each member of the group upon request of the contracting authority. However, a consolidated assessment will be made to verify compliance with the minimum capacity levels.

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

The following selection criteria will be used to select the tenderers. In case the requirements indicated as “selection criteria” are not met, the offer will be rejected.

- the selection criteria in respect of financial and economic capacity (see point 2.3.1 below) are to be considered as setting minimum standards which must be fulfilled by each tenderer;
- the selection criteria in respect of technical capacity (see 2.3.2 below).

2.3.1. Financial and economic capacity

Criterion:	Average annual turnover of the last two financial years for which the accounts have been closed above EUR 110 000; in case of a consortium,
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¹ Commission Delegated Regulation (EU) 2015/2462 of 30 October 2015 amending Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (hereafter referred to as "Rules of Application") (OJ L 342/7 of 29/12/2015).

² Regulation (EU, Euratom) No 2015/1929 of the European Parliament and the Council of 28 October 2015 amending Regulation (EU Regulation) No 966/2012 on the financial rules applicable to the general budget of the Union (hereafter referred to as “the Financial Regulation”) (OJ L 286 of 30/10/2015)

	25% of this turnover must have been generated by the consortium leader. Out of the average annual turnover at least EUR 55 000 on average per year must have been generated by provision of regulatory information services; in case of a consortium, 25% of this turnover must have been generated by the consortium leader.
Documentary evidence:	Photocopies of profit and loss account and annual financial statement for the last two years for which the accounts have been closed, or extracts signed by the authorised representative of the legal entity for the last two financial years, where applicable, as approved by the general assembly of the company, audited and/or published.

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

2.3.2. Technical and professional capacity

Criterion:	Management capability
Documentary evidence:	List of contracts of a value of at least EUR 55 000 (fifty five thousand) each, performed by the tenderer(s) in the last three years and/or description and price list of standard offers. Statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years.

Criterion:	Educational and professional qualifications of the service provider
Documentary evidence:	Concise but informative note about the team members, to be responsible for the execution and provision of the services under this contract, demonstrating their qualifications and professional experience.

2.4. AWARD OF THE CONTRACT

The contract will be awarded to the tender offering the best value for money, which will be the one with the best quality/price ratio, taking into account the technical award criteria and respective score listed below.

Technical quality of the tender	Maximum points (100)	Threshold
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Scope and content of information services	30	15
Methods of communication and management of individual user preferences	30	15
Access and functionality of underlying regulatory database	20	10
Methodology of data collection, evaluation and selection	20	10

Minimum total score (threshold):

Tenders with a total aggregated score of less than 50 points at the end of the evaluation process will be considered as of insufficient quality and rejected³.

Tenders scoring less than the threshold score for any of the individual award criterion will be considered of insufficient quality and rejected.

The Contract shall be awarded to the tender offering the best value for money, which will be the one with the best quality/price ratio, taking into account the award criteria listed above. No award criteria and sub-criteria other than these detailed above will be used to evaluate the offers.

The quality criteria weighting is = 70%

The price weighting is = 30%

The weighting of quality and price will be applied as follows:

score for tender X =	$\frac{\text{cheapest price}}{\text{price of tender X}}$	* 100	*	price weighting (in %)	+	total quality score (out of 100) + for all award criteria of tender X	*	quality criteria weighting (in %)
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2.5. TECHNICAL OFFER

The technical offer must cover all aspects and tasks required in the technical specifications and include the description of the regulatory information services and regulatory database to

³ A formula method shall not be applied to those tenders not reaching the total aggregated score of 50 points. In case only 1 tender exceeds the total aggregated score of 50 points, the tender will be awarded without application of the formula method.

be offered by the contractor. Please pay due attention to the **points 2.2, 2.3, 2.4** of this document.

2.6. FINANCIAL OFFER

A total value of the contract for the whole contract duration (i.e. maximum 4 years) shall not exceed EUR 220 000. Annual expenses to be borne by the contractor under this contract shall not exceed EUR 55 000.

In case of circumstances which a diligent contracting authority could not foresee at the time of the contract signature, the contracting authority may exceed the price ceiling of the contract without a new procurement procedure up to 50 % of the initial contract value. Such a modification shall not alter the subject matter of the contract (Financial Regulation Article 114a).

The price quoted must fulfil the following requirements:

- A **total** fixed price expressed **in Euro** must be included in the tender for all the services to be provided to the BEREC Office.
- The price quoted must **be firm and not subject to revision**.
- The BEREC Office, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, is exempt from all duties, taxes and dues, including value added tax (VAT).

Such charges may not therefore be included in the calculation of the price quoted.

VAT exemption is granted to the BEREC Office by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

For those countries where national legislation provides an exemption by means of reimbursement, **the amount of VAT is to be shown separately**. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the BEREC Office is exempt from VAT.

- The price quoted shall be subject to the terms set in Article I.4 of the model contract attached.
- The BEREC Office will reject tenders where no financial offers are proposed.

The part that the tenderer intends to subcontract shall be precisely indicated and detailed.

The total price quoted cannot exceed EUR 55 000 (fifty five thousand euro) per year. The total fixed price shall include all expenditures of the contractor for the provision of the services under this contract. Tenders with a higher total price shall be rejected.

3. TECHNICAL SPECIFICATIONS

3.1. CONTENT AND DELIVERABLES

The contractor shall provide the following information services:

- Summaries of recent telecommunications regulatory developments at EU level, in the EU and EFTA member states (news flashes), to be issued shortly after the event.
- Reports on key developments in telecommunications regulation at the EU level as well as in the EU, EFTA member states and EU candidate states, to be provided at least 6 times a year.
- Monthly updated overviews tracking the current status of the main EU initiatives that affect telecommunications.
- At least monthly updated database of market analysis notifications received by the European Commission from national regulatory authorities under EU framework with summaries of notifications.
- Comparative tables benchmarking specific regulatory topics in the EU and EFTA member states (so called cross-Country Analysis), to be updated at least four times per year.
- Access to public documents concerning EU legislation, decision of European NRAs, official public documents and court decisions relevant to the telecommunications sector.
- Response to related regulatory questions (enquiry service) submitted by BEREC Office staff members

The information services shall cover the following fields:

- Electronic communications markets, networks and services
- Internet markets and services
- Frequencies
- Consumer protection
- Anti-trust and competition law

provided by:

- European Commission, European Parliament, COCOM and other relevant EU agencies and institutions
- European Court of Justice
- Relevant National Governments
- National NRAs (of EU members states, EFTA states, observer states).

3.2. TARGET AUDIENCE

The services under the future contract shall be delivered and be accessible to the employees of the BEREC Office. Each user – employee of the BEREC Office shall have an individual login and password for accessing deliverables of the services.

3.3. ACCESS TO THE ONLINE REGULATORY DATABASE

BEREC Office users shall have individual access to the regulatory database established and managed by the tenderer. The database shall contain current and past deliverables of the tenderer.

4. RESPONSIBILITIES

5.1. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE A PROVISION OF:

- all the deliverables, i.e. publications, reports, analysis, updates, overviews, alerts, trackers, flash messages;
- an individual access to the regulatory database of the tenderer protected by password to each individual user - employee of the BEREC office;
- the contractor should clearly designate a project manager or relevant contact person in its tender. The project manager (contact person) will be the only point of contact with the BEREC Office and the one with whom the BEREC Office will have dealings. The project manager will communicate with the BEREC Office and be the one responsible for provision of timely responses and solutions regarding the aspects related to provision of services to the BEREC Office.

5.2. BEREC OFFICE RESPONSIBILITY

It is the BEREC Office's responsibility to designate a project manager or relevant contact person in charge with all communications and dealings with the contractor.

The BEREC Office shall prepare and provide to the contractor the list of all users - employees of the BEREC Office. The list shall be checked and updated regularly.