

Tender Specifications No 2016-BEREC-20

Study on Net Neutrality regulation

Riga, 18 October 2016



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PART 1: TECHNICAL DESCRIPTION

1 CONTEXT AND OBJECTIVES

From the beginning, the net neutrality debate has had a strong transnational dimension and has regularly sprung from one continent to the other. As a result of this intense debate, regulations and decisions regarding net neutrality have been issued by public authorities in different regions of the world.

Now that these newly issued net neutrality rules have to be applied and enforced in their respective legal environment, observers will most likely continue to draw comparisons between the various NN regulations. There is a risk that such comparisons, if not based on a thorough understanding of the specificities of the legal and institutional context in which these regulations have been adopted and will be implemented, would lead to misinterpretations and erroneous conclusions.

Moreover, BEREC believes it would be pointless to try to determine whether it is the US or EU framework (which have both just been adopted after extensive public debates), is the more “neutral”, or more “pro-operator”. BEREC is confident that a study commissioned would, on the contrary, provide an impartial approach that could both contribute to an informed public debate and constitute a precious source of information for NRAs and BEREC in the course of the implementation of the EU regulation 2015/2120 complemented by the guidelines that was issued by BEREC recently.

The BEREC Office issues this call for tenders to acquire this study to help BEREC deliver its Work Programme regarding net neutrality developments.

2 GENERAL SCOPE

The study intends to help BEREC and NRAs to better define their options and identify the requirements and challenges they may face in the future. It would focus on three non-European countries (thereafter “benchmarking countries”): the US, India and Chile.

After an introduction that would give a proper and common understanding of the legal regimes that stakeholders are subject to, the study shall provide an international approach regarding practical aspects of the operational implementation processes (and tools) in the various legal frameworks at stake.

The technical and commercial practices to be observed carefully by public authorities are of a great diversity and enforcement mechanisms imply different levels of action by the concerned public authority: information gathering, technical analysis, sanctions, etc. Among these, information gathering in particular may be of primary importance, given the fact that operators as a whole will generally have little incentive to spontaneously help the regulator to overcome the asymmetry of information between itself and the industry.

Taking into account these diversities of possible infringements and enforcement methods, European authorities would take great benefit from an analysis of how competent authorities

outside the EU use available traffic management detection tools, which can be based on technical solutions (e.g. probes, network tests) or crowdsourcing abilities (e.g. user generated complaint platforms, distributed network test applications), as well as tools designed for the verification of QoS transparency requirements.

Moreover, the study shall analyse (in countries where it is relevant) the method and grid of analysis according to which commercial practices implemented by ISPs, and specialised services provided through their network, are assessed (ex-ante or ex post, economical or technical analysis, relation to competition law, etc.) by competent authorities outside the EU.

As described above, the legal regimes vary across countries and in order to provide a framework for understanding the practical implementation, monitoring and enforcement of the net neutrality regulation, the study should first provide an overview of the legal and institutional context related to regulation of electronic communications in each of the benchmarked countries.

In doing so, each of the analysed legal regimes should be assessed under the following elements:

- material content and scope of the provisions (i.e. material rights and obligations), including to which services they apply (e.g. on the retail level to internet access services and/or on the wholesale level including to interconnection agreements);
- authority enforcing the provisions;
- procedure, including instruments for monitoring adherence to the rules (such as measurement tools) as well as instruments for collecting evidence (including but not limited to information requests);
- sanctions in case of infringement of the provisions.

The NN regulation in general is emphasizing several commercial, technical and contractual practices in both fixed and mobile markets such as:

- zero-rating, bundling, sponsored data;
- traffic differentiation between users, or between applications;
- blocking or throttling of some users, of some applications (e.g. streaming, peer-to-peer, newsgroups, SMTP protocol), of some terminal related practices (e.g. tethering);
- image or video compression;
- use of DPI (i.e. inspection of IP packets beyond the transport layer header);
- provision of specialised services;
- transparency of contracts or other commercial documents as regards QoS and traffic management (limitation and impact on QoS of internet access services), remedies available to the customer in case of discrepancy, rights and obligations, etc.

The study should extensively list the processes and tools (e.g. network tests, user generated complaint platforms, distributed network test applications, international

cooperation) in order to detect or characterise each of the aforementioned type of practices. For these purposes in particular the following categories shall be considered:

1. Deployed or under deployment in each of the benchmarked countries;
2. Imposed or suggested by the framework in each of the benchmarked countries, but not yet deployed or under deployment;
3. made publicly available by third parties but currently not imposed, suggested, deployed or under deployment in any of the benchmarked countries;
4. could be thought of (concepts) but not currently made publicly available by third parties nor imposed, suggested, deployed or under deployment in any of the benchmarked countries.

For each tool, the study should define:

- if the tool is public or private;
- what it exactly measures and how (methodology);
- how the tool is implemented and used in practice;
- the resources (including FTEs) dedicated to it;
- its benefits and drawbacks (e.g. capacity to measure user environment).

The study should also address relevant problems that may have occurred in practice e.g. due to a particular institutional setting (and how those were addressed).

The provider shall then determine the most relevant processes, tools and build extensive and close examination for each of them (case studies).

3 DURATION

The duration of the tasks, including the period of approval of the deliverables, must not exceed 7 months starting from the signature of the contract and is subject to the provisions of Article I.3 of the contract.

4 DELIVERABLES, MEETINGS AND TIMETABLE

4.1 Deliverables

The deliverables listed below must be provided by the contractor:

- **Preparatory documents for the inception meeting**, including a draft meeting agenda, methodology of data collection, reasoned proposals for data and information collection, including the list of private and public stakeholders involved in the project, internal resources and detailed timetable, to be delivered to the BEREC Office five working days before the inception meeting.
- **Inception report**: containing the minutes of discussions and conclusions reached in the inception meeting, final scope of the deliverables, and specifying the methodology, resources and objectives provided in the tender in accordance with the indications provided by the BEREC Office and BEREC during the inception meeting. The report

should take into account all observations and comments raised at the inception meeting and shall be made available within 1 week after the inception meeting.

- **Progress reports:** A concise progress report (of maximum 2 pages) shall be produced regularly providing information about advances, relevant risks or difficulties on collecting data or information as well as proposed measures to be taken. To be delivered every month after the inception meeting.
- **Final Report** of maximum 50 pages (excl. annexes) covering the deliverables set out above (including graphs, tables, etc.). This report will include an executive summary of maximum 3 pages, highlighting the key findings of the study in a structured way.

4.2 Delivery format

All data descriptions and any other information must be written in English.

All data and information sources have to be referenced.

All data will be submitted in an open electronic machine readable format, typically Word (.docx) files (if not stated otherwise). Exchange of advance copies as well as other non-formal communications shall take place via electronic mail.

4.3 Meetings and Communication

A schedule of meetings will be agreed with the contractor for this assignment. Such meetings will be attended by representatives of BEREC and the BEREC Office, the project manager leader and other members of the contractor's team, as required. Other knowledgeable external experts might be invited to participate by the BEREC Office.

The aim of the meetings will be to guide the work of the contractor. In particular, they will allow setting-up the initial orientations, review progress in critical milestones and review the deliverables of the assignment. The following meetings are foreseen:

Inception meeting

An inception meeting will be organised by the BEREC Office at the BEREC Secretariat in Brussels within the first months after signature of the contract. The BEREC Office together with the BEREC representative will determine during the inception meeting on the basis of a proposal from the contractor which information should be collected, the corresponding periods for data collections, the portfolio of countries, public and private stakeholders to be involved and other details of the study.

Interim video conference calls

Interim telephone / video conference calls may be organised by the BEREC Office, if required, after the inception meeting till the final meeting takes place.

Final meeting

The final meeting will be organised by the BEREC Office within 7 months after signature of the contract. The contractor will have to finalise all datasets and information and present them to BEREC.

Communication:

Throughout the duration of the project the BEREC Office will act as a single information point for the tenderer. The BEREC Office will therefore be responsible for coordinating the communication between the parties. Any communication requests to another party, as well as the corresponding response, have to be addressed to the BEREC Office, as indicated by Article I.8 of the contract.

Within three days following each telephone / video conference or meeting, the contractor will circulate minutes of the telephone conference to all participants, together with copies of presentations made or other related documents. The minutes shall be concise and concentrate on major decisions and shall list the open action points for the next reporting period.

4.4 Timetable

Title	Type	Due week
Preparatory documents for the inception meeting	Deliverable	Week 2
Inception meeting	Meeting	Week 3
Inception report	Deliverable	Week 4
Final Meeting	Meeting	Week 20
Final Report	Deliverable	Week 23
Interim video or conference calls, if required	Calls	Week 2 - 26
Progress reports	Deliverable	Week 5 - 20

5 TERMS OF APPROVAL OF REPORTS/DELIVERABLES

5.1 Report(s) and datasets

After reception of each Report included in section 4.1 above, except for the reports linked to payments, the BEREC Office will have 15 working days:

- to approve it,
- to reject it and request a new report.

If the BEREC Office does not react within this period, the deliverable shall be deemed to be approved.

Where the BEREC Office requests a new report/datasets because the one previously submitted has been rejected, this must be submitted within 10 working days. The new report shall likewise be subject to the above provisions. For the terms of approval of the reports linked to payments we refer to article I.5 of the contract.

5.2 Other Deliverables

The BEREC Office shall have 5 working days from receipt to approve or reject the minutes of the meetings and the presentation, and the Contractor shall have 5 working days in which to submit additional information or a new deliverable.

6 LAYOUT/CONTENT OF THE WORK PLAN

Offers should include a detailed work plan. The work plan should specify the management structure as well as the responsibility of each member of the team, including the main contractor and/or sub-contractors.

The work plan should include a list of tasks to be performed, with clear and realistic phases and milestones. Resources should be clearly associated to each task.

PART 2: ADMINISTRATIVE DETAILS

1 ELIGIBILITY REQUIREMENTS

The present tender documents are drawn up in respect of the Financial Regulation,¹ as well the Rules of Application², hereinafter referred to as the Financial Regulation.

Participation in the Office's procurement 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 in the field of public procurement on the conditions laid down in that agreement. The Office can therefore accept tenders from and sign contracts with tenderers from 34 countries, namely: the 28 EU Member States, 3 European Economic Area (EEA) Countries (Lichtenstein, Norway, Iceland) and 4 Stabilisation and Associations Agreements (SAA) Countries (FYROM, Albania, Montenegro and Serbia). The Office's procurement procedures are not open to tenderers from countries which have ratified the Multilateral Agreement on Government Procurement (GPA).

ADMISSIBILITY OF TENDERS

All the **requirements** related to the **submission and opening of the tenders** are detailed in the invitation to tender.

2 ADMINISTRATIVE REQUIREMENTS

A service provider may consider submitting a tender as a single entity or decide to collaborate with other service providers to present a bid: either by submitting a **joint tender** or through **subcontracting**. Tenders may also combine both approaches. Whichever type of bid is chosen, the tender must stipulate the legal status and role of each legal entity in the tender proposed.

2.1 Different ways to submit a tender

Options 1 to 4 below describe the different ways to submit a tender.

¹ Regulation (EU, Euratom) No. 966/2012 on the financial rules applicable to the general budget of the Union, as amended

² 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, as amended

Please make sure all required documents and evidences are submitted with your tender.

(Please refer to the checklist in Annex 7)

- Option 1:** Submission by **one tenderer: Private / Public entity / Individual.**
- Option 2:** Submission by **partners** as defined under section 2.2 below.
One must be designated as **lead partner/contractor.**
- Option 3:** Submission by one tenderer **with subcontractors** as defined under section 2.2 below
- Option 4:** Submission by partners (one must be designated as lead partner/contractor) **with subcontractors** as defined under section 2.2 below

The tender must include a cover letter (Annex 8) presenting the name of the tenderer (including all entities in case of joint offer as well as their roles) and identified subcontractors, if applicable.

2.2 Joint Tenders and Subcontracting

2.2.1 Joint tenders

In case of a joint tender submitted by a group of tenderers, these latter will be regarded as **partners**. If awarded the contract, they will have an equal standing towards the contracting authority in the execution of the contract.

The partnership may take the form of:

- a) a **new legal entity** which will sign the contract with the BEREC Office in case of award

or

- b) a group of partners not constituting a new legal entity, who via a **power of attorney (Annex 5)**, signed by an authorised representative of each partner (except the lead partner), designate one of the partners as lead partner, and mandate him as lead contractor to sign the contract with the BEREC Office in case of award.

In both cases, all partners shall be considered as tenderers and shall **assume joint and several liability towards the BEREC Office for the performance of the contract.**

2.2.2 Subcontracting

Subcontracting is a situation where a contract is to be established between the BEREC Office and a service provider and where this service provider, in order to carry out the contract, enters into legal commitments with other legal entities for performing part of the tasks foreseen in the contract.

The tenderer submitting the tender, if awarded the contract, shall become the sole contractor and shall assume **full liability toward the BEREC Office for the performance of the contract as a whole**. The other service providers will be regarded as subcontractors.

Subcontracting is subject to the provisions of Article II.10 of the model contract annexed to the invitation.

2.3 Identification of the tenderer – List of Forms & Evidences Required

Options 1/2/3/4: Documents to be provided by the single tenderer or lead partner:

- Annex 1: Administrative identification form (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 2: Legal Entities form (ORIGINAL filled in, signed by (an) authorised representative(s), and supported by relevant evidences according to the entity concerned, i.e. private/public/individual)

Economic operators already registered as a legal entity in the BEREC Office's or European Commission's files (i.e. they are or have been contractors of the BEREC Office or the European Commission) are not obliged to provide a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.

- Annex 3: Bank Identification form (ORIGINAL filled in according to the instructions contained in this form)

If the corresponding bank account of economic operators is already registered in the BEREC Office's or European Commission's files they are not obliged to provide a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.

- Annex 4: Declaration of honour on Exclusion Criteria and Selection Criteria (ORIGINAL filled in and signed by (an) authorised representative(s))
- Legible photocopy of the statutes of the legal entity (for public/private entities)
- Legible photocopy 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.

Options 2 and 4: documents to be provided by each partner, except the lead partner

- Annex 1: Administrative identification form (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 2: Legal Entities form (ORIGINAL filled in, signed by (an) authorised representative(s), and supported by relevant evidences according to the entity concerned, i.e. private/public/individual)
Economic operators already registered as a legal entity in the BEREC Office's or European Commission's files (i.e. they are or have been contractors of the BEREC Office or the European Commission) are not obliged to provide a new form, on the condition that they confirm that no change in the information already provided has occurred. In case of doubt, we recommend submitting a new form.
- Annex 4: Declaration of honour on Exclusion Criteria and Selection Criteria (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 5: Power of attorney (ORIGINAL filled in and signed by (an) authorised representative(s) of each partner)
- Legible photocopy of the statutes of the legal entity (for public/private entities)
- Legible photocopy 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.

Options 3 and 4: Documents to be provided by each subcontractor

- Annex 1: Administrative identification form (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 4: Declaration of honour on Exclusion Criteria and Selection Criteria (ORIGINAL filled in and signed by (an) authorised representative(s))
- Annex 6a: Letter of intent from each subcontractor (ORIGINAL signed by (an) authorised representative(s)) to confirm their willingness and availability to perform the tasks.

Individual external experts, not part of the tenderer's staff, foreseen to execute a part of the work are also to be considered subcontractors. Individual external experts will have to provide only the letter of intent in Annex 6b (ORIGINAL).

3 SIGNATURE OF THE TENDER

The signature of the single tenderer's or lead partner's authorised representative or representatives (preferably in blue ink) on the administrative identification form (**Annex 1**) will be considered as the signature of the tender, binding the single tenderer or the group of partners to the terms included in the tender.

4 LAYOUT OF THE TENDER

All tenders must be clear, complete and consistent with all the requirements laid down in the tendering documents and **presented in 3 sections** as follows:

4.1 Administrative section

The documentary evidence required in accordance with part 2 section 2, section 3, section 5.1 and section 5.2 of the Tender Specifications must be included in the administrative section of the tender. **Tenders not including the necessary evidence may be rejected**. The BEREC Office reserves the right, however, to request clarification or additional evidence in relation to the exclusion and selection stages after the opening within a time limit stipulated in its request and in the conditions explained in the invitation to tender.

4.2 Technical section

This section must address all the requirements laid down in Part 1 - Technical description of the tender specifications. Information included here will be used to conduct the qualitative assessment of the tenders on the basis of the technical award criteria listed in section 5.3 below. The BEREC Office will reject tenders where no technical offers are proposed.

4.3 Financial section

The price quoted must fulfil the following requirements:

- A **total** fixed price expressed **in Euro** must be included in the tender.
- 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 price must fall within the scope of these tender specifications and be broken down into unit prices per each of the different data sets (Tariff data, Market data, Quality and Investment data).
- 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 60 000 (sixty thousand). Tenders with a higher total price will be rejected.

5 EVALUATION OF TENDERS

The evaluation of tenders will be done in accordance with the following subsequent steps:

- The BEREC Office verifies that the **tenderer** is not in one of the situations covered by the exclusion criteria (first step, see section 5.1 below)
- For all tenderers that are not in one of the situations covered by the exclusion criteria, the BEREC Office verifies that the **tenderer** has the appropriate capacities to perform the contract on the basis of the selection criteria (second step, see section 5.2 below)
- For those tenderers that have met the minimum requirements for the selection criteria, the BEREC Office assesses the **tender** on the basis of the award criteria (third step, see section 5.3 below).

5.1 Exclusion Criteria

In accordance with the terms set in Article 141 of the Rules of Application³ of the Financial Regulation,⁴ 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 4) duly filled in and signed.

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

5.2 Selection criteria

The following selection criteria will be used to select the tenderers:

If the tender is submitted by partners (as defined under section 2.2 above):

- the selection criteria in respect of financial and economic capacity (see point 5.2.1 below) will be assessed in relation to the combined capacities of all the members of a partnership as a whole (including subcontractors);
- the selection criteria in respect of technical and professional capacity (see 5.2.2 below) will be assessed in relation to the combined capacities of all the members of a partnership as a whole (including subcontractors)

Documentary evidence of the tenderers' claims in respect of the selection criteria is required as indicated below. The tender should also include any other document that the tenderer(s) wish(es) to include by way of clarification.

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 BEREC Office that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

³ 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

⁴ Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No. 966/2012 on the financial rules applicable to the general budget of the Union

5.2.1 Financial and economic capacity

Criterion:	Average annual turnover of the last two financial years for which the accounts have been closed above EUR 60 000.
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 and below 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.

5.2.2 Technical and professional capacity

Tenderers (in case of a joint tender the combined capacity of all tenderers and subcontractors) must comply with the following criteria:

Criterion: Linguistic skills	Capacity to draft reports in English, with at least three reports delivered in the last three years showing the necessary language knowledge.
Documentary evidence:	List of at least three reports in the fields listed above performed in the past three years, or currently being performed.

Criterion: EEA-wide experience	Experience in projects with a scope covering more than one EEA countries, i.e. minimum two EEA Member States.
Documentary evidence:	List of at least two projects in the fields listed above performed in the past three years, or currently being performed.

Criterion: Experience in similar projects	Experience in data collection or drafting reports in the scope of telecommunications sector.
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Documentary evidence:	List of at least two projects in the fields listed above performed in the past three years, or currently being performed.
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Criterion: Qualification of the team	<p>The team delivering the service should include, as a minimum, the following profiles:</p> <p><u>Project manager/project management leader:</u> At least five year experience in project management, including overseeing project delivery, quality control of delivered service, client orientation and conflict resolution experience in project of a similar size and coverage.</p> <p><u>Other experts:</u> At least one other expert with relevant higher education degree and three years' professional experience in the field of in the market of electronic communications networks and services.</p> <p><u>Language quality check:</u> Members of the team should have high level language skills in English as guaranteed by past relevant experience.</p>
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Documentary evidence:	<p>Concise but informative curricula vitae of team members, with the educational and professional qualifications of the persons who will provide the service for this tender (CVs) including the management staff. Each CV provided should indicate the intended function in the delivery of the service.</p> <p>The Europass curriculum vitae template (available at https://europass.cedefop.europa.eu/en/documents/curriculum-vitae/templates-instructions) shall be filled in by each person involved in the execution of the tasks foreseen in the tender.</p>
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5.3 Award criteria

5.3.1 Technical award criteria

The tenders will be qualitatively assessed on the basis of the technical award criteria and the respective scores listed below:

<i>Technical award criteria</i>	Maximum score/weighting	Threshold
<p>1. Quality and relevance of the methodology</p> <p>1.1. Quality and insight of context, objectives and the different tasks to be performed, demonstrated by explanations and elaborations on the way in which the tenderer intends to handle the various requirements (data collection, data analysis)</p> <p>1.2. Value added in respect of information included in the tender specification.</p> <p><i>(All the sub-criteria above are of equal relative importance)</i></p>	(60)	(30)
<p>2. Scope and relevance of the offered service</p> <p>2.1. Scope of the offer and relevance of the information, provision of extra information and variables.</p> <p>2.2. Soundness and appropriateness of the proposed approach and information gathering techniques.</p>	(20)	(10)

<p>3. Management and coordination of the deliverables</p> <p>3.1. Feasibility of meeting the objectives specified in the tender specifications (outlined e.g. by a workplan or timetable).</p> <p>3.2. Sound and realistic allocation of:</p> <ul style="list-style-type: none"> - financial and - human resources, including allocation of expertise - organisation of the work <p>3.3. Adequacy of the quality control system applied to the service foreseen in the tender specifications (the quality of all information supplied to the contracting authority, the deliverables, the language quality check, and continuity of the service in case of absence of a member of the team).</p> <p><i>(All the sub-criteria above are of equal relative importance)</i></p>	<p>(20)</p>	<p>(10)</p>
<p>TOTAL</p>	<p>100</p>	<p>50</p>

Minimum score per criterion is indicated in the second column (called “Threshold”).

Minimum total score (threshold):

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

5.3.2 Price

The price quoted must comply with the requirements laid down in Part 2 - section 4.3 above.

6 AWARD OF THE CONTRACT

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 in section 5.3 and calculated according to the following formula:

The method applying a weighting for quality and price expressed in percentage (e.g. 60%/40%):

score for tender X	=	cheapest	*	100	*	price weighting (in %)	+	total quality score (out of 100) for all award criteria of tender X	*	quality criteria weighting (in
		price of tender X)

7 PAYMENT AND STANDARD CONTRACT

- Payments under the contract shall be made in accordance with articles I.5 and II.21 of the draft contract attached, provided that the contractor has fulfilled all contractual obligations. No pre-financing is foreseen in this contract.

8 VALIDITY OF THE TENDER

Period of validity of the tender shall be three (3) months from the closing date for submission of the tender given above.

9 ADDITIONAL PROVISIONS

- Changes to tenders will be accepted only if they are received on or before the final date set for the receipt of tenders.
- Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.
- No information of any kind will be given on the state of progress with regard to the evaluation of tenders.
- All documents submitted by tenderers will become property of the BEREC Office and will be regarded as confidential.

10 LIQUIDATED DAMAGES: SEE ARTICLE II.15 OF THE MODEL CONTRACT

11 NO OBLIGATION TO AWARD THE CONTRACT

Initiation of a tendering procedure imposes no obligation on the BEREC Office to award the contract. The BEREC Office shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the contract.

12 RESULTS

The results of the service must be forwarded to the BEREC Office. The results will belong to the BEREC Office.

If the result is not to be fully created for the purpose of the contract it is to be clearly pointed out in the tender. There should be information provided about the scope of

pre-existing materials, their source and when and how the rights to them have been acquired.

The provisions on the use of the results and ownership of the results can be found in the Model Service Contract (Article I.10 Exploitation of the results of the contract and Article II.13 Intellectual Property Rights).

PART 3: ANNEXES

ANNEX 1: ADMINISTRATIVE IDENTIFICATION FORM

<u>TENDERER'S ID</u>	
Name	
Legal form	
Date of registration	
Country of registration	
Registration number	
VAT number	
Address of registered office	
Contact address (if different)	
URL	
<u>AUTHORISED REPRESENTATIVE(S)⁵</u>	
<u>CONTACT PERSON</u>	
Name	
Forename	
Position	
Telephone	
Fax	
Email	
<u>DECLARATION BY THE AUTHORISED REPRESENTATIVE(S):</u> I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	

⁵ Please include the names of the legal representative(s) whose contract signature is required in accordance with the statutes of the organisation and the official document to be provided as required in Part 2 under section 2.3

Place and date:

Name (in capital letters) and signature:

ANNEX 2: LEGAL ENTITIES FORM

As required in PART 2 under section 2.3 of the tender specifications.

A standard template in each EU language is available at:

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

ANNEX 3: BANK IDENTIFICATION FORM

As required in PART 2 under section 2.3 of the tender specifications

A standard template in each EU language is available at:

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

ANNEX 4: DECLARATION ON HONOUR ON EXCLUSION CRITERIA AND SELECTION CRITERIA
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The undersigned [*insert name of the signatory of this form*], representing:

<i>(only for natural persons)</i> himself or herself	<i>(only for legal persons)</i> the following legal person:
ID or passport number: ('the person')	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number: ('the person')

I – Situation of exclusion concerning the person

1. declares that the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;	<input type="checkbox"/>	<input type="checkbox"/>
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;	<input type="checkbox"/>	<input type="checkbox"/>

(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(d) it has been established by a final judgement that the person is guilty of the following:		
(i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the legal provisions of the country where the contracting authority is located, the country in which the person is established or the country of the performance of the contract;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) the person has shown significant deficiencies in complying with the main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an Authorising Officer, OLAF or the Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>

<p>(g) for the situations of grave professional misconduct, fraud, corruption, other criminal offences, significant deficiencies in the performance of the contract or irregularity, the applicant is subject to:</p> <ul style="list-style-type: none"> i. facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body; ii. non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics; iii. decisions of the ECB, the EIB, the European Investment Fund or international organisations; iv. decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law; or v. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body. 	<input type="checkbox"/>	<input type="checkbox"/>
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II – Situation of exclusion concerning natural persons with power of representation, decision-making or control over the legal person

Not applicable to natural persons, Member States and local authorities

2. declares that a natural person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers company directors, members of management or supervisory bodies, and cases where one natural person holds a majority of shares) is in one of the following situations:	YES	NO	N/A
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III – Situation of exclusion concerning natural or legal persons assuming unlimite liability for the debts of the legal perosn

3. declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations:	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV – Grounds for rejection from this procedure

4. declares that the above-mentioned person:	YES	NO
(h) has distorted competition by being previously involved in the preparation of procurement documents for this procurement procedure.	<input type="checkbox"/>	<input type="checkbox"/>

V – Remedial measures

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

VI – Evidence upon request

Upon request and within the time limit set by the contracting authority the person must provide information on the persons that are members of the administrative, management or supervisory body. It must also provide the following evidence concerning the person itself and concerning the natural or legal persons which assume unlimited liability for the debt of the person:

For situations described in (a), (c), (d) or (f), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (a) or (b), production of recent certificates issued by the competent authorities of the State concerned are required. These

documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by 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.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

VII – Selection criteria

5. declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	YES	NO	N/A
(a) It fulfills the applicable economic and financial criteria indicated in section 5.2.1, part 2 of the tender specifications;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable technical and professional criteria indicated in section 5.2.2, part 2 of the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. if the above-mentioned person is the sole tenderer or the leader in case of joint tender , declares that:	YES	NO	N/A
(c) the tenderer, including all members of the group in case of joint tender and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VIII – Evidence for selection

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender

specifications and which are not available electronically upon request and without delay.

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.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.

Full name

Date

Signature

ANNEX 5: POWER OF ATTORNEY⁶

MANDATING ONE OF THE PARTNERS IN A JOINT TENDER AS LEAD PARTNER AND LEAD CONTRACTOR

The undersigned:

– *Signatory (Name, Function, Company, Registered address, VAT Number)*

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by [*Company 1, Company 2, Company N*], and led by [*Company X*], in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached.
- 2) If the BEREC Office awards the Contract to the group of partners constituted by [*Company 1, Company 2, Company N*], and led by [*Company X*] on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
 - (a) All partners shall be jointly and severally liable towards the BEREC Office for the performance of the Contract.
 - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
 - 1) Payments by the BEREC Office related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: [*Provide details on bank, address, account number*].
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
 - (a) The lead partner shall submit the tender on behalf of the group of partners.
 - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
 - (c) The lead partner shall act as a single contact point with the BEREC Office in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the BEREC Office, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the BEREC Office express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the BEREC Office for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the BEREC Office's consent.

⁶ To be filled in and signed by each of the partners in a joint tender, except the lead partner;

Signed in on [dd/mm/yyyy]

Place and date:

Name (in capital letters), function, company and signature:

ANNEX 6A: LETTER OF INTENT FOR SUB-CONTRACTORS

STUDY ON NET NEUTRALITY REGULATION

The undersigned:

.....

Name of the company/organisation:

.....

Address:

.....

Declares hereby that, in case the contract is awarded to [*name of the tenderer*], the company/organisation that he/she represents, intends to collaborate in the execution of the tasks subject to this call for tender, in accordance with the tender specifications and the tender to which the present form is annexed, and is available to carry out its part of the tasks during the period foreseen for the execution of the contract.

Declares hereby taking note of Art. II.10 regarding subcontracting and Art. II.24 in relation with checks and audits of the service contract.

Place and date:

Name (in capital letters) and signature:

ANNEX 6B: LETTER OF INTENT FOR EXTERNAL EXPERTS

STUDY ON NET NEUTRALITY REGULATION

The undersigned:

.....

Address:

.....

Declares hereby that, in case the contract is awarded to [*name of the tenderer*], he/she intends to collaborate in an individual capacity as **an external expert** in the execution of the tasks subject to this call for tender, in accordance with the tender specifications and the tender to which the present form is annexed, and is available to carry out its part of the tasks during the period foreseen for the execution of the contract. In addition, the undersigned declares not to have any conflict of interest in connection with the contract, and not to be in one of the situations of exclusion referred to in Article 106(1) of the Financial Regulation.

Declares hereby taking note of Art. II.10 regarding subcontracting and Art. II.24 in relation with checks and audits of the service contract.

Place and date:

Name (in capital letters) and signature:

ANNEX 7: CHECK LIST OF DOCUMENTS TO BE SUBMITTED

The purpose of the table below is to facilitate the preparation of the tender by providing an overview of the documents that must be included (marked by ■) depending on the role of each economic operator in the tender (be it lead partner, partner in joint bid, single tenderer or subcontractor/external expert). Some of the documents are only relevant in cases of joint bids or when subcontractors are involved. Additional documents might be necessary depending on the specific characteristics of each tender.

Description	Lead partner in a joint bid	All the other partners in a joint bid	Single tenderer (with or without subcontractors)	Subcontractor	Subcontractor – External expert
<i>Administrative section of the tender</i>					
Annex 1: Original Administrative identification form (see section 2.3, part 2)	■	■	■	■	
Annex 2: Original Legal Entity Form (see section 2.3, part 2)	■	■	■		
Annex 3: Original Financial Identification form (see section 2.3, part 2)	■		■		
Annex 4: Original Declaration of honour on Exclusion Criteria and Selection Criteria (see section 2.3, part 2)	■	■	■	■	
Annex 5: Original Power of attorney (see section 2.3, part 2)		■			
Annex 6 a: Original Letter of intent from each subcontractor (see section 2.3, part 2)				■	
Annex 6 b: Original Letter of intent from each subcontractor (see section 2.3, part 2)					■
Annex 8: Cover letter for the tender	■		■		
Legible photocopy of the statutes of the entity (see section 2.3, part 2)	■	■	■		
Legible photocopy of the notice of appointment of the persons authorised to represent the tenderer (see section 2.3, part 2)	■	■	■		
Evidence of financial and economic capacity (see section 5.2.1, part 2)	■	■	■		
Evidence of Technical and professional capacity (see section 5.2.2, part 2)	■	■	■	■	■

<i>Technical Section of the tender (see section 4.2, part 2)</i>	■		■		
<i>Financial Section of the tender (see section 4.3, part 2)</i>	■		■		

ANNEX 8: COVER LETTER FOR THE TENDER

Please select the appropriate option

OPTION 1

Single legal person or private/ public entity

- The offer is submitted by a **one tenderer**.
-

OPTION 2

Joint offers

- The offer is submitted by **partners**.
- Company acting as **lead partner** for the group of tenderers:
.....
 - **Other partners** taking part in the joint tender:
.....
.....
-

OPTION 3

Joint offers

- The offer is submitted by one tenderer **with subcontractors**.
- Company acting as **tenderer**:
.....
 - **Subcontractors**:
.....
.....

OPTION 4

Joint offers

- The offer is submitted by partners **with subcontractors**.
 - Company acting as **lead partner** for the group of tenderers:
.....
 - **Other partners** taking part in the joint tender:
.....
.....
 - **Subcontractors:**
.....
.....

