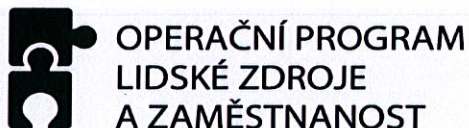




ÚŘAD PRO OCHRANU HOSPODÁŘSKÉ SOUTĚŽE



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PODPORUJEME
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Reference number

ÚOHS-5695/2011/920/ZNo

Contact Person/Phone

Nowaková/358

In Brno:

18. 4. 2011

Operational program:	Human Resources and Employment OP
Call identification:	48-The call for proposals IP 4.1-Effective Management Office - Strengthening institutional capacity and efficiency of public administration, 4.4a1
Registration number:	CZ.1.04/4.1.00/48.00007
Name of the project:	Improving effectiveness of the management process in the Office for the protection of competition

This project is funded by the ESF through the Human Resources and Employment Operational Program and the State Budget.

Contracting entity: Czech Republic – Office for the protection of competition

Seat: třída Kpt. Jaroše 7, 604 55 Brno

ID: 65349423

The name of the public contract:

Providing the expert advisory services for the application of so-called effect based approach in mergers evaluation and antitrust

Persons authorized to act on behalf of the contracting entity:

Mr. Petr Rafaj - Chairman of Office for the protection of competition

Ms. Zuzana Nowaková - Project manager

Type of award procedure:

Open procedure of a small range. The award procedure shall not be conducted pursuant to Act No. 137/2006 Coll. On Public Contracts (hereafter only "Act"), but shall be conducted pursuant to



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třída Kpt. Jaroše 7, 604 55 Brno, Česká republika, Tel: +420 542 167 111, Fax: +420 542 167 112, www.compet.cz

Guidelines on public procurement "Human resources and employment Operation program" from 1.1.2011, issue 1.4.

TENDER DOCUMENTATION FOR BELOW-THE-TRESHOLD PUBLIC CONTRACT

1. Definition of the public contract

1.1. Definition of the project, within which the public contract belongs

This public contract is being realized as a part of the project "Improving effectiveness of the management process in the Office for the protection of competition". This project is supported by Human resources and employment Operation program (project registration number CZ.1.04/4.1.00/48.00007). The realization of this project originates from the need of the Office for the protection of competition (hereafter only "Office") to follow the current trends in competition protection with focus on the more economic approach. The main target of one of the project activities is improving more economic approach at the Office, which will further help the Office to better focus on antitrust practices with market impact and on better assessment of such practices through economic analyses.

1.2. The subject-matter of the public contract

The aim of this public contract is preparing expert materials, with which the Office will be able to better implement the more economic approach for the competition protection. The performance of public procurement is defined as provision of expert consulting services for application of the so-called effect based approach in the field of mergers and antitrust.

1.3. Further specification of the subject-matter of the public contract

The part of this public contract is provision of expert consulting services in Czech or English language for using the effect based approach in mergers and antitrust field. Provision of expert consulting services includes mainly, but not only:

- assisting with preparation of internal guidelines and processes for application of the effect based approach at the Office in the fields of:
 - mergers
 - abuse of dominance
 - horizontal agreements and vertical agreements
- assisting with preparation of a Notice on application of the more economic approach (the Notice will be similar to best practices and guidelines published by the European Commission). The Notice will be published by the Office and will constitute a new methodological guideline of the Office in analyzing antitrust and merger cases
- assisting with methodological materials on how to carry out sector enquiries focusing on market analysis and detection of dysfunctional markets. This will also include identification of the appropriate market indicators and data sources that could be used in market analysis and optimal use of received data
- cooperation on methodology on data collection, which are further used in economic and econometric analyses

- cooperation on preparing a methodology for using and carrying out consumer surveys (with respect to using questionnaires). These are often used in cases when it is necessary to ask numerous respondents and when SSNIP test simulation is appropriate
- cooperation on preparing a methodology on consumer harm and antitrust damages with respect to hardcore cartel agreements and exclusionary conduct. Final paper will include cross-sectional application, before-after approach, difference-in-differences approach, industrial organization models and cost-based analysis.
- personal consulting at the Office to above mentioned topics and materials for at least 5 weeks total; this period will be divided into a period of at least 2 weeks, a period of 2 weeks and a period of one week by the instructions of the submitter. 5 weeks of personal consulting will be carried out during the first 3 months of the contract. Continuous and intensive cooperation (via email, phone or video conference when possible) with Chief Economist and his unit is expected outside the 5 weeks of personal consulting; consultations to economic and econometric analysis done at the Office within the timeframe
- methodological consultations on current economic and econometric analysis made by the Office

The final outcome of the subject-matter of this contract part includes preparation of the following materials:

- Draft for releasing the Notice on application of the more economic approach
- Draft for releasing methodology for carrying out sector enquiries
- Draft for releasing methodology for data collection
- Draft for releasing methodology for carrying out consumer surveys
- Draft for releasing methodology for antitrust damages quantification

Preparation of above-mentioned documents will be carried out by a tenderer in cooperation with the Office. An intensive cooperation is expected between the tenderer and the Office (esp. Chief Economist Unit). The Office will then use and further develop the prepared materials.

2. Requirements for the number of bids and variants of tender

The contracting authority hereby excludes the possibility of variant solutions.

3. Time and place of the performance of the public contract

3.1. Time limit for the performance of a part of the public contract

The time limit for the performance of this part of the public contract is set at six months from the date of the conclusion of the contract between the parties.

3.2. Place of the performance of the public contract

The place of the performance of the public contract is the seat of the contracting entity: 605 44 Brno, třída Kpt. Jaroše, č.p. 1926, č. or. 7.

4. Qualification requirements

4.1. Basic qualifications

Basic qualifications shall be satisfied by the economic operator which,

- has provided an affidavit of indebtedness to the relevant tax office and social security office

4.2 Professional qualifications

The economic operator shall prove the fulfillment of professional qualifications prerequisites by furnishing:

- the certificate of incorporation or other similar proof of legal subjectivity and
- proof of business license (Evidence of professional qualification).

4.3. Technical qualifications prerequisites

The economic operator shall demonstrate the fulfillment of technical qualifications prerequisites by furnishing:

- a list of at least three principal consulting services in the field of competition economics (mergers and antitrust) provided by the economic operator in 2008, 2009 and 2010, with an indication of the extent (price and description of the service) and the time of provision thereof, and including at least one service in a minimum amount of 750,000 CZK net of VAT. Principal consulting services in the field of competition economics (mergers and antitrust) shall be deemed to mean contracts for the provision of consulting services regarding economic analysis in the field of mergers and antitrust; **this list shall be supplemented by:**
 - a) certificate issued and signed by a contracting authority, if the services were provided to the contracting authority;*
 - b) a certificate issued by another person, if the services were provided to a person other than the contracting authority; or*
 - c) a solemn declaration of the economic operator, if the services were provided to a person other than the contracting authority and, simultaneously, if it is not possible to obtain a certificate pursuant to item a) and b) above from such a person for reasons on the part thereof.*
- a list of persons, including name and surname (of at least one person), to be involved in the performance of the public contract, and who were also involved in the execution of contracts for the provision of consulting services *regarding* economic analysis in the field of mergers and antitrust in 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010.

4.4. The contracting authority is entitled to require of the economic operator to clarify in writing produced information or evidence or furnish further additional information or evidence demonstrating the fulfillment of qualifications. The economic operator shall be obligated to discharge such an obligation within a reasonable period of time fixed by the contracting authority.

5. Commercial terms and conditions

5.1. The service provider shall be obligated to enable the persons authorized to exercise control over the project (particularly the provider of financial support, the Ministry of Labor and Social Affairs, the Ministry of Finance, the Supreme Audit Office, the European Commission, the European Court of Auditors), from which the contract is financed, to examine documents related to the fulfillment of the contract, for the archiving period stipulated by Czech legal regulations (the Act No. 563/1991 Coll., On Accounting and the Act No. 235/2004 Coll. On Value Added Tax).

5.2. If the service provider is in default with respect to the provision of services according to the tender documentation, he shall pay a penalty of 0.05% of the price of services provided (i.e. including VAT) for each day of delay. Claiming or payment of this penalty does not affect the right of the contracting entity to recover damages. The contracting entity is entitled to claim damages in excess of the penalty.

5.3. The service provider will start work on the subject-matter of the public contract immediately (within 10 days) after the contract is signed by both parties.

5.4. In case that the ordering party will be in delay with providing the cooperation necessary for the realisation of the subject of the contract, the period of execution according to article 3.1 Time limit for the performance of a part of the public contract is extended and the initiation of the work on the subject-matter according to the article 5.3 is postponed by the time of the delay. The record on the delay of the ordering party, its reasons and the time period will be made and signed by both contracting parties.

5.5. The service provider commits himself to indicate on invoices the name of the contract (project "Improving effectiveness of the management process in the Office for the Protection of Competition", tender name "Providing of the expert advisory services for the application of so-called effect based approach in mergers evaluation and antitrust" and registration number CZ.1.04/4.1.00/48.00007) co-financed by EU structural funds, from which costs will be financed, and to proceed in accordance with the instructions of the contracting authority in this area.

5.6. The service provider is obligated to properly retain complete documentation related to the Project implementation, including accounting records in accordance with Article 90 of the Council Regulation (EC) No 1083/2006, at least until the end of 2021, and if the Czech legal regulations provide for a time limit longer than the time limit prescribed by the European legal regulations, the longer time limit will be applied. Each original accounting document must indicate the name of the contract project "Improving effectiveness of the management process in the Office for the Protection of Competition" and registration number CZ.1.04/4.1.00/48.00007 and by the following text ***"This project is financed by European social fund through Operational program Human Resources and Employment and state budget of the Czech Republic."***

5.7. In order to verify the fulfillment of the obligations arising from the provisions of the OP LZZ Program, the service provider shall be obligated to provide the employees or representatives of the authorized authorities (OSF of the Ministry of Interior, the Ministry of Regional Development, the Ministry of Finance, the European Commission, the European Court of Justice, the Supreme Audit Office, the respective tax authority and other authorized bodies of the State Administration) with the requested information and documents by the end of 2021. It shall be

obligated to create conditions for the above-mentioned persons to conduct inspections related to the project implementation, and to provide assistance in carrying out inspections.

5.8. The service provider shall be obligated to implement the information and publicity measures under the Commission Regulation (EC) No 1828/2006, which stipulates, among others, the responsibilities of beneficiaries relating to information and publicity measures for the public.

5.9. The service provider shall be obligated to ensure that obligations in relation to the Project are also fulfilled by the partners and suppliers involved in the project by the end of 2021.

5.10. The service provider shall be obligated according to Manual for publicity of Operation Program (i.e. logos of European Social Fund, EU, Operation Program Human Resources & Employment and declaration "We support your future").

5.11. The contract must follow the laws of the Czech Republic and in the case of litigations is given exclusive jurisdiction to Czech courts.

6. Requirements regarding the calculation method of a tender price

6.1. The tenderer (service provider) shall quote in the tender the amount of tender price in CZK both including VAT and net of VAT in compliance with Act No. 235/2004 Coll. on Value Added Tax, as amended.

Name of a part of the public contract	Tender price (in CZK net of VAT)	Tender price (in CZK incl. VAT)
Provision of expert consulting services for the application of the so-called effect based approach in the field of mergers and antitrust		

6.2. Tender price is the maximum permissible price, which shall not be exceeded unless explicitly specified in the tender documentation. The tender price shall include all necessary costs of the tenderer (service provider) related to the service provision. In case the contract is concluded, the price will cover all expenses incurred in fulfilling the obligations associated with the execution of the contract, such as price developments in the area, until the termination of the obligations arising from the contract. The price also reflects expected fluctuations in the exchange rate of the Czech crown to foreign currencies, until the termination of the obligations arising from the contract.

6.3. The price of the subject-matter of the public contract can be changed only in case that during the execution of the contract, the legal regulation governing the rate of VAT is changed; in such a case the parties shall be obligated to conclude an amendment to the contract.

7. Payment conditions

7.1. The contracting entity shall not provide advance payments. Services provided will be invoiced after handover and takeover of the perfect work. The record on proper and full service provision will be written up by the representatives of both contracting parties.

7.2. The contracting entity shall pay for the services rendered on the basis of invoices by a bank transfer to the account of the provider stated in the header of the contract. An invoice shall meet all requirements of a tax document prescribed by the applicable law, particularly by the Act No. 235/2004 Coll. on Value Added Tax, as amended. The record on proper and full service provision signed by authorised representatives of both parties will be enclosed to the invoice. The invoice has to include following information: the project concerned is Operational Program Human Resources and Employment with the name "Improving effectiveness of the management process in the Office for the Protection of Competition", tender name "Providing of the expert advisory services for the application of so-called effect based approach in mergers evaluation and antitrust" and has to be specified by number of the project (registration number CZ.1.04/4.1.00/48.00007). If the invoice does not meet all requirements of a tax document, as described above, or if there are other errors in the content, the contracting entity is entitled to return it to the service provider within the due date and the service provider is obliged to issue a corrected or supplemented invoice. In case the invoice is returned to the orderer in compliance with the previous sentence, the term of repayment is stopped and the new term of repayment shall commence from the beginning from the day following the day when the corrected or supplemented invoice meeting all requirements according to specific legislation, is delivered to the contracting entity. The invoice due date is 15 days from the date of the delivery of the invoice to the contracting entity. The Parties agreed that the date of payment means the date of debiting the invoiced amount from the contracting entity's account. The contracting entity is not in default, if the invoice is paid within 15 days after its receipt, but after the time limit, which is indicated on the invoice as the due date.

8. Bid (Tender)

8.1. Contents of the tenderer's bid

The bid will further include:

- Identification data of the tenderer
- Tenderer's contact person including his/her contact address and e-mail address
- Documents demonstrating the fulfillment of qualifications prerequisites
- Bidding price processed pursuant to the contracting entity's requirements stated in chapter 6 of this tender documentation
- Draft contract signed by a person authorized to act on behalf of or for the tenderer. **The contract will be concluded in Czech language.** The draft shall be identical with the contract proposal that is attached to this Documentation. The commercial conditions and the payment conditions set in draft contract are mandatory and the tenderer is not authorized to change the provisions of these articles. Any alteration made to the commercial and payment conditions set in draft contract will be considered by the evaluation committee as not fulfilling the requirements set by contracting entity in tender documentation. An offer, which would include the amended contract, will be eliminated and the candidate, who would submit their offer in the draft contract, will be disqualified from further participation in procurement proceedings.

8.2. Submission of a bid (tender)

For the submission of a bid, the contracting authority shall indicate the following:

A bid shall be submitted to the contracting authority in the Czech or English language, in writing in (one) original. The original shall be submitted in a properly sealed envelope denoted by the identification information of the tenderer and the name of the public contract: „OP LZZ- Providing the expert advisory services for the application of so-called effect based approach in mergers evaluation and antitrust“. The contracting entity further recommends denoting the envelope with a title "DO NOT OPEN (NEOTVÍRAT)" in the upper left corner, and to secure it against unauthorised opening with a seal up and stamp. Bids may be delivered by mail or in person via the filing room of the contracting authority at: the Office for the protection of competition, třída Kpt. Jaroše 7, 604 55 Brno, during the official working hours of the filing room from 08:00 a.m. to 04:00 p.m.

8.3. Time limit for the submission of bids (tenders) and opening of envelopes

The time limit for the submission of bids (tenders) shall terminate on 6.5.2011 at 11:00 a.m. Bids submitted after the expiry of the time limit will not be opened.

9. Bid evaluation criteria

A basic evaluation criterion for the award of each part of the public contract is the lowest bidding (tender) price net of VAT. The ranking of bids shall be established according to the bidding price.

10. Estimated value of the bid

Estimated value of the bid is 1.700.000,- CZK without VAT.

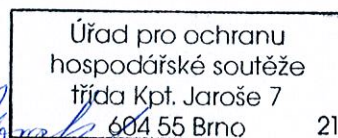
11. Other conditions

Bids submitted are not sent back to the tenderers but remain with the contracting entity as part of the documentation on public contract.

12. Contact persons

The contracting entity's contact person for this open procedure is Ms. Zuzana Nowaková, phone: +420 542 167 358, e-mail: zuzana.nowakova@compet.cz

Written requests for additional information on the award conditions shall be send in a copy also in electronic form at this e-mail address: tomas.houska@compet.cz



Zuzana Nowaková
Project manager