



Commission for  
**Communications Regulation**

## Invitation to Tender

### Spectrum Liberalisation in the 900MHz and 1800MHz Bands - Economic Advice

Document No:	09/22
Date:	30 March 2009

All tenders should be clearly marked:-

‘Spectrum Liberalisation in the 900MHz and 1800MHz Bands’  
Tenders must be submitted by registered post or by hand. Tenders  
must be submitted in three copies in the format described in  
section 4, to the following address:-

David Thom  
Commission for Communications Regulation  
Blocks D,E,F                      Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
Ireland

Ph: +353-1-8049602    Fax: +353-1-804 9665    Email:  
[david.thom@comreg.ie](mailto:david.thom@comreg.ie)

**Applications must be received on or before 12.30Hrs (Irish  
Time) on 24 April 2009**

Tenders which are delivered late regardless of circumstance will  
not be considered.

The withdrawal of tenders will not be permitted after their  
acceptance.

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# 1 Invitation to Tender

## 1.1 Requirement

Provision of professional technical services:

- To provide detailed economic advice on the options for the optimal strategy for the release of spectrum in the 900MHz band in order to achieve the Commission for Communications Regulation's ("the Commission") statutory objectives.
- The analysis in general should present; a consideration of the costs in terms of the running and administration of any chosen auction methodology, as well as the benefits of each of each auction type being considered for the future of the 900MHz band: highlighting the one(s) that will best allow the Commission to fulfil its statutory objectives.
- To submit an interim and subsequent final written report to the Commission; and
- To liaise with staff of the Commission and its advisors as necessary during any subsequent release of spectrum in the 900MHz band.

## 1.2 Awarding Authority

The Commission for Communications Regulation  
Block DEF  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
Ireland

## 1.3 Overview of the Requirement

The Commission has responsibility under the Communications Regulation Act, 2002 as amended, for the issue of licences under the Wireless Telegraphy Act 1926 as amended and General Authorisations for electronic communications networks and services. These include licences issued to mobile telephony networks using both the 2G (GSM) and 3G (IMT 2000) standards. Currently, each mobile operator's licence contains standard provisions obliging the licensee to offer a guaranteed minimum level of quality of service (QoS), and to meet certain specified minimum roll-out requirements. The requirements contained in these licences are detailed in Appendix 3 of this document.

The purpose of this Invitation to Tender (ITT) is to provide detailed economic advice; on the options for the optimal strategy for the release of spectrum in the 900MHz band. The analysis in general should include and present; a consideration of the costs in terms of the running and administration of any chosen auction methodology, as well as the benefits of each of each auction type being considered for the future of the 900MHz band: highlighting the one(s) that will best allow the Commission to fulfil its statutory objectives.

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<sup>12</sup> See Appendix 3 for a list of all associated documents.

The Commission now invites tenders from suitably qualified persons to provide these professional technical services. The successful tenderer(s) will be required, subject to contract, to carry out this analysis on the Commission's behalf.

Tenderers must clearly demonstrate their ability to conduct the analysis, as required and provide written reports on the results by documenting, as relevant, the following:

- An understanding of the Requirement and knowledge of the associated documents in their proposed tender;<sup>2</sup>
- The professional qualifications and relevant training of the proposed project personnel and support personnel;
- Details of the equipment, software and any modelling tools to be used;
- A knowledge of relevant European initiatives for "spectrum liberalisation" in the 900MHz and 1800MHz bands including those at the European Commission (EC), the Conference of European Postal and Telecommunications Administrations (CEPT) and in any other European States; and
- Details of similar work completed to-date, including any samples which can be provided.

#### 1.4 Provision of Information

The Commission proposes to release the following information relating to this ITT, on request:

- The name and address of the successful tenderer, and
- Overall contract value of the successful tender.

It should be noted that under the Freedom of Information Act, 1997 (as amended) information provided in this ITT may be disclosed where a request is made for access to records and the public interest value of releasing such information is deemed to outweigh the right to confidentiality. Tenderers must specify to the Commission any information which they do not wish to be disclosed. The Commission will consult with the relevant tenderer before making any decision on releasing such information in response to a request under the Freedom of Information Act 1997 (as amended).

The Commission undertakes to hold confidential any information provided by tenderers subject to:

- Disclosure of the information specified above as being information that will be released on request; and
- The Commission's obligations under law, including the Freedom of Information Act, 1997 (as amended).

## 1.5 Tender and Contractual Arrangements

Tenders must adhere to the format set out in Section 4 and must be completed in the English language. For the avoidance of doubt, failure to do so will result in disqualification of the tenderer.

The solution offered may involve the provision of services from either a single party or a group/consortium of bidders. Where a tender is based on a group/consortium of business interests, the tender must also identify:

- The prime partner in the group/consortium;
- The number of parties involved and names of each party; and
- The proposed arrangements for its operation, including the nature and area of participation of each party in the context of the contract in question.

Where a tender from a group or consortium of bidders is selected as the preferred bid, the Commission will enter into negotiations with a view to concluding a contract with a prime contractor within that group or consortium, who will then take responsibility for all matters arising under the contract.

The Commission reserves the right to select individual components from tender(s) and upon agreement with the tenderer to comprise a total solution as relevant.

Tenders must contain the tenderer's best and final offer for the award of contract. All prices must be quoted in Euro and be provided inclusive of VAT.

## 2 Requirements of Contract

### 2.1 General Requirements

This specification contains details of the minimum requirements of this ITT. Tenders must clearly demonstrate that these requirements can be met. Proposals above the minimum requirements should be detailed in the response and may attract extra marks. However any further and associated costs must be detailed separately.

Tenderers must have a proven track record and capability for providing a professional, high quality, accurate and compliant service similar to the services required in this ITT.

Award of the contract will be dependent upon compliance by the successful tenderer with the tax clearance requirement of Irish public sector contracts procedures (which are subject to Article 45 of EU Directive 2004/18/EC relating to procedures for the award of public service contracts) and relevant statutory taxation requirements in relation to taxation of professional services provided to the public sector.

Tenderers are required to provide a statement that none of the circumstances listed in paragraphs 1 and 2 of Article 45 of EU Directive 2004/18/EC apply to them (copy of Article 45 attached at Appendix 2).

It should be noted that the Commission reserves the right to cancel the tender process at any time should it see fit to do so.

The Commission will retain all intellectual property rights over all documents, records and reports produced (electronic and hard copy) and all such material shall be returned to the Commission upon the completion of the contract.

### 2.2 Specific Requirements

#### 2.2.1 General

The purpose of this ITT is to engage the services of an experienced and suitably qualified professional contractor to provide detailed technical and economic advice on the options for the optimal strategy for the release of spectrum in the 900MHz band.

The analysis in general should present; a consideration of the costs in terms of the running and administration of any chosen auction methodology, as well as the benefits of each of each auction type being considered for the future of the 900MHz band: highlighting the one(s) that will best allow the Commission to fulfil its statutory objectives. This should also include any further submissions from MNOs in light of ComReg 09/14.<sup>4</sup>

Analysis and recommendations are sought in relation to issues including, but not limited to:

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<sup>4</sup> See Appendix 3

<sup>7</sup> See Appendix 3

#### 2.2.2 Potential licence conditions

- Analysis of the costs, benefits, advantages and disadvantages regarding other potential licence conditions in light of the Commission's statutory functions and objectives, including but not limited to:
  - coverage (its feasibility in terms of number of sites used), traffic projections, voice or data only, roll out conditions, "use it or lose it" licence conditions to avoid spectrum hoarding,
  - the nature and level of appropriate financial and other incentives which would encourage bidders to propose MVNO commitments in any release of 900MHz spectrum,
- Benchmarking conclusions with international (best) practices, and in particular any similar work undertaken in any other CEPT Administration or European Member State; and
- Evaluation of conclusions in light of the particular circumstances in Ireland, including taking into account any relevant information supplied by the Commission.

#### 2.2.3 Spectrum Auction Strategy

- Analysis and recommendation/s regarding the optimal allocation mechanism/s to release spectrum in the 900 MHz band (in whole or in part). This should involve consideration of issues including but not limited to:
  - Analysis of different auction types,
  - Benchmarking conclusions with international (best) practice, and in particular any similar work undertaken in any other CEPT Administration or European Member State; and
  - Evaluation of conclusions in light of the particular circumstances in Ireland, including taking into account any relevant information supplied by the Commission.

#### 2.2.4 Specifics of Auction Design

- Analysis and recommendations regarding the specifics of the auction strategy recommended. This should involve consideration of issues including but not limited to:
  - Ensuring equitable access to all lots,
  - Prevention of collusion before, during and after the recommended auction, including consideration of whether anonymity of bidders is required and what options are available in this regard,
  - Strategies to avoid gaming as well as ensuring the transparency of the auction process,
  - whether any reserve price is used or not and the respective advantages or disadvantages of this approach,
  - Review of the practicalities of auctions e.g. Software, location of bidders, timing, etc;
  - Availability and potential supply of suitable software to facilitate the desired auction type,

- Benchmarking conclusions with international (best) practice, and in particular any similar work undertaken in any other CEPT Administration or European Member State;
- Evaluation of conclusions in light of the particular circumstances in Ireland, including taking into account any relevant information supplied by the Commission;
- Conducting modelling analysis; and
- Setting out applicable auction mechanics, auction rules and their formulation suitable for publication including participation in any stakeholder workshops held by ComReg.

#### 2.2.5 Spectrum fees

- Analysis and recommendations regarding the nature and level of spectrum fees for allocated 900 MHz spectrum. This should involve consideration of issues including but not limited to:
  - The appropriateness of balancing of spectrum access fees relative to the build out of the network in the first 3 years of the licence;
  - A suitable fee structure to encourage mobile operators which continue to use GSM 900 to phase-out GSM-only networks, having regard to factors including: spectrum efficiency (such as number of users and traffic supported per MHz), operational cost savings in terms of reduced power consumption, lower maintenance costs, and simplicity of interconnection etc;
  - Benchmarking conclusions with international (best) practice, and in particular any similar work undertaken in any other CEPT Administration or European Member State; and
  - Evaluation of conclusions in light of the particular circumstances in Ireland, including taking into account any relevant information supplied by the Commission.

#### 2.2.6 Reserve Price

- Where a reserve price is used; analysis and recommendations regarding the methodology for determining the optimal reserve price, for allocated 900 MHz spectrum and the appropriate reserve price itself. This should involve consideration of issues including but not limited to:
  - A review of different methodologies that could be used to establish reserve prices for allocations of spectrum used to provide public mobile and other relevant services. This review should identify, amongst other things, the and reasoning and assumptions underpinning these methodologies and relevant economic, market and other factors used in these methodologies,
  - A review of the reserve prices used in other countries for the same or similar blocks of spectrum in the 900 MHz and 1800 MHz bands;
  - Benchmarking conclusions with international (best) practice, and in particular any similar work undertaken in any other CEPT Administration or European Member State; and
  - Evaluation of conclusions in light of the particular circumstances in Ireland, including taking into account any relevant information supplied by the Commission.



### 2.2.7 Liaison

Reviewing submissions made in response to ComReg Document 09/14<sup>7</sup>, assisting in the preparation of a further response to consultation and any subsequent information memorandum (IM).

### 2.2.8 Reports to Be Submitted

The successful tenderer will produce an interim and final report detailing the conclusions of the study, including all justification, modelling and assumptions used in reaching these conclusions. The exact format of each report will be detailed in the contract and as such communicated to the successful tenderer.

The successful tenderer must submit:

- All electronic reports in both Microsoft Word and Adobe PDF formats using a template as agreed in advance with the Commission;
- A back-up electronic copy of the reports on a CD-ROM, and
- A printed and bound copy of each complete report.

## 2.3 Price Quoted

The price submitted in tenders must be inclusive of all costs associated with the project including; the preparation and if necessary the presentation of the written reports to the Commission, as well as any travel and accommodation costs the tenderer estimates are necessary.

Note: The total price submitted in tenders must not exceed the threshold (€80,000 Inc. V.A.T.)<sup>8</sup>

## 2.4 Equipment and software

The successful tenderer will be responsible for procuring all of the necessary equipment, licences and software modelling required: to fully complete the analysis, to the standard agreed with the Commission.

## 2.5 Location and Confidentiality

The successful tenderer will be required to work alongside Commission staff and other advisers from time to time. Where face to face meetings are required these will be held at the Commission's premises in Dublin unless otherwise agreed by the Commission. The confidentiality of the work will be protected at all times.

## 2.6 Duration of the Assignment

The following timescale indicates key deadlines in the project:

Results of Tendering Process to be communicated to all parties by the end of April 2009 or as soon as possible thereafter; and

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<sup>8</sup> Exceeding this threshold will result in the tenderers disqualification.

- Target date for commencement of the project: Beginning of May 2009;
- Target date for the submission of the first report, 31 July 2009, second report 30 September 2009.

It is intended to put the contract in place for the period May 2009 until June 2010.

## 2.7 Other Information

In general the successful tenderer:

- Will be required to comply with the requirements for the awards of Irish public sector contracts;
- Must agree to a confidentiality agreement covering the organisation and the individuals assigned to the project (see Appendix 1); and
- Must enter into a formal and binding contract for the work specifications required.

### 3 Conditions of Tendering

Detailed contractual arrangements are not within the scope of this document. However, the following conditions of tendering apply and should be noted in tenders submitted. By responding to this ITT, tenderers agree to be bound in all respects by all of the terms and conditions contained herein. Prior to the deadline for the receipt of tenders the Commission may delete, vary, amend or extend any item or requirement in this ITT.

#### 3.1 Financial Status of Successful Contractors

Before contracts are awarded, the successful contractor (and agent, where appropriate) will be required to comply with the prevailing tax clearance procedures.

A successful tenderer will be required to promptly produce a Tax Clearance Certificate from the Irish Revenue Commissioners. In addition, such contractors must retain records of tax reference numbers for any sub-contractors, whose payments exceed €635 including VAT.

Application for a Tax Clearance Certificate may be made to the Irish Revenue Commissioners by way of a standard form which will be provided to the successful tenderer by the Commission in due course.

Where a Tax Clearance Certificate expires during the course of the contract, the Commission will require a renewed certificate or statement. All payments under the contract will be conditional on contractors being in possession of valid certificates at all times. In addition, all payments will be subject to Withholding Tax as laid down by the Revenue Commissioners.

#### 3.2 Conflict of Interest

Any conflicts of interest involving a contractor (or contractors in the event of a group or consortium bid) must be fully disclosed. Any registerable interest involving the contractor and the Commission or their relatives must be fully disclosed in the response to this ITT, or should be communicated to the persons specified at Section 3.7 immediately upon such information becoming known to the tenderer in the event of this information only coming to their notice after the submission of the tender and prior to the award of the contract. The terms "registerable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act 1995.

#### 3.3 Duration of Contract

It is intended that this ITT will give rise to a contract for the provision of the services in question, to the Commission from the date of commencement of the contract for a period ending on 30 June 2010. [The contract will include the usual clauses relating to early termination, e.g. liquidation of the contractor, failure to provide agreed services, and so on.]

#### 3.4 Information Supplied by Tenderer(s) to be Contractually Binding

Information supplied by tenderer(s) will be treated as contractually binding and the Commission, reserves the right to seek further clarification or verification of any such information.

### 3.5 Costs incurred in Preparing Tenders

The Commission will not be liable in respect of any cost incurred by service providers in the preparation of tenders or any associated work effort including subsequent travel to present the tenders.

### 3.6 Time Available for The Commission to Accept Tenders

All tenders must be kept open for at least 4 calendar months<sup>9</sup> from the closing date for receipt of tenders.

### 3.7 Submission of Tenders

Tenders must be completed in accordance with the format outlined in Section 4 of this document. Tenders which are incomplete may be rejected.

Tenders should be submitted by registered post or by hand. Tenders must be submitted in two in the format described in section 4, to:-

David Thom  
Commission for Communications Regulation  
Block DEF  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
Ireland

### 3.8 Deadline for Receipt of Tenders

Applications must be received on or before **12.30Hrs (Irish Time) on 24 April 2009.** Tenders which are delivered late (whether such lateness is occasioned through the use of tenderers' agents or otherwise) will not be considered.

### 3.9 Acceptance of Tenders

3.9.1 The Commission reserves the right at its sole discretion, to accept or reject any tender (in whole or in part) and to waive any informality or irregularity. Furthermore the Commission is not bound to accept the lowest priced tender or any tender.

3.9.2 The contract if awarded shall be awarded to the tenderer that has submitted:

- A tender in full compliance with this Invitation to Tender and the conditions of tendering herein; and
- A tender which has been assessed to be the most economically advantageous proposal by reference to the award criteria as outlined in Section 6 herein.

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<sup>9</sup> Failure to do so will lead to the tenderers disqualification.

- 3.9.3 If a tender is accepted, written notification of acceptance of a tender will be given to the successful tenderer and no tender shall be deemed to be accepted until such notification has been given.
- 3.9.4 The Commission may make acceptance of any tender conditional upon the tenderer providing (at the tenderer's expense) such security for the due performance of the contract The Commission may require.

This procedure is then concluded by a contract signed by the parties involved.

## 4 Format of Tender

All costings for the project must be quoted in euro. Any exchange rate risk will be borne by the tenderers.

Tenderers should outline the payment terms which they consider to be appropriate to the proposed assignment.

Separate prices must be provided for the minimum requirements specified. Prices should distinguish between labour costs and associated overheads such as travel and subsistence.

All information arising from the tender process will be and shall, remain the property of the Commission. Your agreement to this must be included in your detailed tender. The successful tenderer will be required to sign a confidentiality agreement.

Tenders must take the following format:-

### 4.1 General Information

- a) Name, address, telephone and fax number of tenderer. Name of person within the tendering business dealing with the matter;
- b) Name, address, telephone and fax number of any third-parties involved in the tender. Name of person within third-party business dealing with the matter;
- c) Where applicable, a description of role or element of contract to be fulfilled by any third-party;
- d) Where applicable, identification of party who will carry overall responsibility for the contract and his/her position within the contracting company/business;
- e) Please state if your organisation is accredited with ISO, or other recognised quality standard equivalent;
- f) Confirmation of acceptance by the tenderer and any third parties of the conditions of tender described in Section 3 of this document.

### 4.2 Details of the Tendering Firm

During the evaluation, the suitability of tenderers will be checked by reference to their financial and economic standing and technical capability.

#### 4.2.1 Economic and Financial Standing

Tenderers must provide evidence that they have a sufficiently sound economic and financial standing to undertake the project. The following information must be provided in response to this paragraph:

- (a) An appropriate statement from appropriate financial institutions evidencing the tenderer's financial standing and evidence of relevant professional risk indemnity insurance;

- (b) Presentation of the tenderer's balance sheets or extracts therefrom, where publication of the balance sheets is required under company law in the country in which the service provider is established;
- (c) A statement of the tenderer's overall turnover and its turnover in respect of the services to which this contract relates for the three previous financial years;
- (d) Details of any professional indemnity insurance policy the tenderer may have;
- (e) A statement from the tenderer that none of the circumstances listed in paragraphs 1 and 2 of Article 45 of EU Directive 2004/18/EC apply to them (copy of Article 45 attached at Appendix 2).<sup>10</sup>

#### 4.2.2 Technical Capability

Evidence of the technical capability of the tenderer will be assessed by reference to the following and the required information should be provided in response to this paragraph:-

- (a) The relevant professional qualifications of the personnel, including managerial personnel, who would be responsible for providing the services under the contract. Current curriculum vitae<sup>11</sup> outlining details of similar projects on which they have worked, their specific responsibilities in relation to such projects together with details of formal qualifications or expertise suited to the conduct of the work under tender;
- (b) An indication of the technical staff who would be involved in the contract, whether or not belonging directly to the service provider, especially those responsible for quality control;
- (c) A statement of the service provider's average annual manpower, and the number of managerial staff, for the last three years;
- (d) A statement of the service provider's proposed modelling equipment and software; including its full capabilities in terms of carrying out the services under tender; and
- (e) A description of the service provider's measures for ensuring quality, which are relevant to this contract.

#### 4.3 Resource Allocation

A full description must be provided to the Commission of; the measures in place, including; those to deal with equipment or software failure, management, the nature and level of supervision which will be provided to ensure that a high quality service will be delivered.

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<sup>10</sup> Failure to provide any of the information listed in Section 4.2.1 (a) to (e) inclusive will lead to the tenderers disqualification.

<sup>11</sup> The use of sample curriculum vitae will lead to the tenderers disqualification.



#### 4.4 Detailed Proposal

The proposal must include the following:-

- (a) A detailed statement of the tenderer's understanding of the assignment and the work to be performed;
- (b) A detailed description of the individuals proposed for the assignment, in particular, position within the firm, number of years with the firm, proposed role/responsibility in the assignment, description of previous relevant projects and experience;
- (c) A statement on conflict of interest: The proposal must contain a clear statement that there is no existing or potential conflict of interest in relation to the proposed assignment.
- (d) A statement regarding the property of information arising from the assignment contract: The tenderer must clearly state in the proposal document that he/she agrees that all information arising from any contract that might be awarded will be and shall remain the property of the Commission. In particular, tenderers should include a statement to the effect that copies of all working papers and supporting material arising from the project will be made available to the Commission on request;
- (e) A sample report of similar work.

The work will be conducted in English and all deliverables will be submitted in English.

#### 4.5 Relevant Experience and References

Comprehensive details of experience of providing the required services are required. Tenderers must provide a list of names, addresses and telephone numbers of at least 3 existing customers who may be contacted for references in connection with the proposed services.

## 5 Points of Clarification regarding the Tender Process

Companies interested in tendering must signal such an interest on or before **12.30Hrs on Tuesday 7 April 2009<sup>12</sup>**, together with their contact details by post to:-

David Thom  
Commission for Communications Regulation  
Block DEF  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
Ireland

Or email to:-

[david.thom@comreg.ie](mailto:david.thom@comreg.ie)

There will be a period during which prospective tenderers may request clarification on issues specific to the submission of a competitive tender based on the terms of reference or any other points of clarification which are deemed relevant to this project. In particular, tenderers shall immediately notify The Commission should they become aware of any ambiguity, discrepancy, error or omission in this Invitation to Tender.

All points of clarification must be submitted in writing and should be labelled “Questions: Spectrum Liberalisation in the 900MHz and 1800MHz Bands” and should include full details i.e. name, contact person address, fax no, e-mail of the party posing the question. E-mails may be sent to the following address: [david.thom@comreg.ie](mailto:david.thom@comreg.ie) .

Questions addressed in any other way will not be answered. The latest time, without exception, for receipt of questions is **12.30 Hrs on Tuesday 14 April 2009.**

All questions and answers will be circulated to companies who have signalled interest in tendering as soon as possible after this date. The Commission will not however disclose the identity of any party posing a question, except where it is legally obliged to do so.

Whilst every endeavour is made to provide accurate information to potential respondents regarding the requirements for this contract, tenderers should form their own conclusions about the methods and resources needed to meet those requirements. The Commission cannot accept responsibility for the tenderers assessment of this assignment.

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<sup>12</sup> Failure to do so will lead to the tenderers disqualification.

## 6 Evaluation of Tenders and Award Criteria

The contract will be awarded on the basis of the most economically advantageous tender (MEAT) applying the following criteria, with the individual weighting of each criterion being indicated in parentheses:

- (i) demonstrated understanding and analysis of the requirements (15 points),
- (ii) comprehensiveness and quality of the approach proposed (20 points),
- (iii) the experience, expertise and qualifications of the team. Regard will be had as to the participation of team members with previous experience of similar initiatives (20 points),
- (iv) the stated ability of the tenderer to manage the project effectively and to complete it within the required time-scale (15 points) and
- (v) Ultimate Cost (30 points);

It should be noted that all responses to this tender will be opened at the same time, and not before the closing time for receipt of tenders has elapsed. The evaluation criteria will not be changed without prior notification to all applicants.

Tenderer(s) should note also that a further selection stage involving presentations and interviews may be necessary at short notice in order to select the successful candidate.

**NB: - The Commission reserves the right not to select the lowest price tender or any tender.**

## APPENDIX 1

### **CONFIDENTIALITY AGREEMENT COVERING TENDER TO COMMISSION FOR COMMUNICATIONS REGULATION**

The Chairperson  
Commission for Communications Regulation  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
Ireland

We hereby agree not to divulge any of the confidential information, written or oral, acquired during the course of our tender to the Commission for Communications Regulation (ComReg) to any company, person or persons.

We shall not at anytime after submitting the tender, use or attempt to use any such information concerning the business secrets or operational secrets of ComReg which we acquire in the course of our tender for our own, or other firm or person's benefit.

**Signed**

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**For**

## APPENDIX 2

### ARTICLE 45 OF EU DIRECTIVE 2004/18/EC<sup>13</sup>

#### Personal situation of the candidate or tenderer

1. Any candidate or tenderer who has been the subject of a conviction by definitive judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:

- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA <sup>14</sup>;
- (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 <sup>15</sup> and Article 3(1) of Council Joint Action 98/742/JHA <sup>16</sup> respectively;
- (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities <sup>17</sup>;
- (d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering <sup>18</sup>.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

They may provide for a derogation from the requirement referred to in the first subparagraph for overriding requirements in the general interest.

For the purposes of this paragraph, the contracting authorities shall, where appropriate, ask candidates or tenderers to supply the documents referred to in paragraph 3 and may, where they have doubts concerning the personal situation of such candidates or tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the candidates or tenderers concerned. Where the information concerns a candidate or tenderer established in a State other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities. Having regard for the national laws of the Member State where the candidates or tenderers are established, such requests shall relate to legal

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<sup>13</sup> As transposed into Irish law by the European Communities (Award of Public Authorities' Contracts) regulations 2006, Statutory Instrument 329 of 2006

<sup>14</sup> OJ L 351, 29.12.1998, p. 1.

<sup>15</sup> OJ C 195, 25.6.1997, p. 1.

<sup>16</sup> OJ L 358, 31.12.1998, p.2.

<sup>17</sup> OJ C 316, 27.11.1995, p. 48.

<sup>18</sup> OJ L 166, 28.6.1991, p. 77. Directive as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p. 76).

and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

2. Any economic operator may be excluded from participation in a contract who:

(a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;

(b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;

(c) has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;

(d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;

(e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

3. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in paragraphs 1 or 2(a), (b), (c), (e) or (f) applies to the economic operator:

(a) as regards paragraphs 1 and 2(a), (b) and (c), the production of an extract from the "judicial record" or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence that person comes showing that these requirements have been met;

(b) as regards paragraph 2(e) and (f), a certificate issued by the competent authority in the Member State concerned.

Where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1 and 2(a), (b) and (c), they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

4. Member States shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraph 3 and shall inform the Commission thereof. Such notification shall be without prejudice to data protection law

## Appendix 3; List of Relevant Documents

### GSM Licences

<http://www.comreg.ie/fileupload/publications/odtr0146.pdf>

<http://www.comreg.ie/fileupload/publications/odtr0001.pdf>

<http://www.comreg.ie/fileupload/publications/odtr0003.pdf>

### GSM Licence Schedules

<http://www.comreg.ie/fileupload/publications/odtr0146s.pdf>

<http://www.comreg.ie/fileupload/publications/odtr0001s.pdf>

<http://www.comreg.ie/fileupload/publications/odtr0003s.pdf>

### 3G Spectrum Rights of Use

<http://www.comreg.ie/fileupload/publications/ComReg0416.pdf>

<http://www.comreg.ie/fileupload/publications/ComReg0417.pdf>

<http://www.comreg.ie/fileupload/publications/ComReg0418.pdf>

### Relevant Consultations and Associated Responses

<http://www.comreg.ie/fileupload/publications/ComReg0857.pdf>

<http://www.comreg.ie/fileupload/publications/ComReg0914.pdf>