



Commission for  
**Communications Regulation**

## Invitation to Tender

### **Spectrum Liberalisation in the 900 MHz and 1800 MHz bands – 900 MHz Auction Rules and Implementation**

<b>Document No:</b>	<b>10/16</b>
<b>Date:</b>	<b>04 March 2010</b>

Parties interested in submitting a tender **must** register their interest by acknowledged e-mail to the address below on or before 12.30 PM Thursday 11 March 2010.

Tenders **must** be clearly marked:  
'Spectrum Liberalisation in the 900 MHz and 1800 MHz bands – 900 MHz Auction Rules and Implementation'

Tenders **must** be submitted by registered post or by hand and received on or before Friday 09 April 2010.

Tenders **must** be submitted as three printed copies and one read-only electronic copy on CDROM of the Submission (incorporating both the Pre-Qualification Questionnaire and the Tender as separate documents) in the format described and satisfy all requirements set out in this document, to the following address:

Ms. Sinead Devey  
The Commission for Communications Regulation,  
Abbey Court, Irish Life Centre, Lower Abbey Street,  
Dublin 1, Ireland.  
Phone: +353-1-8049621  
Email: [sinead.devey@comreg.ie](mailto:sinead.devey@comreg.ie)

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# 1. Invitation to Tender

## 1.1 DEFINITIONS

In the Process Documents, the following terms and expressions have the following meanings:

“**Associated Documents**” means the documents referred to in Appendix 3 of this ITT.

“**Commission**” means the Commission for Communications Regulation and includes, if the context so admits or requires, its advisors, employees, officers, contractors, representatives and/or agents.

“**Consultant**” means the consultant appointed pursuant to this tendering process and who shall enter into the Contract.

“**Consultancy Services**” mean the services which the Consultant will be required to provide to the Commission pursuant to the Contract and which are described in section 3.3 of this ITT.

“**Contract**” means the contract between the Commission and the Consultant for the provision of the Consultancy Services a draft of which is set out in Appendix 5 of this ITT.

“**ITT**” means this Invitation to Tender, together with the Appendices to this Invitation to Tender and any clarifications issued by the Commission in respect of this ITT.

“**Lead Firm**” means the member of the Tenderer nominated by the Tenderer as the Lead Firm in its PQQ and which will act as the Commission’s principal contact in respect of this process and, if applicable, the Contract.

“**Person**” means, if the context so admits or requires, an individual, sole trader, company, joint venture, partnership, consortium or any other form of grouping.

“**PQQ**” means the Pre-qualification Questionnaire provided with this ITT and which Tenderers are required to complete and include in their Submission, and any clarifications in respect of the PQQ issued by the Commission.

“**Preferred Tenderer**” means the Tenderer provisionally selected as the Preferred Tenderer from time to time in accordance with section 9.4 of this ITT.

“**Process Documents**” means the ITT and/or the PQQ, as the context admits or requires.

“**Submission**” means the completed PQQ and the Tender submitted by a Tenderer in response to the ITT.

“**Tender**” means the Tenderer’s response submitted in respect of the Consultancy Services in response to the ITT and which Tenderers are required to include in their Submissions.

“**Tenderer**” means a Person who is either a recipient of the ITT or submits a Submission in response to the ITT and includes, as the context admits or requires, any,

some or all the members (individually and/or collectively) of any consortium or group which submit a Submission (but does not include any proposed sub-contractors of the Tenderer).

## 1.2 INTRODUCTION

The Commission has responsibility, under the Communications Regulation Act 2002 (as amended), for the management of Ireland's radio frequency spectrum and is required to ensure the efficient management and use of same. It is also responsible, under the Wireless Telegraphy Act 1926 (as amended), for, amongst other things, the issue of licences to possess and use apparatus for wireless telegraphy.

The purpose of this ITT is to enable the Commission to procure independent, expert Consultancy Services for the provision of detailed auction rules for the assignment of spectrum rights of use (in the form of licences that would be issued under the Wireless Telegraphy Act 1926 (as amended)) in the 900 MHz spectrum band and for the provision of Consultancy Services associated with the effective and efficient implementation of an auction for these spectrum rights of use.

Tenderers should note that a Commission consultation process is ongoing in relation to, amongst other things, the methodology for assignment of spectrum rights of use in the 900 MHz band and the auction format and associated details and processes for the assignment of those rights of use.<sup>1</sup> Tenderers will note the matters that are currently the subject of consultation, and that the deadline for responses from interested parties is 26 February 2010.

The Commission will not make any decisions on any auction format or related processes for the future use of the 900 MHz band until it has fully considered all responses to Consultation 09/99 (and all other relevant information before it) and issued its Response to Consultation on these matters. For the avoidance of doubt, therefore, the publication by the Commission of this ITT is not, in any way, to be taken as any indication that it will necessarily proceed with the proposals set out in Consultation 09/99. Rather the Commission being conscious of the time available to award spectrum rights of use in the 900 MHz band and noting, in particular, that two of the three existing licences in the 900 MHz band will expire in mid-2011 nevertheless wishes to prepare appropriately and accordingly.

It is for this reason that the Commission is now publishing the ITT to allow suitably qualified parties to tender to supply the Consultancy Services. In light of the context in which the ITT is being published, the Commission reserves the right to modify the nature, extent and timing of, amongst other things, the ITT process, the Process Documents (including to suspend or terminate the tender process altogether) and the Consultancy Services. The Commission also reserves the right to tender again in relation to this matter.

For the avoidance of doubt, the Commission would not require provision of the Consultancy Services to commence no earlier than one month following publication by the Commission of its forthcoming Response to Consultation (unless otherwise specified by the Commission).

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<sup>1</sup> In this regard, tenderers are referred to Commission Document 09/99: <http://www.comreg.ie/fileupload/publications/ComReg0999.pdf> ("Consultation 09/99").

### **1.3 THE DOCUMENTS**

A contract notice in respect of this procurement was published on [www.etenders.gov.ie](http://www.etenders.gov.ie).

A PQQ is being made available with this ITT. The PQQ and ITT should be read together and are collectively referred to as the Process Documents. In the event of any conflict between the PQQ and this ITT, this ITT will generally prevail. However, any such conflict should be notified immediately to the Commission in writing and the Commission will clarify the position in such respect in such manner as it considers appropriate.

Tenderers are invited, pursuant and subject to the Process Documents, to participate in this process and to submit a Submission comprising (a) the completed PQQ and (b) their Tender. The PQQ and Tender should be submitted as separate documents but as a part of a single Submission at the same time in accordance with the Process Documents. Tenderers may submit one Submission only.

While the Commission reserves its right to engage in discussions and pre-evaluation meetings with Tenderers, Tenderers should assume that it may not do so and should put in their best Submissions from the outset. This is because the Commission wishes to run and complete this process in a short timeframe and, accordingly, may simply make its award decision based upon the original Submissions received without engaging in any further discussions.

Submissions must meet and address all the requirements, and must be in the format, required by the Process Documents. A Submission which fails to meet and/or address any or all of the requirements of the Process Documents and/or which is not in the specified format to the satisfaction of the Commission may be treated as failing to comply with mandatory conditions of the Process Documents and may, at the absolute discretion of the Commission and subject to applicable law, be accepted or rejected and eliminated from this process.

### **1.4 PROCESS OVERVIEW**

The Commission will first consider the completed PQQs in order to determine whether a Tenderer is suitably qualified. The Commission will then, based on the PQQs, select the Tenderers whose Tenders will be evaluated. This selection process will be undertaken in accordance with the process set out in section 9.3 of this ITT.

The PQQ sets out, in this regard, the information which is required by the Commission in order to assess the suitability of Tenderers in terms of their technical knowledge and experience, capability/capacity, organisational and financial standing to meet its requirements.

The Tenderers selected in accordance with section 9.3 of this ITT will then have their Tenders evaluated. This evaluation will be undertaken in accordance with the process set out in section 9.4 of this ITT.

## 1.5 PROCESS TIMELINES

The key target dates in relation to this process are as follows:

<b>Publication of Process Documents</b>	Thursday 04 March 2010
<b>Registration of Interest by acknowledged Email</b>	By 12:30 PM Irish Time, Thursday 11 March 2010
<b>Closing Date for Receipt of Queries</b>	12:30 PM Irish Time Thursday 18 March 2010
<b>Issue of Responses to Queries</b>	Thursday 25 March 2010
<b>Closing Date for Submissions</b>	Friday 09 April 2010
<b>Evaluation of Tenders</b>	Tuesday 20 April 2010
<b>Appointment of Preferred Tenderer</b>	Friday 30 April 2010
<b>Entry into Contract</b>	Friday 14 May 2010
<b>Commencement of Contract</b>	No earlier than one month following publication by the Commission of its forthcoming Response to Consultation (unless otherwise specified by the Commission)
<b>Provision of Draft Auction Rules and Auction Logistics Plan</b>	To be determined

The above dates are anticipated target dates only. The Commission has the right, at its absolute discretion and subject to applicable law, to extend or waive any of the timelines specified in the table of key target dates above or any other timelines specified in the Process Documents. The Commission may, at its absolute discretion, give (or not give) notice to Tenderers of any such extensions or waivers as it considers appropriate.

Once commenced, it is intended that the Contract shall remain in place until satisfactory completion of the auction process unless terminated earlier in accordance with the Contract.

## **2. Acceptance of Pre-Qualification Documents**

By downloading a copy of the Process Documents and/or submitting a Submission in response to the Process Documents, each Tenderer accepts and agrees to the terms and conditions of the Process Documents and will be legally bound by them.

Tenderers' attention is particularly drawn to section 10 of this ITT which contains conditions, disclaimers, requirements and caveats that apply to and govern the Process Documents and this process and which Tenderers are legally bound by in accordance with the above.



### **3. Specific Requirements of ITT**

#### **3.1 CONSULTANCY SERVICES**

This section details the substantive specific requirements of the ITT. The requirements described in this section are without prejudice to mandatory requirements set out in other sections of the Process Documents.

#### **3.2 GENERAL COMMENTS REGARDING SPECIFIC REQUIREMENTS**

The specific requirements (“Specific Requirements”) set out in section 3.3 below will be provided by the Consultant on foot of the Contract.

Subject to procurement law, the Commission reserves the right to modify the nature, extent and timing of the Specific Requirements as they would appear in the Contract.

All Consultancy Services provided are required to be consistent with the decisions made to-date, and to be made, by the Commission relevant to the 900 MHz spectrum rights of use auction process. In this regard, the Consultant will be required to take into account relevant information provided by the Commission (such as submissions received by the Commission in response to Consultation 09/99).

Tenderers should clearly demonstrate their ability to perform each of the Specific Requirements set out in Section 3. At a minimum, however, Submissions must include the following details in relation to the Specific Requirements:

- The completed PQQs must set out professional qualifications and relevant experience of the proposed project and support personnel (including those of consortium partners/members and any sub-contractors engaged for the provision of the Consultancy Services). These qualifications and experience shall be reviewed as part of the section 9.3 selection process;
- The completed PQQs must set out details of relevant projects completed to-date in this field, including any samples and references which can be provided. This shall be reviewed as part of the section 9.3 selection process;
- Confirmation by the Tenderer that all the software to be used in conjunction with the auction and its implementation will be licensed the Commission so that the Commission will have rights to use and, in turn, rights to sub-licence the use of this software in accordance with the Contract to third parties (the latter including prospective bidder/s and any party/s engaged by the Commission to verify the results of the auction outcome). This confirmation shall form part of the section 9.3 selection process;
- A statement of the Tenderer’s understanding of the Specific Requirements and knowledge of the Associated Documents. This statement shall be reviewed as part of the section 9.4 evaluation process;
- Details of the auction implementation algorithms, particularly auction winner and price determination algorithm/s, modelling tools, computer software and any specialised equipment (e.g. computer hardware) that would be used for the

provision of the Consultancy Services. This information shall be reviewed as part of the section 9.4 evaluation process;

- The total price of the Tenderer's proposal. This **must** be inclusive of all costs associated with the provision of the Consultancy Services 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. Tenders **must** also include an itemisation of the total cost which distinguishes between labour costs and associated overheads, such as travel and subsistence. This statement shall be reviewed as part of the section 9.4 evaluation process; and
- A statement on the tenderer's knowledge of European initiatives for "spectrum liberalisation" in the 900 MHz and 1800 MHz bands including of the European Commission (EC), the Conference of European Postal and Telecommunications Administrations (CEPT) and in other Member States. This statement shall be reviewed as part of the section 9.4 evaluation process.

### 3.3 SPECIFIC REQUIREMENTS

By issuing the ITT, the Commission is seeking to procure independent, expert Consultancy Services, for and on behalf of the Commission, in relation to the following:

#### *Pre-auction*

- 1 The provision of auction implementation algorithms, particularly auction winner and price determination algorithm/s, to give effect to the Commission's post-Consultation 09/99 decision/s on the auction format for the award of spectrum rights of use in the 900 MHz band. The Commission is likely to require such algorithms and explanatory material to be made publicly available;
- 2 The provision of computer software (and any necessary computer hardware or other equipment) for auction implementation and verification (such as that based on the auction implementation algorithms described above). Such software should have the facility to produce an accurate audit trail report that is suitable for publication by the Commission<sup>2</sup> and would be independently verifiable. While the Commission would not require the intellectual property of such computer software to be assigned to it outright it will require the Consultant to provide the software (and related licences to use the software) to the Commission and appropriate third parties (the latter including prospective bidder/s and any party/s engaged by the Commission to verify the results of the auction outcome);
- 3 The provision of detailed auction rules that would give effect to the Commission's post-consultation decision/s on the auction format (including other auction details and processes) for the 900 MHz, having regard to the Commission's statutory functions, objectives and duties.<sup>3</sup> All proposed auction

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<sup>2</sup> In line with the Commission's guidelines on the treatment of confidential information as set out in Commission document 05/24.

<sup>3</sup> Including the Commission's obligation to act in a manner which is non-discriminatory, fair, transparent, proportionate and to promote competition (such as to minimise the potential for anti-competitive behaviour).

rules and mechanics should be set out and documented in a detailed, clear and logical manner suitable for publication in the Commission's associated information memorandum ("Information Memorandum") on the auction;

- 4 The provision of assistance to the Commission in the publication of an Information Memorandum and other material in relation to the auction rules and process and to assist the Commission in addressing any queries raised in relation to auction implementation;
- 5 The provision of an auction logistics plan which should:
  - ensure that all computer software and hardware to be used in auction implementation is suitable and secure in terms of its reliability, the physical robustness of the Information Technology (IT) system, its redundancy and back-up systems;
  - ensure that the method chosen for bidders to communicate bids is secure, efficient and is not subject to tampering or other interference;
  - seek to ensure that the potential for anti-competitive behaviour (such as collusion and gaming) is minimised before and during the auction; and
  - ensure that the computer software to be used in auction implementation has an accurate audit process and that such data reports, if required by the Commission, is suitable for publication;
- 6 The provision of assistance to the Commission in its validation of the auction implementation algorithms, computer software, auction rules and auction logistics plan;
- 7 The provision of assistance to the Commission in its conduct of one or more pre-auction stakeholder workshop/s and live mock auction/s for the benefit of prospective bidders and other interested stakeholders;
- 8 The provision of assistance to the Commission throughout the auction implementation process (including but not limited to addressing any queries raised in relation to same);

### ***Conduct of Auction***

- 9 The provision of assistance to the Commission in the conduct of the auction which would include, but is not limited to, the following:
  - carrying out a secure analysis of bids received to determine the results of each stage of the auction;
  - at the conclusion of each relevant stage of the auction, securely notifying the results to the Commission and providing an audit trail report by which the Commission can verify the results of each stage of the auction. The audit trail

report should be produced in such a form that it can be made publicly available<sup>4</sup> and be independently verifiable; and

- reporting any suspected breaches of the auction rules to the Commission in a prompt and detailed manner and providing assistance to the Commission in any actions which may be taken by it in relation to such breaches;

### ***Post-auction***

- 10 The provision of assistance in relation to any post-auction review and verification process determined by the Commission;
- 11 The provision of assistance to the Commission in any litigation involving the Commission in relation to the subject matter of the ITT and Contract; and

### ***Ancillary***

- 12 The provision of assistance in relation to ancillary or related tasks as may be determined by the Commission.

### ***Reports to be Submitted***

- 13 The specific nature of each report required to be provided by the successful tenderer will be detailed in the Consultancy Agreement.
- 14 In relation to these reports, the successful tenderer would be required to 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 final reports on an appropriate electronic storage device (e.g. CD-ROM or memory stick); and
  - A printed and bound copy of each final report.
- 15 The provision of the Consultancy Services **must** be in English and all deliverables **must** be submitted in English.

## **3.4 PRICE AND TAX**

The total price submitted in Tenders **must** be inclusive of all costs associated with the provision of the Consultancy Services 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. Tenders **must** also include an itemisation of the total cost which distinguishes between labour costs and associated overheads, such as travel and subsistence.

All prices submitted **must** be quoted in euro and **must** separately identify the applicable VAT<sup>5</sup>. Any currency exchange rate risk shall be borne by the Consultant.

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<sup>4</sup> In line with the Commission's guidelines on the treatment of confidential information as set out in Commission document 05/24.

The total price submitted in tenders **must** not exceed the threshold of **€150,000 exclusive of V.A.T.** Tenderer's price proposals shall be reviewed as part of the section 9.4 evaluation process.

Award of the Contract will be dependent upon compliance by the Consultant 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.

In particular, the successful tenderer will be required to promptly produce a Tax Clearance Certificate from the Irish Revenue Commissioners.<sup>6</sup> In addition, such contractors shall be required to retain records of tax reference numbers for any sub-contractors, whose payments exceed €635 including VAT.

Where a Tax Clearance Certificate expires during the course of the Contract, the Commission will require a renewed certificate. 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 Professional Services Withholding Tax as laid down by the Revenue Commissioners.

### **3.5 EQUIPMENT AND LOCATION**

The successful tenderer shall be responsible for providing all of the necessary auction implementation algorithms, computer software and hardware, intellectual property licences and any other material and equipment required for it to meet the Specific Requirements. The successful tenderer will be required to work alongside Commission staff and its 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.

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<sup>5</sup> Tenderers should note that the Commission must account to the Irish Revenue Commissioners for VAT on a reverse charge basis in respect of any services received from a supplier who is based outside of Ireland. The rate applicable for consultancy services is 21%. Prices quoted from suppliers outside of Ireland **must** factor in this charge. Prices quoted from suppliers from within Ireland **must** also be inclusive of VAT as applicable.

<sup>6</sup> See <http://www.revenue.ie/en/business/running/tax-clearance.html>

## **4. Minimum PQQ Requirements**

### **4.1 PQQ**

This competition is open to all teams, joint ventures, partnerships or consortia led by the Lead Firm subject to the provisions of the Process Documents. The Submissions of Tenderers whose personal situation falls within any of the circumstances referred to in Article 45 of the Public Sector Directive 2004/18/EC will be rejected. This is a pass / fail requirement.

### **4.2 MINIMUM INSURANCE LEVELS**

The Lead Firm will be required prior to entering into the Contract, at a minimum, to take out and maintain at its sole cost and expense for the benefit of the Commission at all times for the duration of the Contract and for such further time as is reasonable and/or may be required in the circumstances the minimum insurance levels detailed below:

- €11,000,000 - Employers Liability insurance; and
- €5,000,000 - Professional Indemnity insurance.

The interest of the Commission must be noted on any such insurance policies or else an indemnity to principals clause must be contained on such policies. These insurance policies must cover all acts and omissions by the members of the Consultant including sub-contractors which relate to the Consultancy Services.

The above mentioned insurance levels comprise the Minimum Insurance Levels. Tenderers must provide evidence in their PQQ (to the satisfaction of the Commission) of an ability to take out and maintain such insurance. Tenderers must provide a letter/statement in their Submission from the Tenderer's insurance company or broker as evidence of its ability.

The insurance details provided by Tenderers and any existing arrangements they have in place or propose to make in relation to insurance are subject to further comment by the Commission and its insurance advisers and the Commission and its insurance advisers may query or seek clarifications or supplemental information on any matters pertaining thereto as they see fit.

The Commission reserves the right, at its absolute discretion, to reject any Submission if the terms of insurance which is proposed to be provided are not to the Commission's satisfaction. Tenderers should note that the Commission reserves the right to prescribe maximum levels of excess and other details regarding required insurance as a condition of Contract execution.

## **5. Tenderer Composition**

### **5.1 RELIANCE ON RESOURCES**

Tenderers may, where and provided it is appropriate for the Contract, rely on the capacities or abilities of third parties, or of consortium members or sub-contractors of the Tenderer, provided it can prove to the Commission that it will have at its disposal the resources necessary for the execution of the Contract.

Where, in order to prove it can satisfy the financial and economic standing, or technical capability necessary to undertake the Contract, a Tenderer or, in the case of a consortium, any member of a Tenderer relies on the resources of entities or undertakings with which it is directly or indirectly linked, whatever the legal nature of those links may be (including, for example, but not limited to, reliance on a parent company's resources, or the resources of a key sub-contractor), it must establish and provide evidence that it has available to it the resources of those entities or undertakings which are necessary for the performance of the Contract. This is provided for in the PQQ in sections 1.5 and 1.6. It should be noted that contractual assurances in favour of the Commission or the Tenderer to this effect may be required as a condition of award if this is considered appropriate or necessary.

If sufficient evidence is not provided, or it is not appropriate for the Tenderer to rely on those resources for the Contract, the Tenderer or a member of a Tenderer will be evaluated based on its own financial and economic standing, and technical capability.

### **5.2 LEAD FIRM**

Tenderers must have and nominate a Lead Firm which will act as the Commission's principal contact in respect of this process and, if applicable, the Contract. In the case of a Tenderer comprising a single member, the single member is the Lead Firm. Otherwise, the Tenderer must nominate the member of the Tenderer which is the Lead Firm where provided for in the PQQ.

### **5.3 CONSORTIA/GROUPINGS**

In order to offer the resources and the range and depth of skills required, organisations may wish to collaborate to form a consortium which will then apply as a single Tenderer for the purposes of the competition.

If the Tenderer is a consortium or grouping of members, the Tenderer must identify the proposed members in the PQQ and specify the commercial and legal relationship amongst its members and any agreements giving effect to same. The Commission reserves the right to request copies of any such agreements. The Tenderer must also clearly outline the proposed responsibility and role of each member of the Tenderer.

A Tenderer must provide details of its ownership and group structures, as well as the structure of its proposed team.

A Tenderer's choice of legal structure (e.g. joint venture/unincorporated/incorporated) will not be relevant in the assessment at this time.

Collateral warranties and/or guarantees may also be required from third parties (including sub-contractors or parent companies) making available resources for the project in a manner satisfactory to the Commission.

By submitting a Submission, Tenderers warrant and represent that they can, and irrevocably agree that they will, comply, or procure compliance, as the case may be, with this section on request by the Commission. The failure by a Tenderer to comply with any such requirement may result in its rejection and elimination from the competition.

#### **5.4 SUB-CONTRACTORS**

Tenderers are required to disclose the names and addresses of any sub-contractors they propose to employ, stating the part of the Consultancy Services to be provided by each. The Commission reserves the right to request evidence of any agreements between the parties in this respect and to comment upon them and take them into account in the evaluation process.

The Consultant will remain solely liable under the Contract to the Commission for its and any of its sub-contractors' acts, errors or omissions despite the use of any sub-contractor.

#### **5.5 CONFLICTS, COLLUSION, MULTIPLE PARTICIPATION AND CONFIDENTIALITY STATEMENT**

Any conflict of interest or potential conflict of interest must be fully disclosed to the Commission as soon as such conflict or potential conflict becomes apparent. This includes any registerable interest involving the contractor and the Commission or their relatives.<sup>7</sup> In the event of any conflict or potential conflict of interest, the Commission shall, in its absolute discretion, decide on the appropriate course of action.

A Tenderer must, in particular, disclose if it, or any of its members or sub-contractors or other parties identified in its Submission is involved in another Tenderer's Submission or has any economic, legal, commercial or financial relationship with another Tenderer or member or sub-contractor of another Tenderer submitting a separate Submission. In such an instance, the Tenderer must notify the Commission as to the identity of the other Tenderer and the relationship in question as soon as possible.

The Tenderer is required in such event to provide an accompanying statement stating that it is aware of the matter and that it has been brought to the attention of all concerned whilst, at the same time, maintaining the integrity of this competition and confidentiality. The Tenderer is also required in such an event to propose suitable protections and procedures to be put in place by the Tenderer to protect against or minimise any potential conflict, collusion or distortion of competition arising.

The Commission reserves the right at its absolute discretion to refuse to allow a consortium member or sub-contractor to be part of another competing Submission and/or to disqualify a Tenderer in the event that there is a breach of this requirement or require steps to be taken. If clarification is required, please contact the Commission in accordance with section 6.

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<sup>7</sup> The terms "registerable interest" and "relative" shall be interpreted as per Section 2 of the Ethics in Public Office Act 1995.



In addition, the Lead Firm and each party of any group/consortium, including all sub-contractors must provide a signed confidentiality statement in the form set out in Appendix 1 to the ITT and this must accompany the Submission.

## **5.6 CHANGE IN TENDERER OR KEY PERSONNEL**

The Commission recognises that arrangements in relation to consortia and sub-contracting may be subject to future change. Tenderers should therefore respond in the light of such arrangements as are currently envisaged. It should be noted, however, that it is not permitted, after a Tenderer has submitted a Submission to add, delete or substitute constituent members or sub-contractors of a Tenderer which are identified in the Submission, or alter the intended shareholdings, control or responsibilities of individual members and/or proposed sub-contractors identified in the Submission without the prior written approval of the Commission.

It is similarly not permitted, after a Tenderer has submitted a Submission, to change the key personnel proposed in a Submission without the prior written approval of the Commission.

The Commission reserves the right to withhold approval for any such changes and to disqualify the Tenderer concerned from any further participation in the procurement process where any such change is made.

Approval will only be granted provided the Tenderer, in the view of the Commission, continues to meet the conditions for selection as set out in the Process Documents and would not have received a lower score in the pre-qualification stage which would have impacted upon its ranking to the extent that it would not have been selected. Tenderers may be required to submit a revised PQQ highlighting any relevant changes where approval is sought to facilitate such evaluation.

Any proposed changes must be notified to the Commission as soon as possible. Failure to notify any changes may result in disqualification of the Tenderer.

## 6. Registration of Interest and Information and Queries

### 6.1 REGISTRATION OF INTEREST

Parties interested in submitting a Tender must register their interest by acknowledged e-mail to the address below on or before 12.30 PM Irish Time, Thursday 11 March 2010.

[sinead.devey@comreg.ie](mailto:sinead.devey@comreg.ie)

### 6.2 QUERIES

Tenderers may not address queries to, or communicate with, the Commission other than in the manner provided in this section 6.

Tenderers, including consortia or groups of entities, must nominate in the PQQ one (1) named person **within the Lead Firm** to whom only all correspondence will be furnished.

All queries regarding any element of the Process Documents must be forwarded to the Commission **by e-mail only** to:

[sinead.devey@comreg.ie](mailto:sinead.devey@comreg.ie) .

Queries should be received by the Commission not later than 12:30 PM Irish Time Thursday 18 March 2010. It is the Tenderer's responsibility to ensure that all queries are received by the Commission by this deadline.

Queries may **not** be made verbally or by any other means.

Queries may **only** be made by those parties who have registered their interest in the manner specified in section 6.1 above.

Queries from all Tenderers will be accumulated and answers, where appropriate, will be sent simultaneously to all Tenderers to ensure that all Tenderers have the same opportunity to respond.

The Commission reserves the right to respond separately to a Tenderer's query if, in the Commission's opinion, the response is particular to that particular Tenderer.

If a Tenderer believes a query and/or its response relates to a confidential aspect of its Submission it must mark the query as "confidential". If the Commission, at its absolute discretion, is satisfied that the query and/or its response should be properly regarded as confidential, the nature of the query and its response shall, subject to the following provisions of this section 6, be kept confidential.

If the Commission is of the opinion that it would be inappropriate to answer the query/request on a confidential basis it will notify the Tenderer and require the Tenderer to either withdraw or reformulate the query or to raise any objection within two (2) days of such notification and state the grounds for its objection. If the Tenderer

does not withdraw or reformulate the query/request or raise any objection within the specified period, or the Commission is of the opinion that, notwithstanding the objection of the Tenderer, the query/request is not confidential, the Commission may issue the query and its response to all of the Tenderers.

If, as a result of queries/requests, any discussion or other communication between the Commission and a Tenderer and/or otherwise, the Commission is of the opinion that a clarification of and/or amendment to the Process Documents is required to be made and/or additional information is required to be issued, then the Commission shall be entitled to do so at any time by notice in writing to the Tenderers.

The Commission does not accept responsibility for any communications issued by it which are missed or not received by a Tenderer or for communications issued by Tenderer which are not received by the Commission.

## 7. Submissions

### 7.1 GENERAL

The PQQ and Tender should each be separate documents and should not cross-refer to the other. The PQQ should be submitted to the Commission in conjunction with, and at the same time as, the Tender as a part of a single Submission.

### 7.2 DELIVERY OF SUBMISSION

**THREE** completed and executed hard copies and **ONE** read-only electronic copy on CDROM of the Submission (incorporating both the PQQ and the Tender as separate documents) should be submitted.

The completed copies of the Submission should be enclosed in a sealed envelope with the CDROM entitled:

‘Spectrum Liberalisation in the 900 MHz and 1800 MHz bands – 900 MHz Auction Rules and Implementation’

Submissions **must** be submitted by registered post or by hand to:

Sinead Devey  
The Commission for Communications Regulation  
Abbey Court, Irish Life Centre, Lower Abbey Street,  
Dublin 1, Ireland

Submissions **must** be received by the Commission on or before 13.00 hrs (Irish Time) Friday 09 April 2010.

Submissions may not be submitted by e-mail and/or fax. Submissions should be in English and complete and all details requested must be submitted.

Tenderers must mark one of the hard copies of the PQQ and Tender as the “Master Copy”. This will take precedence in the event of any inconsistency or conflict between it and any other copies of the PQQ or Tender, as the case may be. If no copy is marked as the “Master Copy”, the Commission may choose a hard copy at random which will then operate as the “Master Copy” in the same way as if the Tenderer had identified it as the “Master Copy”.

Tenderers are fully responsible for the safe and timely delivery of their Submissions. Late Submissions will not, subject to the paragraph below, be accepted by the Commission under any circumstances.

Late Submissions may exceptionally be accepted by the Commission where it, at its absolute discretion, considers that the principle of proportionality may require such because of any special or exceptional circumstances such as where, for example, the lateness results from the fault of the Commission. This is would only arise in an exceptional case and no representation or warranty is made to this effect. The Commission may, at its absolute discretion, investigate any relevant circumstances in

order to make a determination in this regard and a Tenderer is required to provide all such assistance, access and verification as the Commission may require in such respect.

### **7.3 PQQ**

The instructions for completion and use of the PQQ are set out in the PQQ itself. It should be noted, in particular, that a separate PQQ should be submitted in respect of each member and sub-contractor of the Tenderer as well as in respect of any other organisation upon whose resources or capacities the Tenderer proposes to rely.

The onus is on Tenderers to demonstrate their economic and financial standing and technical and professional ability or knowledge in their PQQ.

The PQQ must be executed in the manner provided for in it by each relevant organisation. This includes the certificate of good standing and the final execution page.

Failure to submit the completed and executed PQQ may, at the Commission's absolute discretion, result in a Submission being deemed invalid and rejected. This is because the PQQ is used to assess Tenderer's capability, competence and suitability, in particular.

### **7.4 TENDER**

Tenders must follow the format set out in Appendix 3 of this ITT. Each section of a Tender identified in Appendix 3 of this ITT must be separated and identified with clearly marked tab dividers to facilitate easier accessibility and referencing.

The Tender must address all the requirements set out in this ITT including the matters identified in section 3.

### **7.5 SIGNING SUBMISSION**

The Acceptance Certificate set out in Appendix 2 of this ITT must be signed or sealed in whatever manner is usual and legally permissible for the Tenderer (including, all members of the Tenderer) to effect binding contracts. In the case of a consortium or group, this should be executed by each member of the consortium or group on its own behalf.

### **7.6 COMMENTS ON CONTRACT**

The draft Contract will not be open to substantial amendment. Tenderers are asked to carefully consider the terms and conditions set out in the draft Contract.

Tenderers may propose amendments which they require to the terms of the draft Contract and which they consider to be appropriate in the circumstances. In this regard:

- If a Tenderer proposes an amendment(s) in relation to the draft Contract, tenderers must provide a version of the draft Contract containing all

amendments with their Tender. In addition, reasons for each proposal must be provided;

- If a Tenderer does not wish to make any amendment(s) in relation to the draft Contract, then Tenderers must make this clear in their Submission.

Tenderers will be deemed to have accepted in principle any provisions of the draft Contract if no observations or amendments are made in relation to such provisions.

The Commission may accept or reject any observations, proposed amendments or supplemental provisions proposed by a Tenderer. Furthermore, the Commission is entitled to seek clarification, raise queries, make a response or propose solutions or amendments where any observations, proposed amendments or supplemental provisions are proposed by a Tenderer. Tenderers may be required to confirm acceptance of any such proposals in order to remain eligible for award of the Contract.

The Preferred Tenderer, as a condition of its provisional selection, is required to enter into the Contract on terms satisfactory to the Commission.

The Commission is entitled to amend, revise or replace at any time during the competition, the provisions of the draft Contract whether, in particular, on its own initiative or arising from observations, proposed amendments or supplemental provisions made by Tenderers for consideration by the Commission.

## **7.7 FULL INFORMATION**

Tenderers must disclose all relevant information in their Submissions and otherwise. Tenderers which, or which attempt to, withhold any information that the Tenderers knows to be relevant, or to mislead the Commission may, at the Commission's discretion, be rejected and eliminated from this competition.

## **7.8 CHANGE IN EVENTS**

Any material information or change in events which relates to a Tenderer and/or its Submission that come to light subsequent to the submission of its Submission must be clearly identified and clearly disclosed in writing to the Commission by the relevant Tenderer as soon as possible.

## **7.9 SENSITIVE INFORMATION**

The Commission is designated as a public body pursuant to the provisions of the Freedom of Information Acts 1997 and 2003 ("**Freedom of Information Acts**").

Accordingly, if a Tenderer considers that any information it provides during the course of the process should not be disclosed because of its commercial sensitivity or confidentiality, this must be clearly stated and the information clearly marked as being confidential, commercially sensitive and/or proprietary, and the reasons for this specified. The content and nature of the relevant documentation may then be taken into account by the Commission in considering requests, if any, for access to such information under the Freedom of Information Acts.

The final decision on any freedom of information request rests with the Commission, subject to applicable law. Tenderers should seek their own legal advice on the applicability of the Freedom of Information Acts.

The Commission is not liable or responsible under any circumstances whatever for any loss, damage or suffering of any kind suffered as a result of disclosure of such information before, during or after this competition and process.

#### **7.10 COMPLIANT AND UNQUALIFIED SUBMISSION**

Tenderers must submit a fully compliant Submission which is not qualified in any way.

#### **7.11 MANDATORY CONDITIONS**

The following is a non-exhaustive checklist of mandatory conditions which must be addressed to the satisfaction of the Commission:

- Registration of interest
- Three (3) Hard Copies of Response
- One (1) Copy of Response on CDROM
- Timely Delivery
- Completed PQQ
- Confidentiality Statement (Appendix 1)
- Acceptance Certificate
- Article 45 Statement (Part of PQQ)
- Lead Firm
- Sub-contractors
- Ownership/Group Structures
- Consortia/Groupings
- Legal Relationship (section 5)
- Multiple Participation (section 5)
- Conflicts notice if appropriate
- Full Information (section 8)
- Change in Events (section 8)
- Evidence and Reliance on Third Parties
- Minimum Requirements

## **8. Evaluation**

### **8.1 EVALUATION COMMITTEE**

The evaluation committee appointed by the Commission will conduct the evaluations. The Commission, at its absolute discretion, may contact and visit Tenderers and any or all of their sub-contractors, members, suppliers and/or referees which might be provided in the Submission of a Tenderer. Tenderers, on request, must facilitate same.

The Commission reserves the right, at its absolute discretion, to ask Tenderers for supplementary information, clarification or elaboration of their Submissions to assist in the evaluation of Submissions. Tenderers should respond to such requests within two (2) calendar days of the date of the request or such later or earlier date as the Commission may specify.

The Commission reserves the right to require any of the Tenderers to attend meetings and/or interviews. In such event the Tenderer will bear all its costs and expenses in attending any such meeting. Tenderers should note that the Commission may elect to hold such meetings and/or interviews with only those Tenderers whom the Commission consider, at its absolute discretion, it necessary to do so.

### **8.2 RIGHT OF WAIVER, CLARIFICATION AND REJECTION**

If a Submission (whether the PQQ or Tender) fails to address and satisfy any of the mandatory conditions or other elements of the Process Documents, the Commission may, at its absolute discretion:

- reject the Submission and eliminate the Tenderer from this competition;
- meet with, raise issues and/or seek clarification or supplementary information from the Tenderer in respect of the Submission and/or the non-compliance;
- request the Tenderer to provide the Commission with information on items which have not been provided or have been provided in an incorrect form; and/or
- waive a requirement if this is, in the opinion of the Commission acting reasonably and permitted by applicable law, appropriate in the circumstances (particularly if it is minor and/or procedural) and to proceed to evaluate such Submission in accordance with this ITT.

### **8.3 RIGHT TO REQUIRE VERIFICATION**

Tenderers may be required by the Commission, at its absolute discretion and at any time, to provide evidence verifying the findings with respect to their economic and financial standing and technical and professional ability based upon the evaluation of their PQQs. A Tenderer may be rejected in the event that it cannot provide evidence verifying information provided in its Tender in circumstances where such failure is material in the context of this competition and its selection.



## **9. Opening and Evaluation of Submissions**

### **9.1 OPENING OF SUBMISSIONS**

Submissions will be opened in a closed meeting in the presence of such persons as the Commission considers appropriate. Tenderers will not be present at the opening of Submissions.

### **9.2 OVERVIEW OF PQQ AND TENDER EVALUATION**

The Submission will contain two separate documents: the PQQ and the Tender. These will each be evaluated separately in accordance with the process described below.

In broad terms, this will entail:

- Evaluation of PQQs in order to determine which Tenderers will be pre-qualified;
- Evaluation of the selected pre-qualified Tenders of the Tenderers who were selected based upon evaluation of PQQs; and
- Tenderers who were selected based upon the evaluation of their PQQ will have their Submissions rejected and will be eliminated from the competition.

This process is described in more detail in the following sections.

### **9.3 PQQ EVALUATION**

PQQs will be assessed using the selection methodology outlined in the following sections.

- Stage 1 – Completeness / Compliance;
- Stage 2 – Minimum Capacity Levels;
- Stage 3 – Economic and Financial Standing;
- Stage 4 – Technical and Professional Ability and/or Knowledge.

These stages are sequential and a PQQ must pass each stage in order to progress to the next stage. If a PQQ fails a stage, the Submission will be rejected and the Tenderer will be eliminated from the competition without any further consideration or evaluation of the Submission. Unsuccessful Tenderers will be notified in writing accordingly.

#### ***PQQ Stage 1 - Completeness / Compliance Check***

In the first instance, PQQs will be subjected to a check for completeness to ensure that all Tenderers have provided a complete and compliant response to all questions and requirements contained in the PQQ and have submitted all necessary supporting documentation where required.

#### ***PQQ Stage 2 - Eligibility Requirements***

PQQs (Section 6 of the PQQs) will then proceed to be assessed against the eligibility requirements set out in section 4.2 of the ITT (“Minimum Insurance”). Any Tenderer

who does not satisfy the eligibility requirements will have its Submission rejected and will be eliminated from the competition.

### ***PQQ Stage 3 – Economic and Financial Standing***

PQQs will then proceed to be evaluated against economic and financial standing.

A Tenderer must have sufficient economic and financial standing to perform the Contract. This is a pass / fail requirement.

A Tenderer will be deemed to have passed the minimum economic and financial standing requirement if it receives a grade of “Medium” or “High” in this regard.

On the other hand, a Tenderer who receives a grade of “Low” will have its Submission rejected and will be eliminated from the competition.

The assessment of the financial and economic standing of the Tenderer will consider the information provided in response to section 5 of the PQQ including, if requested by the Commission, any supporting information provided in such respect.

### ***PQQ Stage 4 – Technical and Professional Ability and/or Knowledge***

PQQs will then proceed to be evaluated against technical and professional ability and/or knowledge by reference to the selection criteria stated below and their weightings and minimum scores.

A Tenderer must have sufficient technical and professional ability and/or knowledge to perform the Contract and to provide the Consultancy Services over the full term of the Contract. This is a pass / fail requirement.

A Tenderer will be deemed to have passed the minimum technical and professional ability and/or knowledge requirement if it achieves the minimum scores in respect of each and every one of the selection criteria set out in the table below.

On the other hand, a Tenderer who does not achieve the minimum scores in respect of any one of the selection criteria will have its Submission rejected and will be eliminated from the competition.

<b>Selection Criteria</b>	<b>PQQ Section</b>	<b>Minimum Score</b>
Average annual manpower of both staff and managerial staff over the past 3 years	4.2	50%
Services of a similar nature	4.3 and 4.5	50%
Educational and professional qualifications (managerial)	4.4	50%
Educational and professional qualifications (personnel)	4.4	50%

Technical ability to perform the Contract	4.6	50%
Measures for ensuring quality	4.7	50%

#### 9.4 TENDER EVALUATION

The Tenders which pass the four stages of the PQQ selection process will be evaluated by the Commission. The Contract will be awarded to the most economically advantageous Tender from the Commission's point of view in accordance with the following award criteria and weightings:

Award Criteria	Marks Available
Demonstrated understanding and analysis of the Specific Requirements described in Section 3 above of the ITT and the issues involved in the project (whether of an engineering, economic, commercial, technological or other nature).	35
Comprehensiveness and quality of the solution proposed to meet the Specific Requirements described in Section 3 above of the ITT and achieve the objectives of the project in the most efficient manner.	35
Demonstrated ability of the Tenderer to manage the project effectively and to complete it within the required timeframe by reference to, amongst other things, a proposed project plan and other documentation.	10
Ultimate cost. The Commission reserves the right not to select the lowest-priced tender.	15
The nature and extent of the Tenderer's proposed variations (if any) to the draft Contract (as contained in Annex 5 of the ITT).	5

##### *Tender Stage 1 – Compliance Check*

In the first instance, Tenders will be subjected to a check for completeness to ensure that all Tenderers have provided a complete and compliant response to all questions and requirements contained in the ITT and have submitted all necessary supporting documentation where required. Any Tenderer who has not provided a complete and compliant Tender in accordance with the requirements of the ITT may be eliminated from the competition.

##### *Tender Stage 2 –Evaluation*

Tenders will then be evaluated in accordance with the award criteria set out above.

### ***Appointment of Preferred Tenderer***

Tenders will be evaluated and the Tenderer with the most economically advantageous Tender, from the Commission's point of view, by reference to the award criteria will be provisionally selected as the Preferred Tenderer. This will take place at such point as the Commission considers appropriate, having regard to its rights above.

The Commission will notify the Preferred Tenderer in writing of its provisional selection as the Preferred Tenderer. Any such provisional notification will be conditional on the Preferred Tenderer agreeing to, and actually, entering into the Contract with the Commission on terms satisfactory to it.

As a condition of such provisional notification, the Preferred Tenderer may be required to comply with any notified conditions to the satisfaction of the Commission.

Any notification issued to the Preferred Tenderer is provisional, is not binding on the Commission, gives rise to no legitimate expectations and may be revoked at any time prior to finalisation of such appointment.

The Commission reserves the right to require the Preferred Tenderer to attend meetings for purposes connected with its appointment as Preferred Tenderer and/or for the purposes of any negotiations and/or discussions with it and the Preferred Tenderer must comply with such a request. In such event the Preferred Tenderer will bear all its costs and expenses in attending any such meeting.

The Commission may also, without limitation, require clarification, specification, elaboration and/or fine tuning of the Preferred Tenderer's Tender, seek further information, conduct interactive sessions or interviews with the Preferred Tenderer or take such other steps as it considers appropriate.

The Commission reserves the right to de-select the Tenderer originally provisionally selected as the Preferred Tenderer if it cannot comply with any conditions of its provisional selection; if the final Contract is not executed with such Tenderer (or it does not comply with any pre-conditions of such Contract) or final close is not reached with such Tenderer for whatever reason; or for any other reason whatever which the Commission consider appropriate, and to provisionally select the Tenderer with the next highest ranked Tender as the Preferred Tenderer with a view to entering into the Contract with such Tenderer. In such a case, the process applying to the provisional selection of the Preferred Tenderer as outlined in this section 9.4 will apply again.

### **9.5 FINAL APPROVAL**

The evaluation committee's recommendation as to the execution of the contracts with the Preferred Tenderer will be subject to final approval by the Commission.

### **9.6 UNSUCCESSFUL TENDERERS**

Unsuccessful Tenderers will be notified of this in writing. The Commission will not enter into a Contract with the Preferred Tenderer until fourteen (14) days have elapsed from the date on which unsuccessful Tenderers were notified of their rejection.

## **10. Additional Conditions**

### **10.1 ADDITIONAL CONDITIONS APPLYING TO TENDER PROCESS**

All Submissions (including unaccepted Submissions) must remain open and valid for six (6) months from Monday 11 March 2010. No Submission may be withdrawn after its submission.

Tenderers must not canvass directly or indirectly any member of the Commission, officer or employee of the Commission, its advisers, or any member of the evaluation committee. Failure to comply with this requirement will result in disqualification from the selection process.

Collusion, or any attempt by interested parties/Tenderers to influence, in any way, the procurement process, will result in the disqualification of that/those interested parties/Tenderer(s). Examples of such improper influence are collusion, price fixing, bid rotation or market division.

The Commission may disqualify a Tenderer if the Tenderer is economically, legally, commercially, financially or otherwise related to one or more other Tenderers in a way that would impede in any way the incentive that the Tenderer should have to compete to be a successful Tenderer in the competition.

The Process Documents are confidential and personal to each Tenderer who is in receipt of it and may be only used for the purposes of submitting a Submission. Tenderers may not release details of the Process Documents to third parties other than on a confidential basis to those who have a legitimate need to know or with whom they need to consult for the purpose of preparing the Submission.

Tenderers should note that the Commission proposes to release the following information relating to the ITT upon request:

- The name and address of the successful Tenderer; and
- Overall contract value of the successful Tenderer.

All information supplied to Tenderers as part of the process remains confidential and is to be treated as such. Failure to comply with the confidentiality of this process may disqualify a Tenderer. All information arising from the tender process will be and shall remain the property of the Commission and Tenderer agrees to the Commission retaining all intellectual property rights over all documents, records and reports produced by the Tenderer (both electronic and hard copy) as part of this tendering process.

No publicity whatever regarding the Process Documents, the competition and/or process is permitted unless and until the Commission has consented in writing, at its absolute discretion, to the relevant communication.

The Commission may issue such communications and generate such publicity in relation to this process as it considers appropriate and without notice to Tenderers. The Commission, in particular, has the right to publicise or otherwise disclose to any person information regarding this process, the identity of the Tenderers (including the

identity of their members and sub-contractors), shortlisted Tenderers, the tender process or the award of the Contract (including, without limitation, details of the contract price) at any time.

If a Tenderer discovers any error or omissions or lack of clarity in the Process Documents, the Tenderer must immediately notify the Commission in writing of such error, omission or lack of clarity which will be resolved by the Commission in such manner as it considers appropriate.

The publication of the Process Documents does not warrant or imply that any Tenderer will be awarded a Contract or any Tenderer will be awarded or invited to enter into the Contract on any particular conditions.

The Commission reserves the right, for any reason whatever at its absolute discretion:

- to reject any and all Submissions;
- not to proceed with any evaluation and/or negotiations;
- not to select any Tenderer or Submission;
- not to provide a Tenderer with any additional information;
- not to implement any arrangement contemplated by the Process Documents;
- to withdraw from discussions;
- to suspend the process or discussions;
- not to award any Contract; and
- to terminate the Process Documents, the process and/or the competition at any time and without reason.

Each Tenderer is fully responsible for the entirety of all expenses and/or costs it incurs in the presentation or submission of a Submission or in participating in this process and competition. The Commission is not responsible for and will not pay for any expense or cost incurred or loss suffered by a Tenderer in the preparation or submission of its Submission, the participation in this competition or otherwise. Further, the Commission is not responsible for any travel or accommodation costs incurred by the Tenderer unless previously agreed in writing by the Commission.

No representation, warranty or undertaking, express or implied, in respect of any error or misstatement by or on behalf of the Commission is made or given to any Tenderer and no responsibility or liability is accepted by the Commission for the accuracy or completeness of the Process Documents or omissions from them. Any and all liability and/or loss of any nature whatever and however arising (including liability and/or loss in any way resulting from the process and competition which arises out of the Process Documents) is hereby expressly disclaimed and excluded by the Commission. This paragraph operates to the fullest extent permitted by applicable law.

Tenderers are responsible for obtaining their own financial, taxation, legal, technical, investment and other appropriate advice, and undertaking their own due diligence, in relation to this process, the Process Documents, the Consultancy Services, the Contract and all information provided or made available to them, at their own cost and expense.

No contractual obligations in relation to the Consultancy Services on the part of the Commission will arise unless and until an agreement has been entered into, formally executed in writing and delivered between the Commission and the Consultant and any conditions precedent to such have been fulfilled. Legal and contractual obligations are imposed on Tenderers who download or respond to the Process Documents and the

Commission reserves the right to enforce such obligations. However, the Process Documents do not give rise to any enforceable contractual obligations against the Commission and no collateral contract is entered between the Commission and any Tenderer in such respect.

The failure or neglect by the Commission to enforce any provision of the Process Documents is not (and will not be deemed to be) a waiver of that provision and does not prejudice the Commission's right to take subsequent action in respect of such provision.

Subject to compliance with applicable law, the Commission reserves the right, at its absolute discretion, to accept or reject any or all Submissions and/or to waive any irregularity, non-compliance or informality in any Submission or failure to comply with a timeline.

The Commission has the right, at its absolute discretion and subject to applicable law, to extend or waive any of the timelines specified in the Process Documents. The Commission may, at its absolute discretion, give (or not give) notice to Tenderers of any such extensions or waivers.

The Commission reserves, at its absolute discretion, the right, at any time until the conclusion or termination of the process, to amend or modify any documents, information, data, procedures, rules and/or timelines in or related to the Process Documents or process in any respect by way of clarification, addition, deletion or otherwise. The Commission will inform Tenderers of any such amendments or modifications, if appropriate.

The process and the competition will be concluded when the successful Tenderer has been awarded the Contract, has entered into and delivered the Contract and the Contract has come into force (and any conditions precedent to the effectiveness of the Contract have been fulfilled), or if the process and competition is terminated by the Commission in accordance with the provisions of the Process Documents.

The Process Documents and any matter related to or in any way connected with the Process Documents and this process are governed by and construed in accordance with Irish law and subject to the exclusive jurisdiction of the Irish courts.

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.

Particulars of the Specific Requirements, as described in Section 2 herein, shall be set out in a schedule to the Consultancy Agreement and the Commission reserves its right to further amend those particulars, where necessary and to a reasonable extent, at any time before the Consultancy Agreement is entered into to the extent permitted by law.

## **Appendix 1 - Confidentiality Statement<sup>8</sup>**

### **CONFIDENTIALITY STATEMENT RELATING TO TENDER TO COMMISSION FOR COMMUNICATIONS REGULATION FOR SPECTRUM LIBERALISATION IN THE 900 MHZ AND 1800 MHZ BANDS – 900 MHZ AUCTION RULES AND IMPLEMENTATION**

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

We hereby agree not to divulge any confidential information, written or oral, acquired during the course of the Tender process referred to above to any other person without the prior written consent of the Commission for Communications Regulation (the “Commission”).

We shall not use or attempt to use any confidential information provided by the Commission which we acquire during the course of our tender for our own or any other person’s benefit.

**Signed**

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**For**

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<sup>8</sup> Confidentiality Statements to be included with PQQ



## Appendix 2 – Acceptance Certificate<sup>9</sup>

I hereby agree and declare for and on behalf of the Tenderer entity identified below that:

- (a) such entity fully, unconditionally and irrevocably accepts the terms and conditions of the Process Documents and is fully and legally bound thereby; and
- (b) to the best of its knowledge, the information submitted in the Submission, and the documentation submitted with it, are correct and accurate and not misleading and all relevant information has been disclosed; and
- (c) the contents of the Tender is legally binding on the Tenderer.

Signed as an authorised signatory  
for and on behalf of the Tenderer  
entity identified below  
in the presence of:

Authorised Signatory: \_\_\_\_\_

Name: \_\_\_\_\_

Position (Job Title): \_\_\_\_\_

Tenderer Entity: \_\_\_\_\_

Date: \_\_\_\_\_

Witness Name: \_\_\_\_\_

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<sup>9</sup> Tenderers which comprise a group or consortium are referred, in particular, to section 7 of the ITT. This requires each member of the Tenderer to execute this certificate. Acceptance Certs must accompany the PQQ

## **Appendix 3 - List of Associated Documents**

Relevant Consultations, Reports and Associated Responses

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

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

<http://www.comreg.ie/fileupload/publications/ComReg0999.pdf>

<http://www.comreg.ie/fileupload/publications/ComReg0999c.pdf>

## **Appendix 4 – Tender Format**

Each section must be separated with clearly marked tab dividers to facilitate easier accessibility and referencing.

### **Section 1: Executive Summary**

### **Section 2: Costs Proposal**

Costs for the project to include a breakdown of all charges and expenses.

Tenders **must** also include an itemisation of the total cost which distinguishes between labour costs and associated overheads, such as travel and subsistence.

### **Section 3: Detailed Proposal in relation to the Consultancy Services**

Tenderers should clearly demonstrate their ability to perform each of the Specific Requirements set out in Section 3.

This section should also include statement of the Tenderer's understanding of the Specific Requirements referred to in Section 3 and knowledge of the Associated Documents.

### **Section 4: Specification of Software and Algorithms to be used**

This section should include details of the auction implementation algorithms, particularly auction winner and price determination algorithm/s, modelling tools, computer software and any specialised equipment (e.g. computer hardware) that would be used for the provision of the Consultancy Services.

This should include the confirmation by the Tenderer that all the software to be used in conjunction with the auction and its implementation will be licensed the Commission so that the Commission will have rights to use and, in turn, rights to sub-licence the use of this software in accordance with the Contract to third parties (the latter including prospective bidder/s and any party/s engaged by the Commission to verify the results of the auction outcome).

### **Section 5: Comments on draft Contract**

### **Section 6: Supporting Information and Documents**

This section should include statement on the Tenderer's knowledge of European initiatives for "spectrum liberalisation" in the 900 MHz and 1800 MHz bands including of the European Commission (EC), the Conference of European Postal and Telecommunications Administrations (CEPT) and in other Member States.

## **Appendix 5 – Draft Consultancy Contract**

