



# Joint Procurement of an Auction Monitor

**Information Day**

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- 3. Deliverables, organisation and skillset**
- 4. Ordering services and paying for them**
- 5. Way forward**



# 1. General description

# 1. General description

- 1.1 Applicable legal framework
- 1.2 Joint procurement procedure
- 1.3 Context

## 1.1 Applicable legal framework (1)

### ■ **EU ETS legislation**

- EU ETS Directive (Directive 2003/87/EC)
- Auctioning Regulation (Commission Regulation No 1031/2010) (AR)
- Registries Regulation (Commission Regulation No 1193/2011) (RegReg)

### ■ **EU procurement legislation**

- Financial Regulation (Council Regulation 1605/2002) (FR)
- Implementing Rules (Commission Regulation 2342/2002) (IR)

### ■ **Subsequent changes to any of the above**

## 1.1 Applicable legal framework (2)

- **EU financial market legislation**

- Markets in Financial Instruments Directive (Directive 2004/39/EC) (MiFID)
- Market Abuse Directive (Directive 2003/6/EC) (MAD)
- Anti-Money Laundering Directive (Directive 2005/60/EC) (AMLD)

- **National implementing legislation**

- **Any other relevant EU/national legislation**

- **Subsequent changes to any of the above**

## 1.1 Applicable legal framework (3)

- **Joint procurement agreement to procure an auction monitor (JPA – AM)**
  - Signed by the Commission and all Member States, entered into force on 22 November 2011
  - Lays down the practical modalities for the procurement procedure of the Auction Monitor jointly by the Member States and the Commission (Article 91(1) FR)
  - Provisions on: role of the Contracting Parties, procurement procedure(s), contract management, functioning of and decision-making in the Joint Procurement Steering Committee

## 1.2 Joint procurement procedure

- **Joint action of the Member States and the Commission**(Art 91(1) FR) – **joint procurement procedure** (Art 125c IR)
- Object: appointment of an auction monitor (Art 24 AR)
- Contracting authorities: Members States and European Union represented by the European Commission
- Duration: framework contract (FWC) for up to 4 years
  - Implemented through specific contracts



## 1.3 Context (1)

- State of play of the joint procurement of the auction monitor
- State of play of the procurement of the transitional common auction platform (TCAP), the DE, UK, and PL opt-out auction platforms
- Starting date and duration of the FWC
- Frequency of the auctions

## 1.4 Context (2)

- **State of play of the procurement of the auction monitor**
  - Restricted procedure in two phases was launched on 5 May 2012:
    - Candidature phase
    - Tender phase
  - Deadline for submission of requests to participate (candidature phase) was 20 June 2012
  - No requests were submitted → non-award notice was published in the Official Journal of the European Union (OJ) on 8 September 2012
  - Currently assessing the options for launching a **new joint procurement procedure**

## 1.4 Context (3)

<b>State of play procurement procedures of the auction platforms</b>	
<b>TCAP</b>	TCAP contract awarded to the European Energy Exchange (EEX), award decision published in the OJ on 9 September 2012
<b>DE opt-out</b>	Transitional opt-out contract awarded to EEX, opt-out platform listed in the AR on 31 August 2012
<b>UK opt-out</b>	Definitive opt-out contract awarded to the Intercontinental Exchange (ICE) Europe, opt-out platform listed in the AR on 7 November 2012
<b>PL opt-out</b>	Not expected to launch tender procedure in 2012. In the meantime, allowances will be auctioned on the TCAP (Art 30(7) AR)

## 1.4 Context (4)

	<b>Starting date</b>	<b>Duration</b>
<b>TCAP</b>	First auction of general allowances: 13 November 2012	3 + 1 years, possible earlier termination upon the appointment of definitive common auction platform (DCAP) (but: guaranteed volume of allowances to be auctioned)
<b>DE opt-out</b>	First auction of general allowances: 26 October 2012 First auction of aviation allowances: 31 October 2012	until at least 31 March 2013, and 31 December 2013 at the latest Call for the definitive platform launched on 6 October 2012
<b>UK opt-out</b>	No later than 21 November 2012	3 + up to 2 years
<b>PL opt-out</b>	unknown but not in 2012	unknown but not on 2012

## 1.4 Context (5)

Frequency of general allowances auctions		
	2012	2013 onwards
TCAP	2 per week	2 per week
DE opt-out	1 per week	1 per week
UK opt-out	fortnightly	fortnightly
PL opt-out	unknown	unknown

## 1.4 Context (6)

Upcoming legal changes in the AR and carbon market:

- Commission's proposal of 13 November 2012 to revise the auction time profile and delay the auctioning of 900 million allowances in the 3rd phase of EU ETS
- Commission's report of 14 November 2012 identifies possible structural measures:
  - Back-loading as first step
  - Launching a debate on potential structural measures (6 options identified)
- Commissioner Hedegaard recommended on 12 November 2012 to "stop the clock" when it comes to enforcement of the inclusion of aviation in the EU ETS regarding flights into and out of Europe during 2012 (until after the ICAO General Assembly next autumn)



## 2. Role of the auction monitor

## 2. Role of the Auction Monitor

2.1 Competencies

2.2 Tasks and technical capacity

2.3 Economic and financial capacity



## 2.1 Competencies (1)

- **Monitoring and reporting tasks** (Recitals 44 and 46 AR)  
on:
  - Compliance of the **auction process** with:
    - the objectives of Article 10(4) of the ETS Directive (openness, transparency, integrity, non-discrimination, harmonisation)
    - the provisions of the AR, and
    - any evidence of anti-competitive behaviour, market abuse or money laundering
- **Data room and hand-over tasks** (Art 35(3)(h) AR)
  - (optional additional services) to ensure seamless transfer from one auction platform to another
- **Least risk of conflict of interests or market abuse by reference to carbon market** (Art 34(1) AR)
  - Balancing mitigating measures against ability to perform functions to highest professional standards

## 2.1 Competencies (2)

- Entrusted with the monitoring of **all auctions of allowances** covered by the AR:
  - Common auction platform
  - Opt-out auction platforms (DE, UK, and later PL)
  - EEA-EFTA States
- **No decision-making** powers: monitoring, reporting, opinions and recommendations
- Instead, ensure compliance through **transparency**
- Interaction with **national competent authorities** (NCAs): functions independently from but in tandem with NCAs w/o duplication but in co-operation

## 2.1 Competencies (3)

These are some of the technical or professional capacities that the auction monitor should possess to carry out its tasks:

- **Impartiality** and **objectivity**
- **Project management** on a multi-party basis, at pan-European or global level
- **Dedicated pool of experts** (maximum 20 experts) commensurate to the assignment

Emphasis is placed on demonstrable pertinent **transferable skills**

## 2.1 Competencies (4)

### ▪ Languages

- Deliverables must be drawn up in a comprehensible, standardised easily accessible format and concise manner – Art 25(7) AR)
- Deliverables must be drawn up in English
- Knowledge of other EU languages could be an advantage, especially: DE and PL

## 2.2 Tasks and technical capacity (1)

Ref.	Task	Capacity
Art 25(1)	<p>The auction monitor shall monitor each auction and report on the proper implementation of the auctions conducted in the preceding month to the Commission on behalf of the Member States and to the Member States concerned, within the deadline provided for in the fourth subparagraph of Article 10(4) of Directive 2003/87/EC, pursuant to that subparagraph in particular with respect to: fair and open access; transparency; price formation; technical and operational aspects</p>	<p>monitoring and advising on compliance with legal obligations with the aim of achieving economic and financial policy objectives, in particular in the fields of financial markets, energy and/or carbon markets and reporting thereon to public bodies at Member State and/or Union level</p> <p>monitoring the auctioning of financial instruments, energy products or allowances or the auctioning of financial instruments, energy products or allowances</p>

## 2.2 Tasks and technical capacity (2)

Ref.	Task	Capacity
Art 25(2)	The auction monitor shall provide to the Member States and the Commission an annual consolidated report which shall comprise:	
a)	the matters referred to in paragraph 1 both in relation to each individual auction and in aggregate for each auction platform	<b>Same as for 25(1)</b>

## 2.2 Tasks and technical capacity (3)

Ref.	Task	Capacity
b)	any failure to comply with the contract appointing an auction platform	working with regulated markets, clearing systems or settlement systems
c)	any evidence of anti-competitive behaviour, market abuse, money laundering, terrorist financing, criminal activity or terrorist financing	<p>micro-economics, including expertise in applying game theory to markets</p> <p>supervision and/or surveillance of trading in financial instruments under MiFID and MAD, including the national measures transposing these Directives</p> <p>combating money laundering, terrorist financing and other criminal activities such as fraud and corruption in the financial markets under AMLD, including the national measures transposing this Directive</p>

## 2.2 Tasks and technical capacity (4)

Ref.	Task	Capacity
d)	the impact of the auctions on the market position of the auction platforms on the secondary market, if any	<b>Same as for 25(2)(c)</b>
e)	the relationship between the auction processes covered in the consolidated report and between them and the functioning of the secondary market, pursuant to Article 10(5) of Directive 2003/87/EC	<b>Same as for 25(2)(b) and (c)</b>



## 2.2 Tasks and technical capacity (5)

Ref.	Task	Capacity
f)	information about the number, nature and status of any complaints made pursuant to Article 59(4) as well as any other complaints made to the national competent authorities supervising credit institutions and investment firms	<b>Same as for 25(2)(b) and (c)</b>
g)	information about any follow-up given to any reports of the auction monitor made under paragraphs 3, 4 and 5	<b>Same as for 25 (3), (4) and (5)</b>

## 2.2 Tasks and technical capacity (6)

Ref.	Task	Capacity
h)	<p>any recommendations deemed appropriate to improve any of the auction processes or for any review of the following:</p> <p>(i) this Regulation including the review referred to in Article 33;</p> <p>(ii) the Commission regulation adopted pursuant to Article 9(3) of Directive 2003/87/EC;</p> <p>(iii) Directive 2003/87/EC including the review of the functioning of the carbon market provided for in Articles 10(5) and 12(1a) of that Directive</p>	<p><b>Same as for 25(2)(b) and (c)</b></p>

## 2.2 Tasks and technical capacity (7)

Ref.	Task	Capacity
Art 25(3)	<p>The auction monitor may, upon request by the Commission and one or more Member State(s), or as required in paragraph 5, report from time to time on any specific issue related to any of the auction processes, whenever it is necessary to raise the issue in question prior to the submission of the reports covered in paragraphs 1 or 2. Otherwise the auction monitor may report thereon in the reports provided for in paragraphs 1 or 2.</p>	<p><b>Same as for 25(1) and (2)</b></p>

## 2.2 Tasks and technical capacity (8)

<b>Ref.</b>	<b>Task</b>	<b>Capacity</b>
Art 25(4)	<p>A Member State not participating in the joint action provided for in Article 26 of this Regulation but opting to appoint its own auction platform pursuant to Article 30(1) and (2) of this Regulation may request the auction monitor to provide the Member States, the Commission and the auction platform concerned with a technical report on the ability of the auction platform it proposes or intends to propose, to carry out the auction process in accordance with the requirements of this Regulation and in conformity with the objectives set out in Article 10(4) of Directive 2003/87/EC</p>	<p><b>Same as for 25(1) and (2)</b></p>

## 2.2 Tasks and technical capacity (9)

Ref.	Task	Capacity
Art 25(5)	In the event of any breach of this Regulation or non-conformity with the objectives of Article 10(4) of Directive 2003/87/EC of the auction process carried out by an auction platform, or upon request by the Commission in case it suspects such a breach, the auction monitor shall report forthwith to the Member States, the Commission and the auction platform concerned	<b>Same as for 25(4)</b>
Art 25(6)	Any opinions provided under Articles 7(7) or 8(3) of this Regulation by the auction monitor shall form part of its functions under this Article	<b>Same as for 25(2)(b)</b>

## 2.2 Tasks and technical capacity (10)

Ref.	Task	Capacity
	A data room or any other means deemed appropriate by the Commission to ensure a competitive, transparent and non-discriminatory joint procurement procedure for the appointment of the transitional common auction platform's successor	<b>Same as for 25(2)(b)</b>
	Handover of all tangible and intangible assets available to the transitional common auction platform in performing its tasks under Article 28 AR	<b>Same as for 25(2)(b)</b>

## 2.3 Economic and financial capacity (1)

- The tenderer/candidate and all entities relied on by it (including sub-contractors) should:
  - Provide annual accounts for the three most recent financial years
  - Provide declaration that there are no liabilities unreported in the accounts
- The tenderer/candidate should meet the following minimum requirements:
  - Minimum turnover of €35 million on average in the three most recent financial years
  - Current ratio of assets / liabilities of at least 1.0 on average in the three most recent financial years

## 2.3 Economic and financial capacity (2)

- Tenderers/candidates should provide:
  - An explanation that a lower current ratio will not affect the financial and economic capacity of the tenderer/candidate if the minimum requirement is not met
  - A satisfactory bank reference
  - Professional risk indemnity insurance cover of €3m (or confirmation from insurance company it could be arranged) – tenderer/candidate only



# 3. Deliverables, organisation and skillset

## **3. Deliverables, organisation and skillset**

- 3.1 Deliverables
- 3.2 Organisation
- 3.3 Skillset

## 3.1 Deliverables (1)

### ■ **Work Plan (per Auction Platform)**

- Based on an analysis of the specific situation of an auction platform and on discussions with NCAs
- Includes an analysis of an emergency management protocol with rapid-response, redress and outreach procedures in the event of any serious complaint, problem or incident regarding an auction platform, its secondary market or the carbon market
- Includes the auction monitor's business continuity plan and security protocol
- Pro-forma work plan could be provided in the tender specifications
- Sample work plan could be provided in the tender

## 3.1 Deliverables (2)

- **Monthly report (per Auction Platform)**
  - **Monitor** auctions (Art 25(1) AR), possibly on-line or via physical presence
  - **Report** on (Art 25(1) AR)
    - Fair and open access
    - Transparency
    - Price formation
    - Technical and operational aspects
    - Other aspects

## 3.1 Deliverables (3)

### ▪ **Monthly report (cont.)**

#### • **Other aspects?**

- Any failure to comply with the **contract appointing an auction platform** (Art 25(2)(b) AR)
- Any evidence of **anti-competitive behaviour, market abuse, money laundering, criminal activity** and **terrorist financing** (Art 25(2)(c) AR)
- Any **complaints** lodged with NCAs (Art 25(2)(f) AR)
- Any **breaches** of the AR or **non-conformities** with the objectives EU ETS Directive (Art 25(5) AR)
- **Follow-up** to any previous reports of breaches or non-conformities (Art 25(5) AR)
- **Opinion** on "**reserve price**" methodology (Art 7(6) AR)
- **Opinion** on any changes in the "**bidding window**" (Art 8(3) AR)

## 3.1 Deliverables (4)

- **Annual report (for all Auction Platforms)**
    - **Aggregation** of the monthly reports (Art 25(2)(a) to (c) AR)
- PLUS
- **Impact of the auctions on the market position** of the auction platforms (Art 25(2)(d) AR)
  - **Relationship between auction processes** and with the secondary market (Art 25(2)(e) AR)
  - **Recommendations to improve auction processes** or the EU regulatory framework (Art 25(2)(h) AR)

## 3.1 Deliverables (5)

- **Reports on specific issues (per Auction Platform)**
  - Report upon request by one or more Member State(s) and the Commission on any specific issue relating to auction processes (Art 25(2)(f) AR)
- **Opt-out technical report (per opt-out Auction Platform)**
  - Provide a technical accreditation report (Art 25(4) AR)
    - assessing the ability of the opt-out Auction Platform to carry out the auction process:
      - in accordance with the AR
      - the objectives of Art 10(4) of the EU ETS Directive
    - making precise recommendations for further development or improvement to the auction process

## 3.1 Deliverables (7)

- **Reports on breaches or non-conformities (per Auction Platform)**
  - Report on breaches of the AR or non-conformities with the objectives of Art 10(4) of the ETS Directive carried out:
    - on the auction monitor's initiative or
    - upon request of the Commission in case of suspicion of such a breach or non-conformity (Art 25(5) AR)



## 3.1 Deliverables (8)

### ■ Other deliverables

- Such as the following non-limitative list:
  - **Catch-up report (per Auction Platform)** on:
    - aspects of the monthly and annual report for the period preceding the start of the work of the auction monitor
  - **Ad hoc reports (per Auction Platform)**, e.g. on:
    - any report (including consultations) relating to the subject matter of the contract, e.g. on:
      - ✓ one or several Auction Platforms,
      - ✓ its or their respective secondary market(s),
      - ✓ the carbon market as a whole
      - ✓ any neighbouring, adjacent or related market

## 3.1 Deliverables (9)

### ■ **Emergency management protocol**

- The emergency\* management protocol should describe in a detailed and coherent manner:
  - how to detect or be informed about an emergency
  - the nature of the auction monitor's response to different types of emergencies from an organisational point and in terms of content
  - how the auction monitor will be involved in the communication regarding the emergency
  - what the auction monitor's role will be regarding recommendations and follow-up actions in order to prevent a similar emergency from reoccurring

\* *Emergency of the Auction Platform, not of the Auction Monitor*

## 3.1 Deliverables (10)

- **Business continuity plan and security protocol\***
  - Business continuity plan and security protocol should describe procedures and measures designed to:
    - ensure **business continuity** in the performance of the contract – **real-time market facing**
    - ensure absence of **conflicts of interests**
    - ensure preservation of **confidential** and **inside** information
    - includes aspects of IT security and of preserving the security of oral and written communication

*\* Emergency of the Auction Monitor, not of the Auction Platform*

## 3.1 Deliverables (11)

- **Exit strategy (per Auction Platform)**
  - Establishment of an exit strategy per auction platform by:
    - assisting the auction platform in drawing up its exit strategy
    - proposing modifications to a draft exit strategy drawn up by an auction platform
    - approving the exit strategy (optional)
    - confirming the Commission's modifications to the list of resulting and non-resulting information
  - Draft exit strategies could be provided with the tender specifications
  - Sample response could be provided in the tender

## 3.1 Deliverables (12)

- **Exit strategy (per Auction Platform) (cont.)**
  - Implementation of the exit strategy of an Auction Platform (optional)
    - E.g. by organising:
      - ✓ a data room to ensure a competitive, transparent and non-discriminatory procurement procedure to appoint a successor
      - ✓ the hand over of assets to the auction platform's successor
    - In accordance with the terms of:
      - ✓ the exit strategy of the auction platform
      - ✓ the relevant service contract appointing the auction platform
      - ✓ the relevant specific contract with the auction monitor

## 3.1 Deliverables (13)

- **Auction Monitor's exit strategy**
  - Transfer all results to the auction monitor's successor to ensure business continuity
    - Results = all information derived from the performance of the contract
    - Results become the EU's property

## 3.1 Deliverables (14)

- **Auction Monitor's exit strategy (cont.)**
  - Transparency of:
    - all information necessary to create a level playing field with other candidates/tenderers in subsequent joint procurement procedure
  - Pre-forma exit strategy could be provided in the tender specifications
  - Sample exit strategy could be provided in the tender

## 3.1 Deliverables (15)

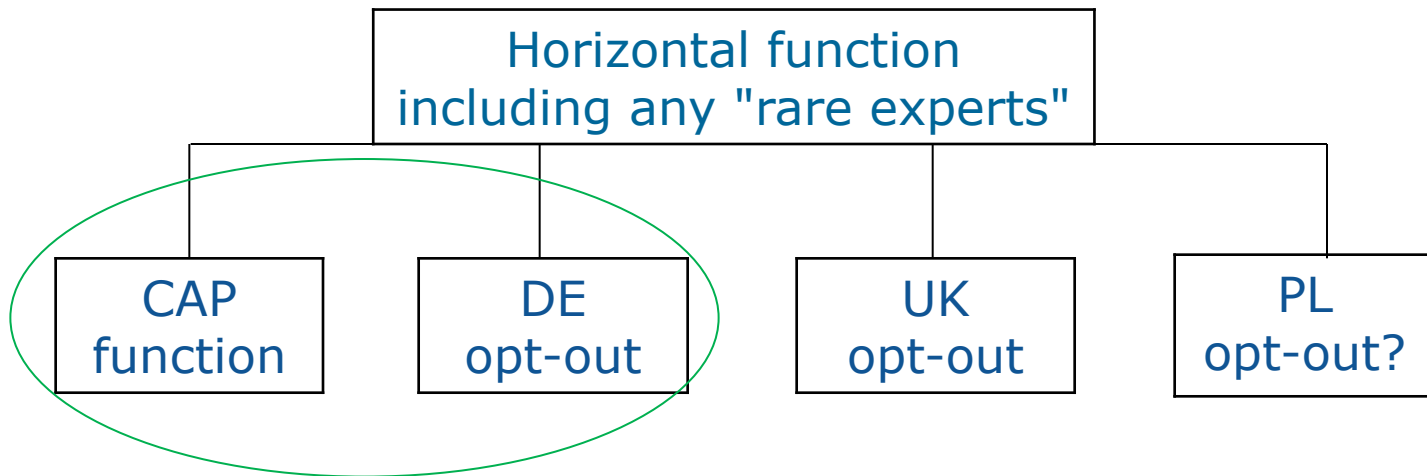
- **Standard deliverables per auction platform per annum:**
  - 12 monthly reports
  - 1 annual report
  - **X** Specific issues reports
  - **X** Breaches or non-conformity reports
  - **X** Ad hoc reports
  
- **Some years will be different, e.g.:**
  - **Year 1** there will be the Exit strategies plus the Catch-up report
  - Some other years there might be one or more Opt-out technical report(s)



## 3.2 Organisation (1)

- **Single or joint tenders**
  - A tender may be submitted either individually by a natural or legal person or jointly by several persons
  - Joint tenderers would be jointly and severally liable for the performance of the contract
- **Subcontracting**
  - Subcontracting or reliance on other entities is permitted
  - Prior written authorisation from the Commission needed
  - No de facto performance by third parties
  - Liability of the contractor for the performance of the contract as a whole, including tasks performed by subcontractor(s) or other entities
  - Use of nominated subcontractors
- **Compliance with EU competition law**

## 3.2 Organisation (2)



## 3.2 Organisation (3)

- No **conflicts of interests**
- Protection of **confidential** and **"inside"** information

## 3.2 Organisation (4)

- **Put processes in place to mitigate the risks**
- **E.g., Chinese walls:**
  - One-way versus two-way Chinese walls
  - Between horizontal team and auction platform teams
  - Between separate auction platform teams
  - Between the auction monitor function and the rest of the organisation

## 3.2 Organisation (5)

- **Team?**
  - Mix of seniority levels per task and over time
  - Core team plus back-ups
  - Use of so-called "rare experts"

## 3.2 Organisation (6)

- **Mix of seniority levels per task and over time**
  - **Relevant experience?**
    - junior typically 1-3; middle typically 4-6; senior typically at least 7
  
- **Life-cycle of the contract**
  - Start-up phase – **high** intensity – more senior people
  - Business as usual phase – **normal** intensity – more middle and junior people
  - Succession of auction platform – **added** intensity – more middle and senior people
  - Shutdown phase – **higher** intensity – more senior and middle people

## 3.2 Organisation (7)

### ■ Core team

#### • Composition

- Project Manager + back-up
- Contract Manager + back-up per auction platform
- So-called "Rare Experts"
  - ✓ 1 expert in micro-economics and applying game theory to markets
  - ✓ 1 expert in money laundering
  - ✓ 1 expert in market abuse
  - ✓ 1 expert IT including IT-security
  - ✓ 1 expert on handling confidential, market sensitive information (not necessarily including IT-security)
  - ✓ 1 expert on communication security and the handling of market sensitive information

## 3.2 Organisation (8)

- **"Rare experts"**
  - Game theory expert
  - Market abuse expert
  - Money laundering expert
  - Communication expert
  - Security expert
  - IT expert



## 3.2 Organisation (9)

### ▪ Auction Platform teams

- **1 team per auction platform:** should teams per auction platform be separate?
  - For discussion

### ▪ Horizontal team

- Senior level experts in the horizontal team should collectively have experience in:
  - working as a team
  - communicating effectively
  - managing cross-border projects
  - establishing and running effective teams and processes
  - mediating conflicting interests
  - managing resources efficiently

## 3.2 Organisation (10)

### ■ **Horizontal team (cont.)**

- Senior level experts should have excellent interpersonal skills, discretion and very good judgment

### ■ **Pool of experts** could be made up as follows:

- 1 senior and 1 middle level expert per auction platform team = up to 8 persons
- 1 senior person and back up in the horizontal team = 2 persons
- 6 middle and 6 junior persons in the horizontal/auction platform teams = 12 persons

#### **OR**

- 1 middle and 2 junior level experts per auction platform team = up to 12 persons
- 1 senior person and back up in the horizontal team = 2 persons
- 6 rare experts in horizontal team = 6 persons



# 4. Ordering services and paying for them

## 4. Ordering services and paying for them

- 4.1 Auctioning Regulation
- 4.2 Ordering processes
- 4.3 Pricing and budgeting
- 4.4 Payment processes

## 4.1 Auctioning Regulation

### ■ Article 52(3) AR

- Share of the cost of the auction monitor that **varies according to number of auctions** must be **evenly distributed over the number of auctions**
- All other costs save for costs attributable to the Commission **must be evenly distributed over number of auction platforms unless otherwise agreed in the FWC**
- Costs relating to **opt-out platforms** must be borne by the appointing Member State including cost of **opt-out technical report**
- Costs relating to the **TCAP** are distributed between the Member States participating in the joint action in accordance with their **share of auctioned allowances**
- Costs of the auction monitor borne by each Member State must be **deducted from the auction proceeds payable by the auctioneers** to the appointing Member State

## 4.2 Ordering processes (1)

- Commission places an **order** with the Contractor for the procurement of specific services under the FWC
- **Specific contract** constitutes an individual commitment of the Contractor to provide a specific service accomplish a particular task and/or provide an expert of a specific profile
- Possible kinds of orders:
  - **fixed price**
  - **"quoted" time and means**
  - **time and means**
- **Above are non-exhaustive nor mutually exclusive:**
  - more than one ordering process possible in same FWC
  - different combinations of different aspects of different ordering processes could also be possible
- Ordering process must be **"fit for purpose"** to deliver **best value for money** under FWC

## 4.2 Ordering processes (2)

### ■ Fixed price order

- Order of a defined work, normally executed *extra muros*
- Commission specifies the **deliverables** required and **deadlines** for delivery
- Contractor's offer normally includes a project plan indicating:
  - ✓ *proposed activities*
  - ✓ *team structure, profiles and roles*
  - ✓ *responsibilities and workload (person-days) of different team members*
- The financial offer must be based on:
  - ✓ *fee rates per expert profile in accordance with FWC*
  - ✓ *the estimation of the number of days for each expert profile*
- Payment ⇒ lump-sum upon acceptance of the deliverables by the Commission

## 4.2 Ordering processes (3)

### ■ "Quoted" time & means order

- Order of a **number of days** for **defined subtasks**, normally executed *extra muros*
- Commission specifies:
  - ✓ different sub-tasks to be executed
  - ✓ total number of man-days
  - ✓ may specify (or not) the required expert profiles
- Contractor's offer normally includes a technical proposal based on:
  - ✓ requirements
  - ✓ profiles
  - ✓ workload (man-days)
- Financial proposal ⇨ based on the profiles and their respective man-days



must respect the daily rates defined in the FWC



## 4.2 Ordering processes (4)

### ■ Time and means order

- Order of a number of man-days for experts of specific profiles with no pre-defined subtasks – normally provided *intra-muros*
- Commission specifies
  - ✓ profiles of the experts needed
  - ✓ number of man-days required
- Contractor proposes at least x experts per profile requested ⇒ Commission chooses whom it will engage
- Financial proposal ⇒ based on the profiles and the required man-days
  - ⇒ must respect the daily rates defined in the FWC
- Experts must follow the instructions of the Commission when performing their tasks
- Invoicing is based on the number of days performed
  - ✓ payments done against time sheets for each expert

## 4.2 Ordering processes (5)

- **Specific contract versus "order form"**
  - Tailor-made versus off-the-rack
  - Prior negotiation necessary versus prior negotiation unnecessary
  - Daily rate versus fixed fees or price list
  
- **Duration of specific contracts or "order forms"**
  - There could be a minimum (e.g. six months) and a maximum duration (e.g. 12 months)
  - Specific contracts could expire after expiry of the FWC (e.g. 6 months after)

## Section 4.3 Pricing and budgeting (1)

- **Normal rules would apply**
  - All fees are normally expressed in EUROS
  - All fixed fees / daily rates should be inclusive of all expenses which are not reimbursed separately
  - The price could be the daily rate or the fixed fee or a weighted combination of the two
  - There could be volume discounts
  - There could be a periodic price review clause
  - There could be periodic indexation in line with inflation

## 4.3 Pricing and budgeting (2)

- There could be a price formula for determining the price for award purposes
- There could be requirements regarding expert profile or seniority mix
- Estimated budget for the performance of Auction Monitor services is **€ 25 million** for 4 years

## Section 4.3 Pricing and budgeting (3)

- **Specificities of a joint procurement process**
  - Multi-party **transaction costs**: how to mitigate this?
    - Maximise use of fixed fees and off-the-rack deliverables
    - Minimise use of daily rates and tailor-made deliverables
  - How to match **price agreed** with **services needed**?
    - **For discussion**

## 4.4 Invoicing and payment processes (1)

Deliverables	Payee
<b>Work Plan per Auction Platform</b>	Per Auction Platform (TCAP jointly based on volume auctioned) (Opt-outs bear full cost)
<b>Exit Strategy per Auction Platform</b>	Per Auction Platform (TCAP jointly based on volume auctioned) (Opt-outs bear full cost)
<b>Exit Strategy of the Auction Monitor</b>	Per Contracting Party to FWC based on volume auctioned
<b>Monthly report</b>	Per Auction Platform (TCAP jointly based on volume auctioned) (Opt-outs bear full cost)
<b>Annual report</b>	Either various payees for different sections or aggregate amount split on the basis of a pre-determined distribution

## 4.4 Invoicing and payment processes (2)

<b>Deliverables</b>	<b>Payee</b>
<b>Specific issues reports</b>	Per Auction Platform (TCAP jointly based on volume auctioned) (Opt-outs bear full cost)
<b>Breaches and non-conformities reports</b>	Per Auction Platform (TCAP jointly based on volume auctioned) (Opt-outs bear full cost)
<b>Opt-out technical reports</b>	Each opt-out Member State bears full costs
<b>Ad hoc reports</b>	Per Auction Platform or Per Contracting Party to FWC based on volume auctioned

## 4.4 Invoicing and payment processes (3)

- **Alternative scenarios:**
  - Lots of tailor-made, daily rate specific contracts with different payees
  - Lots of off-the-rack, fixed fee specific contracts with the same payees
- **Need to arrive at the right mix and put in place the correct verification procedures**



## 4.4 Invoicing and payment processes (4)

### ■ Approval of invoices

- At **operational level**: Verification of draft invoices against services contracted and/or rendered under the specific contract and FWC: principle of 4-eyed review
- At **compliance level**: Same verification plus scrutiny of compliance with FR, IR and internal procedures: principle of 4-eyed review

### ■ Specificities of a joint procurement

- Multi-party **approval processes**: how to mitigate this?
- Approval of invoices could be conducted at EU level
- How to avoid double-invoicing where same services but different payees?
  - **For discussion**

## 4.4 Invoicing and payment processes (5)

### ■ **Payment of invoice**

- Need approved invoice: obligation to pay at level of contracting authorities once invoice approved at EU level
- Multi-party **credit risk**: how to mitigate this?
  - ✓ Funds could be **set aside** from the auction proceeds to pay for the invoices
  - ✓ Funds could be **deducted** from the auction proceeds to pay for the invoices
  - ✓ Some combination of the two

### ■ **Approval of invoices and their payment could follow periodic cycles**



# 5. Way forward

## 5. Way forward

- 5.1 Prior to launch of joint procurement procedure
- 5.2 Type of procurement procedure

## 5.1 Prior to launch of the joint procurement procedure

- **Market testing**
  - Prior information notice (PIN)
  - Information Day
  - Invitation to submit any further written input or questions by 12 December 2012
  - Publication of Questions and Answers or Frequently Asked Questions – beginning of 2013?
- **Discuss** the outcome with the **Member States**
- **Decide procurement procedure**
- **Finalise tender documents**
- **Re-launch** the joint procurement procedure

## 5.2 Type of procurement procedure (1)

- **Available procurement procedures (Article 91 FR):**
  - Open
  - Restricted
  - Negotiated
  - Competitive dialogue

## 5.2 Type of procurement procedure (2)

- Open
  - All-in all procedure
  - Tenders evaluated in one go: exclusion, selection & award criteria
- Restricted
  - First phase: evaluation of the economic and technical capacity of candidates (exclusion and selection criteria)
  - Second phase: evaluation of the tenders (award criteria)

## 5.2 Type of procurement procedure (3)

- **Negotiated with prior publication of a contract notice**
  - Article 127(1)(b) and (c) IR

*"(b) in **exceptional cases** involving work, supplies or **services** where the **nature or the risks** do not permit **prior overall pricing** by the tenderer;*

*(c) where the **nature of the service** to be procured, in particular in the case of **financial services** and **intellectual services**, is such that **contract specifications cannot be established with sufficient precision** to permit the award of the contract by selecting the best tender in accordance with the rules governing open or restricted procedures"*



## 5.2 Type of procurement procedure (4)

- Art 124 IR (Art 91 FR)
  - Contracting authorities are **negotiating** with **at least three** pre-selected tenderers **the tenders** they have submitted in order to adapt them to:
    - the requirements set out in the contract notice, or in the specifications, and
    - in any additional documents,in order to find the tender offering **best value for money**
- Equal treatment for all tenderers and protection of tenderers' confidential information or business secrets

## 5.2 Type of procurement procedure (5)

- Can be conducted in **stages**, by applying the award criteria set out in the specifications
- Negotiation can cover both the **technical** and the **financial** aspects of the tender, but:
  - May not concern the minimum (compulsory) technical or administrative specifications in the tender documents
- Procedure can be conducted in writing, by exchange of correspondence or orally
  - Evidence of each contact is kept

## 5.2 Type of procurement procedure (6)

### ▪ Competitive dialogue

- Discussions with **at least three** pre-selected candidates in order to **identify options** for the **best solution**
- **Tender documents can be altered** up to end of the dialogue
- Then, ask the candidates to send offers based on the **tender documents resulting from the dialogue**
- Possibility to **clarify, refine** or **fine-tune** the tenders after their submission
- Equal treatment for all participants and tenderers and protection of confidential information and business secrets

## 5.2 Type of procurement procedure (8)

- **Article 125b IR (Art 91 FR)**
  - Particularly complex contracts
    - When the contracting authority is not objectively able to:
      - ✓ Define the technical means capable of satisfying the needs or objectives, or
      - ✓ Specify the legal or financial make-up of the project
  - The use of an open or restricted procedure will not allow the contract to be awarded to the tender offering **best value for money**

# Thank you for your attention!

For more information see:

[http://ec.europa.eu/clima/policies/ets/auctioning/third/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/auctioning/third/index_en.htm)

[http://ec.europa.eu/clima/tenders/2012/index\\_en.htm](http://ec.europa.eu/clima/tenders/2012/index_en.htm)

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