

# Call for tenders for subcontracting an expert for the ETUC project on “Securing Workers Rights in subcontracting chains”

This is a call for a subcontractor to provide expertise as part of the implementation of the ETUC project on “Securing Workers Rights in subcontracting chains”.

The ETUC will publish the call on its website, on 30 April 2020, and keep it online for 25 calendar days (deadline for submission of bids: Monday 25 May 2020).

## 1. Background information on the project

Subcontracting refers to a business practice whereby a company hires individuals or companies to complete a project. Subcontracting chains are composed of different undertakings in charge of specific tasks within one bigger project. This business model is on the increase. It represents a convenient way for businesses to look for expertise that they do not have in house, without a long-term commitment. Subcontracting also reduces the risks as the contractor disposes off potential liability with regard to a number of legal obligations, including in particular on employment rights.

Subcontracting creates many concerns for worker representation bodies and for trade unions across Europe, in particular when it involves operators established in different Member States. Subcontracting blurs the traditional employer/ employee relationship and employees’ representatives are left without a counterpart to dialogue and bargain with. Furthermore, in the absence of due diligence on the part of the main contractor subcontracting can lead to violation of the applicable labour law and health & safety legal obligations. Reckless subcontracting can therefore lead to extreme exploitation of workers, as well as result in poor quality goods and services.

In the wake of recent scandals involving subcontracting, a number of legal and political initiatives are being discussed at various levels, with different scope. The OECD and the ILO promote due diligence in global supply chains. A number of countries have as a result put in place due diligence requirements. A 2012 Commission’s study showed that seven EU Member States and Norway had elaborated a system for joint and several liability, each of them with its own specificities. Since then, the picture has radically changed in particular as a result of new EU legislation imposing certain requirements in subcontracting chains.

The result is a mismatch of regulations with different scopes and varying impact. In parallel, EU companies increasingly make use of the opportunities offered by the single market and cross-border provision of services is on the rise.

This ETUC Project will address the legal obligations applying to all contractors in the sub-contracting chains, including in particular various forms of Joint and Several Liability.

The objective of this project is to build a case for a consistent EU approach towards subcontracting and to help create better tools and conditions (more adequate legal framework) for workers' representatives to know about their rights and to be informed and consulted about the practices of their company along its subcontracting chain.

This project will gather data to illustrate the consequences of the lack of regulation at EU level. On the basis of experts' conclusions, an ETUC position will be defined and policy recommendations put forward.

Several types of legislative interventions should be explored, including due diligence, transparency and reporting requirements, joint & several liability. Attention will also be paid to the ways in which different legal personalities can be treated as a single economic and social entity (eg: for the purpose of establishing collective representation).

The specific objectives of the project are:

- Gather data and develop expertise on subcontracting practices, among trade union networks and workers representatives. Fact-finding missions will be carried out by an external expert in order to better understand the scale and nature of the phenomenon (case studies). Case studies will be identified by the expert with the support of the ETUC and the European Trade Union Federations involved. Interviews will be conducted with local level of trade union representation, labour inspections, and where realistic human resources management;
- Map and clarify the applicable legal frameworks. On the basis of these fact-finding missions, the project partners, with the help of legal experts, will analyse the existing legal and practical situations at international, EU and national level, identifying loopholes and contradictions. The analysis will also cover legislative and non-legislative tools and practices in the framework of corporate social responsibility;
- Propose policy recommendations for a consistent EU approach towards subcontracting. The final phase of the project will be to make concrete policy recommendations, which the ETUC will then discuss with its affiliates with a view to shape a fully-fledged ETUC policy. We will hold discussions involving external and trade unions experts.

Every three months, the ETUC and its partners' affiliates, in particular the relevant European Trade Union Federations, will hold steering groups in Brussels to monitor the work of the experts, and to prepare the content of the seminars and conferences.

The first phase of the project consists of several case studies to be carried out by the contractor, including fact-finding missions. This phase is currently being finalised. The mid-term conference will be held before the summer.

## 2. Tasks to be performed by the subcontractor

The second phase of the project will consist of an analysis of the existing legal framework, including international instruments and the EU and national level, identifying loopholes and contradictions. The screening of relevant legal provisions will be carried out with a view to identify existing provisions on subcontracting. On the basis of the challenges identified during phase 1, policy recommendations will be elaborated to secure more transparent, legal and workers-friendly subcontracting practices.

The subcontractors shall analyse and present an overview of the international instruments dealing with subcontracting chains, including at UN, ILO and CoE levels.

They shall examine the legal framework regulating subcontracting chains at European level, in particular with regard to its consequences for working and employment conditions and workers' rights. The analysis should cover *inter alia* the regulation of subcontracting chains with regard to the following areas: posting of workers, social security coordination, migration, public procurement, health and safety at the workplace. Legal instruments in other policy areas containing provisions regulating subcontracting chains and comparable situations shall be assessed as well, including – for example – competition law, environmental responsibility and taxation.

The subcontractors shall also analyse the legal framework for subcontracting chains in different Member States. The number of national legal frameworks to be assessed will be discussed by the experts with the steering committee and shall cover at least 8 Member States.

The analysis should present a clear overview of the current legal framework, including its limits and shortcomings, as well as the regulating options used by Member States in the different areas. The study should assess *inter alia* the existing approaches with regard to transparency requirements, joint and several liability, limits to the length of the subcontracting chains, the possibility to treat different legal personalities as a single economic and social entity, limited length for the subcontracting chains, restricted limited liability of company owners... It will also cover legislative and non-legislative tools and practices in the framework of corporate social responsibility and due diligence. Links shall be made with the case studies and abuses identified in the first phase of the study.

The subcontractors shall then propose draft policy recommendations, on the basis of the analysis of the legal framework, including of the existing shortcomings and loopholes, and of the different options in place in Member States, as well as of the problems identified in the case studies carried out in the first phase of the study. The policy recommendations shall have the objective to ensure that subcontracting practices ensure decent and fair working conditions, equal treatment of workers and the full respect of workers' rights, are more transparent and based on responsible business practices and conduct.

The draft policy recommendations will be discussed in a one-day seminar with external and trade union experts (approximately 20 people, 2 working languages). The date of the seminar shall be decided by the subcontractors and the steering committee.

The subcontractors shall then draft a report on the basis of the analysis they carried out. The report shall include an overview of the legal framework at international, European and national level, and shall include recommendations to policy makers.

The subcontractor will need to:

- Participate in meetings of the steering committee of the project, to discuss the legal analysis and its content and to assess the developments and the ongoing work;
- Identify, together with the steering committee of the project, the Member States whose legislation will need to be assessed;
- Prepare an overview of the legal framework regulating subcontracting processes, in particular with regard to workers' rights and working conditions;

- On the basis of discussions with the steering committee and also considering the case studies gathered in the first phase of the project, propose draft policy recommendations;
- Contribute to organise a full-day seminar to present the overview of the legal framework and to discuss the draft policy recommendations;
- Produce a report including the overview of the legal framework, with a particular focus on workers' rights and working conditions, and policy recommendations (approximately 60 pages);
- Participate in the mid-term conference of the project and contribute to the next events in the framework of the project.

A steering group composed of ETUC and its partners' affiliates, in particular the relevant European Trade Union Federations, will be held in Brussels every three months to monitor the progress of the work produced by the subcontracted experts..

### 3. Expertise, experience and skills required

Sound expertise is required on the following issues:

- Expert knowledge of subcontracting practices and of the regulation of subcontracting at national and European level;
- Expert knowledge of labour law and company law and EU internal market policies;
- Good understanding of industrial relations (both in national and European contexts);
- Experience in working on European level projects;
- Good understanding of the European trade union movement.

Sound experience is required in the following areas:

- Carrying out in-depth researches, including legal researches and overviews, preferably relating to workers' rights, working conditions and employment contracts;
- Writing research reports containing analysis of legal frameworks and meaningful policy recommendations;
- Successful track record of delivering in case studies for similar projects, with EU institutions and/or European stakeholders (social partners, NGOs, etc.).

Skills required:

- Proven research and presentation skills (in English);
- Proven skills in drafting study reports;
- Ability to work within specified deadlines and to respect budgetary limits;
- Ability to work in a multicultural context and understanding of different industrial relations culture & traditions;
- Good administration and project management skills.

### 4. Time schedule and reporting

The subcontractor will be asked to perform the above-mentioned tasks by the end of November 2020.

The subcontractor will also be asked to participate in the next events of the project.

## 5. Payment

The total maximum budget available for the fees of the subcontractor is as follows:

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| <b>Contract with ETUC</b>  |  |
| <b>Main activities and Meetings</b>  |  |
| <ul style="list-style-type: none"> <li>• Conducting analysis of the legal framework and drafting policy recommendations</li> <li>• Participating in a full day seminar to discuss the draft recommendations</li> <li>• Drafting report</li> <li>• Participating in the other events in the framework of the project</li> </ul> |  |
| <b>Total budget for the Expertise</b>  | <b>15 000 € (VAT and all taxes included)</b> |

The subcontractor will be remunerated in various instalments (advance and final payment). This amount covers the fees but does not include the travel and subsistence costs incurred for attending project meetings (such as Steering Committee meetings and Conferences). These will be covered by ETUC on the basis of EU rules & thresholds (see the EC table of maximum amounts per EU member state).

## 6. Selection criteria

The selection criteria are:

- Verifiable expertise, experience and skills, as required and described in part 3 of this call;
- Proven track record of ensuring the quality of written materials produced, both in terms of content and format (i.e. previous publications), in the relevant subjects specified in this call for tenders;
- Price not exceeding the amount stated above;
- Previous research/work undertaken in the field of subcontracting and its impact on employment and labour.

## 7. Form, structure and content of the tender

Tenders must be written in English. They must be signed by the tenderer or his duly authorised representative and be perfectly legible so that there can be no doubt as to words and figures. Tenders must be clear and concise and assembled in a coherent fashion.

Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications.

All tenders must include at least two sections:

i) Technical proposal

The technical proposal must provide all the information needed for the purpose of awarding the contract, including:

- Specific information covering the technical and professional capacity, as required, in particular:
  - Description of relevant professional experience with emphasis on the specific fields covered by the invitation to tender;
  - Detailed curriculum vitae of key coordinator and of the other team members;
  - A selection of the main works and/or articles published by all the experts involved, in relation to the relevant subjects specified in this tender.
- Specific information concerning the proposed methodology for delivering the tasks listed in part 2 of this call.

ii) Financial proposal

Prices of the financial proposal must be quoted in euros, including if the subcontractor is based in a country which is not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.

Prices must be fixed amounts and shall not include travel expenses and daily allowances for the attendance to the Steering Committee meetings and other project events which will be covered by ETUC on the basis of EU rules & thresholds.

The maximum amount available for this contract is EUR 15.000 (VAT and all taxes included).

Prices shall be fixed and not subject to revision during the performance of the contract.

## 8. Award Criteria

The contract will be awarded to the tender offering the best value for money, taking into account the specific objectives, requirements and selection criteria of the tender. The principles of transparency and equal treatment will be respected with a view to avoiding any conflicts of interest.

## 9. Content and selection of the bids

**This call for tenders will be published on the ETUC website on 30 April 2020 and will be kept online for 25 calendar days. Offers must be sent at the latest on Monday 25 May 2020** Offers must be sent to ETUC, in electronic format (by e-mail to [amartin@etuc.org](mailto:amartin@etuc.org)).

A committee will be formed comprising of 3 representatives of the ETUC. One member of this committee will confirm the date and time of receipt of each bid. The committee members will sign the report on the bids received, which will list the admissible bids and provide reasons for rejecting bids owing to their failure to comply with the stipulations of the tendering process.

This committee will also evaluate the tenders that have been deemed admissible. An evaluation report and classification of participation requests will be drawn up, dated and signed by all the members of the evaluation committee and kept for future reference.

This report will include:

1. The name and address of the contracting authority, the purpose and value of the contract;
2. The names of any excluded candidates and the reasons for their rejection;
3. The names of candidates selected for consideration and the justification for their selection;
4. The names of candidates put forward and justification of their choice in terms of the selection or award criteria.