

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 Friday 22 March 2019, and keep it online for 35 calendar days (deadline for submission of bids: Friday 26 April).

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.

2. Tasks to be performed by the subcontractor

The first phase of the project consists of several case studies to be carried out by the contractor, including fact-finding missions. The intention is to conduct at least 5 case studies (and the project budget foresees at least 5 field visits), but the actual number of these case studies/field visits may be altered.

A first step will be to identify representative subcontracting practices. The case studies should be representative of the different geographical areas of the European Union (and different Member States) and of the different subcontracting practices and conditions (long or short subcontracting chain; national or cross-border; different sectors...). The list of cases will be discussed and agreed upon

by the subcontractor and the steering committee. Interview templates for the field visits will be developed by the contractor, together with the steering committee.

The second step will be to gather concrete material on practical consequences of subcontracting practices upon workers. The case studies should identify clear subcontracting schemes and investigate what may constitute abuses and/or fraudulent and/or immoral behaviours. Particular attention should be paid to working conditions and employment contracts. Field visits and interviews will be carried out. Where necessary, interpretation will be required for local interviews. Interview templates and their responses will be translated from local languages into English. The interlocutors will be trade union representatives at local level, labour inspectors, and where realistic human resources management.

A report will then be drafted on the basis of the material and the information gathered, outlining the findings of the case studies and of the fact-finding missions, in particular on the consequences of the subcontracting structures for workers' rights, working conditions and employment contracts. The report will undergo a thorough and independent legal screening.

The contractor will need to:

- Identify, together with the steering committee of the project, representative case studies;
- Develop interview templates, together with the steering committee;
- Analyse at least 5 representative case-studies, carrying out at least 5 field visits (and the relevant interviews);
- Produce a report on the case studies conducted, describing the impact of subcontracting in the cases studied, in particular on employees' rights and working conditions (approximately 90 pages);
- Contribute to organise and participate in a mid-term conference in January 2020 to present the results of the case studies and the report and to discuss first areas of policy recommendations;
- Participate in 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 fact-finding missions.

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 and case studies, including field visits, preferably relating to workers' rights, working conditions and employment contracts;
- Writing research reports containing analysis of case studies 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 January 2020, including a mid-term conference in January 2020.

The subcontractor will also be asked to participate in the full day seminar foreseen in the phase 2 of the project and in the final conference in February 2021.

Please note that the exact dates of the above-mentioned events may be subjected to slight changes and will be decided upon by the steering committee.

5. Payment

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

Contract with ETUC	
Main activities and Meetings	
<ul style="list-style-type: none"> • Conducting case studies and field visits • Drafting report • Participating in full day seminar and other events in the framework of the project 	
Total budget for the Expertise	25 000 € (VAT and all taxes included)

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 Final Conference) and for conducting the country visits (for the study). 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 sub-contractor 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 25 000 (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 Friday 22 March 2019, and will be kept online for 35 calendar days. Offers must be sent at the latest on Friday 26 April 2019. Offers must be sent to ETUC, in both formats: electronic (by e-mail to amartin@etuc.org) and as a paper copy (see contact details below).

Concerning the paper copy, to ensure confidentiality, bidders must submit their offer in a double envelope. Both envelopes must be sealed and the inside envelope shall not only bear the name of the department for which it is intended (see below), but also the words "Tender Subcontracting Project – not to be opened by the Mail Department" (Appel d'offres – à ne pas ouvrir par le service du courrier).

A committee will be formed comprising of 3 representatives of the ETUC. One or more members of this committee will initial the documents, confirming the date and time 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.

Candidates must send their bid electronically – to the following e-mail address: amartin@etuc.org – as well as submitting a paper copy of their bid, either delivered by hand or by registered mail or special courier service to:

ETUC

Thiébaut WEBER

Confederal Secretary

International Trade Union House

Boulevard du Roi Albert II, 5

B – 1210 Brussels

BELGIUM

For bids sent by registered mail, the postmark will serve as proof of the date of dispatch.