



Commission for
Communications Regulation

Business Radio Licensing Review: Provision of Economic Consultancy Services in relation to future Business Radio Licences in Ireland

Invitation To Tender

Reference: ComReg 13/65

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**An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

Additional Information

All responses to this ITT should be clearly marked:	"Business Radio Licensing Review: Provision of Economic Consultancy Services in relation to future Business Radio Licences in Ireland"
<p>Applications should be submitted by hand or by post.</p> <p>Applications must be submitted in three hard copies (together with one electronic copy provided on CD or USB Key), to :</p> <p>Attention: Brendan O'Brien Commission For Communications Regulation 2nd Floor Reception Abbey Court (Block D,E,F) Irish Life Centre Lower Abbey Street Dublin 1 Ireland</p> <p>Applications must be received by 24 July 2013 17:00 (Irish Time).</p> <p>Applications which are delivered late will not be considered, subject to the terms of the ITT.</p> <p>No Application may be withdrawn after its acceptance.</p>	

A word version of the ITT is offered by ComReg in good faith for candidates' convenience however candidates are advised that in the event of any discrepancy between the PDF version and the word version of the ITT, the PDF version of the ITT shall at all times be the definitive and governing version.

Content

Section	Page
1 Definitions.....	7
2 General Overview.....	9
2.1 Process Overview	9
2.2 The Invitation to Tender	9
2.3 The Competition Documents.....	10
2.4 Process Timelines.....	10
2.5 Requirements.....	11
2.6 Acceptance of Competition Documents	11
2.7 Important Notice.....	11
3 The Services Requirement And Indicative Contract	12
3.1 The Commission	12
3.2 The Services Specification.....	12
3.3 Conditions for Performance of Contract	13
3.4 Indicative Contract	14
3.5 Key Personnel.....	14
3.6 Payment for Services	15
4 Applicant Composition	16
4.1 Lead Firm.....	16
4.2 Consortia / Groupings	16
4.3 Subcontractors.....	17
4.4 Conflicts, Collusion and Participation in other Applications.....	17
4.5 Change in Applicant or Key Personnel.....	18
4.6 Change in Legal Form of Applicant.....	19

4.7	Registerable Interest.....	20
4.8	Article 45 Declaration.....	20
5	Information And Queries	21
6	Delivery, Content And Format Of Applications.....	23
6.1	General	23
6.2	Delivery of Application.....	23
6.3	Format of Application	24
6.4	Comments on Indicative Contract	25
6.5	Full Information	26
6.6	Change in Events or Applicant Status.....	27
6.7	Sensitive Information.....	27
6.8	Compliant and Unqualified Application.....	27
6.9	Abnormally Low Applications	28
7	Evaluation Committee And Its Powers.....	29
7.1	Evaluation Committee	29
7.2	Powers of Evaluation Committee	29
7.3	Interviews.....	30
7.4	Right of Waiver, Clarification and Rejection	30
7.5	Right to Require Verification.....	31
8	Overview Of Evaluation Process.....	32
8.1	Opening of Applications	32
8.2	Overview of Evaluation of Applications	32
8.3	Stage 1 – Compliance Check.....	32
8.4	Stage 2 - Compliance with Minimum Requirements.....	33
8.5	Stage 3 – Evaluation on the basis of the Selection Criteria.....	34
8.6	Stage 4 – Evaluation on the basis of the Award Criteria	35
8.7	Stage 5 – Elimination/Appointment of Preferred Applicant.....	37
8.8	Stage 6 - Final Approval / Execution	39
8.9	Unsuccessful Applicants	39
9	Additional Conditions	40
9.1	Open Applications	40

9.2	Canvassing	40
9.3	Collusion / Improper Influence.....	40
9.4	Confidentiality.....	40
9.5	Publicity.....	41
9.6	Errors	41
9.7	No Warranty and Termination	41
9.8	Own Costs.....	42
9.9	Exclusion of Liability.....	42
9.10	No Contract.....	42
9.11	Own Advice	43
9.12	Legal Obligations	43
9.13	Waiver.....	43
9.14	Timelines.....	43
9.15	Amendments.....	44
9.16	Conclusion of Process	44
9.17	Governing Law.....	44

Appendix

Section	Page
Appendix: 1 Application Format	45
Appendix: 2 Marking Scheme	46
Appendix: 3 Acceptance Certificate	48
Appendix: 4 Article 45 Certificate	50
Appendix: 5 Pre-Qualification Questionnaire	52
Appendix: 6 Declaration Of Compliance	56
Appendix: 7 Tender	58
Appendix: 8 Economic And Financial Standing	74
Appendix: 9 Draft Contract.....	76

1 Definitions

1.1.1 In this ITT, unless the context otherwise suggests, the following terms and expressions have the following meanings:

- “Applicant” means a Person who is either a recipient of the ITT or submits an Application in response to the ITT and includes any, some or all the members (individually and/or collectively) of any consortium or group which submits an Application (but does not include any proposed sub-contractors of the Applicant).
- “Application” means the PQQ, Tender and certifications / declarations submitted by an Applicant in response to the ITT and any clarifications provided in respect of it.
- “Award Criteria” means the award criteria set out in section 8.6.
- “Business Radio” refers to a variety of Licence types issued by ComReg. These include Business Radio, Temporary Business Radio, Community Repeaters, Paging, Mobile Radio Systems and Third Party Business Radio Licences¹.
- “Commission” means the Commission for Communications Regulation and includes, if the context so admits or requires, its advisors, employees, officers, contractors, representatives, agents and/or the evaluation committee.
- “Competition Documents” means any or all the ITT (including all appendices) and/or any clarification documents issued by the Commission.
- “Contract” means the contract to be entered into between the Commission and the Service Provider for the Services which is set out in draft form in Appendix 9.
- “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 Invitation to Tender.

¹ ComReg’s Business Radio Website:

http://www.comreg.ie/radio_spectrum/search.541.489.10005.0.rslicensing.html

Business Radio Licensing Review: Provision of Economic Consultancy Services in relation to future Business Radio Licences in Ireland 7

- “Lead Firm” means the member of the Applicant nominated by the Applicant as the Lead Firm in its PQQ and which will act as the Commission’s principal contact in respect of this process and subject to the terms of this ITT. The Lead Firm will be required to execute the Contract as the prime contractor if the Applicant is successful.
- “Minimum Requirements” mean the pass / fail minimum requirements set out in section 8.4.
- “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 PQQ at Appendix 5 and which Applicants are required to complete and include in their Applications submitted to the Commission and any clarifications provided in respect of it.
- “Preferred Applicant” means the Applicant provisionally selected as the Service Provider in accordance with section 8 of this ITT.
- “Selection Criteria” means the selection criteria set out in section 8.5.
- “Services” means the services more particularly described in section 3 of this ITT, any services which can reasonably be inferred from them.
- “Service Provider” means the Applicant who is awarded and enters into, the Contract with the Commission.
- “Tender” means the Applicant’s commercial offering as more particularly described in Appendix 7 and which Applicants are required to complete and include in their Applications submitted to the Commission and any clarifications provided in respect of it.

2 General Overview

2.1 Process Overview

- 2.1.1 The purpose of this process is to award a contract for the provision of the Services by the Service Provider. The Services in broad terms are the provision of Economic Consultancy Services in relation to future Business Radio Licences in Ireland.
- 2.1.2 This competition was advertised on www.etenders.gov.ie by publication of a contract notice and on ComReg's website².
- 2.1.3 The estimated value of this contract, including the option to extend its term, is below the threshold for application of Directive 2004/18/EC and the corresponding Irish Regulations, namely the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329 of 2006). As a result, is not subject to this legislation.
- 2.1.4 The open procedure is being used.

2.2 The Invitation to Tender

- 2.2.1 Applicants are invited, pursuant to this ITT, to participate in this process and to submit an Application to provide the Services. The Application should be in the format described in the ITT.
- 2.2.2 The Application should contain two distinct documents:
- 2.2.3 PQQ
- 2.2.4 The Tender
- 2.2.5 Together with the declarations identified in Appendix 1. The required contents of each of the documents are described further below. All documents should be submitted at the same time in a single Application.
- 2.2.6 The Commission requires Applicants to submit three hard copies (together with one electronic copy provided on CD or USB Key) of their Application by hand or by post to be received by the deadline set out in section 2.4
- 2.2.7 Applicants must submit an Application in respect of all of the Services. Variants are not permitted.

² www.comreg.ie

2.2.8 Applicants may submit one Application only.

2.3 The Competition Documents

The ITT comprises the Competition Documents. These may be supplemented by clarification documents issued during the course of the competition.

2.4 Process Timelines

2.4.1 The key timelines in relation to this process are as follows:

Deadline for receipt of queries (see section 5 {Information and Queries} of the ITT)	10 July 2013 17:00 (Irish time)
Deadline for comments on draft Contract (See section 4.1/6.5 of the ITT)	10 July 2013 17:00 (Irish time)
Deadline for submission of Applications	24 July 2013 17:00 (Irish time)
Site Visit / Presentation by selected Applicants to evaluation committee (if required)	TBD
Notification of outcome of evaluation of Applications	02 August 2013
Award of Contract	02 August 2013

2.4.2 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 Competition Documents. The Commission may, at its absolute discretion, give (or not give) notice to Applicants of any such extensions or waivers as it considers appropriate.

2.5 Requirements

- 2.5.1 Applications must meet and address all the requirements, and must be in the format, required by the Competition Documents.
- 2.5.2 An Application which fails to meet and/or address any or all of the requirements of the Competition 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 Competition Documents and may, at the absolute discretion of the Commission and subject to applicable law, be accepted or rejected and eliminated from this process.

2.6 Acceptance of Competition Documents

- 2.6.1 By receiving a copy of the Competition Documents and/or submitting an Application in response to the Competition Documents, each Applicant unconditionally and irrevocably accepts and agrees to the terms and conditions of the Competition Documents and will be legally bound by them.

2.7 Important Notice

- 2.7.1 Applicants' attention is particularly drawn to section 9 (Additional Conditions) of this ITT which contains conditions, disclaimers, requirements and caveats that apply to and govern the Competition Documents and this process and which Applicants are legally bound by in accordance with section 2.6.

3 The Services Requirement And Indicative Contract

3.1 The Commission

3.1.1 Commission for Communications Regulation (ComReg) is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) and the postal sector. We are the national regulatory authority for these sectors in accordance with EU law which is subsequently transposed into Irish legislation.

3.1.2 More information in relation to the Commission can be accessed at www.comreg.ie

3.2 The Services Specification

3.2.1 The Requirement

The Services in broad terms are the provision of advice on Licence fees and duration for future Business Radio Licences in Ireland.

The detailed Terms of Reference including required deliverables and timelines are outlined in Appendix 7.

The Preferred Applicant will be required to work alongside ComReg staff and advisers from time to time via conference calls or face to face meetings. Where face to face meetings are required, these will generally be held at either ComReg's premises or locations in Dublin. The confidentiality of the work must be protected at all times.

3.2.2 Duration of the Contract

It is intended that the Contract between the Commission and the Service Provider will be put in place for a period of 12 months. At the end of the initial contract period, the Commission will review the Service being provided and, at its absolute discretion, may continue the Contract for a further 12 months period or, alternatively, terminate it. At the end of that period, the Commission will review the Service being provided and, at its absolute discretion, may continue the Contract for a further 12 months period or, alternatively, terminate it.

3.3 Conditions for Performance of Contract

3.3.1 It is the obligation of Applicants to ensure that they are fully aware, appraised of and comply with all the associated responsibilities and legal obligations arising out of and/or in connection with the provision of the Services and hold any required consents etc. This will be a condition of the Contract. This section provides some general information in relation to particular conditions for performance of the Contract. Relevant websites include:

- www.revenue.ie
- www.entemp.ie
- www.employmentrights.ie
- www.epa.ie
- www.environ.ie
- www.hsa.ie
- www.hse.ie

Employment and Working Conditions

3.3.2 Applicants are required to acknowledge in their Applications that they have taken account of their obligations relating to employment protection and working conditions that are in force where the Services are to be provided and which are applicable to the Services when drawing up their Applications.

3.3.3 The Service Provider will be required to comply with the obligations relating to employment protection and working conditions that are in force where the Services are to be provided and which are applicable to the Services.

Tax

3.3.4 It will be a condition of the Contract that the Service Provider must comply with the terms of Department of Finance Circular 43/2006: Tax Clearance Procedures: Public Sector Contracts, or any replacement.

3.3.5 The Service Provider and any sub-contractors (domestic or otherwise) appointed by the Service Provider may be required, as a pre-condition to entry into the Contract, to produce for inspection by the Commission a current Tax Clearance Certificate within one (1) week of request by the Commission or such other period as may be stipulated by the Commission. However, a Tax Clearance Certificate is not required in order to be eligible to submit an Application.

- 3.3.6 The Service Provider and any sub-contractors must continue to hold the current versions of such certificate until the termination of the Contract, and no payment falling due under the Contract will be made by the Commission unless it has in its possession at the time of such payment a current issue of the relevant certificate.
- 3.3.7 Applicants may give the Commission permission to check their tax clearance status by quoting their (Revenue) customer number and tax clearance certificate number. Applicants which provide such numbers are deemed to have agreed to the Commission checking their status in this way.

Health and Safety

- 3.3.8 The Service Provider will be required in providing the Services to comply with, and to allocate adequate resources to enable it to comply with, its obligations under the Safety, Health and Welfare at Work Act 2005, any regulations and statutory codes under it, and any subsequent Safety, Health and Welfare legislation.

3.4 Indicative Contract

- 3.4.1 The Preferred Applicant will be required to enter into the Contract with the Commission. An indicative Contract is enclosed at Appendix 8. Applicants may submit comments or queries in relation to the Contract, in accordance with section 6.4, by the deadline set out in section 2.4.1 above and in accordance with the procedure set out in section 5 below.
- 3.4.2 It is intended that the current tender process will give rise to a Contract between the Commission and the Service Provider for the provision of the Services to the Commission for a term of 12 months, with an option for the Commission to continue it for a further 2 years. The Contract will include such clauses relating to early termination which the Commission considers appropriate. At the end of the initial contract period, the Commission will review the Service being provided, and reserves sole discretion as to whether or not the Contract will be renewed after that.

3.5 Key Personnel

- 3.5.1 Applicants are required to identify the names and addresses of the personnel which they propose (presently or in the future) will provide Services under the Contract. It will be a condition of the Contract that such key personnel provide the Services.

3.6 Payment for Services

3.6.1 The Service Provider will be paid for the Services in euro on completion of both Phases I and II. For Phase III the Service Provider will be paid, at the hourly rate, for the Services in euro on completion.

4 Applicant Composition

4.1 Lead Firm

- 4.1.1 Applicants 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 an Applicant comprising a single member, the single member is the Lead Firm. Otherwise, the Applicant must nominate the member of the Applicant which is the Lead Firm where provided for in the PQQ.
- 4.1.2 The Lead Firm is responsible for providing all relevant information to all members and sub-contractors of the Applicant and any other relevant Persons.
- 4.1.3 The Lead Firm will be required to execute the Contract as the prime contractor if the Applicant is successful.

4.2 Consortia / Groupings

- 4.2.1 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 Applicant for the purposes of the competition.
- 4.2.2 If the Applicant is a consortium or grouping of members, the Commission reserves the right to request copies of any agreements between the members and to comment upon them and take them into account in the evaluation process to the extent appropriate. However, this information should not be provided without being specifically asked to do so.
- 4.2.3 An Applicant will be required under the Contract to use any consortium members identified in its Application for the role specified in it.
- 4.2.4 If an Applicant is a consortium, a single member of the Applicant will be required to enter into the Contract as the prime contractor with all other members of the Applicant assuming the role of sub-contractors. The Commission may, at its absolute discretion, require the latter members to provide collateral warranties or guarantees to the Commission on terms satisfactory to the Commission. The Lead Firm will be required to execute the Contract as the prime contractor if the Applicant is successful.

4.3 Subcontractors

- 4.3.1 Applicants are required to identify any subcontractors which they propose to use (presently or in the future) in the performance of the Contract.
- 4.3.2 An Applicant will be required under the Contract to use any subcontractors identified in its Application for the role specified in it.
- 4.3.3 An Applicant will remain solely liable under the Contract to the Commission for its and any of its subcontractors' acts, errors or omissions despite the use of any subcontractor.

4.4 Conflicts, Collusion and Participation in other Applications

- 4.4.1 An Applicant must disclose in its Application if it, or any of its members, subcontractors or other parties identified in its Application, has any economic, legal, commercial or financial relationship with another Applicant (or part of another Applicant's team) submitting a separate response to the Competition Documents.
- 4.4.2 The Applicant is required in such event to identify the economic, legal commercial or financial relationship in question and provide an accompanying statement stating that it is aware of the matter and that it has been brought to the attention of all persons identified in its Application whilst, at the same time, maintaining the integrity of this competition and confidentiality. The Applicant is also required in such an event to propose suitable protections and procedures to be put in place by the Applicant to protect against or minimise any potential conflict, collusion or distortion of competition arising. It is recommended that Applicants do this in good time before submitting an Application so that the Commission can determine whether the Applicant is permitted to proceed based on its proposed composition before the Applicant submits its Application as such is at the Applicant's risk.
- 4.4.3 The Commission may investigate the circumstances to determine if the notified matter may result in a conflict of interest, collusion and/or a distortion of competition or perception or risk of such. If it is felt by the Commission that adequate protections and procedures are in place to ensure that competition will not be distorted and conflicts of interest or collusion will be avoided, the Applicant may be permitted to proceed. On the other hand, if it is felt by the Commission that there is a risk that competition may be distorted or there is a potential perceived conflict of interest or possibility of collusion, the Applicant will be informed of this and may be instructed that if it still wishes to participate in this process it must go forward as a single Applicant or number of Applicants or

without the party concerned or to take any other steps, as considered appropriate by the Commission at its absolute discretion. The Commission also reserves the right acting reasonably, to reject the Application of an Applicant and eliminate it from the process and competition if it considers this appropriate or necessary.

4.5 Change in Applicant or Key Personnel

- 4.5.1 The Commission recognises that arrangements in relation to consortia and subcontracting may be subject to future change. Applicants should therefore respond in the light of such arrangements as are currently envisaged.
- 4.5.2 It should be noted, however, that it is not permitted, after an Applicant has submitted an Application, to:
- add, delete or substitute constituent members of the Applicant or subcontractors or other parties identified in the Application;
 - alter the intended shareholdings or control of individual members of the Applicant;
 - alter the intended responsibilities, functions or duties of individual members of the Applicant, subcontractors or other parties identified in the Application;
 - change or replace the key personnel identified in the Application or their intended responsibilities, functions or duties,

Without the prior written approval of the Commission.

- 4.5.3 The Commission reserves the right to withhold approval for any such changes and to disqualify the Applicant concerned from any further participation in the procurement process where any such change is made without the Commission's prior approval or where the Commission's decision is not accepted.
- 4.5.4 Approval will only be granted provided the Applicant, in the view of the Commission, continues to meet the conditions for selection as set out in the Competition Documents and would not have received a lower score / grade in the evaluation process which would have impacted upon its ranking or to the extent that it would not have been selected and provided it does not substantially alter the composition of the consortium or team in question, is not to the detriment of the Commission and the Commission is satisfied that the change does not present any risks from a public procurement perspective.
- 4.5.5 It should be noted that a change to the Applicant will be judged as against the structure, shareholdings, control, duties and responsibilities

of the team proposed in the original Application submitted. Similarly, a change to the key personnel will be judged as against the educational and professional qualifications and experience, and duties, functions and roles, of the key personnel proposed in the original Application.

4.5.6 Any such change is at the risk of the Applicant.

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

4.5.8 The Contract contains provisions dealing with changes in the proposed team during the term of the Contract.

4.6 Change in Legal Form of Applicant

4.6.1 An Applicant may, with the Commission's prior written approval, establish a new legal entity or entities that will take on the position of the Applicant that pre-qualified provided that:

- the conditions for selection as set out in the Competition Documents are satisfied by the new legal entity/entities;
- the new legal entity or entities would not have received a lower score / grade in the evaluation process which would have impacted upon its ranking or to the extent that it would not have been selected;
- the Commission gives its prior written approval to the establishment of such entity or entities for the purposes of this process;
- the Applicant undertakes, prior to such date as may be stipulated by the Commission, that any such new legal entity or entities will be established;
- the change in legal form of the Applicant is not to the detriment of the Commission.
- The Commission reserves the right to set out further requirements in relation to any proposed new legal entity or entities, including requirements for guarantees, warranties or other forms of security from any members of the Applicant or Persons identified in its team.
- Any proposed new legal entity or entities must be notified to the Commission as soon as possible.

4.7 Registerable Interest

- 4.7.1 Any registerable interest involving an Applicant and the Commission (or their relatives) must be fully disclosed in the response to this ITT, or should be communicated to the Commission immediately upon such information becoming known to the Applicant in the event of this information only coming to their notice after the submission of the Application.
- 4.7.2 The terms “registerable interest” and “relative” are interpreted as per section 2 of the Ethics in Public Office Act 1995.
- 4.7.3 Applicants with a registerable interest may be deemed ineligible where this is considered necessary to maintain the probity of the competition, or alternative steps may be taken to mitigate any issues arising in such respect.

4.8 Article 45 Declaration

- 4.8.1 An Application made by an Applicant whose personal situation falls within any of the mandatory circumstances referred to in Article 45 of the Public Sector Directive 2004/18/EC will be rejected. This is a pass / fail requirement. Please complete appendix 4.

5 Information And Queries

- 5.1.1 Applicants may not address queries to, or communicate with, the Commission other than in the manner provided in this section 5.
- 5.1.2 Each Applicant must fully satisfy itself as to the nature and requirements of the Competition Documents. In addition, if Applicants consider that any aspect of the Competition Documents are not clear or are ambiguous, contain errors or have any queries regarding the manner in which the evaluation will be undertaken or any of the Minimum Requirements, Selection Criteria or Award Criteria will be applied or are properly understood, this must be raised with the Commission.
- 5.1.3 All queries regarding any element of the Competition Documents must be forwarded to the Commission by e-mail only to:

brendan.obrien@comreg.ie (and copied to tom.hurley@comreg.ie)

Subject line should be entitled:

“Questions: ITT for the Provision of Economic Consultancy Services in relation to future Business Radio Licences in Ireland”

A query is deemed to not have been made unless and until it is acknowledged or responded to by the Commission.

- 5.1.4 Queries should be received by the Commission by the time and date stated in section 2.4 and prior to submission of an Application. It is the Applicant’s responsibility to ensure that all queries are received by the Commission by this deadline. The Commission reserves the right, at its absolute discretion, to respond to queries submitted after this deadline, although it may opt not do so.
- 5.1.5 Queries may not be made orally, or by any other means except that provided for in section 5.1.3. The Commission will not be bound by any oral communications unless, and only to the extent, to which they are subsequently confirmed by the Commission in writing.
- 5.1.6 Queries from all Applicants will be accumulated and answers, where appropriate and subject to the following sections, will be sent simultaneously to all Applicants to ensure that all Applicants have the same opportunity to respond. The Commission will, if appropriate, circulate copies of all queries submitted pursuant to this section 5, together with the Commission’s responses to them, to all Applicants.
- 5.1.7 The Commission reserves the right to respond separately to an Applicant’s query if, in the Commission’s absolute opinion, the

response is particular to that particular Applicant.

- 5.1.8 If an Applicant believes a query / request and / or its response relates to a confidential or commercially sensitive aspect of its submission it must mark the query / request as “confidential” or “commercially sensitive” and specify clear and substantive reasons for this. If the Commission, at its discretion, is satisfied that the query / request and / or its response should be properly regarded as confidential or commercially sensitive, the nature of the query / request and its response will be treated on a confidential basis.
- 5.1.9 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 Applicant accordingly and require the Applicant to either withdraw the query or to raise any objection within one (1) working day of such notification and state the grounds for its objection. If the Applicant does not withdraw the query / request or raise any objection within the specified period, or Commission is of the opinion that, notwithstanding the objection of the Applicant, the query / request is not confidential or commercially sensitive, the Commission may issue the query / request and its response to all of the Applicants.
- 5.1.10 The Commission does not accept responsibility for any communications issued by it which are missed or not received by Applicants or for communications issued by Applicants which are not received or responded to by the Commission. The onus is on Applicants to follow up with the Commission if no response is received.
- 5.1.11 The Commission is not responsible for information relayed (or not relayed) via third parties.
- 5.1.12 It should be noted that all communications in respect of this tender process will be issued to the e-mail address of the nominated contact person as provided by the Applicant in response to the PQQ. Accordingly, Applicants should ensure that such e-mail addresses can receive communications from e-mails with the domain comreg.ie and that they are monitored when the recipient is not in the office or otherwise unavailable. The Commission will not follow up on out of office or message failure notices received.
- 5.1.13 If, as a result of queries/requests, any discussion or other communication between the Commission and an Applicant and/or otherwise, the Commission is of the opinion that a clarification of and/or amendment to the Competition Documents is required to be made and/or additional information is required to be issued, then the Commission is entitled to do so at any time by notice in writing or by circulating it otherwise.

6 Delivery, Content And Format Of Applications

6.1 General

6.1.1 Applicants must submit Applications in the format and manner required by Appendix 1, as well as this section 6.

6.2 Delivery of Application

6.2.1 The Commission requires applicants to submit three hard copies (together with one read-only electronic copy on CDROM or USB Key) of the Application by hand or by post to be received by the deadline set out in section 2.2.6 above.

6.2.2 The Application should be enclosed in a sealed envelope entitled:

“Strictly Confidential – Tender for Business Radio Licensing Review: Provision of Economic Consultancy Services in relation to future Business Radio Licences in Ireland”

6.2.3 The Application must be delivered to the following address:

Attention: Brendan O'Brien
The Commission for Communications Regulation
2nd Floor Reception
Abbey Court
Block D, E, F
Irish Life Centre
Lower Abbey Street
Dublin 1
Ireland

6.2.4 Please allow sufficient time to deliver Applications to the Commission's offices as they are not located on ground floor. Delivery to the security desk at the ground floor does not constitute delivery to the Commission.

6.2.5 Applications may not be submitted by e-mail and/or fax.

6.2.6 Applications should be in English and complete and all details requested must be submitted.

6.2.7 Applicants must mark one of the hard copies of the Application as the “Master Copy”. This will take precedence in the event of any identified

inconsistency or conflict between it and any other copies of the Application, 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 Applicant had identified it as the “Master Copy”.

6.2.8 Applicants are fully responsible for the safe and timely delivery of their Applications. Late Applications will not, subject to 6.2.9, be accepted by the Commission under any circumstances.

6.2.9 Late Applications 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 exceptional circumstances such as where, for example, the lateness results from the fault of the Commission. This 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 an Applicant is required to provide all such assistance, access and verification as the Commission may require in such respect. The failure by a part of the delivery chain to deliver on time is unlikely to be considered an exceptional circumstance in the normal course.

6.3 Format of Application

6.3.1 The format and requirements for Applications are identified in Appendix 1. Applications must address all the requirements set out in this ITT.

6.3.2 An Application must comprise two separate documents, namely:

- The PQQ
- This will be evaluated against the Minimum Requirements and the Selection Criteria which are both identified in section 8. This assessment concerns Applicants’ economic and financial standing, and technical and professional ability/knowledge.
- The Tender
- This will contain the proposed solution and commercial offering of an Applicant. The highest ranked Tender will be awarded the Contract, subject to the terms of this ITT. This assessment concerns the Applicant’s approach to delivery of the Services and its cost.

6.3.3 The PQQ and Tender should be submitted as separate documents but as a part of a single Application at the same time subject to, and in accordance with, the Competition Documents. See Appendix 1 in this respect.

- 6.3.4 Applicants must submit an Application in respect of all of the Services specified. Variants are not permitted.
- 6.3.5 The onus is on Applicants to demonstrate the manner in which they meet the Minimum Requirements, Selection Criteria and Award Criteria.
- 6.3.6 The Application must include the following statements and certificates, duly completed and executed by an authorised representative of the Applicant in whatever manner is usual and legally permissible for the Applicant (including, all members of the Applicant) to effect binding contracts
- Acceptance Certificate (see Appendix 3)
 - Article 45 Declaration (see Appendix 4)
 - Declaration of Compliance with Minimum Requirements
- (See Appendix 6)
- 6.3.7 In the case of a consortium or group, these certificates or statements should be executed by each member of the consortium or group on its own behalf.
- 6.3.8 The name of each person signing should be typed or written in block capitals below his or her signature. The official capacity or authority of the persons signing should be shown.
- 6.3.9 Failure to submit the completed and executed certificates and statements may, at the Commission's absolute discretion, result in an Application being deemed invalid and rejected.

6.4 Comments on Indicative Contract

- 6.4.1 A copy of the indicative Contract is enclosed in Appendix 9. The indicative Contract is not open to substantial amendment.
- 6.4.2 Applicants are asked to carefully consider the terms and conditions set out in the indicative Contract.
- 6.4.3 If an Applicant has a comment or query on any provision of the Contract it must submit such comment or query by the deadline stipulated in section 2.4. It is recommended that specific concerns are identified and proposed acceptable amendments clearly set out. This is because Applicants may not be given a further opportunity in this respect. All questions and answers will be circulated via e-mail to all Applicants. The Commission will not, however, disclose the identity of any party which has posed a question, except where it is legally obliged to do so.

- 6.4.4 Applicants will be deemed to have accepted in principle any provisions of the indicative Contract if no observations are made in relation to such provisions in accordance with 6.4.3.
- 6.4.5 The Commission will consider any observations received in this way and may, at its absolute discretion, accept or reject any observations, proposed amendments or supplemental provisions proposed by an Applicant. The Commission is also entitled, on an individual basis, to seek clarification, raise queries, make a response or propose solutions or amendments where any observations, proposed amendments or supplemental provisions are proposed by an Applicant.
- 6.4.6 The Commission will then, insofar as it elects to make any changes to the Contract, issue a revised draft of the indicative Contract. Applicants will be required to confirm substantial acceptance of the revised draft in order to remain eligible for award of the Contract or, if no revised draft is issued, the original draft of the indicative Contract. The Commission may issue a revised draft before and/or after the deadline for submission of Applications, and may issue further revised drafts.
- 6.4.7 The Commission may, at its absolute discretion, eliminate an Applicant who will not accept, to the satisfaction of Commission, the indicative Contract in substantially the form which it is in or substantially in the revised form proposed by the Commission.
- 6.4.8 The Preferred Applicant, as a condition of its provisional selection, is required to enter into the Contract on terms satisfactory to the Commission.
- 6.4.9 The Commission is entitled to amend, revise or replace at any time during the competition, the provisions of the indicative Contract whether, in particular, on its own initiative or arising from observations, proposed amendments or supplemental provisions made by Applicants for consideration by the Commission. For the avoidance of doubt, it should be noted that the indicative Contract enclosed in Appendix 8 is not open to substantial amendment.

6.5 Full Information

- 6.5.1 Applicants must disclose all relevant information in their Applications and otherwise. Applicants which, or which attempt to, withhold any information that the Applicants knows to be relevant, or to mislead the Commission, may, at the Commission's absolute discretion, be rejected and eliminated from this competition.
- 6.5.2 If an agreement or agreements are awarded to an Applicant that has knowingly withheld relevant information or misled Commission, the agreements may, at the Commission's absolute discretion, be rendered

null and void.

6.6 Change in Events or Applicant Status

6.6.1 Any material information or change in events which relates to an Applicant and/or its Application that come to light subsequent to the submission of an Application must be clearly identified and clearly disclosed in writing to the Commission by the relevant Applicant as soon as possible. This includes any material changes in an Applicant's financial or other circumstances or the ownership of an Applicant. The Commission may (but is not obliged to) revisit any assessment and evaluation as a result of any such change on the basis of the information then available to the Commission.

6.7 Sensitive Information

- 6.7.1 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").
- 6.7.2 Accordingly, if an Applicant 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.
- 6.7.3 The final decision on any freedom of information request rests with the Commission, subject to applicable law.
- 6.7.4 Applicants should seek their own legal advice on the applicability of the Freedom of Information Acts.
- 6.7.5 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.

6.8 Compliant and Unqualified Application

6.8.1 Applicants must submit a fully compliant Application which is not qualified in any way.

6.9 Abnormally Low Applications

6.9.1 The Commission reserves the right to reject an Application if it considers that some or all of the pricing components of that Application are abnormally low. The approach adopted in this respect will be in line with the process provided for by Regulation 69 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329 of 2006) and Article 55 of Directive 2004/18/EC, The Commission shall, by notice in writing and before rejecting the Application, request the Applicant to provide written details of such of the constituent elements of the Application as are specified in the notice.

7 Evaluation Committee And Its Powers

7.1 Evaluation Committee

- 7.1.1 The evaluation committee appointed by the Commission will conduct the evaluations. Each member of the relevant evaluation committee will undertake such functions and tasks as each may agree to be allocated to a member or members. The Commission reserves the right, at its discretion, at any time to remove, substitute, appoint, decrease or increase the members of the evaluation committee without notice to Applicants.
- 7.1.2 The Commission, at its absolute discretion, may divide the evaluation committee's responsibilities so that a particular member or particular members have principal responsibility for the evaluation of only specific aspects of an Application to the exclusion of other parts. Nonetheless, while principal responsibility for evaluating specific aspects may be divided, each member of the evaluation committee will be entitled (without any obligation to do so), at its absolute discretion, to consider and comment upon other aspects of Applications, as the case may be, which may be taken into account to the extent considered appropriate by the evaluation committee having regard to the division of responsibilities.

7.2 Powers of Evaluation Committee

- 7.2.1 The evaluation committee may nominate one or more persons to conduct certain meetings or discussions or to evaluate or consider certain matters on its behalf during the competition.
- 7.2.2 The evaluation committee is entitled to carry out investigations and undertake such other matters in respect of any matter arising out of or incidental to the competition and/or its evaluations where, in the opinion of the evaluation committee, this is necessary, appropriate or helpful. The evaluation committee may, in particular, seek independent financial and market advice to validate information declared, or to assist in the evaluation.
- 7.2.3 The Commission, at its absolute discretion, may contact and visit Applicants and any or all of their sub-contractors, members, suppliers and/or referees which might be provided in the Application of an Applicant. Applicants, on request, must facilitate same.
- 7.2.4 The Commission reserves the right, at its absolute discretion, to ask Applicants for supplementary information, clarification or elaboration of their Applications to assist in the evaluation of Applications. Applicants 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.

- 7.2.5 Applicants may not, in responding to any such request, amend, supplement or elaborate upon their Applications in any way which would give rise to a distortion of competition, breach of transparency or unequal treatment.

7.3 Interviews

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

7.4 Right of Waiver, Clarification and Rejection

- 7.4.1 If an Application fails to address and satisfy any of the mandatory conditions or other elements of the Competition Documents, the Commission may, at its absolute discretion and subject to applicable law:

- reject the Application and eliminate the Applicant from this competition;

or

- meet with, raise issues and/or seek clarification or supplementary information from the Applicant in respect of the Application and/or the non-compliance; and/or
- request the Applicant 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 Application in accordance with this ITT.

7.5 Right to Require Verification

- 7.5.1 Applicants may be required, at the Commission's absolute discretion and at any time, to provide evidence verifying any information set out in their Applications. An Applicant may be rejected in the event that it cannot provide evidence verifying information provided in its Application in circumstances where such failure is material in the context of this competition and its selection.

8 Overview Of Evaluation Process

8.1 Opening of Applications

- 8.1.1 Applications will be opened in a closed meeting in the presence of such persons as the Commission considers appropriate. Applicants will not be present at the opening of Applications.

8.2 Overview of Evaluation of Applications

- 8.2.1 Applications will be evaluated in accordance with the sections below.

- 8.2.2 This includes the following stages:

Stage 1 – Compliance Check

Stage 2 – Compliance with Minimum Requirements

Stage 3 – Evaluation of PQQs on the basis of the Selection Criteria

Stage 4 – Evaluation of Tenders on the basis of the Award Criteria

Stage 5 – Appointment of Preferred Applicant / Verification of Minimum Requirements.

Stage 6 – Final Approval/Execution.

- 8.2.3 Each stage is sequential so that an Application which does not pass a particular stage will not be assessed in a following stage, but rather will be rejected.

- 8.2.4 Information considered under, or provided in, the PQQ will not be considered when evaluating Tenders in accordance with the Award Criteria.

8.3 Stage 1 – Compliance Check

- 8.3.1 Applications will be subjected to a check for completeness to ensure that all Applicants 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.

- 8.3.2 Any Applicant who has not provided a complete and compliant Application in accordance with the requirements of the ITT may be eliminated from the competition. This is subject to section 7.4 of this ITT.

8.3.3 It should be noted that this is an initial check for obvious non-compliance and does not prevent the Commission from subsequently identifying an element of non-compliance.

8.4 Stage 2 - Compliance with Minimum Requirements

8.4.1 In order to reduce bureaucracy and simplify the tendering process, Applicants are no longer asked, in respect of a number of requirements, to supply detailed evidence of capacity in the first instance. Instead, Applicants are required to self-declare compliance with the Minimum Requirement by submitting the Declaration set out in Appendix 6. In the first instance, Applications will be subject to a check to ensure Applicants have submitted an executed copy of the Declaration confirming that they satisfy the Minimum Requirements. Any Applicants who do not meet this requirement will have their Applications rejected, subject to section 7.4.

8.4.2 The Minimum Requirements are:

Criteria	<i>Minimum Requirement</i>
Banker's Letter	Each member of the Applicant must provide a letter from its current principal banker dated within the past 3 months stating that, to the best of its knowledge, this is the Applicant's principal account and it is currently in good standing.
Insurance ³	The Applicant must demonstrate that it has in place or available to it the following minimum levels of insurance: ⁴ Professional Indemnity Insurance: €1 million for each and every claim / in aggregate Maximum excess Public Liability Insurance:

³ The insurance details provided by the Applicant and any existing arrangements it has in place or proposes to make in relation to insurance are subject to further comment and approval 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 to insurance as they see fit. The Commission reserves the right, at its absolute discretion, to reject any Application if the terms of insurance which is proposed to be provided are not to the Commission's satisfaction.

⁴ If you do not currently have insurance in place which meets the minimum requirement set out above, an ability to take it out can be demonstrated by providing a letter/statement from the organisation's (reputable) insurance company or broker confirming it has such insurance available to it.

Criteria	<i>Minimum Requirement</i>
	<p>€ 1 million for each and every claim / in aggregate Maximum excess: Employer's Liability Insurance: € 1 million for each and every claim / in aggregate Maximum excess: The Service Provider will be required, 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 times as is reasonable and /or may be required in the circumstances the minimum insurance levels with the maximum excess stated above.</p>
<i>Economic and Financial Standing</i>	<p>The Applicant must demonstrate that it has sufficient economic and financial standing to meet its financial and economic obligations anticipated under the Contract and in respect of the Services over the full term of the Contract. The assessment of the Preferred Applicant in this respect will be undertaken in the manner set out in this document</p>

8.4.3 The Applicant provisionally selected as the Preferred Applicant will subsequently be required to provide evidence substantiating that it satisfies the Minimum Requirements as provided for in Stage 5 (8.7) below.

8.5 Stage 3 – Evaluation on the basis of the Selection Criteria

8.5.1 The PQQs will then be evaluated against the Selection Criteria. Any Applicant which does not achieve the minimum score for any of the Selection Criteria will be rejected. All other Applicants will be selected for stage 4. The Selection Criteria are:

Selection Criteria	Explanation	Marks	<i>Minimum Score (%)</i>
Services of a similar nature,	The Applicant shall list their experience in providing Services	50	60

Selection Criteria	Explanation	Marks	Minimum Score (%)
size and complexity	of a similar nature, size and complexity ⁵ .		
Experience, educational and professional qualifications (managerial and personnel staff)	The Applicant shall list the specific team members, including their area of specialism, experience, educational and professional qualifications.	50	60
<i>Total</i>		<i>100</i>	<i>60</i>

8.5.2 Marks will be awarded in accordance with Appendix 2. Applicants should note that their submission must achieve a minimum of 60% of the total marks available for each of the Selection Criteria above, in order to avoid elimination from consideration. In the event that an Applicant is eliminated from consideration due to a failure to reach the 60% threshold for either of the Selection Criteria listed above, then that Applicant's Application (including its Tender) will not be taken into further consideration.

8.5.3 The Commission reserves the right to interview Applicants before completing the final assessment under the Selection Criteria. Applicants who achieve the minimum 60% mark in both Selection Criteria above will then have their Tenders evaluated under the Award Criteria in the manner set out below.

8.6 Stage 4 – Evaluation on the basis of the Award Criteria

8.6.1 The Tenders of the Applicants selected in Stage 3 will be evaluated against the Award Criteria. The Award Criteria is the most economically advantageous Application from the Commission's point of view in accordance with the following criteria and weightings:

⁵ Applicants should include samples of Services provided in last three years, which are of a similar nature, size and complexity. Applicants should also provide contact details for three samples which we may contact.

Award Criteria	Marks Available	Minimum Score %
<p>Understanding the issues Criterion: This criterion will assess the Applicants understanding of the background and of the main tasks.</p> <p>Explanation: The Applicant shall outline its understanding of the background to the project, its understanding of the main tasks and steps required in order to assist ComReg with this project.</p> <p>This criterion is not concerned with the Applicant's capability (which was assessed in Stages 2 and 3) but rather is aimed at assessing the quality of services proposed.</p> <p>The subsections above are intended to provide an explanation of what the Commission intends to consider under this criterion. The Commission will take a holistic approach in this respect. There are no sub-criteria or sub-weightings.</p>	10	60
<p>Project plan and timing - proposed approach Criterion: This criterion will assess the Applicants project plan and timing, i.e. its proposed approach and allocation of resources.</p> <p>Explanation: The Applicant shall outline its proposed approach / solution in relation to how it will perform the tasks outlined in the Terms of Reference.</p> <p>The Applicant shall clearly outline, in its proposed plan, the quality and balance of its resource allocation for the project in respect of the proposed team, including any sub-contractors. In order to do so, the Applicant should include the following:</p> <ul style="list-style-type: none"> ➤ The time input (in days) of each team member. The proposed plan shall also clearly indicate each team members' availability throughout the project and the nomination of a person to liaise with ComReg. ➤ The specific responsibilities and the key role for each team member on the project. ➤ The evaluation in this respect will consider the 	60	60

<p>quality and balance of the proposed resource allocation to the work to be done in terms of availability, time allocation, expertise and experience having regard to the corresponding responsibilities, roles and input for the proposed personnel.</p> <p>This criterion is not concerned with the Applicant's capability (which was assessed in Stages 2 and 3) but rather is aimed at assessing the quality of services proposed.</p> <p>The subsections above are intended to provide an explanation of what the Commission intends to consider under this criterion. The Commission will take a holistic approach in this respect. There are no sub-criteria or sub-weightings.</p>		
<p>Cost</p> <p>This will be evaluated in the manner set out in appendix 2.</p> <p>The maximum unconditional capped fee (incl. VAT and expenses) that may be tendered is €65,000.</p>	30	n/a
Total	100	

8.6.2 Marks will be awarded in accordance with Appendix 2. Tenderers should note that their submission must achieve a minimum of 60% of the total marks available for each of the Award Criteria set out above, in order to avoid elimination from consideration.

8.6.3 Applicants which do not achieve the minimum score of 60% for any of the Award Criteria will have their Applications rejected. The price of any rejected Applicants will not be taken into account in the evaluation on cost.

8.7 Stage 5 – Elimination/Appointment of Preferred Applicant

8.7.1 The Tenders will be provisionally ranked in accordance with the Award Criteria and the Applicant who has submitted the highest ranked Tender will be provisionally selected as the Preferred Applicant.

8.7.2 The Commission will notify this Applicant in writing of its provisional ranking and provisional selection as a Preferred Applicant. Any such provisional notification will be conditional on the Preferred Applicant agreeing to, and entering into, the Contract with the Commission on terms satisfactory to the Commission. Furthermore, any notification

issued to the Preferred Applicant 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.

- 8.7.3 As a condition of any provisional notification, the Preferred Applicant may be required to comply with any notified conditions to the satisfaction of the Commission.
- 8.7.4 The Preferred Applicant will, in particular, be required to provide evidence substantiating that it satisfies the Minimum Requirements which it declared it met within seven (7) days (or such less or greater period as may be determined by the Commission at its absolute discretion) of a request to do so. If it fails to do so within the time required, or does not provide sufficient evidence to substantiate that it satisfies the Minimum Requirements the Application of the Preferred Applicant may be rejected and the Preferred Applicant eliminated from the process.
- 8.7.5 The Commission reserves the right to de-select and eliminate an Applicant originally provisionally selected as the Preferred Applicant and reject its Application on the basis of non-compliance:
- if it cannot comply with any conditions of its provisional selection;
 - if it cannot verify any information contained within its Application (including anything listed in the Declaration of Compliance with the Minimum Requirements) to the satisfaction of the Commission where requested to do so within the time allowed;
 - if the Contract is not executed with such Applicant (or it does not comply with any pre-conditions of the Contract);
 - if final close is not reached with such Applicant for whatever reason; or
 - for any other reason whatever which the Commission considers appropriate.
- 8.7.6 The Commission is not liable for any costs or expenses incurred by the Preferred Applicant arising out of or in connection with the issue of the notification, its revocation and anything occurring in between such stages.
- 8.7.7 If the Preferred Applicant is rejected, the Commission will follow the same process with respect to the next provisionally highest ranked Applicant. If a Preferred Applicant who has been rejected had submitted the lowest price, the evaluation against price will be re-executed without using the original Preferred Applicant with the then lowest price as the reference point for the price evaluation. This will be done until an Applicant enters into a Contract with the Commission.

8.8 Stage 6 - Final Approval / Execution

8.8.1 The evaluation committee's recommendation as to the execution of the Contract with the Preferred Applicant may be subject to final internal approval within the Commission. The Contract will then be executed.

8.9 Unsuccessful Applicants

8.9.1 Unsuccessful Applicants will be notified of this in writing. The Commission will not enter into the Contract with the Preferred Applicant until fourteen (14) days have elapsed from the date following that on which unsuccessful Applicants were notified by fax or electronic means of their rejection.

9 Additional Conditions

9.1 Open Applications

- 9.1.1 All Applications (including unaccepted Applications) must remain open and valid for 3 months from the deadline date of submission, as set out in 2.4 timelines. Applications are contractually binding offers. No Application may be withdrawn after its acceptance.

9.2 Canvassing

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

9.3 Collusion / Improper Influence

- 9.3.1 Collusion, or any attempt by interested parties/Applicants to influence, in any way, the procurement process, will result in the disqualification of that/those interested parties/Applicant(s). Examples of such improper influence are collusion, price fixing, bid rotation or market division.
- 9.3.2 The Commission may disqualify an Applicant if the Applicant is economically, legally, commercially, financially or otherwise related to one or more other Applicants in a way that would impede in any way the incentive that the Applicant should have to compete to be a Service Provider in the competition.

9.4 Confidentiality

- 9.4.1 The Competition Documents are confidential and personal to each Applicant who is in receipt of it and may be only used for the purposes of submitting an Application. Applicants may not release details of the Competition 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 Application. All information supplied to Applicants 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 an Applicant.

9.5 Publicity

- 9.5.1 No publicity whatever regarding the Competition 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.
- 9.5.2 The Commission may issue such communications and generate such publicity in relation to this process as it considers appropriate and without notice to Applicants. The Commission, in particular, has the right to publicise or otherwise disclose to any person information regarding this process, the identity of the Applicants (including the identity of their members and sub-contractors), shortlisted Applicants, the process or the award of the Agreement (including, without limitation, details of the contract price) at any time.

9.6 Errors

- 9.6.1 If an Applicant discovers any error or omissions or lack of clarity in the Competition Documents, the Applicant 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.

9.7 No Warranty and Termination

- 9.7.1 The publication of the Competition Documents does not warrant or imply that any Applicant will be awarded the Contract or any Applicant will be awarded the Contract on any particular conditions.
- 9.7.2 The Commission reserves the right, for any reason whatever at its absolute discretion:
- to reject any and all Applications;
 - not to proceed with any evaluation and/or negotiations;
 - not to select any Applicant or Application;
 - not to provide an Applicant with any additional information;
 - not to implement any arrangement contemplated by the Competition Documents;
 - to withdraw from discussions;
 - to suspend the process or discussions;

- not to award any Contract;
- to procure the Services by alternative means; and/or
- to terminate the Competition Documents, the process and/or the competition at any time and without reason.

9.8 Own Costs

9.8.1 Each Applicant is fully responsible for the entirety of all expenses and/or costs it incurs in the presentation or submission of an Application 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 an Applicant in the preparation or submission of its Application, the participation in this competition or otherwise. Further, the Commission is not responsible for any travel or accommodation costs incurred by the Applicant unless previously agreed in writing by the Commission.

9.9 Exclusion of Liability

9.9.1 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 Applicant and no responsibility or liability is accepted by Commission for the accuracy or completeness of the Competition 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 Competition Documents) is hereby expressly disclaimed and excluded by the Commission. This section 9.9 operates to the fullest extent permitted by applicable law.

9.10 No Contract

9.10.1 The Commission is under no obligation to award the Contract to the lowest priced, most economically advantageous or any Application it may receive.

9.11 Own Advice

9.11.1 Applicants 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 Competition Documents, the Services, Contract and all information provided or made available to them, at their own cost and expense.

9.12 Legal Obligations

9.12.1 No contractual obligations in relation to the Services, the process and/or the competition 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 Service Provider and any conditions precedent to such have been fulfilled. Legal and contractual obligations are imposed on Applicants who download or respond to the Competition Documents and the Commission reserves the right to enforce such obligations. However, the Competition Documents do not give rise to any enforceable contractual obligations against the Commission and no collateral contract is entered between the Commission and any Applicant in such respect.

9.13 Waiver

9.13.1 The failure or neglect by the Commission to enforce any provision of the Competition 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.

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

9.14 Timelines

9.14.1 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 Competition Documents. The Commission may, at its absolute discretion and subject to applicable law, give (or not give) notice to Applicants of any such extensions or waivers.

9.15 Amendments

9.15.1 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, the Services, rules and/or timelines in or related to the Competition Documents or process in any respect by way of clarification, addition, deletion or otherwise. The Commission will inform Applicants of any such amendments or modifications, if appropriate.

9.16 Conclusion of Process

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

9.17 Governing Law

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

Appendix: 1 Application Format

The Contract and the Services will be conducted in the English language and all deliverables must be submitted in English.

The Application should comprise the following documents:

- Acceptance Certificate (see Appendix 3)
- Article 45 Certificate (see Appendix 4)
- Declaration of Compliance with Minimum Requirements (see Appendix 6)
- Pre-Qualification Questionnaire (see Appendix 5)
- Tender (see Appendix 7)

The above documents must be separated with clearly marked divisions to facilitate easier accessibility and referencing.

The specific information to be included in the PQQ and Tender are identified in the Appendices referred to above.

Please carefully review the requirements of the ITT and, in particular, section 6.

In creating your Application, it is in your interest to tailor it to respond to the various requirements and criteria identified in the ITT, particularly the Minimum Requirements, Selection Criteria and Award Criteria.

Appendix: 2 Marking Scheme

Applications which are assessed against the Selection Criteria and Award Criteria will be marked against each of those criteria using the marking scheme set out below.

Applicants will be given a percentage score against each of the Selection Criteria or, as the case may be, Award Criteria set out in section 8 in accordance with the following table. This is with the exception of the cost Award Criterion which will be marked as provided further below.

The percentage score awarded within each range will be determined as considered appropriate by the evaluation committee having regard to the description below and the Applicant's response to the relevant criterion.

Percentage Score	Meaning
0	No answer provided or Applicant completely fails to fulfil the criteria.
1-20%	Poor: Application significantly fails to fulfil the criteria or the Application contains significant shortcomings or inconsistencies.
21 – 40%	Fair: Application does not FULLY fulfil the criteria: the Application only partially fulfils the criteria.
41 – 60%	Good: Application fulfils the criteria in most material respects, but is lacking or inconsistent in others.
61 – 80%	Very Good: Application adequately fulfils the criteria in all material respects but does not give the Commission a high level of confidence that it has done so.
81 – 100%	Excellent: The Application is so complete and detailed that it gives the Commission a high level of confidence that the Application completely fulfils the criteria.

The percentage score will then be multiplied by the marks available under the relevant Section Criterion or, as the case may be, Award Criterion to give the score under the criterion concerned.

The marks awarded under the cost Award Criterion will be calculated in accordance with the following formula:

Where:

Tender Fee, is the Tender Fee (including VAT and expenses) submitted by the relevant Tenderer;

Lowest Tender Fee, is the lowest Tender Fee (including VAT and expenses) received from the responsive valid Tenders;

Maximum points: 30 marks.

The Lowest Tender Fee is determined by reference to Applications which have not been rejected or failed to pass a particular stage of, or minimum score in, the evaluation process set out in section 8.

There is no negative marking. Marks are awarded to two decimal points. There will be no rounding up or down of decimals. Using the weighting (30) for the cost Award Criterion, the maximum marks that can be achieved under the cost Award Criterion is 30.

In order to facilitate the evaluation, the tender fee will be computed based on the information provided in specification 3.2.1 and additional information per section 5 - Information and Queries.

The above in no way gives rise to any suggestion, guarantee or warranty in respect of the volume or value of Services that may be drawn down by the Commission pursuant to the Contract.

Appendix: 3 Acceptance Certificate⁶

(Please sign and submit with PQQ and Tender)

- I hereby agree and declare for and on behalf of the Applicant entity identified below that:
- it has taken account of its obligations relating to employment protection and working conditions that are in force where the Services are to be provided when drawing up its Application; and
- it will comply with the obligations relating to employment protection and working conditions that are in force where the Services are to be provided, if selected to provide the Services.

In addition, I hereby agree and declare for and on behalf of the Applicant entity identified below that:

- such entity fully, unconditionally and irrevocably accepts the terms and conditions of the Competition Documents and is fully and legally bound thereby;
- to the best of its knowledge, the information submitted in the Application, and the documentation submitted with it, are correct and accurate and not misleading in any respect and all relevant information has been disclosed;
- any registerable interest (as defined in section 2 of the Ethics in Public Office Act 1995) involving an Applicant and the Commission (or their relatives) has been fully disclosed in the Application;
- the contents of the Application is legally binding on the Applicant; and
- it unconditionally accepts the terms of the Contract in the form most recently circulated by the Commission.

⁶Applicants which comprise a group or consortium are referred, in particular, to section 6.3 of the ITT. This requires each member of the Applicant to execute this certificate.

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

Authorised Signatory: _____

Name: _____

Position (Job Title): _____

Applicant Entity: _____

Date: _____

Witness Name: _____

Appendix: 4 Article 45 Certificate

THIS DECLARATION MUST BE COMPLETED AND SIGNED BY A DULY AUTHORISED OFFICER OF THE APPLICANT

Name of Applicant:	
Address:	

Please tick Yes or No as appropriate to the following statements relating to the current status of your organisation.

No.	QUESTION	YES	NO
		Please ✓	
1.	The organisation is bankrupt or is being wound up or its affairs are being administered by the court or has entered into an arrangement with creditors or has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations.		
2.	The organisation is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws and regulations.		
3.	The organisation, a director or partner, has been convicted of an offence concerning his professional conduct by a judgment which has the force of res judicata or been guilty of grave professional misconduct in the course of their business.		
4.	The organisation has not fulfilled its obligations relating to the payment of taxes or social security contributions in Ireland or any other State in which the organisation is located.		
5.	The organisation, a director or partner has been found guilty of fraud.		
6.	The organisation, a director or partner has been found guilty of money laundering.		
7.	The organisation, a director or partner has been found guilty of corruption.		

8.	The organisation, a director or partner has been convicted of being a member of a criminal organisation.		
9.	The organisation has been guilty of serious misrepresentation in providing information to a public buying agency.		
10.	The organisation has contrived to misrepresent any information relevant to this application.		

I certify that the information provided above is accurate and complete to the best of my knowledge and belief and not misleading in any respect. I understand that the provision of inaccurate or misleading information in this declaration may lead to my organisation being excluded from participation in this and/or future competitions.

Signature		Date	
Name		Position	
Phone		Email	
Entity/Company			

Appendix: 5 Pre-Qualification Questionnaire

Each section of the Pre-Qualification Questionnaire must be separated with clearly marked tab dividers to facilitate easier accessibility and referencing.

Section 1: Applicant Details

Please complete the following tables:

Lead Firm Name:	
a) Your organisation is bidding to provide the services required itself	YES / NO (please delete)
b) Your organisation is bidding in the role of prime contractor and intends to use third party sub-contractors to provide some services	YES / NO (please delete)
c) The Applicant is a consortium	YES / NO (please delete)

If the Applicant is a consortium, joint venture or other arrangement, please complete the table below.

Please explain current legal form of consortium (i.e. incorporated / unincorporated joint venture / other).	
If the consortium is not currently incorporated, is it proposed to do so for the purposes of the Contract if successful?	YES / NO (please delete) If yes, please provide proposed details in respect of arrangement.
Are there any legal agreements between the consortium members?	YES / NO (please delete) If yes, please give details of the agreements:

Please indicate in the table below (by inserting the relevant company/organisation name) the identity and roles of each member (including the Lead Firm) and any proposed sub-contractors of the Applicant.

Organisation	
Lead Firm / Member / Sub-contractor of Applicant	
What Services will they directly deliver / proposed role	
Organisation	
Lead Firm / Member / Sub-contractor of Applicant	
What Services will they directly deliver / proposed role	

This section should be completed in respect of the Lead Firm of the Applicant, as well in respect of each member or sub-contractor of the Applicant.

Organisation Name	
Type of Organisation (e.g. limited / unlimited company, partnership, sole trader etc)	
Address	
Town/City	
Postcode	
Country	
Website (if any)	
Contact Name	
Phone Number	
E-mail	

Please note that the Commission will generally only communicate with the contact of the Lead Firm.

Please disclose any information required pursuant to section 4.4 of the ITT.	
Please disclose any information required pursuant to section 4.7 of the ITT.	

Please disclose any information required pursuant to section 6.5 of the ITT.	
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Section 2: Bankers letter – Minimum Requirement

Each member of the Applicant must provide a letter from its current principal banker dated within the past 3 months stating that, to the best of its knowledge, this is the Applicant's principal account and it is currently in good standing.

Section 3: Insurance – Minimum Requirement

The Applicant must demonstrate that it has in place or available to it the following minimum levels of insurance:

- Professional Indemnity Insurance:
 - €1 million for each and every claim / in aggregate
 - Maximum excess
- Public Liability Insurance:
 - €1 million for each and every claim / in aggregate
 - Maximum excess:
- Employer's Liability Insurance:
 - €1 million for each and every claim / in aggregate
 - Maximum excess:

The insurance in each case must extend to subcontractors engaged by the Applicant. The insurance must name the Commission or include an indemnity to principal's clause covering the Commission.

If the Applicant is a consortium, each member of the Applicant must meet each of the above requirements or, alternatively, be covered by the insurance of another member if it does not meet a particular requirement.

The Service Provider will be required under the Contract to put in place such insurance.

Applicants are required to self-certify that this requirement is met by submitting the Declaration in Appendix 6 in the first instance. No other information is required in this respect in the first instance.

Please see sections 8.4 and 8.6 of the ITT for more information in this respect.

Section 4: Economic and Financial Standing – Minimum Requirement

The Applicant must demonstrate that it has sufficient economic and financial standing to meet its financial and economic obligations anticipated under the Contract and in respect of the Services over the full term of the Contract.

Applicants are required to self-certify that this requirement is met by submitting the Declaration in Appendix 6 in the first instance.

No other information is required in this respect in the first instance.

Please see sections 8.4 and 8.6 of the ITT for more information in this respect.

Applicants are required to complete the table below in the first instance. The Preferred Applicant may/will be required to provide proof of following information (including any further documents, e.g. accounts etc, requested which are referred to below) which will be assessed in accordance with Appendix 8:

<i>If asked, would you be able to provide at least one of the following?</i>	
A copy of your most recent audited accounts (for the last two years if this applies)	Yes / No
A statement of your turnover, profit & loss account and cash flow for the most recent year of trading	Yes / No
A statement of your cash flow forecast for the current year and a bank letter outlining the current cash and credit position	Yes / No

Section 5: Services of a similar nature, size and complexity – Selection Criteria

The Applicant shall list their experience in providing Services of a similar nature, size and complexity.

Section 6: Experience, educational and professional qualifications (managerial and personnel staff) – Selection Criteria

The Applicant shall list the specific team members, including their area of specialism, experience, educational and professional qualifications. The required Services are described in Appendix 7 of this ITT.

Appendix: 6 Declaration Of Compliance⁷

To Commission for Communications Regulation (ComReg)

I declare for and on behalf of the Applicant entity identified below that the Applicant meets the Minimum Requirements identified in section 8.4 of the *ITT for Business Radio Licensing Review: Provision of Economic Consultancy Services in relation to future Business Radio Licences in Ireland.*

Furthermore, I will provide any required evidence to substantiate this declaration to the Commission within seven or less days to support this declaration when requested to do so.

It is understood that the Application may be rejected if, upon request, it does not demonstrate to the satisfaction of the Commission that the Minimum Requirements are all met.

Name of Company (Applicant entity) Tendering:

Postal Address:

Contact email address: _____

Signature: _____

Print name of signatory: _____

Capacity or Authority of signatory: _____

⁷Applicants which comprise a group or consortium are referred, in particular, to section 6.3 of the ITT. This requires each member of the Applicant to execute this Declaration.

Dated the _____ day of _____ 2011

Appendix: 7 Tender

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

Tenders must take the following format: (Format – refer to Award Criteria)

1. Executive Summary

The Commission for Communications Regulation (“the Commission” or “ComReg”) has responsibility, under the Communications Regulation Act 2002 (as amended), for the management of Ireland’s radio frequency spectrum and to ensure the efficient management and use of same. The Commission is also responsible, under the Wireless Telegraphy Act 1926 (as amended), for granting radio licences, with the exception of Ships Radio Licences, to possess and/or use apparatus for wireless telegraphy.

In line with its Spectrum Strategy⁸, the Commission is now reviewing the use of the Business Radio (BR)⁹ spectrum bands in Ireland. As part of this review the Commission is seeking advice on the how to determine future Business Radio licence¹⁰ fees and durations, to ensure that they encourage the efficient use of the radio spectrum and incentivise the deployment use of new technologies.

2. Objectives of the project

The Preferred Applicant shall assist ComReg in its review of the Business Radio licensing scheme in Ireland. In particular the Preferred Applicant shall provide advice in relation to the calculation of future Business Radio Licence fees and durations. This work will feed directly into ComReg’s review by allowing ComReg to put forward proposals on the most appropriate future fees and durations for Business Radio services in Ireland.

The Terms of Reference for the successful Applicant, in broad terms, consist of three Phases and the Preferred Applicant will prepare a Report (may be published) for each Phase.

The detailed Terms of Reference for each Phase including required deliverables and timelines are outlined in sections 7 – 10 of this Tender.

⁸ ComReg Document 11/89 - Strategy Statement: Strategy for Managing the Radio Spectrum: 2011 – 2013 - published 22 November 2011. <http://www.comreg.ie/fileupload/publications/ComReg1189.pdf>

⁹ Business Radio licences allow individuals or firms to use radio equipment for the purpose of sending and receiving messages on the business of the licensee.

¹⁰ It is envisaged that the future Business Radio Licensing scheme will also encompass paging and high-power tracing and asset tracking.

The Preferred Applicant will be required to work alongside ComReg staff and advisers from time to time via conference calls or face to face meetings. Where face to face meetings are required, these will generally be held at either ComReg's premises or locations in Dublin. The confidentiality of the work must be protected at all times.

3. Definitions

“Paging system” means a system allowing one-way radio communications between the sender and the receiver using a base station with the mobile as a receiver¹¹;

“Tracing and Asset Tracking system” means a system which allows the tracing and tracking of goods, leading to their recovery, consisting in general of a radio transmitter placed on the item to be protected and a receiver and may also include an alarm¹²;

4. Background

Applicants should familiarise themselves with the relevant documents as listed in section 11 of this Tender.

The possession and use of radio equipment in Ireland is governed by the Wireless Telegraphy Act 1926, (Act No 45 of 1926), (as amended), which stipulates that an appropriate Wireless Telegraphy licence must be held, unless licence exempted. The specific regulations governing Business Radio Licences are the Wireless Telegraphy (Business Radio Licence) Regulations, 1949 (S.I. 320 of 1949¹³) as amended¹⁴.

The majority of Business Radio licence fees are currently based on a fee per piece of equipment plus an administrative processing fee. In order to incentivise efficient spectrum usage in the Business Radio bands, ComReg now envisages moving from an equipment based fee to a spectrum usage fee.

¹¹ From Commission Decision 2005/928/EC

¹² From Commission Decision 2005/928/EC

¹³ <http://www.irishstatutebook.ie/1949/en/si/0320.html>

¹⁴ http://www.irishstatutebook.ie/ResultsTitle.html?q=business+radio&Simple_Search=Acts&Simple_Search=Slis

In Consultation [05/58](#)¹⁵ and Response to Consultation [05/89](#)¹⁶ proposals were made for new spectrum fees for Business Radio (BR) licences. However, these fees were not implemented and in the years since the proposition of new Business Radio fees the local and global economic climates have changed significantly¹⁷. As the Commission continually strives to ensure that the radio spectrum is optimally used,¹⁸ it needs to ensure that radio licensing schemes, including fee structures and licence durations properly reflect spectral efficiency and encourage the ongoing deployment of new and emerging technologies.

In ComReg's Spectrum Strategy [11/89](#)¹⁹, ComReg indicated it would implement a fee structure that takes into account key criteria such as bandwidth used, exclusive use, geographic location and range of coverage. Advice as to whether these criteria could be incorporated into future Business Radio licence fees is required.

Bearing in mind the Commission's policy on technology neutrality the Commission would also like to explore where spectrum efficiency gains can be identified e.g. by the use of narrow bandwidth (6.25 kHz) systems, and if/how these could be reflected in any future Business Radio licence fees. Advice on these matters is also required.

ComReg also plans to incorporate Paging systems and high-power Tracing and Asset Tracking systems into its Business Radio Licensing scheme. These systems are not currently covered under ComReg's Business Radio licensing framework^{20 21}. However since these systems are used for business radio purposes it is ComReg's intention to include both in its future Business Radio licensing framework.

¹⁵ ComReg Document 05/58 - Review of Fees applicable to Rights of Use for Radio Frequencies – published 28 July 2005. <http://www.comreg.ie/fileupload/publications/ComReg0558.pdf>

¹⁶ ComReg Document 05/89 - Review of Fees applicable to Rights of Use for Radio Frequencies – published 07 December 2005. <http://www.comreg.ie/fileupload/publications/ComReg0589.pdf>

¹⁷ The 2005 consultation should not be taken into account as part of this project.

¹⁸ Regulation 20 of the Authorisation Regulations (S.I. 306 of 2003) permits ComReg to impose fees for a licence which reflect the need to ensure the optimal use of the radio frequency spectrum.

¹⁹ ComReg Document 11/89 - Strategy Statement: Strategy Statement: Strategy for Managing the Radio Spectrum: 2011 – 2013 - published 22 November 2011.

²⁰ The licensing of paging systems is currently covered by the issuing of a permit. The Paging Permit is issued on a once off basis and no fees are charged for this service.

²¹ High power tracing and asset tracking systems are currently not covered by any of ComReg's licensing schemes and there are no such systems operating within Ireland.

The work required under this Tender competition is intended to feed into ComReg's review of the Business Radio framework in Ireland. This review of ComReg's Business Radio licensing framework is timely and will facilitate best practice with regard to current and future Business Radio needs. Following the procurement of advice under this Tender, it is ComReg's intention to consult on its proposals for a new Business Radio licensing framework in Ireland. The creation of a new Business Radio licensing framework is likely to require the adoption of new Regulations but firstly a public consultation will be conducted to highlight and receive feedback on all relevant issues.

5. Background to Radio Licensing

Business Radio is a collective term that refers to a variety of Licence types issued by the Commission. These include Business Radio, Temporary Business Radio, Community Repeaters, Mobile Radio Systems (Local Area) and Third Party Business Radio Licences²². Details of the different Business Radio Licences and Permits currently available in Ireland are outlined in Table A.

Table A: Current Business Radio Types and Fees

Licence or Permit	Frequency Bands	Licence Duration	Licence Fees	Relevant Documents
Business Radio Licence	68 to 87.50 MHz (VHF Low) 138 to 156 MHz (VHF mid) 156 to 174 MHz (VHF high) 450 to 470 MHz (UHF)	12 months, renewable	Processing Fee €22.00 PLUS fee per piece of radio equipment as follows: Base Station €22.00 Mobile Station €22.00 Hand portable Station €22.00	Guidance notes: http://www.comreg.ie/fileupload/publications/ComReg0007aR1.pdf Application form: http://www.comreg.ie/fileupload/publications/ComReg0007R4.pdf
Temporary Business Radio Licence	Numerous frequencies, as listed in ComReg 0808R2	Non-renewable and valid for up to six months.	Fixed charge of €12.00 plus a €12.00 fee for each radio in the system.	Application form: http://www.comreg.ie/fileupload/publications/ComReg0202R2.pdf Guidance notes: http://www.comreg.ie/fileupload/publications/ComReg0808

²² Further background to BR licensing at http://www.comreg.ie/radio_spectrum/search.541.874.10005.0.rlicensing.html

Licence or Permit	Frequency Bands	Licence Duration	Licence Fees	Relevant Documents
				R2.pdf
Community Repeater Licence	68 - 87.5 MHz (VHF Low) 450 - 470 MHz (UHF)	12 months, renewable	A non-refundable fee of €12 for processing each licence application: A fee of €625 payable before the issue of a licence (the initial licence fee) A fee of €1000 (£800) for the renewal of a licence, payable one month before the expiry date of a licence each year.	Application form and Guidance notes: http://www.comreg.ie/fileupload/publications/ComReg0203R.pdf
Paging Permit	86 - 90 kHz (Commercial firms) 26175 - 27500 kHz (Private, on-site) 27.5 - 28 MHz (Private, On-site) 30.01 - 37.5 MHz (Hospitals) VHF Mid band UHF band	Paging Permit is issued on a once off basis	No fees.	Application form: http://www.comreg.ie/fileupload/publications/ComReg0212r.pdf
Local or on-site Mobile Radio Licence (Trunked)	Analogue trunked system: 415.775-418.9875 MHz / 425.775 - 428.9875 MHz Digital trunked system: 385-390 MHz / 395-399.9 MHz	12 months, renewable	The fee for a Mobile Radio System (Trunked) Licence is calculated as follows: (a) €625 per channel (up to 2 x 12.5 kHz) per base station on issue of a Licence (the initial licence fee) (b) €1000 per channel per base station for each renewal of the licence Please note for systems employing	Guidelines and Application form: http://www.comreg.ie/fileupload/publications/ComReg0757.pdf

Licence or Permit	Frequency Bands	Licence Duration	Licence Fees	Relevant Documents
			<p>channels at 25kHz, the above fees are increased</p> <p>accordingly to €1,250 and €2,000 respectively.</p> <p>Where a licence is granted for a portion of a year the licence fee is calculated on a pro-rata basis.</p>	
Third Party Business Radio (TPBR) Licence	VHF High and UHF bands	5 years	The fee payable for a TPBR licence is €5000 per channel for a five year TPBR licence.	<p>Application form: http://www.comreg.ie/fileupload/publications/ComReg0582aR2.pdf</p> <p>Guidelines: http://www.comreg.ie/fileupload/publications/ComReg0582R2.pdf</p>

A sample of current licence and permit numbers are detailed in Table B.

Table B: Licence numbers

Type of Licence/Permit	No. of current licences/permits (July 2012)	Number of new licences/Permits 2011 - 2012
Business Radio Licence	1477	205
Community Repeater Licence	16	4
Trunked Radio Licence	19	4
Third Party Business Radio Licence	31	1
Paging Permit	104	2

Background to Tracing and Asset Tracking and Paging services in Ireland

There is currently no licensing scheme covering the operation of high-power Asset Tracing and Tracking or Paging services in Ireland. At present, ComReg issues Paging Permits for the operation of Paging systems (local, on-site, wide-area) in Ireland. One of the DCENR's Policy Principles in its Spectrum Policy Statement²³ (September 2010) states that "All users of spectrum will be required to justify their use of spectrum and contribute to the cost of the administration and management of its use."

In line with this Policy Principle and ComReg's statutory objectives ComReg plans to streamline Paging and high-power Asset Tracing and Tracking²⁴ with other radio services in Ireland and include them under a new Business Radio licensing framework.

ComReg has noted some interest in the 164.175 MHz and 163.1625 MHz frequency bands. However, other frequency bands should also be considered in terms of their suitability for the provision of high-power Asset Tracing and Tracking systems in Ireland.

Paging and high-power Asset Tracing and Tracking³¹ should be investigated in terms of appropriate fees and duration along with other the radio services in Ireland and include them under the new Business Radio licensing framework.

²³ <http://www.dcenr.gov.ie/NR/rdonlyres/83EB5634-66B9-45DE-9362-24414408E4AC/0/SpectrumPolicyStatement.pdf>

²⁴ There is an existing European Regulation for the 169 MHz band, in the form of two Commission Decisions ([Decision 2005/928/EC](#) & [Decision 2008/673/EC](#)). The requirements for the high-power part of the 169 MHz band (169.6125 - 169.8125 MHz) for Asset Tracking, Tracing and Paging systems have not been implemented in Ireland. ComReg addressed this point in its Spectrum Strategy Consultation ([ComReg Document 11/28](#)) but, in the Submissions to that Consultation ([ComReg Document 11/28s](#)), no demand was expressed to ComReg in accessing this spectrum for Paging, Asset Tracking or Tracing systems. Although there was one response on the issue of the use of high power Asset Tracing and Tracking Systems it related to the use of the 164.175 MHz frequency.

³¹ Recent EU studies ([CEPT Report 43](#)) on the 169 MHz band have identified a low usage of the upper 169 MHz band for high-power Asset Tracing and Tracking systems. The CEPT recommends ([CEPT Report 44](#)) withdrawing the Commission Decision 2005/928/EC and proposes to add in the band 169.4-169.8125 MHz a new regulation for non-specific SRD with Low Duty Cycle (LDC) parameters.

6. Proposed Future Business Radio Licences

Table C details the future Business Radio licences that ComReg foresees in the future:

Table C: Proposed Future Business Radio Licences

Licence Type	Range/Extent	Current Allocations	Frequency	Band
Private Mobile Radio ³²	<ul style="list-style-type: none"> On-site (1 - 2 km) Local area (2 - 5 km) Wide-area (5 - 25 km) Countrywide (mobiles and hand portables only – no base stations) National 	<ul style="list-style-type: none"> VHF Lo (68 - 87.5 MHz) VHF High (163 - 174 MHz) UHF (450 - 470 MHz) 		
Temporary Business Radio Licence ³³	<ul style="list-style-type: none"> On-site (1 - 2km) Local area (2 - 5km) Wide area (5 - 25 km) 	<ul style="list-style-type: none"> Numerous frequencies, as listed in ComReg 0808R2 		
Mobile Radio Licence (Trunked) ³⁴	<ul style="list-style-type: none"> On-site (1 - 2km) Local area (2 - 5 km) Wide-area (5 - 25 km) National 	<ul style="list-style-type: none"> Analogue trunked system: 415.775 - 418.9875 MHz / 425.775 - 428.9875 MHz Digital trunked system: 385 - 390 MHz / 395 - 399.9 MHz 		
Third Party Business Radio Licence ³⁵	<ul style="list-style-type: none"> National 	<ul style="list-style-type: none"> VHF High (156 - 174 MHz) UHF (450 - 470 MHz) 		
Tracing and Asset Tracking Licence	<ul style="list-style-type: none"> Wide-area (range TBD) National 	<ul style="list-style-type: none"> 163.1625 MHz 164.175 MHz VHF Lo (68 - 87.5 MHz) VHF High (163 - 174 MHz) UHF (450 - 470 MHz) 		
Paging Licence ³⁶	<ul style="list-style-type: none"> On-site (1 - 2 km) Local area (2 - 5 km) Wide-area (5 - 25 km) National 	<ul style="list-style-type: none"> 26.6 - 27.62 MHz (Private, on-site paging) 31.75 - 35.00 MHz (Paging, Hospitals) 153.00 - 153.825 MHz (national, wide-area, on-site and local) 459.00 - 459.85 MHz (on-site paging) 469.875 MHz (local) 		

³² For current licensing documentation, see [ComReg 0007aR1](#) and [ComReg 0007R4](#)

³³ For current licensing documentation, see [ComReg 0808R2](#)

³⁴ For current licensing documentation, see [ComReg 0757](#)

³⁵ For current licensing documentation, see [ComReg 0582aR2](#)

³⁶ ComReg intends to allow existing Paging Permit holders to convert their paging permits to new paging licences on payment of a licence fee. Permit holders who no longer wish to use their paging systems or have not paid the new paging licence fee will relinquish the use of the frequency(ies) on which their paging systems operated by a date to be specified by ComReg.

Licence Type	Range/Extent	Current Allocations	Frequency	Band
		<ul style="list-style-type: none"> 469.9 - 469.95 MHz (wide-area) 		
Miscellaneous BR Licence	<ul style="list-style-type: none"> Include a catch all licence type of sonobouys and radiosondes etc. 			

6. Meetings

The Preferred Applicant will be required to provide weekly written feedback to the ComReg project team on progress. This may be done via email or conference call as required by ComReg. Where face-to-face meetings are required these will take place in Dublin.

7. Terms of Reference

The Services in broad terms are the provision of advice on Licence fees and duration for future Business Radio Licences in Ireland.

PHASE I: Initial work

1. To identify an appropriate method³⁷ for calculating Business Radio licence fees³⁸, and make a justified proposal on the method by comparing and contrasting against other alternative methods for calculating future Business Radio licence³⁹ fees in Ireland⁴⁰.
2. To establish criteria to set future Business Radio licence durations, outlining the pros and cons of each and make a justified and proportionate proposal on the most appropriate method/criteria for determining future Business Radio licence⁴¹ durations in Ireland.

³⁷ ComReg is flexible in terms of the economic methods it employs and is of the view that the best method for the task in hand should be used. In the past ComReg has employed benchmarking analysis as a means of determining licence fees. However, there may be other methods more suitable to fee determination for Business Radio licences and this work should identify the most appropriate method.

³⁸ ComReg does not set annual revenue targets for any of its licensing schemes and annual revenue targets or cost recovery are not part of ComReg's statutory remit

³⁹ See Table C for details of Proposed Business Radio Licences.

⁴⁰ All proposals must be in line with ComReg's statutory objectives including, *inter alia*, ensuring the efficient management and use of the radio frequency spectrum, promoting competition, protecting consumers and encouraging innovation (Regulations 10 and 12 of the Communications Regulation Act, 2002 (No. 20 of 2002)).

⁴¹ See Table C for details of Proposed Business Radio Licences.

3. To provide an overview of other Business Radio (including Paging and high-power Tracing and Asset Tracking) licensing schemes in operation in Europe, particularly in countries of similar size/population density to Ireland, and to advise on their merits regarding spectrum efficiency, flexibility to implement and on how future-proof they are.
4. To present the work outlined above in the form of a Draft Report to the Commission. A redacted non-confidential version of the Draft Report must also be provided. This non-confidential version may be published as part of a public consultation on ComReg's future Business Radio Licence framework/Business Radio Licence review.
5. Following the initial work, ComReg will review the Draft Report produced and, having taken into account the proposals made in Phase I, will instruct the Preferred Applicant on the manner in which to undertake the Phase II work on the calculation of licence fees and duration.
6. The date for the completion and presentation of the Draft Report for Phase I will be confirmed at a later stage.

PHASE II: Follow-on Work

7. To calculate the appropriate fees and licence durations for future Business Radio, Paging and high-power Tracing and Asset Tracking licences in Ireland using a methodology agreed to by the Commission.
8. To advise ComReg on the more appropriate method for the award of each of the different proposed Business Radio licence types, detailing the rationale for those recommendations.
9. To present the work outlined in 7 and 8, detailing the methodology used and full justification, in the form of a Final Report to ComReg. A redacted non-confidential version of the Final Report must also be provided. This non-confidential version may be published as part of a public consultation on ComReg's future Business Radio Licence framework/Business Radio Licence review.
10. The date for the completion and presentation of the final Report for Phase II will be confirmed at a later stage.

PHASE III: Response to Consultation

11. Following the public consultation, the Preferred Applicant will be required to assist ComReg with analysing and responding to the responses received in the consultation process. (This will be at the hourly rate).

12. As part of assisting ComReg in responding to any comments received in the consultation process, the Preferred Applicant will be required to prepare a report, if necessary, on the responses received. This report may be published.
13. The time for completion of Phase III will depend on the volume of responses received. ComReg will agree a completion date with the Preferred Applicant at a later stage.

As part of this work, consideration should be given to the following points⁴²:

- Fees for the majority of Business Radio Licences are currently calculated on a per equipment basis and include a processing (administrative) fee. The merits/drawbacks of moving from a Business Radio licence fee calculated on a per equipment basis to a spectrum based fee should be addressed as part of the work;
- The opportunity cost of the radio spectrum being allocated to Business Radio applications over alternative spectrum uses. Do different frequency bands hold different economic values? If this should be reflected in the licence fees, how should it be done?
- Should the use of Simplex versus Duplex channels be taken into account in setting licence fees? If so, how should this be done?
- The Preferred Applicant should also explore where spectrum efficiency gains can be identified e.g. by the use of narrow bandwidth (6.25 kHz) systems, and if/how these could be reflected in the future Business Radio licence fees;
- The fee structure should take into account key criteria such as bandwidth used, exclusive use, geographic location, range of coverage and technology type (Analogue or Digital);
- Should there be an economic incentive, e.g. reduced licence fee, to encourage the deployment/migration of digital technology over analogue technology. If so how should it be determined and reflected in the licence fee?
- The manner in which applications should be processed. At present Business Radio licence applications are dealt with on a first-come-first-served basis but what should happen (e.g. drawing of lots) if two applications for the same spectrum arrive on same day? How should national licences be awarded?

⁴² This list of points is by no means an exhaustive list. Other points may arise during the process which will need to be considered by the Preferred Applicant as part of this work.

8. Deliverables

The Preferred Applicant will produce Draft and Final Reports detailing the study and all analysis, evidence, data, modelling and assumptions used in reaching its conclusions and recommendations to ComReg. All reports submitted to the Commission should be produced in such a form that can readily be made publicly available⁴³. All confidential material submitted to ComReg should be clearly highlighted. Where spreadsheets are generated as part of the work, copies of these must also be provided to ComReg.

In relation to the Draft and Final Reports, the Preferred Applicant will 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
- Three printed and bound copies of the Draft and Final reports.

The provision of the Consultancy Services **must** be in English and all deliverables **must** be submitted in English.

It is expected that the Draft Report (Phase I deliverable) will be received by ComReg at a date TBD.

Confidential report

The Preferred Applicant is required to present two confidential Reports to ComReg (i) Draft Report output from Phase I and (ii) Final Report from Phase II.

Non-confidential report

The Commission may wish to publish the details of the Final Report alongside a future consultation document and therefore redacted, non-confidential version of the final reports from Phases I and II should also be prepared.

All redactions will be justified by the Preferred Applicant.

⁴³ In line with the Commission's guidelines on the treatment of confidential information as set out in Commission document 05/24.

The non-confidential version will be initially prepared in draft format for the project team. Following receipt of comments from ComReg the final non-confidential Reports will be prepared. The final non-confidential Reports may be published by ComReg on its website to support any final decision.

If there are any administrative, legal or other proceedings arising out of or in connection with this work, or its output, ComReg may expand the Services to include advice and input in such respect to the extent relevant or necessary to the proceedings. However, this does not form part of the immediate Services and no provision should be made for this in the maximum fee quoted.

9. Cost

The **maximum** unconditional capped fee (incl. VAT and expenses⁴⁴) that may be tendered is €65,000. A Tender with a higher fee will be rejected and ineligible to be awarded the Services Agreement.

The pricing information should be provided in the format below:

<u>Team Member and Title</u>	<u>Daily Rate (excluding VAT)</u> €	<u>Number of Days</u>	<u>Total Cost (excluding VAT)</u> €
<u>Total</u>			
	<u>(including VAT)</u> €		
<u>Maximum Unconditional Capped Fee (including VAT and expenses⁴³)</u>	65,000		
<u>Expenses⁴³</u>			

The daily rate is for 7.5 hours of work.

⁴⁴ Expenses are capped at 10% of the overall value of the contract and must be in ComReg's view reasonable and legitimate.

If the scope of Services is varied, the applicable rate tendered will apply in accordance with Clause 10 of the Services Agreement in relation to the fees payable in relation to any variation to the Services.

The price tendered by an Applicant under this Invitation to Tender should hold good for 3 months from the final date for receipt of Tenders. ComReg will not be responsible for any errors in the calculation of the costs provided in the Applicant's Tender. It is the responsibility of Applicant to ensure that the costs quoted are correct and properly calculated.

10. Scope of the project

INDICATIVE TIMELINES

<u>Date</u>	<u>Description of task</u>
August 2013*	Preferred Applicant commences work as outlined in section 7.
August 2013*	Preferred Applicant presents draft findings/recommendations for Phase I as outlined in section 7.
August 2013*	Preferred Applicant presents final findings/recommendations for Phase I as outlined in section 7.
August/September 2013*	Preferred Applicant presents final findings/recommendations for Phase II as outlined in section 7.
September 2013*	Preferred Applicant presents report on the responses received in the consultation process.
* = Indicative Date which may be subject to change	

11. Relevant Documentation

1. Business Radio Guidance Notes:
<http://www.comreg.ie/fileupload/publications/ComReg0007aR1.pdf>
2. Business Radio Application Form:
<http://www.comreg.ie/fileupload/publications/ComReg0007R4.pdf>
3. Temporary Business Radio Guidance Notes:
<http://www.comreg.ie/fileupload/publications/ComReg0808R2.pdf>
4. Temporary Business Radio Application Form:
<http://www.comreg.ie/fileupload/publications/ComReg0202R2.pdf>
5. Community Repeaters Application Form and Guidance Notes:
<http://www.comreg.ie/fileupload/publications/ComReg0203R.pdf>
6. Paging Permit Application Form:
<http://www.comreg.ie/fileupload/publications/ComReg0212r.pdf>
7. Local or On-Site Mobile Radio System Guidance Notes:
http://www.comreg.ie/publications/mobile_radio_system_licence_trunked_radio_guidelines_and_application_form.583.102732.p.html
8. Local or On-Site Mobile Radio System Application Form:
<http://www.comreg.ie/fileupload/publications/ComReg0757.pdf>
9. Third Party Business Radio Licence Application Form:
<http://www.comreg.ie/fileupload/publications/ComReg0582aR2.pdf>
10. Third Party Business Radio Licence Guidance Notes:
<http://www.comreg.ie/fileupload/publications/ComReg0582R2.pdf>
11. Original Business Radio Regulations in Ireland:
<http://www.irishstatutebook.ie/1949/en/si/0320.html>
12. Amendments to Business Radio Regulations in Ireland
http://www.irishstatutebook.ie/ResultsTitle.html?q=business+radio&Simple_Search=Acts&Simple_Search=SlS
13. Amendments to Mobile Radio Systems Regulations in Ireland
http://www.irishstatutebook.ie/ResultsTitle.html?q=Mobile+Radio+Systems&Simple_Search=Acts&Simple_Search=SlS
14. Amendments to Third Party Business Radio Regulations in Ireland
http://www.irishstatutebook.ie/ResultsTitle.html?q=Third+Party+Business+Radio+&Simple_Search=Acts&Simple_Search=SlS

15. Third Party Business Radio Licence Regulations:
<http://www.comreg.ie/fileupload/publications/SI646of2005.pdf>
16. ComReg's Strategy for Managing the Radio Spectrum:
<http://www.comreg.ie/fileupload/publications/ComReg1189.pdf>

Appendix: 8 Economic And Financial Standing

An Applicant will be deemed to have passed the minimum economic and financial standing requirement if it receives a grade of “Medium Risk” or “Low Risk” in this regard. On the other hand, an Applicant who receives a grade of “High Risk” will fail this requirement.

The following definitions will be used to determine if an Applicant has passed this requirement:

Grade	<i>Meaning</i>
High Risk	The assessment indicates a risk exists in terms of the Applicant’s capability of meeting the financial and economic obligations anticipated under the Contract and in respect of the Services over the full term of the Contract.
Medium Risk	The assessment indicates a reasonable likelihood that the Applicant is capable of meeting the financial and economic obligations anticipated under the Contract and in respect of the Services for the Lot concerned over the full term of the Contract.
<i>Low Risk</i>	The assessment indicates a strong likelihood that the Applicant is capable of meeting the financial and economic obligations anticipated under the Contract and in respect of the Services over the full term of the Contract.

The assessment of the financial and economic standing of the Applicant will consider the information provided in response to sections 2, 3 and 4 of the PQQ including, if requested by the Commission, any supporting or verificatory information provided in such respect. The Commission may, in particular, take into account any form of guarantee or other contractual assurance that will be provided in relation to an Applicant’s economic and financial standing. The Commission may, on its own initiative, make suggestions to an Applicant in such respect where this may address any concerns of the Commission.

The Commission has not allocated a particular weighting or level of importance to any of the particular questions in sections 2, 3, and 4 of the PQQ, but rather will take a holistic approach when assessing the financial and economic standing of the Applicant.

It should be noted that this is without prejudice to the Minimum Requirements set out in section 8.4 of the ITT with respect to banker's letter and insurance. An Applicant may pass the latter Minimum Requirements but still fail this Minimum Requirement.

Appendix: 9 Draft Contract

A 9.1 The indicative agreement is attached separately.