

TENDER FILE / TERMS OF REFERENCE
(Competitive bidding procedure / One-off contract)
Contract N° RCP 2024 – 6 DMI VOD USAGE

CA3LUMIEREVOD

PROVISION OF DATA ON VOD USAGE

Background on the European Audiovisual Observatory

The European Audiovisual Observatory (hereinafter also Observatory), a public service organisation based in Strasbourg, France, is an enlarged Partial Agreement of the Council of Europe.

The Observatory was created in 1992 in order to collect and distribute information about the audiovisual industries in Europe. By making this information available, the Observatory aims at promoting greater transparency and a clearer understanding of the ways in which the audiovisual industries in Europe function, both from an economic and legal point of view.

The Observatory provides information on the various audiovisual markets in Europe and their financing and analyses the legal issues affecting the different sectors of the audiovisual industry. It publishes reports, maintains several databases and organises professional events. The Observatory offers the combination of a well-established system for continuous data collection assisted by a thoroughly built-up international network, more than 30 years of experience in analysing information, unique in-house expertise in the relevant subject matters and related methodological questions, a multi-national setting and strict commitment to offer solely neutral and objective information.

Background on the project

The Observatory wishes to analyse the actual consumption of works on European VOD services and compare it to the composition of the VOD catalogues. The Observatory therefore wishes to purchase title by title usage data for an as large as possible number of VOD services and European countries together with data regarding the composition of the catalogues. The data will be used for reports and presentations. The project is co-financed by the European Commission.

A. SCOPE OF THE TENDER PROCEDURE AND TENDER RULES

This tender procedure is a competitive bidding procedure. In accordance with **Article 22 of the Financial regulations** of the European Audiovisual Observatory (hereafter Observatory), which is based *mutatis mutandis* on **Rule 1395 of the Secretary General of the Council of Europe**¹, on procurement procedures, the Organisation shall invite to tender **at least three potential providers for any purchases between €2 000 (or €6 000 for intellectual services) and €55 000 tax exclusive.**

A tender is considered valid for 120 calendar days as from the deadline for submission (see table below). The selection of tenderers will be made in the light of the criteria indicated under Section C below. All tenderers will be informed in writing of the outcome of the procedure.

The tenderer must be a legal person except consortia.

Tenders shall be submitted **by email only** (scans) **to the email address indicated in the table below, with the following reference in subject: Tender - RCP 2024 – 6 DMI VOD USAGE.**

Tenders addressed to another email address **will be rejected.**

The general information and contact details for this procedure are indicated below. **All questions shall be submitted at least 5 (five) working days before the deadline for the submission of the tenders and shall exclusively be addressed to the email address indicated below with the following reference in subject: Question - Tender - RCP 2024 – 6 DMI VOD USAGE.**

¹ The activities of the Council of Europe are governed by its [Statute](#) and its internal Regulations. Procurement is governed by the Financial Regulations of the Organisation and by [Rule 1395 of 20 June 2019 on the procurement procedures of the Council of Europe.](#)

Type of contract ▶	One-off contract
Duration ▶	Until complete execution of the obligations of the parties (see Article 18 of the General conditions below)
Deadline for submission of tenders ▶	10 September 2024
Email for submission of tenders ▶	tenderobs@coe.int
Deadline for questions ▶	3 September 2024
Email for questions ▶	tenderobs@coe.int
Expected starting date of execution ▶	16 September 2024

B. EXPECTED DELIVERABLES

The Observatory is looking for a Provider in order to support the implementation of the project. This specific tender procedure aims at concluding a **contract** for the provision of datasets on:

- Title-by-title usage of works on a sample of VOD services.
- The structure of individual catalogues in the sample.

The applicants are invited to specify in their application the complete list of VOD services they monitor, specifying the country of operation and the business model (AVOD, TVOD, SVOD).

I. CONTENT OF THE DATASETS

Title-by-title usage of works per VOD service:

- VOD service
- Country
- Original title
- Type (Film or TV)
- SVOD original (Yes/no)
- Production country(ies)
- Year of production
- Genre(s)
- IMDb ID
- Usage data

The applicants are invited to specify in their application:

- The indicators they will provide for measuring usage (e.g. views, view time...) and their definitions.
- Any other metadata they would be in a position to provide.

Structure of catalogues

The provider should supply **either**:

- the full title by title list of works included in the catalogues of the sample, with the following metadata:
 - Original title
 - Type (Film or TV)
 - SVOD original (Yes/no)
 - Production country(ies)

- Year of production
- Genre(s)
- IMDb ID
- Tables providing for each of the catalogues included in the sample:
 - The number of titles by production country(ies), broken down between film and TV.
 - The number of titles by genre, broken down between film and TV.
 - The number of films broken down by year of production.

The applicants are invited to specify in their application which option(s) they propose.

II. TIME PERIOD OF THE DATA

The data should cover at least the period from 01/09/2023 to 30/09/2024.

The applicants are invited to specify in their application the time period covered by the data.

III. DELIVERY OF THE DATA

Datasets may be delivered through the access to an online database, or as Excel/csv files. Should the access take the form of an access to an online database, the data should remain accessible for six months after access has been granted to the Observatory.

The applicants are invited to specify in their application how will the data be delivered.

C. FEES

The Observatory is looking for a Provider in order to support the implementation of the project with an expertise on VOD services and catalogue data. This specific tender procedure aims at concluding a **contract** for the provision of the deliverables listed in the following table.

Prices indicated below are final and not subject to review, throughout the duration of the contract. The maximum budget for the project is **EUR 50 000 excluding VAT**. Offers proposing a fee above this exclusion level will be excluded from the tender procedure.

Prices are indicated in Euro **without VAT**. For the VAT regime to be mentioned on the invoice(s), please refer to the Council of Europe's website: <https://www.coe.int/en/web/portal/vat>.

Table of fees

Expected deliverables ▼	Deadline for delivery ▼	Fees ▼	Exclusion level ▼
Title by title usage of works until 30/09/2024	01/11/2024		
Structure of catalogues	01/11/2024		
Total ▶			€50 000

The provider shall indicate its proposed fee(s) in the box(es) below.

Tenderers shall send a **quote (Pro Forma invoice)** on their letterhead including

- the Service Provider's name and address;
- its VAT number;
- the full list of services;
- the fee per type of deliverables (in Euro, tax exclusive);
- the total amount per type of deliverables (in Euro, tax exclusive);
- the total amount (in Euro), tax exclusive, the applicable VAT rate, the amount of VAT and the amount VAT inclusive.

D. ASSESSMENT

Exclusion criteria and absence of conflict of interests (See declaration in Appendix I)

Tenderers shall be excluded from participating in the tender procedure if they:

- have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering, terrorist financing, terrorist offences or offences linked to terrorist activities, child labour or trafficking in human beings;
- are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are subject to a procedure of the same kind;
- have received a judgment with res judicata force, finding an offence that affects their professional integrity or serious professional misconduct;
- do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence;
- are an entity created to circumvent tax, social or other legal obligations (empty shell company), have ever created or are in the process of creation of such an entity;
- have been involved in mismanagement of the Council of Europe funds or public funds;
- are or are likely to be in a situation of conflict of interest;
- are retired Council of Europe staff members or are staff members having benefitted from an early departure scheme;
- are or if their owner(s) or executive officer(s), in the case of legal persons, are included in the lists of persons or entities subject to restrictive measures applied by the European Union (available at www.sanctionsmap.eu).

Eligibility criteria

- Tenderers must have an expertise on VOD catalogue data.
- Only offers meeting the requirements of above-mentioned deadlines and price will be deemed admissible.

Award criteria

- Quality of the offer (80%), including
 - Professional expertise in the audiovisual industry (10%)
 - Soundness of usage tracking methodology (20%)
 - Number of countries and VOD services covered (50%).
- Financial offer (20%).

E. NEGOTIATIONS

The Observatory reserves the right to hold negotiations with those eligible bidders that have submitted the offers, which most closely meet the needs expressed in the specifications.

F. DOCUMENTS TO BE PROVIDED

Tenderers are invited to submit:

- A completed and signed declaration on exclusion criteria (see Appendix I).
- A quote (Pro Forma invoice), describing their financial offer, in line with the requirements of Section B of the Tender File (see above).
- A list of TVOD, AVOD and SVOD services and countries covered.
- The methodology including:
 - The indicators they will provide for measuring usage (e.g. views, view time...) and their definitions.
 - Any other metadata they would be in a position to provide.
 - The option(s) they propose to assess the structure of catalogues.
 - The time period covered by the data.
 - The method to deliver the data.

- Information on the tendering company or organisation including:
 - A description of the candidate's organisation or company and experiences in the field.
 - Statute of the organisation or company.
 - A list of all owners and executive officers, for legal persons only.
 - References in the field.
 - Name of the person or persons authorised to sign.

All documents shall be submitted in **English or French**, failure to do so will result in the exclusion of the tender. If any of the documents listed above are missing, the Observatory reserves the right to reject the tender.

The Observatory reserves the right to reject a tender if the scanned documents **are of such a quality that the documents cannot be read once printed.**

G. SPECIFIC CONDITIONS

The Provider cedes irrevocably and exclusively to the Observatory throughout the entire world and for the entire period of copyright protection, all rights on the deliverable(s) produced as a result of the execution of the present contract. Such rights shall include in particular the right to use, reproduce, represent, publish, adapt, translate and distribute – or to have used, reproduced, represented, published, adapted, translated and distributed - in any country, in any language, in any form and on any kind of support, including on a CD-ROM or the Internet, the said Deliverables, or any part thereof.

The Observatory reserves the right to exercise the above-mentioned rights for any purpose falling within its activities.

The Provider guarantees that use by the Observatory of the Deliverable(s) produced as a result of the execution of the present contract will not infringe the rights of third parties. However, should the Observatory incur liability as the result of any such infringement; the Provider will compensate it in full for any damage it may suffer in consequence.

H. CONTRACTUAL REQUIREMENTS

Tenderers will find below in the Appendix II a copy of the **Observatory's General Conditions** for this type of contract.

Tenderers are invited to read these conditions, and to specify in their offer any of these clauses which they are unable to accept, together with a justification for this, and a proposal of alternative clause(s).

Alternatively, tenderers may provide a copy of their own standard legal conditions. However, tenderers should note that the capacity to meet the Observatory's contractual requirements is one of the award criteria to be considered when the Observatory assesses tenderers' offers. Tenderers should also note that any contract signed following this consultation will have to contain the following clauses: Article 8 (Disclosure of the terms of the contract), Article 9 (Use of name) and Article 17 (Disputes). Moreover, the Observatory reserves the right to ask for the contract proposed by the selected Provider to be amended in order to protect the Observatory's interests, to meet the requirements of its status as an international organisation, and to keep a fair balance between the parties.

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Appendix I – Declaration on the exclusion criteria

Appendix II – General Conditions

Appendix I – Declaration on the exclusion criteria

Name of the signatory ▶	
Name of the Provider ▶	
Full address of the Provider ▶	

I hereby declare² that neither I, nor the company I represent

- have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
- are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are subject to a procedure of the same kind;
- have received a judgment with res judicata force, finding an offence that affects their professional integrity or serious professional misconduct;
- are an entity created to circumvent tax, social or other legal obligations (empty shell company), have ever created or are in the process of creation of such an entity;
- have been involved in mismanagement of the Council of Europe funds or public funds;
- do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence;
- are or are likely to be in a situation of conflict of interests;
- are retired Council of Europe staff members or are staff members having benefitted from an early departure scheme;
- are or if their owner(s) or executive officer(s), in the case of legal persons, are included in the lists of persons or entities subject to restrictive measures applied by the European Union (available at www.sanctionsmap.eu).

Name ▶	
Date ▶	
Signature ▶	

² The Observatory reserves the right to ask tenderers, at a later stage, to supply an extract from the record of convictions or failing that an equivalent document issued by the competent judicial or administrative authority of the country of incorporation, indicating that the first three above listed exclusion criteria are met, and a certificate issued by the competent authority of the country of incorporation indicating that the fourth criterion is met.

Appendix II – General Conditions

GENERAL CONDITIONS

The provisions of these General Conditions shall apply to all contracts for the supply of goods, services or works, as well as framework agreements and partnership agreements entered into by the European Audiovisual Observatory. They may, however, be supplemented or modified by special conditions accepted in writing by both parties.

1. DEFINITIONS

For the purposes of these General Conditions:

- (i) "contract" shall mean the present General Conditions and the order, specific contract, agreement or terms of reference to which they are appended, the two documents together forming the contract;
- (ii) "Observatory" shall mean the European Audiovisual Observatory;
- (iii) "Deliverables" shall mean the services or goods as described in the contract;
- (iv) "Parties" shall mean the Observatory and the Provider or partner in case of a partnership agreement;
- (v) "Provider" shall mean the person or legal entity executing works and/or supplying the goods and/or providing services to the Observatory under the contract or the partner under the partnership agreement.

2. PRECEDENCE CLAUSE

Any general purchasing terms and conditions of the Provider shall never prevail over these General Conditions. Any provision proffered by the Provider in its documents (general conditions or correspondence) conflicting with the clauses of these General Conditions shall be deemed void, except for any provision of the Provider, which is more favourable to the Observatory.

3. ORDER OF PRIORITY OF DOCUMENTS

In the event of inconsistencies between the various contractual documents that constitute an integral part of the tender file, the following order of priority shall apply:

- (i) the contract (as defined above 1. (i));
- (ii) other specific contractual documents prepared by the Observatory (if any);
- (iii) the Provider's Offer.

4. COMMUNICATIONS BETWEEN THE PARTIES

(i) Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the address provided by the receiving party for that purpose. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any other addresses provided by the receiving party. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline, provided the communication is dispatched by another means of communication without further delay.

(ii) Mail sent to the Observatory using the postal services is considered to have been received by the Observatory on the date on which it is registered by the Observatory.

(iii) Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

5. LOYALTY OF THE PROVIDER

In the performance of the present contract, the Provider shall not seek or accept instructions from any government or any authority external to the Observatory. The Provider undertakes to comply with the Observatory's instructions for the completion of the work, to observe absolute discretion regarding all service matters and to refrain from any word or act that may be construed as committing the Observatory.

6. CONFIDENTIALITY

The Provider shall observe the utmost discretion in all matters concerning the contract, and particularly any service matters or data that have been or are to be recorded that come to the Provider's attention in the performance of the contract. Unless obliged to do so under the terms of the contract, or expressly authorised to do so by the Executive Director of the Observatory, the Provider shall refrain at all times from communicating to any person, legal entity, government or authority external to the Observatory any information which has not been made public and which has come to the Provider's notice as a result of dealings with the Observatory. Nor shall the Provider seek to gain private benefit from such information. Neither the expiry of the contract nor its termination by the Observatory shall lift these obligations.

7. CHANGES IN THE PROVIDER'S SITUATION OR STANDING

The Provider shall inform the Observatory without delay of any changes in their address or legal domicile or in the address or legal domicile of any person who may represent them.

The Provider shall also inform the Observatory without delay:

- (i) if they are involved in a merger, takeover or change of ownership or there is a change in their legal status; where the Providers are a consortium or similar entity if there is a change in membership or partnership;
- (ii) if they are sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
- (iii) if they are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are not subject to a procedure of the same kind;
- (iv) if they have received a judgment with res judicata force, finding an offence that affects their professional integrity or serious professional misconduct;
- (v) if they do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of legal domicile;
- (vi) if they are or are likely to be in a situation of conflict of interests.

8. DISCLOSURE OF THE TERMS OF THE CONTRACT

The Provider is informed and gives an authorisation of disclosure of all relevant terms of the contract, including identity, for the sole purposes of internal and external audit and to the Executive Council with a view to these latter discharging their statutory functions, as well as for the purpose of meeting the publication and transparency requirements of the Observatory or its donors. The Provider authorises the publication, in any form and medium, including the websites of the Observatory or its donors, of the title of the contract, its nature and purpose, name and locality of the Provider and amount of the contract.

Whenever appropriate, specific confidentiality measures shall be taken by the Observatory to preserve the vital interests of the Provider.

9. USE OF THE OBSERVATORY'S OR THE COUNCIL OF EUROPE'S NAME

The Provider shall not use the Observatory's or the Council of Europe's name, flag or logo without prior authorisation of, respectively, the Executive Director of the Observatory or the Secretary General of the Council of Europe.

10. GENERAL OBLIGATIONS OF THE PROVIDER

The Provider recognises that it is subject to a general obligation to provide advice, including, but not limited to, an obligation to provide any relevant information or recommendations to the Observatory. In this context, the Provider shall supply to the Observatory all the advice, warnings and recommendations necessary particularly in terms of quality of deliverables, security and compliance with professional standards. The Provider also undertakes to inform the Observatory as soon as it becomes aware, during the execution of the Contract, of any initiatives and/or adopted laws and regulations, policies, strategies or action plans or any other development related to the object of the Contract.

The Provider undertakes to

- (i) inform the Observatory about any change of its status with regard to VAT;
- (ii) observe any applicable law and to comply with their fiscal obligations in conformity with the legislation of the Provider's country of fiscal residence;
If the Provider for this Contract is a natural person and in a situation of employment, the Provider hereby declares
- (iii) to have obtained the necessary approval from their employer to perform paid services for the Observatory under this Contract;
- (iv) to understand that nothing in this contract may be construed as conferring on the Provider the capacity or rights of a Council of Europe staff member or employee.

11. PRICE

The price shall be stated in euros and without tax, except if the Observatory explicitly and in writing stipulates otherwise. The time limit for the validity of offers shall be 120 days starting from the expiry date set for sending the offers.

12. AMENDMENTS

The provisions of the contract cannot be modified without the written agreement of both parties. This agreement may take the form of an exchange of emails. Any modification shall not affect elements of the contract which may distort the initial conditions of the procurement procedure that resulted in the conclusion of this contract.

13. TRANSFER OF CONTRACT

The contract may not be transferred by the Provider, in full or in part, for money or free of charge, without the Observatory's prior authorisation in writing.

14. DATA PROTECTION

Without prejudice to the other provisions of the Contract, the Parties undertake, in the execution of this Contract, to comply at all times with the legislation applicable to each of them concerning the processing of personal data.

15. BREACH OF CONTRACT

In the event that the Provider does not satisfy the conditions laid down in this Contract or those resulting from any modifications duly accepted in writing by both parties, in accordance with the provisions of Article 12 above, the Observatory shall consider there to have been a breach of contract and may consequently refuse to pay to the Provider the remuneration agreed upon in the Contract.

In the case of a breach of contract, the Observatory reserves further, at any moment and further to prior notification to the Provider, the right to terminate the Contract in all or in part. In case of termination, the Observatory shall pay only the amount corresponding to the deliverables actually and satisfactorily provided at the time of termination of the contract and shall request reimbursement of the sums already paid for deliverables not provided. In case of partial termination, the obligations of the parties shall endure for all deliverables which are not subject of the notification of termination.

The outstanding sums shall be paid to the Observatory's bank account within 60 calendar days after the Observatory notified in writing the Provider of the outstanding amounts.

16. CASE OF FORCE MAJEURE

In the event of a force majeure, the parties shall be released from the application of this contract without any financial compensation. Force majeure is defined as unforeseeable circumstances beyond the control of either of the parties, including but not limited to the following: major weather problems, earthquake, strikes affecting air travel, attacks, a state of war, health risks.

In the event of such circumstances, each party shall be required to notify the other party accordingly in writing, within a period of 5 days.

17. DISPUTES

The following arbitration rules shall apply:

Article 1

Any dispute relating to the execution or application of a contract covered by Article 21 of the General Agreement on privileges and immunities of the Council of Europe shall be submitted, failing a friendly settlement between the parties, for decision to an Arbitration Board composed of two arbitrators, each selected by one of the parties, and a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance de Strasbourg shall make the appointment.

Article 2

However, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance de Strasbourg.

Article 3

The Board referred to in Article 1 or, where appropriate, the arbitrator referred to in Article 2 shall determine the procedure to be followed.

Article 4

If the parties do not agree upon the law applicable, the Board or, where appropriate, the arbitrator shall decide *ex æquo et bono* having regard to the general principles of law and to commercial usage.

Article 5

The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

18. DURATION

The contract is concluded until complete execution of the obligations of the parties and takes effect as from the date of its signature by both parties. The services shall be executed in accordance with the timeframe indicated in the Terms of reference or, by default, as agreed in any prior correspondence.