

You will find below the responses to the individual points you have raised in your email.

1. How did the 3 bids received for the tender score on the specific criteria that were used to select the contractor? Why is this information not required to be made public?

The information regarding the above-mentioned call for tenders was published in accordance with the applicable rules of the Financial Regulation¹ ('FR') and Rules of Application² ('RAP').

The Contract Award Notice, containing all the necessary information, was sent for publication on 11 January 2018 and published in the Official Journal on 18 January 2018 (2018/S 012-022173). This is in line with the requirement of Article 103 of the Financial Regulation and Article 123(4) of the Rules of Application which set out that an award notice for publication must be sent no later than 30 days after the signature of the contract (the contract with the winning tenderer was signed on 22 December 2017).

The results of the procedure, including the grounds on which the decision was taken, were sent to all the tenderers in line with Art. 113(2) of the Financial Regulation and Art. 161(1) of the Rules of Application and additional information (such as the name of the winning tenderer, the characteristics and relative advantages of the successful tenderer and contract value) was provided to the tenderers who requested this information as provided for in Art. 113(3) and within the deadline set in Art. 161(2) of the Rules of Application.

Considering all the above, there were no irregularities in the procedure regarding the disclosure of relevant information.

In addition, it is to be noted that according to Regulation (EC) No 1049/2001³ any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation. Therefore, the evaluation report of the public procurement procedure can be requested in accordance with the rules and procedures set out in this Regulation.

2. Who evaluated the suitability of each candidate? Were independent external experts involved in the evaluation process?

According to Article 111(5) of the Financial Regulation and Art. 158(1) of the Rules of Application, an evaluation committee was appointed in order to give an advisory opinion on the award of the above-mentioned contract as regards the exclusion, selection and award criteria. Each member of the committee signed a declaration of absence of conflict of

¹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 of 26.10.2012, p. 1) as amended.

² Commission delegated Regulation (EU) no 1268/2012 of 29/10/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L362 of 31/12/2012) as amended,

³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents as amended.

interests and of confidentiality. There were no external experts involved in the evaluation process.

3. Was there a consultation process involved?

The tenders were evaluated in accordance with the public procurement procedure rules as set out in the Financial Regulation and Rules of Application. They were also evaluated according to the published tender documents, which did not foresee a consultation process.

4. Why are tenderers only required to identify subcontractors whose share of the contract is above 15%?

Section 1.5. of the Tender Specifications indicated that '[t]enderers are required to identify subcontractors whose share of the contract is above 15% and whose capacity is necessary to fulfil the selection criteria.' The tenderers were required to identify subcontractors who either share a significant amount of the workload or (and) their capacity is necessary to fulfil the selection criteria set out in the tender specifications. Section 4.2. of the Tender specifications required that '[t]he tender must include the proportion of the contract that the tenderer intends to subcontract.'

Art. 146(5) of the Rules of Application provides that an economic operator may, where appropriate and for a particular contract, rely on the capacities of the other entities, regardless of the legal nature of the links which it has with them. It has been consistently established by the European Court of Justice that candidates are free to submit tenders as they see fit to ensure they fulfil the published criteria. They are free to include subcontractors if they wish. Subcontracting cannot be excluded from the outset. It is up to the tenderers to choose to have subcontractors or not, however the contracting authority may request a statement by the tenderer providing the volume/proportion that the tenderer intends to subcontract. The decision by the contracting authority to request the identification of subcontractors must be based on a risk analysis taking into account the principle of proportionality. The Commission set the share (15%) above which subcontractors must be identified on the basis of the scope of the contract, a risk assessment and established best practices. It is to be noted that requesting the identification of subcontractors whose share of the contract is very small would put an excessive burden on tenderers and therefore would go against the principle of proportionality and put unnecessary restrictions on fair competition. In addition tenderers were also obliged to identify subcontractors whose capacity was necessary to fulfil the selection criteria.

5. Was the identity of this subcontractor made known to the EU during the tender process?

The subcontractors (including Elsevier) have been identified in the tender, as requested in the tender specifications and made known to the European Commission.

6. Was a risk analysis performed as to the ramifications of the choice of subcontractor?

According to the Financial Regulation, a subcontractor means an economic operator that is proposed by a candidate or tenderer or contractor to perform part of a contract. The subcontractor has no direct legal commitment to the contracting authority.

Consequently, the choice of a subcontractor belongs exclusively to the tenderer. The contracting authority only examines the subcontractor in accordance with the rules set out in the tender specifications (for example if the capacity of a subcontractor is in accordance with the selection criteria if applicable).

7. CWTS worked for many years on the development of journal indicators based on Scopus. What was the nature of putative collaboration and/or business, and how did this historical relationship (as well as with, for example, The Leiden Manifesto) factor into the decision process for the Monitor?

The Commission has to evaluate the quality of the submitted tenders, including the proposed methodology for the Monitor, in accordance with the rules set out in the Tender Specifications. As is clearly mentioned in the tender specifications, ‘the evaluation is based solely on the information provided in the submitted tender.’ CWTS is one of the three partners of the consortium which submitted the winning tender. While assessing the quality of it, the alleged relationship between CWTS and Elsevier, you are referring to, did not play a role.

8. What was the selection method for the different tools and services to be used for the Monitor? This is essential for reliability, robustness, and reproducibility of the methods, and part of standard Data Management best practices.
 - a. Ironically, The Leiden Manifesto specifically recommends against such non-transparent processes and exclusive data source usage.

It is not correct to state that the Commission is favouring ‘non-transparent’ processes and ‘exclusive data source usage’. As you may know, the Commission is working together with Member States to establish a European Open Science Cloud, which will make eventually access to data, data sharing, and data re-use possible. We do face currently the fact that our current data-infrastructures are not all open and transparent, let alone enable open data usage. Therefore, as long as we do not have yet an open data infrastructure(s) available, we are dependent on actors giving access to data sources, which are useful for the assessment and monitoring of open science practices. The intention of the Commission is to have an as comprehensive Open Science Monitor as possible. The objective of the contract in question is to give the best insights into the behaviour of scientists towards open science practices. The consortium is neither fully dependent on Elsevier, nor does Elsevier determine which indicators the Monitor bases itself on. The Commission wants to promote open science practices and the Monitor is one of the various ‘tools’ available to guide us how to promote and incentivise Open Science. The Commission never takes its decisions on a single tool such as the Open Science Monitor.

9. How do the consortium and the EU resolve the incredibly high profit margins (~37%) of Elsevier with the intrinsic motivations behind open science, including financing and governance?

As described in the tender specifications, the evaluation of the tender is based solely on the information provided in the submitted tender. It involves the following:

- verification of non-exclusion of tenderers on the basis of the exclusion criteria;
- selection of tenderers on the basis of the selection criteria;
- verification of the compliance with the minimum requirements set out in these tender specifications;
- evaluation of tenders on the basis of the award criteria.

All the tenders, including the winning tender, have been evaluated in accordance with the rules set out in the tender specifications. The allegedly high profit margins of one of the subcontractors is not evaluated at any of the steps of the procedure. It would go against the principle of equality and fair competition if the contracting authority evaluated the profit margins of a subcontractor, therefore this was not part of the evaluation procedure published. As mentioned above, the tenders were evaluated solely on the basis of the information provided in the tenders.

10. How is the proportion of work in this project that is allocated to the subcontractor (10%) calculated?

Section 4.2. of the Tender specifications requires that '[t]he tender must include the proportion of the contract that the tenderer intends to subcontract.' Therefore it is an obligation for tenderers to calculate the intended proportion of subcontracting and provide this information in their tenders. The winning joint tenderers provided the information as requested.

11. Who is accountable for the monitoring process itself, including resolution of internal disputes during the monitoring (not just the performance of the contract as a whole)?

During the performance of the contract, the Commission does not intervene in the discussions among the partners of the consortium. The Commission assesses the performance of the contractor over time. This assessment takes into account the constraints of the availability of financial and human resources and time-frames. The tender specifications and contract foresees a number of meetings and interim reports, which must be approved by the Commission, as well as external validation workshops, in order to ensure continuous evaluation of the performance and the effective implementation of the contract.

12. It is not clear what exactly Elsevier's role is. Who is setting the goals, deciding on the metrics and variables, on the indicators, on data sources, on data cleaning protocols, on computation/analysis methods, on presentation, and on outreach and dissemination? The consortium should make clear exactly what the role of Elsevier as subcontractor is.

As indicated in Art. II.10.2 of the Contract, 'even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the performance of this contract.' In addition to that '[t]he contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract' (Art. II.10.3).

In line with the above-mentioned provisions, it is the contractor, who is responsible for the implementation of the contract and not the subcontractor. Therefore, the contractor has the final responsibility for the delivery of the results and coordinates the work among the

partners. Elsevier as a subcontractor provides in this context only a service to the contractor and has therefore *no authority* to decide on the construction of the Monitor.

13. Given the EU's emphasis on Open Science, including Open Data, why is there (apparently) no requirement to insist that the Open Science Monitor must be based upon open data, open standards, and open source tools (with appropriate licenses for re-use accessibility) as a matter of principle? For example, elements of this could follow the EC's own Open Source Software Strategy.

Overall, the Commission wishes to have an as comprehensive Monitor as possible. As explained in our reply for question No. 8, as long as there is in the European Union no fully open and transparent data-infrastructure, we are dependent on a fragmented data infrastructure and data sources from private operators. This implies that the Monitor has to be constructed under non-optimal conditions. However, it can still provide us with some insights on how open science evolves. It is not the intention to provide the ultimate Monitor and a research assessment tool, but solely a tool which helps us to assess how open science practices evolve and provide insights on how we could possibly foster such open science practices with public policy.

14. How will the comments on the indicators (including my own and a number of the undersigned), many of which specifically also mention the bias towards Elsevier services, be handled as part of the consultation?

The Contractor has an online open call, consistent with contractual obligations (see: https://ec.europa.eu/info/open-science/open-science-monitor/about-open-science-monitor_en). The research community and any interested actor can provide comments on the proposed methodology of the contractor and help to improve proposed indicators on the development of open science in Europe and other countries. The Monitor should be seen as a collaborative initiative.

15. Did all persons and partners within the consortium declare their potential conflicts of interest (CWTS, Lisbon Council for Economic Competitiveness and Social Renewal, and the ESADE Business & Law School)? If so, are these public?

As stated in II.7.2 and in II.7.3 of the contract "The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *performance of the contract*. The contractor must immediately take action to rectify the situation. <...> The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest. "

It is the contractor's obligation to take the necessary measures in case a situation of conflict of interest or a professional conflict of interest occurs during the contract implementation. Potential conflicts of interest of the partners of a consortium are not accessible to the public.

According to Art. 103 of the Financial Regulation on publicity measures, "Publication of certain information on a contract award may be withheld where its release would impede law enforcement, or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators or might prejudice fair competition between them."

16. The position of power for Elsevier will have an impact on the future of a fair scholarly publishing market in the EU. From a scientific perspective, selectively choosing and restricting data sources to the exclusion of others (as clearly indicated in the methods for the Monitor), is generally considered to be bad practice.

Please see the response under question number 8. Elsevier will have no authority under the contract to determine the choice of indicators and the contractor, consistent with contractual obligations, will seek input through the open call to make the Open Science Monitor as comprehensive as possible under the conditions foreseen in the contract with the European Commission.

17. By using predominantly, and for many indicators almost entirely, Elsevier-based services, such as Mendeley, Scopus, and Plum Analytics, subcontracting to Elsevier creates an inherent bias in the primary data sources. The potential direction and size of these biases are unknown at the present time.
- This is partly a function of the products (metrics) and data themselves being proprietary, and represents an irresponsible approach towards metrics usage for evaluation.
 - The metrics proposed to be used for the monitor are not acquired by an independent body, but based on Elsevier products and services, creating an inherent bias in the data sources.
 - The fact that Elsevier is a publisher offering services that monitor scholarly publishing also presents a serious COI, and does not respect current competition laws.
 - This also actively discriminates against the competitors of Elsevier, creating unfair market conditions around academic publishing in general, and Open Science evaluation and metrics.

The Contractor, consistent with contractual obligations, has invited the research community to comment on the proposed indicators on the development of open science and the methodology of the Monitor (see: https://ec.europa.eu/info/open-science/open-science-monitor/about-open-science-monitor_en). The contractor engages with a wide range of experts to assess comments and inputs to make an as comprehensive as possible Open Science Monitor. If there would be a bias, then the bias will be made explicit and the choice of indicators will be justified. These indicators will be only be used to get insight and track actual developments in open science. The emphasis is on being as collaborative as possible in the construction of the monitor. There will be no exclusive dependence on a single subcontractor the consortium.

18. It is as yet unclear whether, as Elsevier services are featured so prominently, these services will become more of a requirement (either formal or implicit) for EU researchers and research institutions to use, since this is becoming a primary assessment tool.
- A potential consequence of this is that researcher careers become more dependent on Elsevier's product workflows, and ultimately are 'locked in'.
 - A further consequence of this is that many other competitive services and workflows will be discriminated against.
 - This creates a further inherent COI in having Elsevier as the sole subcontractor.

The Open Science Monitor has been created to get some quantitative and qualitative insights on the ongoing development of open science practices. The Open Science Monitor is *not an assessment tool* as such. The Commission may draw conclusions from the quantitative and qualitative trends in open science and its drivers to propose new policies for fostering open science. However, the Commission will never base its policies directly on a single tool. The Open Science Monitor will be only one particular source among many before the Commission will make proposals for policy.

19. Whether or not Elsevier will benefit by being able to sell more of their metrics and the underlying data sources.
- This creates another inherent, and virtually inevitable, financial COI in having Elsevier as the sole subcontractor here.
 - They are now in a position to evaluate the very same scientific products that they and their competitors sell.
 - As these data will be used to guide public policy in the EC in the future, Elsevier clearly stand to benefit from being subcontracted.

Public procurement procedures are organised in light of the free market economy and tenderers are free to organise themselves and submit their tenders as they see fit, as long as they ensure they fulfil the published criteria and that there is no conflict of interests or distortion of fair competition. The Commission does not assess the potential benefits of a subcontractor to a consortium.

20. Will the data sources be made openly available (including explicitly open licenses) for independent inspection and analysis? Will data gathering protocols be transparent and replicable? Without this, it is unlikely that the wider Open Science community will accept any outputs from the Monitor.

The construction of the Monitor will be done in a transparent manner and reference to all data sources will be made.. The first version of the Monitor was prepared by another contractor. The current contractor has been enabled to access the data provided by the first contract. Once the EU has an open and transparent data infrastructure for publicly funded research, the Open Science Monitor will be improved accordingly.

21. How will the EC ensure that the closed, profit-driven practices of Elsevier match and align with the expectations of government accountability that makes the EU so successful?

In accordance with Art. II.4.1. of the Contract ‘the contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender’. The tender specifications and the contract set clear and firm requirements for the provision of the services, which must be respected by the contractor. In case of subcontracting, ‘the contractor remains bound by its contractual obligations and is solely responsible for the performance of this contract’ (Art II.10.2 of the Contract). Therefore there are no grounds to assume that the practices of the subcontractor (Elsevier) might have any impact on the Commission decision-making processes.

22. What ‘sanity checks’ for the data will be emplaced to compensate for the risk associated with using a single data source?

The Monitor will not be based on a single data source and as explained above, it is the Commission's intention to have an as comprehensive Monitor as possible under the conditions foreseen in the contract and to engage as many actors as possible to give input to the Monitor.