



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Brussels,...

CALL FOR TENDER No. JLS/2009/ISEC/PR/019-F2

(open procedure)

Dear Sir/Madam,

1. The European Commission invites tenders for a service contract regarding the following project:

Study on preventing and fighting illicit trafficking in cultural goods in the EU

This invitation to tender follows the publication of the contract notice in OJEU S [xxxxxx of xx/xx/xxxx]

2. If you are interested in this contract, you must submit a tender in **triplicate**, in one of the official languages of the European Union.

Tenders must be:

- (a) **either sent by registered mail or by private courier**

The tender must be sent by registered mail or by private courier, dispatched not later than **25/03/2010** (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

By registered mail

Tender - Study on preventing and fighting illicit trafficking in cultural goods in the EU
European Commission
Directorate-General Justice, Freedom and Security
Directorate F: Security
Unit F4: Financial support - security
Office LX-46 6/020
B - 1049 Brussels
Belgium

By private courier

Tender - Study on preventing and fighting illicit trafficking in cultural goods in the EU

European Commission

Directorate-General Justice, Freedom and Security – LX 46 6/020

Avenue du Bourget, 1

B-1140 Brussels (Evere)

Belgium

(b) or delivered by hand

Tenders must be delivered by hand at the **Central Mail of the European Commission** by **25/03/2010 not later than 4 p.m.** (Brussels time), at the following address:

European Commission

Directorate-General Justice, Freedom and Security – LX 46 6/020

Avenue du Bourget, 1

B-1140 Brussels (Evere)

Belgium

In this case, a receipt must be obtained as proof of submission, signed and dated by the official in the Commission's central mail department who took delivery. The department is open from 08.00 to 17.00 Monday to Thursday, and from 8.00 to 16.00 on Fridays. It is closed on Saturdays, Sundays and Commission holidays.

3. Tenders must be placed inside two sealed envelopes, one inside the other. **The inner envelope should be marked:**

Call for tenders No. JLS/2009/ISEC/PR/019-F2
not to be opened by the internal mail department

LX 46 6/020

Or

Appel d'offres No. JLS/2009/ISEC/PR/019-F2

à ne pas ouvrir par le service du courrier

LX 46 6/020

If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

Non-respect of these instructions may lead to the exclusion of the tenderer.

4. Tenders will be opened at 11 a.m. on 31/03/2010, at 46 Rue du Luxembourg , office 6/SDR 103 -1040 Brussels).

This opening session will be public. Each tenderer may be represented by not more than one person. At the end of the opening session, the Chairman of the opening committee will indicate the name of the tenderers and the decision concerning the admissibility of each offer received. The prices mentioned in the bids will not be communicated.

5. The specification, listing all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity and the draft contract are attached.
6. Tenders must be signed by the tenderer or his duly authorised representative and perfectly legible so that there can be no doubt as to words and figures.
7. Validity period of the tender: six months as from the final date for submission of tenders mentioned under point 2 above.
8. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification, in the draft contract and, where applicable, waiver of the tenderer's own general or specific terms and conditions. The terms and conditions are binding on the tenderer to whom the contract is awarded during the performance of the contract.
9. Contacts between the awarding authority and tenderers are prohibited throughout the procedure except in exceptional circumstances and under the following conditions only:

Before the closing date for submission of tenders

- At the request of the tenderer, the awarding authority may provide additional information solely for the purpose of clarifying the nature of the contract.

Requests for additional information must be sent in writing not later than six calendar days before the closing date for submission of tenders to the following address:

European Commission
Unit F4: Financial support - Security
LX 46 6/020
B-1049 Brussels
Belgium

Fax (+ 32 2) 29 98215
e-mail: JLS-F4-Procurement@ec.europa.eu

- The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other material shortcoming in the text of the tender documents.

Further information will be sent simultaneously to all tenderers who have requested the specification in writing, where this is appropriate. Tenderers who have downloaded the documents from the Directorate-General Justice, Freedom and Security website (DG JLS) are invited to consult this site regularly until the deadline for submission.

After the opening of tenders

If a tender requires clarification, or if there is a need to correct material errors which have occurred in the drafting of the tender, the Commission may take the initiative and contact the tenderer(s). Such contact shall not lead to the conditions of the tender being altered in any way.

- 10.** This invitation to tender is in no way binding on the Commission. A commitment will come about only when a contract with the successful tenderer has been signed.

Until a contract is signed, the awarding authority may decide not to award a contract or to cancel the tendering procedure, without the candidates or tenderers being entitled to claim any compensation. Where appropriate, the decision will be substantiated and brought to the attention of the tenderers.

- 11.** The costs of dispatching the documents and in participating in this call for tender shall be borne by the tenderer.

- 12.** Tenderers will be informed of whether their tenders have been accepted or rejected.

- 13.** The follow-up of your response to the invitation to tender will require the recording and further processing of personal data (i.e. name, address, CV, etc.). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by Union institutions and bodies and on the free movement of such data. Unless if otherwise stated, replies to questions and personal data requested are necessary for the purpose of assessing your tender (according to the specifications of the invitation to tender) and will only be processed within DG JLS as data controller, for this purpose. You may, upon request, have your personal data sent to you and rectify any inaccurate or incomplete particulars. Should you have any queries concerning the processing of your personal data, please address them to the entity acting as data controller within DG JLS. As regards the processing of your personal data, you have the right to bring the matter before the European Data Protection Supervisor at any time.

- 14.** You are informed that for the purposes of safeguarding the financial interest of the Communities, your personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF).

Tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p. 125), or
- the Commission Regulation of 17.12.2008 on the Central Exclusion Database – CED (OJ L 344, 20.12.2008, p. 12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract or a grant agreement or decision.

- 15.** If you decide not to submit a bid, I kindly request you to communicate the reasons for deciding not to tender. This will be of great help in understanding the market, in view of any future procurement files.
- 16.** The European Union is committed to promoting equality between men and women and aims in all its activities to eliminate gender inequalities (Articles 2 and 3 of the EC Treaty). Women are accordingly particularly encouraged either to submit tenders or to be involved in their submission.

Yours faithfully,

Reinard Priebe

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

Invitation to tender No. JLS/2009/ISEC/PR/019-F2 concerning

**Study on preventing and fighting
illicit trafficking in cultural goods in the EU**

TABLE OF CONTENTS

I	SPECIFICATIONS
I.1	INTRODUCTION
I.1.1.	<i>The legal and institutional context of the study</i>
I.1.2.	<i>Objectives and expected results</i>
I.2	PURPOSE OF THE CONTRACT
I.2.1.	<i>Description of the study</i>
I.2.2.	<i>Geographical area to be covered</i>
I.2.3.	<i>Target groups</i>
I.2.4.	<i>Methodology</i>
I.2.5.	<i>Compulsory sources of information</i>
I.3	REPORTS AND DOCUMENTS TO PRODUCE - TIMETABLE TO OBSERVE
I.4	DURATION OF THE TASKS
I.5	PLACE OF PERFORMANCE
I.6	ESTIMATE OF THE AMOUNT OF WORK INVOLVED
II	TERMS OF CONTRACT
II.1	TERMS OF PAYMENT
II.2	FINANCIAL GUARANTEES
II.3	SUBCONTRACTING
II.4	LEGAL FORM TO BE TAKEN BY THE GROUPING OF SERVICE PROVIDERS TO WHOM THE CONTRACT IS AWARDED
III	FORM AND CONTENT OF THE TENDER
III.1	GENERAL
III.2	STRUCTURE OF THE TENDER
III.2.1	<i>FIRST SECTION: ADMINISTRATIVE PROPOSAL</i>
III.2.2	<i>SECOND SECTION: TECHNICAL PROPOSAL</i>
III.2.3	<i>THIRD SECTION: FINANCIAL PROPOSAL</i>
IV	ASSESSMENT AND AWARD OF THE CONTRACT
IV.1	EXCLUSION CRITERIA - EXCLUSION OF TENDERERS
IV.1.1	<i>EXCLUSION CRITERIA (ART. 93 OF FINANCIAL REGULATION)</i>
IV.1.2	<i>OTHER CASES OF EXCLUSION</i>
IV.1.3	<i>EVIDENCE TO BE PROVIDED BY THE TENDERERS</i>
IV.2	SELECTION CRITERIA – SELECTION OF TENDERERS
IV.2.1	<i>ECONOMICAL AND FINANCIAL CAPACITY – REFERENCES REQUIRED</i>
IV.2.2	<i>TECHNICAL AND PROFESSIONAL CAPACITY – REFERENCES REQUIRED</i>
IV.3	EVALUATION OF TENDERS - AWARD CRITERIA
V	INFORMATION FOR TENDERERS
VI	ADMINISTRATIVE AND FINANCIAL PENALTIES
VII	ANNEXES

I. SPECIFICATIONS

I.1. Introduction

According to different sources, trafficking in cultural goods represents a very high criminal trade worldwide. With drugs and arms trafficking, it is one of the most spread criminal activities developed at international level. It is difficult to indicate accurate statistics but it is estimated that it can bring in \$2-6 billion per year, most of which goes to fund international criminal organisations. According to statistics provided by the Association for Research into Crimes Against Art (ARCA), there were for instance more than 800.000 art works and antiquities reported stolen in Italy over the last 30 years. It is estimated that only 30% of them have been recovered.

The trafficking of art works is often linked to theft, looting, pillaging and/or illicit import and export, mixing art works in the legitimate market. The criminal activities can affect museums, public and private collections, legitimate owners or possessors, resellers and antique dealers, auction houses, religious buildings, cultural institutions, archaeological sites etc.

It is not easy to put figures on the cost of stolen cultural property. The value of an item may be not the same in the origin and the destination country. It is also impossible to assess the financial extent of the losses caused by clandestine archaeological excavations. The looted items sometimes appear on the international market.

The European Union, which is main region of origin, transit and destination for cultural goods, is deeply concerned with this illegal transnational traffic. According to Interpol, the most of thefts are perpetrated in France, Poland, Germany and Italy. Private persons are the most concerned. The trafficked items can be of different nature but the most sought are paintings, sculptures and religious property. Other categories are not spared: archaeological pieces, antiquarian books, antique furniture, coins, ancient weapons etc.

I.1.1. The legal and institutional context of the study

The treaty on the European Union and on the functioning of the EU provides an enlarged legal basis for action at the Union level, in respect of principles of proportionality and subsidiarity.

Several provisions relate to the prevention and fight of trafficking in cultural goods. The combination of title XIII on culture and title V on the area of freedom, security and justice allows the Union to contribute to the blooming of national cultures including through the cooperation of police and other public services and private organisations. The modalities of police cooperation to tackle serious, transborder and organised crime are specified in chapter V. On that basis, the Union shall contribute as well to the collection and exchange of information on crime, possibly with the involvement of Europol.

Art. 83 points out that "the European Parliament and the Council may, by means of directives, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis."

Art. 167 of TFEU and title V of TEU provide both with a basis for fostering cooperation with third countries and the competent international organisations in the sphere of culture. The Union has competence to carry out, support, coordination and supplement actions regarding culture.

Art. 34-36 of the TFEU provide for the free movements of goods, including cultural goods, throughout the Union in. However, Art. 36 TFEU allows restrictions on the circulation of national treasures possessing artistic, historic or archaeological value. On that basis, two legal instruments have been adopted to protect clearly identified art works in the context of the internal market:

- Council Regulation (EC) No 116/2009¹ on the export of cultural goods which establishes rules on trade with third countries and ensures that exports of cultural goods are subject to uniform controls at the Community's external borders
- Council Directive 93/7 on the return of cultural goods unlawfully removed from the territory of a Member State². Introducing an administrative cooperation system, it enables Member States to secure the return of cultural objects which are classified as national treasures within the meaning of Article 36. The Directive has been implemented by all the Member States and the countries of the EEA (Liechtenstein, Iceland and Norway).

In line with the Council Conclusions on the Work plan for Culture 2008-2010³ a working group has been set up in 2008, focussing on the mobility of collections and activities of museums. One of the priority areas of this working group covers the exchange of best practices in the prevention of theft, return of stolen goods and trafficking of collections.

Moreover, a number of Member States ratified the following international instruments:

- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of cultural Property adopted by UNESCO in 1970
- Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted by UNESCO in 1972
- Convention on the Protection of the Underwater Cultural Heritage, adopted by UNESCO in 2001
- Convention on Stolen or Illegally Exported Cultural Objects, adopted by Unidroit in 1995
- European Convention on Offences Relating to Cultural Property, adopted by the Council of Europe in 1985
- Convention for the Protection of the Architectural Heritage of Europe, adopted by the Council of Europe in 1985, amended in 1992

The following resolutions and recommendations were adopted as well in the field:

- Resolution 1205 on Looted Cultural Property, by Parliamentary Assembly of the Council of Europe, 1999
- UNESCO Declaration Concerning the International Destruction of Cultural Heritage, 2003
- Recommendation for the Protection of Movable Cultural Property, Adopted by the General Conference at its Twentieth Session, Paris, 28 November 1978.
- Recommendation Concerning the International Exchange of Cultural Property, Adopted by the General Conference at its Nineteenth Session, Paris, 30 November 1976.

I.1.2. Objectives and expected results

The Conclusions adopted by JHA Council on 27-28 November 2008 reiterated the commitment of the EU to the protection of public and private cultural heritage and art works. For these purposes a strengthened action should be taken at the national, European and international level regarding traceability, prevention and combating trafficking in cultural goods.

The Written Declaration adopted by the European Parliament on 15 December 2008 called for the European concerted action with practical measures and legal framework.

¹ OJ EU L 39/110.2.2009

² http://ec.europa.eu/enterprise/policies/single-market-goods/regulated-sectors/cultural-goods/index_en.htm

³ OJ EU C 143 of 10.06.2008, p. 9.

The study should contribute to achieving these objectives.

I.2. Purpose of the contract

The Study should achieve especially the following specific objectives:

- A. Take stock of legal, regulatory and operational instruments related to
 - a) Civil and criminal framework on the illicit handling of art works
 - b) Methods of traceability and identification of art works
- B. Identify legal and operational obstacles to prevent and combat trafficking in cultural goods
 - a) Explore functioning and interconnection of national databases on stolen cultural goods and cooperation among services concerned by trafficking
 - b) Assess legal differences especially in criminal law regarding national framework on theft, resale and other forms of art crime
- C. Draw options for possible further developments inside the EU and in the EU external relations regarding trafficking and return of illegally removed art works.
 - a) Possibility of harmonisation of national legal and regulatory systems, a development of soft law and ratification by all Member States of international instruments
 - b) Developing exchange of data and information on stolen goods at the European and international level
 - c) Enhancing coordination and exchange of best practice among competent authorities and services at national and European level
 - d) Strengthening prevention measures including identification of art works

I.2.1. Description of the study

The study should build on the existing reports, research and various compilations with an aim to complement them. The study should comprise an inventory of instruments, procedures and available data but should also include an analysis of legal and operational problems and identify possible solutions.

A set of recommendations should be proposed to reinforce prevention and fight of trafficking of cultural goods at national, European and international level. Following the proposal tabled by the former French Presidency, the study should comprise as well considerations on the feasibility of harmonisation of provisions on receiving to be respected by art professionals. A special focus should be given to the question of police registers on the identity of sellers and on the issue of due diligence, good faith and evidence when acquiring and lending an art work. Other legal questions regarding especially applicable law for transborder situations, prescription, aggravating circumstances, double incrimination, confiscation should be raised as well.

The impact of the legal and operational instruments on money laundering and on criminal assets recovery should be analysed as well. Tackling trafficking of stolen goods on the internet should be devoted a special attention to ensure a sufficient security of transactions or sanction of criminal proceedings.

The identification of national public and private databases and inventories should be accompanied by the indications on the standards of exchange of information and their interconnectivity and accessibility. The difficulties of supplying data to the Interpol database "Works of art" should be accompanied by suggestions on how to solve technical or operational problems of supply. Regarding Member States lacking relevant services and database, the study should identify the actions on the improvement of the situation and possible support from the EU. Concrete actions of communication and trainings should also be included in the recommendations.

The study should identify best practices, handbooks, codes of ethics, guidelines on traceability and prevention of theft and trafficking, developed by museums, auction houses and other public and private collections and provide recommendations on their possible dissemination at the EU level. The contractor will also assess the feasibility of marking and other traceability, identification and inventory methods at the EU level, taking into account the recommendations made in the mentioned studies conducted by the Commission in 2004 and 2007.

As recommended by the European Parliament, the extent and modalities of international cooperation should be extensively presented taking into account the existing international instruments. The study should fully explore the potential of action offered by the Lisbon treaty.

I.2.2. Geographical area to be covered

Every EU member state, candidate and EEA countries will be covered by the study. The international aspects will be developed when necessary.

I.2.3. Target groups

All the public and private institutions and individuals concerned by the theft and trafficking should be taken into consideration to achieve the purposes of the study. A special focus will be given to the modalities of cooperation and their obstacles between culture institutions, police, customs and judicial authorities. Interpol, Europol, the International Council of Museums (ICOM), European Heritage Network, representatives of Churches, Historic Houses Association and other professional organisations should be approached to identify their functioning and assess the possibility to strengthen the multiagency cooperation at the European level.

I.2.4. Methodology

The study should be mainly based on the analytical research and, where necessary, interviews with stakeholders.

It should comprise clearly identified annexes, elaborated for operational purposes. As requested, the study will be submitted to the Council and on that basis, a discussion will be developed with Member States.

I.2.5. Compulsory sources of information

The contractor should use every valid information available to achieve the indicated objectives both from public and private organisations. Among others, it is important to take the two following studies into consideration: the study undertaken by the Swedish Council of crime prevention "Cultural heritage crime – the Nordic dimension" and the study undertaken by the French CNRS "Protection de la propriété culturelle et circulation des biens culturels en France et Grande Bretagne".

The contractor should also take into consideration the ongoing work undertaken by the Council subgroup "Mobility of collections" and INTERPOL.

I.3. Reports and documents to produce - Timetable to observe

Execution of the tasks begins after the date on which the Contract enters into force.

A **kick-off meeting** will take place in Brussels, at the latest 14 days following the signature of the contract, in order to settle all the details of the study to be undertaken.

I.3.1 Inception Report

The contractor will submit an inception report of the study to the Commission at the latest **1 month** after the signature of the contract. This draft should describe the methodology and the timeframe of the activities planned to achieve the objectives and requirements of the contract.

If Commission is not content with this inception report, it may require changes in the planning or in the working methods.

I.3.2 Interim report

The interim report showing progress of the work shall be submitted to the Commission at the latest **4 months** after the date of signature of the contract.

The Commission shall have 14 days from receipt to approve or reject the report. Within 14 days of receiving the Commission's observations, the Contractor will submit additional information or another report.

I.3.3.Final report

The contractor will submit a draft final report to the Commission at the latest **9 months** after the signature of the contract.

Within 14 days after the submission of this draft final report the Commission will provide the contractor with its comments on the draft final report and the date of a meeting in Brussels will be agreed in order to discuss the Commission's observations.

After this meeting, the Contractor shall have 14 days in which to submit additional information or a new final report.

I.3.4. Report format and publication

Four copies of the reports shall be supplied in English in paper form and one copy in electronic form, either in MS Word or in HTML format.

The Commission may publish the results of the study. For this purpose, the tenderer must ensure that the study is not subject to any restrictions deriving from intellectual property rights of third parties. Should he intend to use data in the study, which cannot be published, this must be explicitly mentioned in the offer.

I.4. Duration of the tasks

The duration of the tasks shall not exceed **11 months**. This period is calculated in calendar days.

I.5. Place of performance

The tasks will be performed on the Contractor's premises. However, meetings between the contractor and the Commission may be held on Commission premises in Brussels.

I.6. Estimate of the amount of work involved

The total value of the contract has been estimated at **EUR 130.000,00**.

It is indicated in line with the principles of sound financial management, and in particular of economy and value for money.

This is to enable tenderers to submit targeted bids that correspond more closely to the funds available and the needs of the contracting department.

II. TERMS OF CONTRACT

In drawing up his offer, the tenderer should bear in mind the provisions of the draft contract attached to this invitation to tender (Annex 6). Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

The Commission may, before the contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

II.1. Terms of payment

Payments shall be made in accordance with the provisions specified in Annex 6, the draft service contract

II.2. Financial guarantees

Guarantee on pre-financing

For any pre-financing higher than 150.000,00 EUR, a financial guarantee equivalent to the amount of the pre-financing will be requested.

Depending on the financial situation of the tenderer, the Commission may ask for the financial guarantee for amounts lower than 150.000,00 EUR.

II.3. Subcontracting

If the tenderer intends to subcontract part of the service, he shall indicate in his offer which part will be subcontracted and to what extent (% of the total contract value).

Tenderers must ensure that Article II.17 of the contract (Annex 7) can be applied to subcontractors.

II.4. Legal form to be taken by the grouping of service providers to whom the contract is awarded (if applicable)

Groupings, irrespective of their legal form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortium) must specify the company or person heading the project and must also submit a copy of the document authorising this company or person to submit a bid. If awarded, the contract will be signed by the company of the person heading the project, who will be, vis à vis the Commission, the only contracting party responsible for the performance of this contract. Tenders from a consortium of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member of the consortium or group. Each member must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria, selection criteria (all of them) and award criteria.

III. FORM AND CONTENT OF THE TENDER

III.1. General

Tenders must be written in **one of the official languages** of the European Union.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc...). Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications.

III.2. Structure of the tender

All tenders must include three sections:

- 1) Administrative informations and documents related to the exclusion and selection criteria;
- 2) Technical proposal;
- 3) Financial proposal.

III.2.1. Section One: administrative proposal

a) Administrative informations

This section must provide the following information, set out in the standard identification forms attached to these tender specifications (Annexes 1, 2 and 3):

- 1) Tenderers' identification (Annex 1)
 - All tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or provide a declaration or certificate.
 - If the tenderer is a natural person, he/she must provide a copy of the identity card/passport or driving licence and proof that he/she is covered by a social security scheme as a self-employed person.

Each tenderer (including subcontractor(s) or any member of a consortium or grouping) must complete and sign the identification forms in Annex 1 and also provide above-mentioned documents.

However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the contract.

- 2) Financial identification (Annex 2)

The **bank identification form** must be filled in and signed by an authorised representative of the tenderer and his/her banker. A standard form is attached in Annex 2 and a specific form for each Member State is available at the following Internet address:

http://ec.europa.eu/budget/execution/ftiers_en.htm

In the case of a grouping, this form must only be provided by the person heading the project.

- **3) Legal entities (Annex 3)**

The legal entity form in Annex 3 must be filled in and should be accompanied by a number of supporting documents, available on the Web site:

http://ec.europa.eu/budget/execution/legal_entities_en.htm

In the case of a grouping, this form must only be provided by the person heading the project.

The Commission reserves the right, however, to request additional evidence in relation to the bid submitted for evaluation or verification purposes within a time-limit stipulated in its request.

b) Information regarding exclusion and selection criteria:

For the exclusion criteria the tenderer is request to submit:

1. Declaration by the Tenderer relating to the exclusion criteria (see IV.1.3)
2. Documents certifying economic and financial capacity (see IV.2.1)
3. Prove of technical and professional capacity (see IV.2.2)

III.2.2. Section Two: Technical proposal

This technical section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract.

The attention of biderers is specially drawn to the award criteria, which define those parts of the technical proposal to which the tenderers should pay particular attention. The technical proposal should address all matters laid down in the specifications and should include models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender. Tenderers must present in their bids a proposal on the methodology and the organisation of the work to carry out in the framework of the study.

The technical proposal must provide all the information needed for the purpose of awarding the contract.

III.2.2.1. Documents to be presented in the bid

The tenderer is required to present a detailed action plan describing how he wants to achieve the delivery of the services within the contractual timeframe.

The tender will be presented in a structured way and will contain the following:

1. Understanding of the purpose of the services and the nature of the tasks to be undertaken. Details should be given on a preliminary assessment of the difficulties and expected results.
2. Proposed approach to develop an efficient and appropriate study meeting the requirements.
3. Proposed methodology and tools that will be used.

4. Proposed team organisation and structure which will be put in place to achieve the expected results. Details should be given on the allocation of staff profiles to different tasks. The description of the lines of reporting should be part of this section.

III.2.3. Section Three: Financial proposal

All tenders must contain a financial proposal to be submitted **according to the form attached in Annex 5.**

The tenderer's attention is drawn to the following points:

- Prices must be quoted in **euros**, including the countries which are not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.
- **Prices must be fixed amounts** [and include all expenses, such as travel expenses and daily allowances].
- **Prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption. For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT;
- Prices shall be fixed and not subject to revision during the performance of the contract;
- All unit costs should clearly appear. Management as well as travel and accommodation costs should be highlighted in the estimate.

IV. ASSESSMENT AND AWARD OF THE CONTRACT

The assessment will be based on each tenderer's bid.

All the information will be assessed in the light of the criteria set out in these specifications. The procedure for the award of the contract, which will concern only admissible bids, will be carried out in three successive stages.

The aim of each of these stages is:

- 1) to check on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- 2) to check on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;
- 3) to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages.

IV.1. Exclusion criteria (exclusion of tenderers)

IV.1.1. Exclusion criteria (Article 93 Financial Regulation⁴)

To be eligible for participating in this contract award procedure, tenderers **must not be** in any of the following situations:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests⁵;
- (f) they are currently subject to an administrative penalty referred to in Article 96(1) of Financial Regulation.

⁴ Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

⁵ a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995 (OJ/C 316 of 27.11.1995, p. 48);

b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997 (OJ/C 195 of 25.6.1997, p. 1);

c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ/L 315 of 29.12.1998, p. 1);

d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ/L 166 of 28.6.1991, p.77).

IV.1.2. Other cases of exclusion (Article 94 Financial Regulation)

Contracts will not be awarded to tenderers who, during the procurement procedure:

a) **are subject to a conflict of interest;**

Tenderers must declare:

- that they do not have any conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- that they will inform the contracting authority, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;
- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract.

The Commission reserves the right to check the above information.

b) **are guilty of misrepresentation** in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;

IV.1.3. Evidence to be provided by the tenderers

1. When submitting their bids, each tenderer (including subcontractor(s) or any member of a consortium or grouping) shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations mentioned above (cf. IV.1.1 and VI.1.2). **For that purpose, they must complete and sign the form attached in Annex 4.** Where the tenderer is a legal entity, they shall, whenever requested by the Commission, provide information on the ownership or on the management, control and power of representation of the legal entity.
2. The tenderer to whom the contract is to be awarded (including any member of a consortium or grouping) shall provide, within 14 calendar days after notification of the results of the procurement procedure and in any case before the signature of the contract, the following evidence, confirming the declaration referred to above:

The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point IV.1.1 (a), (b) or (e) above, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point IV.1.1 (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraph 1 and 2 above shall relate to legal and/or natural persons including, if applicable with regard to points b) and e), company directors or any person with powers of representation, decision-making or control in relation to the tenderer.
4. When the subcontracted part is above 20% of the contract value, the subcontractor(s) must also provide the above-mentioned declaration on honour. In case of doubt on this declaration on the honour, the contracting authority may also request the evidence referred to in paragraphs 2 and 3 above.
5. The Commission reserves the right to request any other document relating to the proposed tender for evaluation and verification purpose, within a delay determined in its request.

Remark:

The tenderers will be waived of the obligation to submit the documentary evidence above mentioned if such evidence has already been submitted for the purposes of another procurement procedure launched by Directorate General Justice, Freedom and Security provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

IV.2. SELECTION CRITERIA (SELECTION OF TENDERERS)

To be eligible, the tenderers must have the economic and financial capacity as well as the technical and professional capacity to perform the tasks required in this call for tender.

IV.2.1. Economic and financial capacity – References required

Tenderers must provide proof of their financial and economic capacity by means of the following documents:

- the balance sheets or extracts from balance sheets for the last three financial years,
- a statement of overall turnover and turnover relating to the relevant services for the last three financial years.
- completed "Simplified balance sheet" and "Simplified Profit & Loss Account" (Annex 5), filled in for 3 years

This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to submit a tender. However, if the tender includes subcontractors whose tasks represent less than 20% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity.

IV.2.2. Technical and professional capacity – References required

The tenderer must comply with the following criteria:

- have previous experience and insight in legal aspects of the field covered by the study;
- be able to mobilise a team with very good knowledge about technical, operational, organisational and legal requirements in the field covered by the study;

Working experience (number of years)

- a) At least 5 years of professional experience in the field covered by the study for “senior staff”;
- c) At least 3 years of professional experience in the field covered by the study for “junior staff”.

The Contracting Authority shall accept the following as evidence of compliance with the above criteria:

- 1) *Tenderers should provide with their offer detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills. The CV's shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.*

A letter of commitment to provide technical expertise and carry out the tasks as described in the technical proposal must be attached to the CV of each person who is not member of the staff of the tenderer.

- 2) *Tenderers should provide a list of studies, reports or research in the field of the study, with the sums, dates and recipients, carried out by the tenderer and by staff members responsible for carrying out the work in the past five years. Tenderers should provide the executive summary of the studies, reports or research in question, as well as a 5-page sample of them.*

A description of the measures taken by the service provider to ensure the quality and continuity of the services provided.

Remark: If several service providers/subcontractors are involved in the bid, each of them must have and show that they have the professional and technical capacity to perform the tasks assigned to them. Tenderers must provide proof of their technical and professional capacity by means of the documents listed below, which should be attached to the bid (Annex V.3).

IV.3. EVALUATION OF TENDERS – AWARD CRITERIA

The contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 70 % for each criterion will be taken into consideration for awarding the contract.

a) Technical evaluation criteria in their order of importance as weighted by percentage

The quality of the tender will be awarded a score out of 100. The qualitative award criteria will be weighted as follows:

N°	Award Criteria	Weighting
1	Clarity and relevance of the methodology for carrying out the study	50
2	Quality of the sources proposed and the means for accessing the data	10
3	Quality and suitability of the means employed to ensure adequate coverage of all Member States and the relevant services	20
3	<p>Organisational aspects of the team: composition of the proposed team and level of direct participation of senior staff in performance of the tasks required under this Invitation to tender as than the balance between various expertises required to execute the tasks; judicious use of resources consistent with the proposed methodology.</p> <p>To allow the Commission to assess this criteiron, tenderers should give details on the allocation of staff profiles to different tasks, <i>using the form in Annex VI</i> (total number of profiles directly involved in working on the study, number of days for each task, each person/grade/level of experience), including the level of direct participation by experienced (<i>senior</i>) staff within the proposed team.</p>	20
Total number of points		100

Remarks:

Tenderers' attention is drawn to the fact that the Commission will be in a position to make a proper assessment of the tenders on the basis of the above qualitative criteria only if they contain full particulars relating to all aspects of this specification. Lack of detail and vague and perfunctory information will be penalised.

As the tenders will be evaluated on the basis of the quality of the services proposed, they should fully explore all the points included in this specification so as to obtain the best possible mark.

Simply repeating the guidelines given in the specification of this invitation to tender without going into detail or expanding on them will result in a very poor mark.

Furthermore, if any essential points of this specification are not expressly covered by the tender, the Commission may decide to give a zero mark for the relevant quality award criteria.

b) Financial criteria

The contract will be awarded to the tender which offers the **best value for money**.

The evaluation will be made by awarding each tender a number of points calculated as follows:

$$\frac{\text{Number of "quality" points} * 10000}{\text{Price of the tender}}$$

V. INFORMATION FOR TENDERERS

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, the Commission will inform all rejected tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

VI. ADMINISTRATIVE AND FINANCIAL PENALTIES

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been found guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or have failed to supply this information or have been declared to be in serious breach of their obligations under contracts covered by the Union budget may be subject to administrative or financial penalties, in accordance with Article 96 of the Financial Regulation and Articles 133 and 134b of the Implementing Rules.⁶

VII. ANNEXES

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria)
5. Simplified balance sheet Form + profit & loss account Form
6. Financial offer Form

⁶ Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 357 of 31 December 2002, p. 1, last amended by Commission Regulation (EC, Euratom) n° 478/2007 of 23 April 2007, OJ L 111 of 28 April 2007, p.1.

7. Draft Service Contract

ANNEX 1

IDENTIFICATION OF THE TENDERER

(Each service provider , including subcontractor(s) or any member of a consortium or grouping, must complete and sign this identification form)

Call for tender JLS xx/xx/xxxx

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) ⁷	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number: Fax number: E-mail address:	

⁷ For natural persons

Legal Representatives	
Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign contracts with third parties	
Declaration by an authorised representative of the organisation⁸ I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

- All tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or provide a declaration or certificate.
- If the tenderer is a natural person, he/she must provide a copy of the identity card/passport or driving licence and proof that he/she is covered by a social security scheme as a self-employed person.

⁸ This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

ANNEX 2

(to be completed by the tenderer and his or her financial institution)

The tenderer's attention is drawn to the fact that this document is a model and that a specific form for each Member State is available at the following Internet address:

http://ec.europa.eu/budget/execution/ftiers_en.htm

FINANCIAL IDENTIFICATION

<u>ACCOUNT HOLDER</u>	
NAME	<input type="text"/>
ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>
VAT NUMBER	<input type="text"/>
CONTACT PERSON	<input type="text"/>
TELEPHONE	<input type="text"/>
FAX	<input type="text"/>
E - MAIL	<input type="text"/>

<u>BANK</u>	
BANK NAME	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN (optional)	<input type="text"/>

REMARKS :

<u>BANK STAMP + SIGNATURE of BANK REPRESENTATIVE</u> (Both Obligatory)
--

<u>DATE + SIGNATURE of ACCOUNT HOLDER :</u> (Obligatory)
--

ANNEX 3

Legal entity form

Complete the legal entity form, which should be accompanied by a number of supporting documents, available on the Web site:

http://ec.europa.eu/budget/execution/legal_entities_en.htm

Please note that we can only accept either original documents or certified copies, which must be less than 6 months old.

In the case of a grouping, this form must only be provided by the person heading the project.

ANNEX 4

DECLARATION BY THE TENDERER

Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest

The undersigned [*name of the signatory of this form, to be completed*]:

.....

- in his/her own name (*if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator⁹*)

or

- representing (*if the economic operator is a legal person*)

Official name in full (*only for legal person*):

Official legal form (*only for legal person*):

Official address in full:

VAT registration number:

declares that the company or organisation that he/she represents / he/she:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;
- e) has not been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

⁹ To be used depending on the national legislation of the country in which the candidate or tenderer is established

In addition, the undersigned declares on their honour:

- g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.
- k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.
- l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above¹⁰.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.]

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature

¹⁰ Mandatory for contracts of value above €133 000 only. The contracting authority can nevertheless request such evidence for contracts with a lower value.

ANNEXE 5

SIMPLIFIED BALANCE SHEET

Total value of contract	
EC pre-financing / EC intermediary payments	
Duration of contract (in years)	

Currency

Unit

	Year		
	N	N-1	N-2
Assets			
Fixed assets (a)			
Current assets (b = c+d+e)	0	0	0
of which:			
Stocks (c)			
Cash (d)			
Other current assets(e)			
Total assets (A = a+b)	0	0	0

Liabilities (B=f+g)	0	0	0
of which,			
Short term liabilities (f)			
Long term liabilities (g)			
Net assets (Own Funds) (C= A-B)	0	0	0

Name of the tenderer	
Legal representative' s name	
Signature	

ANNEXE 5

SIMPLIFIED PROFIT & LOSS ACCOUNT

Currency
Unit

	Year		
	N	N-1	N-2
Operating income			
Operating expenses			
Gross operating profit/loss	0	0	0
depreciation			
Net operating profit/loss	0	0	0
Financial income			
Financial expenses			
Profit/Loss on ordinary activity	0	0	0
19. Extraordinary income			
Extraordinary expenses			
20. Profit tax			
21. Profit/Loss for the financial year	0	0	0

Name of the tenderer	
Legal representative' s name	
Signature	

ANNEX 6
Financial offer form

ANNEX V.4

Invitation to tender **JLS/xxx**

RESOURCES	Service providers Name of tenderer and, where applicable, names of partners or subcontractors which will perform this task	Level of expertise Senior or junior	Task: e.g. project management	Task : (complete)	Task : (complete)	Task : (complete)	Task : (complete)	Task : (complete)	Add as many columns as necessary for your methodology	TOTAL		
			Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days	Number of days
1												EUR
2												EUR
3, etc.												EUR
TOTAL SENIOR STAFF (persons/days)											EUR	
1												EUR
2												EUR
3, etc.												EUR
TOTAL JUNIOR STAFF (persons/days)											EUR	
A. OVERALL STAFF TOTAL (PERSONS/DAYS)											EUR	
B. TRAVEL AND SUBSISTENCE											EUR	
C. OTHER COSTS											EUR	

Financial bid: FIXED PRICE, NOT SUBJECT TO REVISION AND INCLUSIVE OF ALL EXPENSES: EUR

ANNEX 7



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Directorate
Unit

Draft SERVICE CONTRACT

CONTRACT NUMBER JLS/2009/ISEC/PR/019-F2

The European Union (hereinafter referred to as "the Union"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by [name in full], Director in the Directorate-General Justice, Freedom and Security, Directorate Security

of the one part,

and

[official name in full]

[official legal form] (Delete if contractor is a natural person or a body governed by public law.)

[statutory registration number] Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent

[official address in full]

VAT registration number: xxxx

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by [name in full and function,]

of the other part,

HAVE AGREED

the **Special Conditions** and the **General Conditions** below and the following Annexes:

Annex I – Tender Specifications (Invitation to Tender No [complete] of [complete]) and Monitoring

Annex II – Contractor's Tender (No [complete] of [complete])

which form an integral part of this contract (hereinafter referred to as “the Contract”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is a Study on preventing and fighting illicit trafficking in cultural goods in the EU.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The duration of the tasks shall not exceed 11 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from *date of entry into force of the Contract*. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.
- I.2.4.** Not applicable

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The maximum total amount to be paid by the Commission under the Contract shall be **EUR** [.....] covering all tasks executed.
- I.3.2.** Not applicable
- I.3.3.** Not applicable

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

- I.4.1.** Pre-financing:

Not applicable

I.4.2 Interim payment:

Requests for interim payment by the Contractor shall be admissible if accompanied by :

- an interim technical report in accordance with the instructions laid down in Annex I.
- the relevant invoices

provided the report has been approved by the Commission.

The Commission shall have fourteen days from receipt to approve or reject the report, and the Contractor shall have fourteen days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, an interim payment corresponding to EUR [complete amount in figures and in words] equal to 30 % of the total amount referred to in Article I.3.1 shall be made.

I.4.3. Payment of the balance:

The request for payment of the balance of the Contractor shall be admissible if accompanied by

- the final technical report in accordance with the instructions laid down in Annex I
- the relevant invoices

provided the report has been approved by the Commission.

The Commission shall have fourteen days from receipt to approve or reject the report, and the Contractor shall have fourteen days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, payment of the balance corresponding to [EUR complete amount in figures and in words] equal to 70 % of the total amount referred to in Article I.3.1 shall be made.

Delete inappropriate mention

For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA” or an equivalent statement in the Dutch or German language.

For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell’8/8/1996”.

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro, identified as follows:

Name of bank: [xxxx]

Address of branch in full: [xxxxxx]

Exact designation of account holder: [xxxxxx]

Full account number including codes: [xxxxxx]

IBAN code: [xxxxxx]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Commission:

Technical matters

European Commission
Directorate-General Justice, Freedom and Security
Directorate F Security
Unit F2 Fight against organised crime
B-1049 Brussels

Administrative matters

European Commission
Directorate-General Justice, Freedom and Security
Directorate F: Security
Unit F4: Financial support – security, LX 46 6/020
B-1049 Brussels

Contractor:

Mr/Mrs/Ms [complete]
[Function]
[Company name]
[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1.** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Belgium.
- I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by [entity acting as data controller] without prejudice to possible transmission to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Union. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to [entity acting as data controller]. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 90 days formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

ARTICLE I.9a – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the Commission and the Contractor before the expiry of 14 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken

by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.1.9. Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

II.2.1. The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.

II.2.2. The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.

II.2.5. The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

II.3.2. The Contractor shall abstain from any contact likely to compromise his independence.

II.3.3. The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

Where required by Article I.4.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. Interim payment:

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.3. Payment of the balance:

Within sixty days of completion of the tasks referred to in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.5.1. Payments shall be deemed to have been made on the date on which the Commission's account is debited.

II.5.2. The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension

shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.5.3. In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“*the reference rate*”) plus seven percentage points (“*the margin*”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

ARTICLE II.6 – RECOVERY

II.6.1. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

II.6.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

II.6.3. The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

ARTICLE II.7 - REIMBURSEMENTS

II.7.1. Where provided by the Special Conditions or by Annex I, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

II.7.2. Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

II.7.3. Travel expenses shall be reimbursed as follows:

- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;

d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

II.7.4. Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

II.7.5. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Union, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.9 – CONFIDENTIALITY

II.9.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.10.1. The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

- II.10.2.** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.
- II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Union. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.
- II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

- II.11.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.11.2.** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
- II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to

perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

II.12.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

II.13.1. The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.

II.13.2. Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

II.13.3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

II.14.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

II.14.2. In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II.15 – TERMINATION BY THE COMMISSION

II.15.1. The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Unon's financial interests;

- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.15.2. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.15.3. Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.15.4. Consequences of termination:

In the event of the Commission terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Commission may engage any other contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in

making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.15a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Commission may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

ARTICLE II.16 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.17 – CHECKS AND AUDITS

- II.17.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance.
- II.17.2.** The Commission or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

Without prejudice to the Commission's right to terminate the Contract, the Commission may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,
[*Company name*/forename/surname/function]

For the Commission,
[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.