

# **GENERAL INVITATION TO TENDER**

## **No ECFIN/B/2009/015**

### **Open procedure**

**Study on "Product market reforms and adjustment in the European economy"**

## **TENDER SPECIFICATIONS**

**These specifications follow the publication of  
- the contract notice in OJEU 2009/S 94-134150**

- Part I: Technical description
- Part II: Administrative details
- Part III: Assessment and award of a contract
- Part IV: Draft service contract
  
- Annex 1: Financial identification form
- Annex 2: Legal entity form
- Annex 3: Declaration of the candidate's eligibility
- Annex 4: Financial proposal form

## **PART I: TECHNICAL DESCRIPTION**

### **1. NATURE OF THE CONTRACT**

The European Commission (awarding authority) wishes to sign a service contract for a **study on "Product market reforms and adjustment in the European economy"**.

### **2. BACKGROUND**

The current economic crisis has had a stronger negative impact on some sectors of the EU economy compared to others. Manufacturing sectors were generally harder hit than services, but some of the latter such as for example construction have been especially hard hit. Among manufacturing, economic conditions in the automotive sector deteriorated especially sharply, which triggered a decline in many other sectors.

Within this context, it is important to assess the capacity of different sectors to adjust and determine what role is played by product market reforms and regulations in accelerating this adjustment capacity. Moreover, it would be of great interest to trace how economic shocks work their way from one sector to another. In this respect, it is important to have a thorough knowledge of which sectors have substantial interlinkages with the other sectors of the economy and are likely to generate the strongest positive or negative spillovers in terms of shocks. Some work on this last point has already been made by the IPTS (Institute for Prospective Technological Studies, Joint Research Centre of the European Commission) in terms of identifying which industries have considerable backward and forward interlinkages with the rest of the economy, but the present study should carry this work forward and examine how shocks feed through from one sector to another. Finally, based on the results obtained at the microeconomic level, the study should derive the macroeconomic effects.

### **3. OBJECTIVES**

The objective of the study is to examine the adjustment capacity of the European economy and to provide more in-depth knowledge about the adjustment capacity of the different sectors of the EU economy.

The study should start by establishing the analytical framework for the work, based on a survey of the literature. On that basis, it should define a methodology for the analysis, as well as the indicators to be used. As part of the analytical framework, the study should define the notion of adjustment capacity and propose ways in which to measure it at the sector level and not just at the aggregate macro level.

The literature has developed various ways to examine the adjustment capacity of the economy but this assessment is generally carried out at the macroeconomic level, for example by examining the degree of price and wage stickiness (see for example Carvalho (2006),

Christiano, Eichenbaum and Evans (2005), Chari, Kehoe and McGrattan (2000)<sup>1)</sup> or imputing shocks into VAR models and analysing how quickly output and inflation return to the baseline (see for example Pelkmans, Acedo and Maravalle (2008) or Blanchard and Quah (1989)<sup>2)</sup>).

The present study should focus on adjustment capacity at the micro level starting from the premise that quick adjustment implies a rapid and optimal redeployment of resources within a given sector, between the sectors of an economy and between countries.

Based on the analytical framework defined above, the empirical analysis should measure the degree of adjustment by sector, i.e. it should determine which are the sectors that have a high or low adjustment capacity, as well as the industries which have the strongest impact on other sectors of the economy.

The study should also aim at giving a general overview and a ranking of sectors according to their degree of adjustment across the EU economy as well as an overview of the adjustment capacity of the EU Member States.

The empirical analysis should also examine the main determinants of the adjustment capacity at a sector level. Factor price flexibility is one of these determinants as it plays a crucial role in determining the optimal allocation of resources as a result of a shock. But the literature also shows that institutions (e.g. the degree of development of financial markets) also contribute to ensure an optimal allocation of resources. Therefore, the study should examine the role of these additional factors in determining the degree of adjustment, as well as their micro determinants. Factors to be examined could include the degree of capital and labour mobility and the role of product market regulation/reforms.

The empirical part of the study should also distinguish between demand and supply shocks and examine the adjustment capacity of sectors to these different types of shocks.

The last part of the study should examine the macroeconomic impact of a greater capacity of adjustment at the micro level.

In terms of policy implications, the study should determine what are the product market reforms that are the most likely to improve the adjustment capacity of the various sectors of the EU economy.

The contractor will be responsible for procuring the necessary data in time for the execution of the tasks according to the agreed upon schedule.

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<sup>1</sup> Carvalho, C. (2006). "Heterogeneity in Price Stickiness and the Real Effects of Monetary Shocks", *Frontiers of Macroeconomics*, vol.2, issue 1, article 1.

Christiano, L., M. Eichenbaum and C. Evans (2005). "Nominal Rigidities and the Dynamic Effects of a Shock to Monetary Policy", *The Journal of Political Economy*, 1-44.

Chari, V., P. Kehoe and E. McGrattan (2000). "Sticky Price Models of the Business Cycle: Can the Contract Multiplier Solve the Persistence Problem ?", *Econometrica* 1151-1180.

<sup>2</sup> Pelkmans, J., L. Acedo and A. Maravalle (2008). "How product market reforms lubricate shock adjustment in the euro area", *European Economy Economic Papers* no. 341, October.

Blanchard, O. and D. Quah (1989). "The Dynamic Effects of Aggregate Demand and Supply Disturbances", *The American Economic Review*, vol. 79, no. 4, 655-673.

***The study will consist of the following parts:***

1. An executive summary
2. An extensive survey of the theoretical literature as well as the available empirical evidence on adjustment and its determinants, with particular emphasis on the role of product market reforms and regulation in determining the degree of adjustment capacity. The survey should examine the microeconomic determinants of both labour and capital mobility also from the point of view of market structure and market conditions. The survey should be used to define the analytical framework of the study, comprising both the methodology and the indicators to be used in the analysis.
3. An econometric investigation of the microeconomic reasons for the slow adjustment of some EU sectors and countries to economic shocks, focusing in particular on the role of market structure, institutions and product market regulations/reforms. Based on the econometric investigation, the study should provide a ranking of sectors and countries according to the speed of adjustment to shocks, as well as determine what the main sectors are at the level of the EU economy that are essential for adjustment.
4. An investigation of whether the adjustment process is affected differently by the types of shocks (demand versus supply shocks) hitting the economy. This section should also investigate the macroeconomic impact of an improvement in the adjustment capacity at the micro level.
5. On the basis of the conclusions of the analysis carried out, the study should propose policy recommendations and discuss their effectiveness in improving the adjustment capacity of the EU economy.

**4. DELIVERABLES**

The physical and intellectual products generated by the contractor's assignment will remain the property of the Commission. The contractor undertakes not to use these products outside this assignment without the written agreement of the Directorate-General for Economic and Financial Affairs. Any physical material that must be delivered by the contractor to the Commission, including the six paper copies of the final report, should be send to the following address:

EUROPEAN COMMISSION  
Directorate-General for Economic and Financial Affairs  
Directorate Economic Service and Structural Reforms  
Attn. Mr. Gert-Jan Koopman, ECFIN B2  
BU1 2/208  
B-1049 Brussels

The work carried out by the contractor in performance of the contract will be the subject of the following deliverables, which should be provided in the English language.

- An **initial meeting** will be held in Brussels **immediately after the signing of the contract** to kick off the project and to agree on a detailed outline for the study.
- A **first interim report** must be submitted in electronic form (MS Office Word 2003 compatible/Excel compatible) to the Commission **no later than 3 months after the signature of the contract**. The first interim report will describe the work carried out in accordance with parts 1 and 2 (see above point 3 of the technical specifications). Regarding part 3, this report should set out in detail the methodology and the data set to be used and present some preliminary results. This first interim report should also include preliminary conclusions based on the work done this far.

A meeting between representatives of the contractor and the Commission will be held in Brussels to discuss the report. Within 30 days of receipt of the first interim report, the Commission will either inform the contractor in writing that it accepts the report, accepts the report on condition that its remarks are integrated in the second interim report, or ask for a revision of the first interim report within 30 days on the basis of its comments.

- A **second interim report** must be submitted in electronic form (MS Office Word 2003 compatible/Excel compatible) to the Commission **no later than 9 months after the signature of the contract**. A second interim report should present the final results regarding part 3 and describe the work carried out in accordance with parts 4 to 5 (see above point 3 of the technical specifications).

A meeting between representatives of the contractor and the Commission will be held in Brussels to discuss the report. Within 30 days of receipt of the second interim report, the Commission will either inform the contractor in writing that it accepts the report, accepts the report on condition that its remarks are integrated in the final report, or ask for a revision of the interim report within 30 days on the basis of its comments.

- A **final report** must be submitted to the Commission **no later than 12 months after the signature of the contract**. The final report, which should include an executive summary, will present in full the results of all parts of the study - parts 1 to 5 - (see above point 3 of the technical specifications).

Within 30 days of receipt of the final report, the Commission will either inform the contractor in writing that it accepts the report or send its comments for integration in the report or for a revision of the report. Within 30 days of receiving any such comments, the contractor shall send the definitive final report to the Commission in electronic form (MS Office Word 2003 compatible/Excel compatible) and with six paper copies. The Contractor will also send to the Commission the dataset (Excel compatible) compiled for the purpose of the study.

- In addition, the Contractor will also be called upon to **present the outcome of the study** in the form of a presentation at a workshop in DG ECFIN in Brussels **at the latest 2 months after the approval of the final report**.
- The contractor will be expected to pay the expenses in connection with the above mentioned meetings and workshop.

The European Commission expects the contractor to adhere to the highest scientific and professional standards in her report. In particular, the methodology and the techniques used to meet the requirements of the study shall derive from accepted standards of the profession. The

reports should contain clear objectives and means deployed to reach those objectives. The reports shall in addition be original in its content and/or findings and represent a contribution with value-added compared to existing materials. The European Commission retains the right to refuse a study that does not meet those standards.

## **6. INDICATIVE TABLE FOR THE WORK**

### **6.1 Starting date of the contract and duration of the tasks**

The contract is due to be signed in November 2009.

The duration of the tasks shall not exceed sixteen months.

The execution of the tasks may not start before the contract has been signed. The period of execution of the tasks may be extended, only with the written agreement of the contracting parties, before the end of the period originally stated in the contract.

### **6.2 Place of performance**

The place of performance of the tasks shall be the Contractor's premises or any other place indicated in the tender, with the exception of the Commission's premises.

## **PART II: ADMINISTRATIVE DETAILS**

### **1. GENERAL TERMS AND CONDITIONS FOR THE SUBMISSION OF TENDERS**

- Submission of a tender implies that the Contractor accepts all the terms and conditions set out in these specifications (including the annexes) and waives all other terms of business.
- Submission of a tender binds the Contractor to whom the contract is awarded during performance of the Contract.
- Changes to tenders will be accepted only if they are received on or before the final date set for the receipt of tenders.
- Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.
- No information of any kind will be given on the state of progress with regard to the evaluation of tenders.
- Once the Commission has accepted the tender, it shall become the property of the Commission and the Commission shall treat it confidentially.
- The protocol on the Privileges and Immunities or, where appropriate, the Vienna Convention of 24 April 1963 on Consular Relations shall apply to this invitation to tender.

### **2. NO OBLIGATION TO AWARD THE CONTRACT**

- Fulfilment of adjudication or invitation to tender procedure shall not involve the Commission in any obligation to award the contract.
- The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be liable in the event of its deciding not to award the contract.

### **3. JOINT TENDERS**

When a partnership or a consortium is envisaged three cases can arise:

1. The offer originates from a consortium already formally set up as a separate and legal entity able to submit its statutes, mode of operation, technical and financial capacity, such as result from the contributions of its various members. It is such a consortium that will bear the technical and financial responsibility for the contract and will present the requested financial guarantee.
2. The offer originates from companies not yet having created a consortium as a separate legal entity but planning to constitute one as referred to in item 1, if their joint offer is

accepted. In such a situation, the tenderer will have to provide the legal form, the envisaged draft statutes and mode of operation of the consortium, the various technical and financial contributions as well as the guarantees envisaged. However, the constitution of the consortium should not delay the signing of the contract

3. The offer originates from companies not wishing to constitute formally a consortium as a separate legal entity and thus constituting effectively an association. In such a case, the offer will be submitted in the form of subcontracting (see Part II point 4), in which case one of the companies shall assume the total responsibility for the offer. This company will sign the contract in its name, the other companies then being regarded as subcontractors of the first.

In all cases of joint tenders, the information required below under the sections “administrative proposal” (see Part II point 6.1), and “information for assessment of exclusion criteria” (see Part III point 1) and "information for assessment of selection criteria" (see Part III point 2) must be provided for all members participating in the tender. The tender should also clearly indicate the lead partner for both the operational and the financial/contractual matters.

#### **4. SUBCONTRACTORS**

- Where, in a bid, the amount of the services executed by a subcontractor is equal to or exceeds 20% of the contract, the subcontractor must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria, selection criteria (as a whole) and award criteria. Where those services represent less than 20% of the contract, the subcontractor shall not be required to provide documents on her financial and economic capacity.
- The bid must clearly identify the subcontractor(s), specify the share (in %) of the services that will be executed by the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set out in Part II point 1.
- Tenderers must inform the subcontractor(s) that Article II.17 of the service contract (see Part IV) will be applied to them.
- Once the contract has been signed, Article II.13 of the above-mentioned service contract (see part IV) shall govern the subcontracting.

#### **5. DETAILS OF THE CONTRACT**

##### **5.1 Terms of payment**

Payments shall be made in accordance with the provision of the service contract (see Part IV). The schedule and the procedure for the approval of payments and the documents to be submitted are described in the draft service contract referred to above.



## **5.2 Contractual terms and guarantees**

In drawing up his bid, the tenderer should bear in mind the provisions of the service contract attached to this invitation to tender (see Part IV).

## **6. CONTENT OF THE TENDER**

All tenders must be presented in three sections:

### **6.1 Administrative proposal**

- the tenderer's name and/or business name;
- a clear description of the tenderer's legal form;
- address of the tenderer's registered office;
- the tenderer's telephone and fax numbers, e-mail address and where available, Internet address;
- the names of the legal representatives (directors, etc) of the tenderer, authorised to sign contracts with third parties on behalf of the organization;
- the tenderer's VAT number and trade-register entry number;
- a bank identification form filled in and signed by an authorised representative of the tenderer and her banker. (see Annex 1)
- a legal entity form (see Annex 2)
- a declaration of the candidate's eligibility; certifying that he/she is not in one of the situations listed in articles 93 and 94 of the Financial Regulation of the European Communities (Official Journal L 248 of 16/09/2002) (see Annex 3)
- proof of Economic and Financial Capacity : documents listed in Part III – point 2.1
- proof of Technical and professional competence : documents listed in Part III – point 2.2
- other substantiating documents if the candidate or tenderer cannot, for valid reasons, provide those indicated above.

### **6.2 Technical proposal**

This section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract. Some guidelines are given hereafter, but attention is also 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 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 include in their bids the technical specifications set out in Part I, giving an answer to each of the points mentioned with regard to methodology, deadlines and organisation.

The technical proposal must meet the technical specifications set out in Part I and provide, as a minimum, all the information needed for the purpose of awarding the contract.

### 6.3 Financial proposal

- **Prices must be quoted in euro**, including for the countries which do not form part of the euro zone. For the tenderers of the countries which do not form part of the euro zone, the amount of the offer cannot be revised because of exchange rate movements. The choice of exchange rate belongs to the tenderer, who assumes the risks or opportunities associated with these exchange rate movements.
- The price must be **fixed and not subject to revision**, inclusive of all expenses.
- For your guidance, the maximum budget allocation to this study is fixed at **100,000 EUR**. Offers above this amount will not be considered.
- The price quotation must be signed by the tenderer or his duly authorised representative (see Annex 4).
- **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 (OJEC 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 doubts about the applicable VAT system, it is the tenderer's responsibility to contact her national authorities to clarify the way in which the European Community is exempt from VAT.

## **PART III: ASSESSMENT AND AWARD OF A 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. Only bids meeting the requirements of stage one will be examined in the following stage.

The aim of each of these stages is:

1. to check, in the first stage (exclusion criteria), whether tenderers can take part in the tendering procedure and, where applicable, be awarded the contract (see annex 3);
2. to check, in the second stage (selection criteria), the technical and professional capacity as well as the economic and financial capacity of each tenderer who has passed the exclusion stage (see Part III point 2 – selection criteria);
3. to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages (see Part III point 3 - Award criteria).

**In the case of consortia, the exclusion, selection and award criteria will be applicable to all the members of the consortium. The same principle will also be applied in the case that there are sub-contractors.**

**The bid must clearly identify the subcontractors and document their willingness to accept the task and thus acceptance of the terms and conditions set out in point 5.**

**Tenderers must inform the subcontractors that Article II.17 of the service contract will be applied to them.**

**Once the contract has been signed, Article II.13 of the above mentioned service contract shall govern subcontractors.**

### **1. EXCLUSION CRITERIA**

Tenderers falling within one or more of the following categories will automatically be excluded from the tendering procedure.

Tenders will not be considered if the candidates are 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 judgment 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 judgment 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) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations;
- (g) they are faced with a conflict of interest;
- (h) they have been guilty of misrepresentation in supplying the information required or have failed to supply this information.

Tenderers or their representatives must fill in and sign the form in Annex 3 to these specifications. By completing this form, tenderers:

- state whether or not they are in one or more of the situations described in the form; and,
- undertake to submit to the Commission any document relating to the exclusion criteria that the Commission may see fit to request.

*(\* In compliance with articles 93 and 94 of the Financial Regulation applicable to the general budget of the European Communities.*

## **2. SELECTION CRITERIA**

Only the tenders fulfilling all the selection criteria will be examined in the light of the award criteria.

This part of the tender concerns the criteria and documents relating to the technical and professional capacity and economic and financial capacity of the service provider(s) involved in the bid. It should also contain any other document that the tenderer(s) wish(es) to include by way of clarification.

If several service providers are involved in the bid, each of them must have and show that they have a) the professional and technical capacity to perform the tasks assigned to them in the tender, and b) the required economic and financial capacity.

This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to be tenderers.

However, if the tender includes subcontractors whose tasks represents less than 20% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity.

## **2.1 Financial and Economic capacity**

All tenderers (and subcontractors whose tasks are equal to or exceed 20% of the contract) must provide proof of economic and financial capacity by presenting the following :

- financial statements for the past 3 financial years
- declaration concerning the sales turnover related to the field associated with the invitation to tender for the past 3 financial years

If, for some exceptional reason which the Commission considers justified, a tenderer is unable to provide one or other of the above documents, he may prove his economic and financial capacity by any other document which the Commission considers appropriate. In any case, the Commission must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

## **2.2. Technical and professional competence**

The ability of service providers to perform services will be assessed in particular with regard to their know-how, efficiency, experience and reliability.

Evidence of the technical and professional capacity of the providers involved in the tender must be furnished on the basis of documents certifying the following:

1. The team to conduct the analysis should consist of at least one person with a university degree in economics and with at least 5 years or more of professional experience in conducting economic analysis. The team leader should have professional experience in managing projects of similar type as this call for tender
2. The candidate's technical and professional ability to produce high quality reports on economic issues in the English language, as evidenced by their earlier work and publications.

Candidates should submit :

- A description of the team and CVs of the members of the team who will carry out the study;
- Publication records and references of the members of the team - and if relevant of the subcontractors - regarding the aforementioned areas of expertise;

By submitting a tender, each service provider involved therein accepts the possibility of a check being carried out by the Commission on his/her technical capacities and, if necessary, on his/her study and research facilities and quality control measures.

In addition, all tenderers are informed that they may be asked to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a professional or

trade register or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

*Tenderers' attention is drawn to the fact that any total or partial omission of information for which one or more service providers involved in the tender are responsible may lead the Commission to exclude the tender from the rest of the procedure.*

### 3. AWARD CRITERIA

Subject to the provisions of these terms of reference, the contract will be awarded in favour of the economically most advantageous offer on the basis of the following award criteria:

#### A. the Technical Score

1. Quality of the team proposed by the tenderer to conduct the study (30 points)
  - Professional experience in the field of the study;
  - Credentials in economic analysis, and other areas of expertise related to the study;
  - Publication records in refereed economic journals in the fields listed or in related topics .
2. Clarity of the proposal, understanding of the background to the study and relevance to the requirements of this call for tenders (15 points);
3. Method of project planning, management and implementation, including activity scheduling, assignment of tasks to team members and quality control (15 points);
4. Quality of the proposed methodology for carrying out the study (40 points).

#### B. the Price

Having examined the tenders from a technical point of view, the evaluation committee will proceed to consider which of them is the most economically advantageous offer, taking into account **only those tenders that have obtained at least a technical score of 60 points.**

The evaluation committee will then proceed with the financial comparison of the tenders retained for further consideration according to the following procedure.

The retained tender with the lowest price receives a financial score equal to the highest technical score received among the retained offers.

The other retained tenders are awarded points by means of the following formula:

***Financial score = (lowest price among the retained offers / price of the tender being considered) x (highest technical score among the retained offers)***

The most economically advantageous tender is established by means of the computation of a final score according to the following formula:

***Final score = (Technical score) + (80% of Financial Score).***

**Since assessment of the tenders will focus on the quality of the proposed services, tenders should elaborate on all points addressed by these specifications in order to score as many points as possible. The mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, will only result in a very low score. In addition, if certain essential points of these specifications are not expressly covered by the tender, the Commission may decide to give a zero mark for the relevant qualitative award criteria.**

#### **4. OPENING OF TENDERS**

The tenders received will be opened on Tuesday 7 July 2009 at 11:00 in the Commission building at Avenue de Beaulieu 24, room BU24 3/83, B-1160 Brussels.

An authorised representative of each tenderer may attend the opening of the bids. Companies wishing to attend are requested to notify their intention by sending a fax or e-mail at least 48 hours in advance to:

Directorate General Economic and Financial Affairs  
ECFIN Directorate B2  
B-1049 Brussels  
[ECFIN-PMR-and-adjustment@ec.europa.eu](mailto:ECFIN-PMR-and-adjustment@ec.europa.eu)  
fax: (+32)-2-299 35 02

This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will attend the opening of the bids on the tenderer's behalf.

#### **5. AWARD COMMITTEE**

The process of awarding will take place in September/October 2009. An awarding committee is to be set up for this purpose.

#### **6. 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.

## **PART IV : DRAFT SERVICE CONTRACT**



EUROPEAN COMMISSION  
DIRECTORATE GENERAL  
ECONOMIC AND FINANCIAL AFFAIRS

### **SERVICE CONTRACT**

#### CONTRACT NUMBER

The European Community (hereinafter referred to as "the Community"), 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, function, of the Directorate General Economic and Financial Affairs],

of the one part,

and

[official name in full]

[*official legal form*]

[*statutory registration number*]

[official address in full]

[*VAT registration number*]

(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 ECFIN/B/2009/015 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 '**Product market reforms and adjustment in the European economy**'.
- 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 16 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.

### **ARTICLE I.3 – CONTRACT PRICE**

The total amount to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] covering all tasks executed and costs incurred.

### **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** Interim payment

The request for an interim payment by the Contractor shall be admissible if accompanied by :

- The first and second interim report in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the first and second interim report have been approved by the Commission.

### **First interim report :**

The Commission shall have 30 days from **receipt of the inception report (no later than 3 months after signature of the contract)** to approve, to approve under the condition of the integration of its remarks in the interim report or to request the revision of the report based on its comments, and the Contractor shall have 30 days in which to submit additional information or a new report.

### **Second interim report :**

The Commission shall have 30 days from **receipt of the interim report (no later than 9 months after signature of the contract)** to approve, to approve under the condition of the integration of its remarks in the final report or to request the revision of the report based on its comments, and the Contractor shall have 30 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 report** in accordance with the instructions laid down in Annex I
- the dataset compiled for the purpose of the study in accordance with the instructions laid down in Annex I
- the **presentation of the final report** in accordance with the instructions laid down in Annex I (**no later than 2 months after approval of the final report**)
- the relevant invoice

provided the final report has been approved by the Commission.

### **Final report :**

The Commission shall have 30 days from **receipt of the final report (no later than 12 months after signature of the contract)** to approve, to approve under the condition of the integration of its remarks in the report or to request the revision of the report based on its comments, and the Contractor shall have 30 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, a balance payment 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.

*[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.]*

#### **ARTICLE I.5 – BANK ACCOUNT**

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

Name of bank: [complete]  
Address of branch in full: [complete]  
Exact designation of account holder: [complete]  
Full account number including codes: [complete]  
IBAN code: [complete]

#### **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:

European Commission  
Directorate-General [complete]  
[Directorate [complete]]  
[Unit [complete]]  
[Postcode and city]

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 Community 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 Belgium.

## **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 the Directorate General Economic and Financial Affairs without prejudice to possible transmission to internal audit services, to the European 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 Community. 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 the Directorate General Economic and Financial Affairs. 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 three months 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.

## **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 Communities 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 Community 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 Community, 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 Community. 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 Communities.

**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 Communities' 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 European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities 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 European 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.

## **Annex 1: Financial Identification Form**

[http://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.htm)

## **Annex 2 : Legal entity Form**

[http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)

### **Annex 3: Declaration of the candidate's eligibility**

The undersigned (1) , .....  
.....  
.....

herewith certifies not to be in one of the situations listed below (Articles 93 and 94 of the Financial Regulation, Official Journal of the European Communities L 248 16.9.2002). :

- (a) being bankrupt or being wound up, having affairs administered by the courts, having entered into an arrangement with creditors, having suspended business activities, being the subject of proceedings concerning those matters, or being in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) being convicted of an offence concerning professional conduct by a judgement which has the force of res judicata;
- (c) being guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) not having fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country of establishment or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) being 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) following another procurement procedure or grant award procedure financed by the Community budget, having declared to be in serious breach of contract for failure to comply with the contractual obligations;
- (g) being faced with a conflict of interest;
- (h) being guilty of misrepresentation in supplying the information required or having failed to supply this information.

..... (2)

(1) *Name and address*

(2) *Signature and date*

## Annex 4: Financial proposal

### STUDY on "Product market reforms and adjustment in the European economy"

ECFIN/B/2009/015

### Reply form for the financial proposal

Name of the tenderer:.....

Proposed price (°)	
This price is a fixed amount, inclusive all expenses.	.....euros

The price will not be subject to revision.

*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 (OJEC 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 doubts about the applicable VAT system, it is the tenderer's responsibility to contact his national authorities to clarify the way in which the European Community is exempt from VAT).*

**Date** .....

**Signature of the authorised person**

**Stamp of the company**

(°) Prices must be quoted in euro, including for the countries which do not form part of the euro zone. For the tenderers of the countries which do not form part of the euro zone, the amount of the offer cannot be revised because of exchange rate movements. The choice of exchange rate belongs to the tenderer, who assumes the risks or opportunities associated with these exchange rate movements