



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Security of supply, Energy markets & Networks
B.1 - Energy policy, Security of supply & Networks

Brussels, 07 September 2010

INVITATION TO TENDER No. ENER/B1/452-2010

(open procedure)

Dear Sir/Madam,

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

Permitting procedures for energy infrastructure projects in the EU: evaluation and legal recommendations

This invitation to tender follows the publication of:

- the contract notice in OJEU S 2010/S 173-263870 of 07/09/2010

2. If you are interested in this contract, you must submit a tender, **including one original document and four copies**, 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 13/10/2010 (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

By registered mail

European Commission
Directorate-General for Energy
DM 28 - 0/110 - Archives
B-1049 Brussels
Belgium

By private courier

European Commission
Directorate-General for Energy - DM 28 - 0/110
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 13/10/2010 **not later than 4 p.m.** (Brussels time), at the following address:

European Commission
Directorate-General for Energy – DM 28 0/110
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. ENER/B1/452-2010
not to be opened by the internal mail department
DM 28 0/110 – Archives

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

The non-compliance with these formal conditions will entail the rejection of the bids at the opening session.

4. Tenders will be opened at 11.00 a.m. on 20/10/2010, at 24 Rue De Mot, Directorate-General for Energy, 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.

Any requests for additional information must be sent in writing to the following address:

Co-ordinating Officer Unit B1
European Commission
DM 24 - 06/012
B-1049 Brussels
Belgium

e-mail: ENER-B1-TENDERS@ec.europa.eu

Requests for additional information received less than five working days before the closing date for submission of tenders will not be processed.

- 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 for Energy website 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. Tenderers will be informed of whether their tenders have been accepted or rejected.
12. 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 Community 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 ENER 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 ENER. 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.

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

Data of economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation may be included in a central database and communicated to the designated persons of the Commission, other institutions, agencies, authorities and bodies mentioned in Article 95(1) and (2) of the Financial Regulation. This refers as well to the persons with powers of representation, decision making or control over the said economic operators. Any party entered into the database has the right to be informed of the data concerning it, up on request to the accounting officer of the Commission.


Candidates or 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.

Yours faithfully,



p.o. Anne HOUTMAN
Heinz Hilbrecht
Director

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

Invitation to tender No. ENER/B1/452-2010 concerning

***Permitting procedures for energy infrastructure projects in the EU: evaluation
and legal recommendations***

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I. SPECIFICATIONS

I.1. Introduction

The Commission plans to review the TEN-E policy framework¹ and present a legislative proposal for a new EU Energy Security and Infrastructure Instrument (EESII) in 2011 as follow-up to the Energy Infrastructure Package communication to be tabled in November 2010, based on the results of the Second Strategic Energy Review² and the Conclusions of the European Council in March 2009. The new instrument will aim at facilitating the development of energy infrastructures needed to address the challenges faced by Europe's energy sector in the coming decades (2020/2030 horizon) in terms of market integration, security of supply and climate change (large-scale deployment of renewable energy sources).

Experience in a majority of EU Member States over the last decade has shown that the construction of energy infrastructure is becoming increasingly difficult as its development conflicts with other policy objectives such as protection of landscapes and/or the environment, spatial planning, public health and safety, tourism and other forms of local economic development. Moreover, public opinion and local opinion in particular have become increasingly sceptical of any type of industrial undertakings, which have made already complex processes for planning, authorising and licensing new energy infrastructures even more difficult. This is particularly true for electricity transmission infrastructure, which often covers large bands of territory and hence potentially concerns a relatively larger number of people in its immediate vicinity than energy generation sites. As a result, delays for building energy transmission infrastructure in many Member States are now longer than delays for building the corresponding power plants (e.g. wind or gas), which require this infrastructure to be able to evacuate their production.

This has two major consequences. First, there is a higher planning risk for developing transmission infrastructures, and hence considerable management and administrative costs. For a given regulated rate of return, it therefore reduces the incentive for an operator to invest in new transmission infrastructure.

Second, it puts at risk the EU's ability to reach its commonly agreed policy goals in terms of the 20-20-20 targets on greenhouse gas emissions, renewable energy and energy savings. As electricity generation from renewable sources is more variable than power generation from conventional power sources, there is a particular need for electricity infrastructure to balance supply and demand.

In order to address this bottleneck, the European Council invited in the Commission "*to table proposals aiming at streamlining approval procedures*" in March 2007. The European Commission hence intends to propose, within its Energy Security and Infrastructure Instrument, solutions that would help to address the issues identified.

I.2. Purpose of the contract

The objective of this study is to make **concrete and operational recommendations for EU action** to streamline and accelerate permitting procedures for electricity and gas infrastructure projects, based on a critical review of current practice in the Member States.

¹ Decision 1364/2006/EC and Regulation 680/2007 of the European Parliament and of the Council

² COM (2008) 781 "An EU energy security and solidarity action plan"

A) Description of the tasks

1. Analysis of existing permitting procedures in the EU Member States

The contractor will carry out an analysis of existing permitting procedures for energy infrastructure projects in those EU Member States where such analysis is not available.

As a starting point, a number of documents on permitting procedures in different EU Member States are already available (see available literature under B). The contractor is expected to take these into account when conducting his/her analysis (a report on these is not needed). S/he will then identify Member States (e.g. EU 12) for which information that is deemed crucial to conceive sound, fact-based and viable recommendations is not yet or only to a limited extent available. Complementary research on permitting procedures in these Member States shall then be conducted.

The analysis will cover the electricity sector where delays due to lengthy authorisation processes are considered to be particularly important, as well as the gas sector. It will examine infrastructure projects within a given Member State as well as infrastructures crossing two or more EU jurisdictions (for the Member States examined). Major offshore grid projects will also be taken into consideration.

The analysis will particularly include:

- The legal, regulatory and financial frameworks (including laws, regulation, decrees etc. concerning electricity and gas, spatial planning, environmental protection, and transparency of decision making), on which procedures and decisions are based
- The number and tasks of authorities involved, directly and indirectly, during each step of the permitting and licensing for typical infrastructure projects (for electricity: high voltage overhead/underground/subsea line, for gas: pipelines and LNG terminals), as well as their respective level (local – regional – national)
- The average duration of each step for these infrastructures both as declared by the concerned authorities and as declared by transmission system operators
- The nature of problems encountered and delays faced by each type of infrastructure project (citizen's initiative, repeated consultations, lawsuit etc.), their frequency and the key drivers of these problems and delays.

2. Differences and best-practices

This task will highlight differences arising from the analysis conducted under task 1 in terms of the frameworks, their practical application, procedures and delays. Based on the differences identified, and taking into account other policy imperatives (notably in the field of environmental, spatial planning, health and safety policy, the Member States' legal systems and local acceptance), the study will establish a list of best practices in the different Member States.

These best-practices should at least cover the following dimensions which have been previously identified in the literature available and in the context of stakeholder discussions:

- a. Maximum time frame for final approval with associated sanctions in case of additional delay
- b. Single authority ("one stop shop") at Member State level to coordinate the authorisation process

- c. Financial incentives to overcome existing opposition, such as a special profitability regulation with a bonus on regulated rates of return, compensation and citizen shareholding schemes to ensure local returns to regional or cross-border infrastructure projects, etc.
- d. Regime of "declaration of public interest" allowing certain actions (e.g. expropriation) and facilitating exemptions from existing regulations and procedures
- e. Different sanction mechanisms such as financial penalties for economic losses
- f. Use of arbiters
- g. Communication requirements to overcome public opposition

3. Recommendations

Based on the analysis and best-practices identified, the study will make recommendations for improving the existing legal, regulatory and incentive framework at EU level, taking into account differences in the Member States, notably in terms of legal systems and local acceptance.

These recommendations shall include the following approaches which have been previously identified by the Commission services:

- a. Voluntary measures at Member State level to simplify and accelerate procedures
- b. For projects identified as being of European interest, mandatory inclusion in national priorities or mandatory application of fastest possible procedure (where existing)
- c. Mandatory measures implying transposition at national level, including at least the components a (maximum time frame) and b ("one-stop shop") listed under task 2.

For each recommendation, the contractor shall set out concrete drafting proposals for rules that could be adopted at European level. Possible allocations of roles to the different authorities and actors at regional, national and European level shall be discussed for each of these rules.

The recommendations shall pay due respect to the impact of the solutions proposed in terms of simplifying and accelerating permitting procedures, and their viability in terms of how administrations will be able to implement them technically and legally. The recommendations should further be reflected against the principles of proportionality and subsidiarity, setting boundaries to the extent of action possible to be taken by the EU.

B) Methodology

Task 1 should be carried out based on available literature and further complementary research where necessary. This research should include, as much as possible, telephone and e-mail communication, and, where necessary, field visits and meetings with relevant stakeholders, including national, regional and local administrations, public agencies, elected officials, companies and NGOs. The findings of this task will notably be presented in the form of brief country profiles of the Member States examined, containing all necessary information.

Task 2 will involve detailed analysis of the results obtained in the previous task and a summary review of other relevant national policy fields.

The recommendations in Task 3 should be based on the results of the previous tasks and include concrete steps how these recommendations could be designed and translated into EU policy and/or legislative provisions.

Available literature (non-exhaustive list):

- FP7 REALISEGRID project report on streamlining planning and approval procedures of electricity transmission infrastructures, to be published in 2010
- ENTSO-E Ten-Year Network Development Plan and Position Paper on permitting procedures for electricity infrastructure, published in 2010, https://www.entsoe.eu/fileadmin/user_upload/library/position_papers/100629-ENTSO-E_response_permitting_procedure.pdf; <https://www.entsoe.eu/index.php?id=232>
- ETSO publication providing an overview of the administrative procedures for constructing 110 kV to 400 kV overhead lines, published in 2006, https://www.entsoe.eu/fileadmin/user_upload/library/publications/ets/others/procedure_s%20400%20kv%20lines.pdf
- Ramboll/Mercados study on legislation for TEN-E Priority Corridors for Energy Transmission, published in 2008, http://ec.europa.eu/energy/infrastructure/studies/ten_e_en.htm
- EWEA Wind Barriers study, to be published in 2010, <http://www.windbarriers.eu/index.php?id=3>
- To the extent available: responses of TSOs in the context of a stakeholder consultation on permitting procedures in electricity and gas; responses of different stakeholders in the context of a public consultation on the Environmental Impact Assessment Directive (Directive 85/337/EEC)

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 10 days following the signature of the contract, in order to settle all the details of the study, report, etc... to be undertaken. In particular, the consultant will submit a list of countries and projects s/he suggests to be examined in detail under task 1 for the consideration of the Commission services.

3 other meetings are planned: one after the submission of the interim report, one after the submission of the final report and one meeting to present to the Inter-Service Group (or other stakeholder conference).

I.3.1. Interim report

The **interim report** showing progress of the work shall be submitted to the Commission at the latest 3 months after the date of signature of the contract. The interim report should include the results of completed tasks 1 and 2 and an outline of task 3.

The Commission shall have 20 days from receipt to approve or reject the report. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or another report.

I.3.2. Final report

The contractor will submit a draft final report to the Commission at the latest 5 months after the signature of the contract. Furthermore, the contractor will submit a set of power point slides explaining the main findings of the study.

Within 20 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 third meeting in Brussels will be agreed in order to discuss the Commission's observations.

After this meeting, the Contractor shall have 20 days in which to submit additional information or a new final report.

I.3.3. Report format and publication

4 copies of the reports shall be supplied 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, however not the details of the analysis. For this purpose, the tenderer must include all confidential data in annexes that will not be published and provide a final report that is not subject to any restrictions deriving from intellectual property rights of third parties. Should s/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 7 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 will be held on Commission premises in Brussels.

I.6. Estimate of the amount of work involved

The amount of work involved to carry out this contract is assessed at 120 person-days.

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 5). 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 5, the draft service contract.

II.2. Financial guarantees

Guarantee on pre-financing

For any pre-financing higher than 150,000 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 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 5) can be applied to subcontractors. Once the contract has been signed, Article II.13 of the above-mentioned contract shall govern the subcontracting.

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 or 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 (in their entirety) 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 i.e. an administrative, a technical and a financial proposal.

III.2.1. Section One: administrative proposal

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

- 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.

- 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.

- 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.

III.2.2. Section Two: 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 below, 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 an outline of the overall approach, a detailed work plan and schedule, information on how data will be accessed, and solutions to the 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.2.3. Section Three: Financial proposal

All tenders must contain a financial proposal. 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 European Union is exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union 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;
- For each category of staff involved in the project, the tenderer must specify:
 - the total labour costs;
 - **the daily rates** and **total number of days** (person/days) each member of staff will contribute to the project;
 - other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity.

Bids involving more than one service provider (consortium) must specify the amounts indicated above for each provider.

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 Regulation³)

1. 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 Union's financial interests;
 - (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation⁴ for being guilty of misrepresentation in supplying the

³ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16.9.2002)

information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Union budget.

2. The cases referred to in point IV.1.1. e) above shall be the following:
 - 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.
- c) find themselves in one of the **situations of exclusion**, referred to in paragraph IV.1.1. above for this procurement procedure.

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.

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 shall provide, within 15 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 the Directorates General in charge of Energy or Transport and 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.1.4. 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 134b and 133a of the Implementing Rules.⁵

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 – Criteria and 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, and a statement of overall turnover and turnover relating to the relevant services for the last three financial 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 – Criteria and references required

The tenderer must demonstrate that their staff has the skills, resources and experience needed to carry out the work in this tender, in particular:

- Longstanding experience in the energy sector (gas and electricity)
- Excellent understanding of existing legal and regulatory frameworks and procedures in the different Member States
- Excellent legal, socio-economic and language skills
- Experience in advising on the conception of legal rules and in analysing their impact

⁵ 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.

- Experience in drafting and editing high quality documents
- Experience in working at EU level and in communicating with national administrations and main stakeholders in the Member States, as well as experience in organising and moderating stakeholder meetings

Evidence of this capacity shall be furnished on the basis of the following documents:

- Detailed Curriculum Vitae of the staff members responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills
- List of the main services and tasks, relevant to the contract, delivered by the tenderer during the last five years with the sums, dates and awarding institution (by mentioning the sector – private/public)

If several service providers/subcontractors are involved in the bid, each of them must demonstrate its professional and technical capacity to perform the tasks assigned to them.

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.

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 60 % 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

Nº	Award Criteria	Weighting
1	Overall approach of implementation, in particular with the objective to come to sound, fact-based and technically viable recommendations	40
2	Quality and credibility of the work plan and schedule, adequacy of information/data collection and analysis techniques	40
3	Easy access to relevant information sources in Member States	20
Total number of points		100

b) Total price

The contract will be awarded to the tender which offers the best ratio quality/price.

IV.4. 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.

Upon written request, the Commission will inform the rejected tenderers of the reasons for their rejection and the tenderers having submitted 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.

V. ANNEXES

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria)
5. Draft 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 ENER/B1/452-2010

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) ⁶	
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:	

⁶ 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 organisation⁷	
I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

⁷ 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)

A specific form for each Member State is available at the following Internet address:

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



FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

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

ACCOUNT NAME	
ACCOUNT NAME ⁽¹⁾	<input type="text"/>
	<input type="text"/>
ADDRESS	<input type="text"/>
	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>

CONTACT	<input type="text"/>		
TELEPHONE	<input type="text"/>	FAX	<input type="text"/>
E - MAIL	<input type="text"/>		

BANK	
BANK NAME	<input type="text"/>
	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN ⁽²⁾	<input type="text"/>

REMARKS:

BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE (Both Obligatory) ⁽³⁾
<input type="text"/>

DATE + SIGNATURE ACCOUNT HOLDER : (Obligatory)
<input type="text"/>
DATE <input type="text"/>

⁽¹⁾ The name or title under which the account has been opened and not the name of the authorized agent

⁽²⁾ If the IBAN Code (International Bank account number) is applied in the country where your bank is situated

⁽³⁾ It is preferable to attach a copy of recent bank statement, in which event the stamp of the bank and the signature of the bank's representative are not required. The signature of the account-holder is obligatory in all cases.

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

Each service provider, including subcontractor(s) or any member of a consortium or grouping, must sign this declaration

1. In accordance with Article 93 of the Financial Regulation⁸, I declare on my honour that I am not in any of the following situations which would exclude me from participating in this procurement procedure:
 - a) I am not bankrupt, being wound up or having my affairs administered by the courts, I have not entered into an arrangement with creditors, I have not suspended business activities, I am not the subject of proceedings concerning any such matters, and I am not in any similar situation arising from a similar procedure provided for in legislation or regulations;
 - b) I have not been convicted of an offence concerning my professional conduct by a judgment which has the force of res judicata;
 - c) I have not been found guilty of grave professional misconduct proven by any means which the contracting authority can justify;
 - d) I have not failed to fulfil 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 I am established or with those of the country or the contracting authority or those of the country where the contract is to be performed;
 - e) I have not 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 Union's financial interests;
 - f) I am currently not subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Union budget.
2. In addition, the undersigned declares on his or her honour:
 - a) that on the date of submission of the tender, the company or organisation I do represent and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; I undertake to inform the Commission without delay of any change to this situation after the date of submission of the tender.
 - b) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

⁸ 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.

Done at on.....

Name

Title

Signature:

ANNEX 5
DRAFT CONTRACT

See separate document