

**TENDER SPECIFICATIONS**  
**ATTACHED TO THE INVITATION TO TENDER**

**Invitation to tender No. ENER/C3/2010-414 concerning**

**A Study on Product Labelling Options and their Consumer Understanding**

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## I. SPECIFICATIONS

### I.1. Introduction

The EU energy label (as provided by Directive 2010/30/EU<sup>1</sup> ("Energy Labelling"), the recast of Directive 92/75/EEC) is well-known for transforming the market by the uptake of more efficient energy-related products<sup>2</sup>. Such transformation is achieved by having a compulsory label that provides consumers with meaningful, credible, comparable and easy-to-understand information which brings directly measurable financial gains to consumers. The label focuses on the energy efficiency of the product – energy consumption during the use phase - whilst it also allows the inclusion of other environmental aspects (for example water consumption or noise during use) relevant for consumers to make an informed choice. Directive 2010/30/EU is therefore considered a useful tool in transforming the market towards more efficient products.

In adopting Directive 2010/30/EU the Council asked the Commission in recital 23 to analyse "whether further action to improve the energy and environmental performance of products is needed, *inter alia* the possibility to provide consumers with information on the carbon footprint of products or the products' environmental impact during their life cycle". This study will examine whether further action is needed, focusing on providing verifiable information on carbon footprint and environmental impacts during the products' life cycle. The study will also examine consumer understanding of such information and willingness to purchase products having labels which contain this information (Willingness-To-Pay).

### I.2. Purpose of the contract

The purpose of the contract is to inform the Commission of the possibilities (if any) to improve the energy and environmental performance of products by examining the verifiability of carbon footprint of products or the products' environmental impact during their life cycle and their understanding by the consumers as well as consumers' willingness to pay for parameters which do not bring direct financial benefits to them.

Firstly the study will take into account the conclusions of a study by the Commission on environmental footprint of products<sup>3</sup> which focuses on the identification, analysis and comparison of the existing leading methodologies and initiatives in the European Union and globally in order to use its findings in future policy development whilst also building on a thorough review of available studies and methodologies on the subject not analysed by the previously mentioned study. Its scope will cover the possibility of carbon labelling of energy-related products and the featuring of other environmental parameters.

Secondly, this study will also examine consumer understanding of the elements of the energy label as well as the possibility of a label containing information on carbon footprint and other environmental parameters by running behavioural tests in simulated purchase situations. These situations will also test consumers' willingness to pay for carbon emissions and other environmental parameters which do not provide them with directly measurable financial gains (Willingness-To-Pay).

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<sup>1</sup> JO, L153, 18.06.2010

<sup>2</sup>[http://ec.europa.eu/energy/efficiency/consultations/doc/2008\\_02\\_22\\_labelling/2008\\_consultation\\_energy\\_labelling\\_document.pdf](http://ec.europa.eu/energy/efficiency/consultations/doc/2008_02_22_labelling/2008_consultation_energy_labelling_document.pdf)

<sup>3</sup> [http://ec.europa.eu/environment/eussd/product\\_footprint.htm](http://ec.europa.eu/environment/eussd/product_footprint.htm)

Since the study involves complex tasks which require diverse expertise, the Commission encourages Tenderers to apply in consortium in accordance with Point II.3.

### **I.3. Reports and documents to produce – timetable to observe**

This study aims to examine specifically:

**A) The possibility and appropriateness** of replacing the existing energy label<sup>4</sup> with a label showing

- either all environmental parameters throughout the life cycle of a product,
- or the carbon footprint of the product throughout its life cycle,
- or both,

which should be assessed in an analysis in view of the revision of the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan scheduled for 2012.

The assessment should cover energy-related products (split into energy-using and energy-related products).

Special attention will be paid to such aspects and elements as:

#### **Re an environmental label:**

- benefits of a label containing all environmental parameters compared to the existing EU energy label,
- effectiveness of the label to convince consumers to buy (usually) more expensive albeit more environmental friendly products,
- feasibility and usefulness as an information for consumers to mix several environmental parameters and phases of the lifecycle of the product,
- accuracy of environmental footprint declaration, also taking into account life expectancy of the product,
- measurability and enforceability of the declared values for a label that would take into account all environmental parameters during all phases of the product lifecycle,
- reliable and rigorous methodology(ies) for measurability and accuracy.

#### **Re a carbon footprint label:**

- benefits of a carbon footprint label compared to the existing EU energy label,
- veracity of carbon footprint declaration without knowing where (hence the energy mix) the product will be used,

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<sup>4</sup> Where reference is made to the existing energy label it means the format of the new energy label as set out in the latest delegated acts implementing Directive 2010/30/EU.

- effectiveness of a carbon footprint label to convince consumers to buy (usually) more expensive albeit lower carbon footprint products,
- feasibility of a carbon footprint label that would take into account all phases of the product lifecycle,
- compatibility of a carbon footprint label that would take into account all phases of the product lifecycle with respect to trade rules,
- measurability and enforceability of the declared carbon footprint for a label that would take into account all phases of the product lifecycle,
- reliable and rigorous methodology(ies) for measurability and accuracy.

**Re a combined environmental and carbon footprint label (with the existing EU energy label):**

- benefits of such a label compared to the existing EU energy label,
- effectiveness of such a label to convince consumers to buy (usually) more expensive albeit more environmental friendly products,
- feasibility and usefulness of such a label as an information for consumers to mix several environmental parameters and phases of the lifecycle of the product,
- accuracy of environmental and carbon footprint declaration, also taking into account all phases of the product life cycle and life expectancy of the product,
- measurability and enforceability of the declared values for such a label that would take into account all environmental parameters and carbon emissions during all phases of the product lifecycle,
- reliable and rigorous methodology(ies) for measurability and accuracy.

In each case, the analysis will also assess the extent to which the introduction of additional information on the label would reduce its ability to effectively perform its core task of energy efficiency labelling.

The analysis will also draw conclusions from other existing labelling schemes on carbon footprint and mandatory environmental labelling within and outside the European Union including a review of existing research in the field as well as from the Commission's study on environmental footprint of products (methods and initiatives) and the ongoing pilot project on the harmonised methodology for the calculation of environmental footprint of products ending in December 2011<sup>5</sup>.

As mentioned above, some Member States as well as third countries have already started working on "carbon labelling". These are the respective references to some of their work:

France

<http://affichage-environnemental.afnor.org>

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<sup>5</sup> [http://ec.europa.eu/environment/eussd/product\\_footprint.htm](http://ec.europa.eu/environment/eussd/product_footprint.htm)

<http://www.developpement-durable.gouv.fr/IMG/pdf/expaffichage-ang-a.pdf>

Germany

<http://www.pcf-project.de>

United Kingdom

<http://www.carbon-label.com/>

European Consumer Summit

[http://www.european-consumer-summit.eu/workshops5\\_en.asp](http://www.european-consumer-summit.eu/workshops5_en.asp)

Japan

[http://www.env.go.jp/earth/ondanka/mechanism/carbon\\_offset/pamph1/full.pdf](http://www.env.go.jp/earth/ondanka/mechanism/carbon_offset/pamph1/full.pdf)

United States of America

<http://www.carbonfund.org/>

**B.** This part of the study will include research on the impact of the EU energy label and the above proposed labelling options on consumer behaviour when purchasing energy-related products. Research will be partially based on a literature review of studies relevant to the subject whilst the other part of research will focus on behavioural experiments intended to demonstrate how consumers respond to the four label options (elements of the existing EU Energy Label, carbon footprint label, environmental label and their combination) discussed in Point A above in order to understand precisely what role these labelling options could play in consumers' purchasing decisions and their willingness to pay for parameters not bringing direct financial gains. The Commission will provide the cards for testing.

**Research will consist of the following main tasks:**

1. preparatory review of literature (including official reports, academic research, focus groups results, public opinion surveys, studies, data on prevailing commercial practices, consumer self-reported preferences and any other resources) which provide evidence regarding behavioural traits of consumers when buying appliances covered by the EU energy label and the proposed labelling options;
2. collection of first-hand information through behavioural experiments (four label options and Willingness-To-Pay) and also, where necessary, to complement these experiments by surveys and/or focus groups;
3. analysis of results and policy recommendations.

**Task 1**

Task 1 is aimed at **preparing behavioural experiments:**

- the Contractor will collect and analyse qualitative and quantitative data of existing official reports, carry out academic research, investigate relevant focus groups and public opinion surveys, studies and other resources that provide evidence regarding the main behavioural

traits and external factors influencing individual decision-making vis-à-vis the four labelling options and measuring consumers' willingness to pay for parameters not bringing direct financial gains;

- throughout the preparatory phase, to the extent necessary, the Contractor should recruit sufficient experts in the specific policy field of market to identify the most relevant evidence and to interpret it correctly;

- the Contractor will use the results obtained in Task 1 to identify for the experiment(s), to the extent possible, the behavioural traits and external factors that could influence consumer's decision making when buying an appliance and their Willingness-To-Pay.

## **Task 2**

### **Elements and information that should be indicated in the bid:**

Task 2 is aimed at collecting first-hand information through behavioural experiments (simulated real-life purchase situation online or field experiments by brick and mortar purchases) and surveys and interviews, if and when appropriate, and analyse the findings. The Contractor has to provide a rough draft experiment design in the bid. The Contractor is also expected to assess the number of participants necessary for validity of the experiment(s). Since a Commission study titled Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective<sup>6</sup> found that there were no country specific differences about how consumers make purchasing decisions when tested in real life, it is the Contractor's responsibility to choose the participants and justify their representativeness of the EEA population. As a detailed study plan is expected 20 days from the signing of the contract, the bid shall already have a fairly well-developed part discussing how the experiment(s) will be conducted.

The Contractor must be able to conduct one or more behavioural experiments designed to measure the extent to which the main behavioural factors identified under Task 1 may influence consumer decision-making behaviour and consumers' willingness to pay for parameters not bringing direct financial gains. In preparation for the understanding of the specific experiments to be conducted, the contractor may, if deemed necessary, carry out online or offline surveys as well as interviews.

## **Task 3**

Task 3 is aimed at the analysis of results and policy recommendations. In the final part of the study the Contractor will integrate the results obtained from the previous tasks. The Contractor should carry out a detailed analysis of internal and external factors affecting consumers' decision-making regarding the elements of the EU energy label and the other three labelling options as well as of any commercial practices that may influence consumers, with a quantification of their effects and relative ranking. The Contractor should also provide a detailed analysis on consumers' willingness to pay for parameters not bringing them direct financial gains. Overall, the Contractor, based on the information and data collected in the previous two tasks, should be able to provide clear insights into the main factors that influence consumer decision-making, the effectiveness of the four labelling options and consumers' willingness to pay for parameters not bringing them direct financial gains that could help consumers to make better decisions.

**The experiment(s) should consider the following questions:**

**Re the existing EU energy label:**

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<sup>6</sup> [http://ec.europa.eu/consumers/strategy/docs/final\\_report\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/final_report_en.pdf)

- to what extent the individual elements of the EU energy label (colour scale and letters, energy consumption, and product specific pictograms) influence consumers' decision making?
- to what extent the EU energy label as a whole influence consumers' decision making?
- does other information than energy use present on the EU energy label influence consumers?

**Re an environmental label:**

- to what extent a label containing all environmental parameters of a product would influence consumers' decision making?
- are there any specific environmental parameters currently not seen on any of the product specific EU energy label which would influence consumers' decision making?
- to what extent an environmental label would be effective in convincing consumers to buy (usually) more expensive albeit more environmental friendly products?
- to what extent consumers understand information mixing several environmental parameters and phases of the lifecycle of the product provided on this label (if feasible at all)?
- to what extent consumers are willing to pay for a label that does not bring direct financial gains to them?

**Re a carbon footprint label:**

- to what extent a carbon footprint label would influence consumers' decision making?
- to what extent a carbon footprint label would be effective in convincing consumers to buy (usually) more expensive albeit more environmental friendly products?
- to what extent consumers understand information presenting all phases of the lifecycle of the product provided on the carbon footprint label (if feasible at all)?
- to what extent consumers are willing to pay for a carbon footprint label that does not bring direct financial gains to them?

**Re a combined environmental and carbon footprint label (with the existing EU energy label):**

- to what extent such a label would influence consumers' decision making?
- to what extent such a label would be effective in convincing consumers to buy (usually) more expensive albeit more environmental friendly products?
- to what extent consumers understand information mixing several environmental parameters and phases of the lifecycle of the product provided on this combined label (if feasible at all)?
- to what extent consumers are willing to pay for this combined label that does not bring direct financial gains to them?



Documents which could be relevant for Point B:

Commission study Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective:

[http://ec.europa.eu/consumers/strategy/docs/final\\_report\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/final_report_en.pdf)

Commission study Environmental Impact of Products (EIPRO): Analysis of the life cycle environmental impacts related to the final consumption of the EU-25 (its update is ongoing):

<http://ipts.jrc.ec.europa.eu/publications/pub.cfm?id=1429>

DEFRA study Behavioural Economics and Energy Using Products: Scoping Research on Discounting Behaviour and Consumer Reference Points:

[http://randd.defra.gov.uk/Document.aspx?Document=EV0701\\_9169\\_FRP.pdf](http://randd.defra.gov.uk/Document.aspx?Document=EV0701_9169_FRP.pdf)

Ernst & Young: Environnement et Développement Durable. Pistes pour un étiquetage environnemental lisible et efficace – Résultat d'enquête consommateur:

[http://www.ey.com/Publication/vwLUAssets/Vers\\_un\\_etiquetage\\_environnemental\\_lisible\\_et\\_efficace/\\$FILE/Etude\\_Etiquetage\\_Environnemental.pdf](http://www.ey.com/Publication/vwLUAssets/Vers_un_etiquetage_environnemental_lisible_et_efficace/$FILE/Etude_Etiquetage_Environnemental.pdf)

**Della Vigna, Stefano, Gentzkow, Matthew (2010).** Persuasion: Empirical Evidence. *Annual Review of Economics*, 2010, Vol. 2

<http://elsa.berkeley.edu/~sdellavi/wp/PersuasionAERDellaVignaGentzkowProofsJun10.pdf>

**Della Vigna, Stefano (2009).** Psychology and Economics: Evidence from the Field. *Journal of Economic Literature*, June 2009, Vol. 47, pp. 315-372.

<http://elsa.berkeley.edu/~sdellavi/wp/01-DellaVigna-4721.pdf>

**Lunn, Pete, Lunn, Mary (2011).** What Can I Get For It? A Theoretical and Empirical Re-Analysis of the Endowment Effect. April 2011, ESRI Working Paper 385

[http://www.esri.ie/UserFiles/publications/WP\\_385/WP385.pdf](http://www.esri.ie/UserFiles/publications/WP_385/WP385.pdf)

**Lunn, Pete, Lyons, Séan (2010).** Behavioural Economics and 'Vulnerable Consumers': A Summary of Evidence. Communications Consumer Panel UK

<http://www.esri.ie/UserFiles/publications/BKMNEXT180/BKMNEXT180.pdf>

**Lunn, Pete, Lunn, Mary (2009).** A Computational Theory of Exchange: Willingness to pay, willingness to accept and the endowment effect. November 2009, ESRI Working Paper 327

<http://www.esri.ie/UserFiles/publications/20091201093322/WP327.pdf>

**Lunn, Pete (2008).** Basic Instincts: Human Behaviour and the New Economics. Marshall Cavendish, London.

### **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 20 days following the signature of the contract, in order to settle all the details of the study, the report, discuss the cards and present the study plan.*

**Study plan**

The aim of the study plan is to provide a detailed and comprehensive plan which would set out how the Contractor would carry out the study in order to fulfil the purpose of the contract. The study plan will have to also present the detailed experiment design which demonstrates how the Contractor intends to implement testing of consumer understanding of the label and willingness-to-pay based upon the criteria set out in Point I.2.

**Interim report**

The aim of the interim report is to demonstrate the implementation of Point I.2. including a progress report and findings of the experiment(s) and the examination of the feasibility of various options: (i) business as usual scenario (ii) environmental impacts outside the use phase that could be featured on the existing energy label, (iii) carbon footprint that could be featured on the existing energy label, and (iv) a combination of (ii) and (iii).

**Final report**

The final report has to summarise the findings on the feasibility of various product labelling options and provide concrete recommendations for the future including, if the results justify, methodology for the feasible scenarios taking into account effectiveness and relevance of the information to be provided on the label to the consumers, measurability and verifiability, respecting trade rules and allowing fair comparison between products. The final report also has to deliver a detailed analysis of the results of the experiment(s) which demonstrate how well consumers understand the existing EU energy label and what role the other proposed labelling options could play taking into account the conclusions of the first half of the study on appropriateness, willingness-to-pay and feasibility of such labelling options.

*Timetable*

In principle the deadlines set out below cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties (except for rare cases of *force majeure*). Adequate resources and appropriate organisation of the work including management of potential delays should be put in place in order to observe the timetable below.

<b>Task</b>	<b>Time</b>
Kick-off meeting	not more than 20 days after signing the contract
Study plan	not more than 20 days after signing the contract
Interim report	4 months after signing the contract
Final report	8 months after signing the contract

### ***I.3.1. Interim reports***

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

The Commission shall have twenty 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 **eight months** after the signature of the contract.

*The Commission shall have twenty days from receipt to approve or reject the draft final report, and the Contractor shall have 20 days in which to submit additional information or a new final report.*

### ***I.3.3. Report format and publication***

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

### **I.4. Duration of the tasks**

The duration of the tasks shall not exceed **10 (ten)** months. This period is calculated in calendar days.

### **I.5. Place of performance**

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

### **I.6. Estimate of the amount of work involved**

The amount of work involved to carry out this contract is estimated to correspond to a total amount of 250 man-days. This amount includes the travel costs and all other costs related to the execution of the contract.

## **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/info\\_contract/ftiers\\_en.htm](http://ec.europa.eu/budget/info_contract/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/info\\_contract/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/info_contract/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 models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender. Tenderers must present in their bids a proposal on the methodology and the organisation of the work to carry out in the framework of the study.

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

### ***III.2.3. 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** (man/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 Regulation<sup>7</sup>)***

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;

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<sup>7</sup> 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)

- (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 Regulation<sup>8</sup> 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. 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,

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<sup>8</sup> 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.



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.1.1.1. above for this procurement procedure.

#### ***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.<sup>9</sup>

## **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***

The capacity will be assessed based on the ratios mentioned in Annex 6; only tenderers demonstrating a satisfactory or good economic and financial capacity can be selected.

The following documents must be provided in evidence of economic and financial capacity:

- the presentation of balance sheets including the profit and loss accounts for the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established;
- a statement of overall turnover and turnover concerning the services covered by the contract for the last three financial years;
- the annex 6 form filled in.

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.

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<sup>9</sup> 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, as amended.

#### ***IV.2.2. Technical and professional capacity – Criteria and references required***

The tenderer should demonstrate that it possesses the following experience which is required to carry out this study to a satisfactory level:

- a) relevant experience of the Tenderer in European energy efficiency policy;
- b) at least three years of relevant experience of the Tenderer in the field of life cycle impacts including experience with energy-related products;
- c) relevant experience of the Tenderer in research carried out and/or services provided in connection with drafting and/or validating methodology including experience with energy labelling, or CO<sub>2</sub> labelling or environmental labelling methodology(ies) or their combination;
- d) relevant experience of the Tenderer in the last three years, in the area of consumer surveys in at least six EU Member States including at least two of the EU12 countries<sup>10</sup>;

The core team must include at least one economist who has practical experience of designing the setting and/or carrying out behavioural economic experiments.

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

- a) detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills deemed relevant to the Tender;
- b) a list of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;
- c) a description of the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;

The selection criteria will be assessed in relation to the combined capacity of all partners. If several service providers/subcontractors are involved in the bid, each of them must have and show that they have the professional and technical capacity to perform the tasks assigned to them.

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.

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<sup>10</sup> The EU12 include Bulgaria, Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

### 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

N°	Award Criteria	Weighting
1	Quality of proposed methodology and tools for gathering, validating, analysing and presenting information; Quality and appropriateness of proposed communication and consultation activities.	50%
2	Understanding and coverage of the objectives, the needs and the scope of the tender.	30%
3	Appropriateness of the project planning and management, and the human and financial resources allocated to cope with and fulfil the obligations of the contract.	10%
4	Overall quality, completeness, clarity and presentation of the offer.	10%
<b>Total number of points</b>		<b>100%</b>

b) Total price : the contract will be awarded to the tender offering 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
6. Analysis of the economic and financial capacity

## ANNEX 1 to Call for tender ENER/C3/2010-414

### 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)

<b>Identity</b>	
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) <sup>11</sup>	
<b>Address</b>	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
<b>Contact Person</b>	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number: Fax number: E-mail address:	
<b>Legal Representatives</b>	
Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign contracts with third parties	
<b>Declaration by an authorised representative of the organisation<sup>12</sup></b> I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

<sup>11</sup> For natural persons

<sup>12</sup> This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

**ANNEX 2**  
**to Call for tender ENER/C3/2010-414**

**Financial identification form**

(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/info\\_contract/ftiers\\_en.htm](http://ec.europa.eu/budget/info_contract/ftiers_en.htm)

**ANNEX 3**  
**to Call for tender ENER/C3/2010-414**

**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/info\\_contract/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/info_contract/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 to Call for tender ENER/C3/2010-414

### 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 Regulation<sup>13</sup>, 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.

Done at ..... on.....

Name .....

Title .....

Signature:

<sup>13</sup> 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.

**ANNEX 5 to Call for tender ENER/C3/2010-414**  
**DRAFT CONTRACT**



**EUROPEAN COMMISSION**  
DIRECTORATE – GENERAL FOR ENERGY  
DIRECTORATE C – New and Renewable Energy Sources, Energy Efficiency & Innovation  
The Director

**SERVICE CONTRACT**

**CONTRACT NUMBER ENER/C3/2010-414-SI2.xxxxxx**

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mrs Marie Donnelly, Director for New and Renewable Energy Sources, Energy Efficiency and Innovation, in the Directorate-General for Energy

of the one part,

and

**[official name in full]**

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

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

**[official address in full]**

**[VAT registration number]**

(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 ENER/C3/2010-414 of [complete]) and Monitoring

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

[Annex III – Model of Bank Guarantee]

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 to undertake a study on the products labelling options and consumer understanding of the label in order to provide the Commission with clarification and analysis on a number of issues in order to ensure an effective implementation of Article 9 of the recast EPBD<sup>14</sup>.
- 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 10 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**

- I.3.1.** The maximum total amount to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.

### **ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES**

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

- I.4.1.** Pre-financing:

Following signature of the Contract by the last contracting party, within 30 days of:

- the receipt by the Commission of a duly constituted financial guarantee equal to at least EUR [amount in figures and in words]

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<sup>14</sup> Directive 2010/31 of the European Parliament and of the Council of 17 May 2010 on the energy performance of buildings (recast)

- the receipt by the Commission of a request for pre-financing with a relevant invoice

a pre-financing payment of 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.4.2 Interim payment:

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

- an interim technical report in accordance with the instructions laid down in Annex I.
- the relevant invoice(s)

provided the report has been approved by the Commission.

The Commission shall have twenty days from receipt to approve or reject the report, and the Contractor shall have 20 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 40 % of the total amount referred to in Article I.3.1 shall be made.

#### I.4.3. Payment of the balance:

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

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

provided the report has been approved by the Commission.

The Commission shall have twenty days from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, payment of the balance corresponding to [EUR complete amount in figures and in words equal] to 30 % 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 for Energy  
Directorate C  
Unit C3  
B-1049 Bruxelles

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

## **ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- I.7.1. The Contract shall be governed by Union law complemented, where necessary, by the national substantive law of Belgium.
- I.7.2. Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of 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. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Director of the Shared Resource Directorate MOVE/ENER acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

## **[ARTICLE I.9 – OTHER SPECIAL CONDITIONS**

**\* Provision to be inserted if the bank guarantee is required**

The bank guarantee referred to in article I.4.1. shall be provided according to the model of annex III

## **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.

#### **II.4.4. Payment currency and costs:**

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the Commission are borne by the Commission,
- cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

### **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 by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

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

### **ARTICLE II.6 – RECOVERY**

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

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

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

## **ARTICLE II.7 - REIMBURSEMENTS**

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

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

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

- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
- d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

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

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

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

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

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

## **ARTICLE II.9 – CONFIDENTIALITY**

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

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

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

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

**II.10.2.** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

**II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Union. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

**II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

## **ARTICLE II.11 – TAXATION**

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

## **ARTICLE II.12 – FORCE MAJEURE**

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **ARTICLE II.13 – SUBCONTRACTING**

- II.13.1.** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.13.2.** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

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

#### **ARTICLE II.14 – ASSIGNMENT**

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

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

#### **ARTICLE II.15 – TERMINATION BY THE COMMISSION**

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

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;

- (i) where execution of the tasks has not actually commenced within three months<sup>15</sup> 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 of fraud.

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<sup>15</sup> This period can be modified in the Special Conditions depending on the nature of the contract.



## **ARTICLE II.16 – LIQUIDATED DAMAGES**

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

## **ARTICLE II.17 – CHECKS AND AUDITS**

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

## **ARTICLE II.18 – AMENDMENTS**

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

## **ARTICLE II.19 – SUSPENSION OF THE CONTRACT**

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

**ARTICLE II.20 – DATA PROTECTION**

**II.20.1** The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.

**II.20.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**II.20.3** Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

**II.20.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

**II.20.5** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
  - aa) unauthorised reading, copying, alteration or removal of storage media;
  - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
  - ac) unauthorised using of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

**SIGNATURES**

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

For the Commission,  
**M. Donnelly, Director, Directorate C**

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done at [Brussels], [date]

Done at Brussels, ...

In duplicate in English.

## **ANNEX I**

### **Tender Specifications and Monitoring**

## **ANNEX II**

### **Contractor's Tender**

## ANNEX III

### LETTER FOR PRE-FINANCING FIRST DEMAND GUARANTEE

Financial institution/Bank (Letterhead)  
[Place/Date]

European Union  
Represented by the European Commission  
Directorate-General [...] – [Unit]  
Rue de la Loi 200  
B – 1049 Belgium

**Reference: Contract N° and exact title: [to be completed...]**

#### ARTICLE 1 – DECLARATION ON GUARANTEE, AMOUNT AND PURPOSE

We, the undersigned [name and address of the financial institution or bank] (hereinafter referred to as "the Guarantor") hereby confirm that we give the European Union, represented by the European Commission (hereinafter referred to as "the Commission"), an unconditional, irrevocable and independent first-demand guarantee consisting in the undertaking to pay to the Commission a sum equivalent to the amount of:

EUR [in figures: ...] (in words: ... EUR)

upon single demand, for guarantee of the pre-financing(s) stipulated in the contract (N°/exact title, hereinafter referred to as the "contract") concluded between the Commission and [name and address], (hereinafter referred to as "the Contractor").

#### ARTICLE 2 – EXECUTION OF GUARANTEE

If the Commission gives notice that the Contractor has for any reason failed to reimburse pre-financings paid by the Commission, we, acting by order and for account of the Contractor, shall undertake to immediately pay up to the above amount, in EUR, without exception or objection, into a bank account designated by the Commission, on receipt of the first written request from the Commission sent by registered letter or by courier with acknowledgement of receipt. We shall inform the Commission in writing as soon as the payment has been made.

#### ARTICLE 3 – OBLIGATIONS OF THE GUARANTOR

1. We waive the right to require exhaustion of remedies against the Contractor, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the Commission under the contract or in connection with it or on any other grounds.
2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by the Commission with the Contractor which may concern his obligations under the contract.

**ARTICLE 4 – DATE OF ENTRY INTO FORCE**

This guarantee shall come into force upon its signature. If, on the date of its signature, the pre-financing has not been paid to the Contractor, this guarantee shall enter into force on the date on which the Contractor receives the pre-financing.

**ARTICLE 5 – END DATE**

1. This guarantee shall expire on return of this original document by the Commission to our offices by registered letter or by courier with acknowledgement of receipt.
2. This must occur at the latest one month after the payment of the balance under the contract has been made.

**ARTICLE 6 – CONDITIONS OF RELEASE**

1. We may be released from this guarantee only with the Commission's written consent and do not have the right of deposit without its consent.
2. After expiry, this guarantee shall become automatically null and void and no claim relating thereto shall be receivable for any reason whatsoever.

**ARTICLE 7 – APPLICABLE LAW AND COMPETENT JURISDICTION**

1. This guarantee shall be governed by and construed in accordance with the law applicable to the contract.
2. The courts having jurisdiction for matters relating to the contract shall have sole jurisdiction in respect of matters relating to this guarantee.

**ARTICLE 8 - ASSIGNMENT**

The rights arising from this guarantee may not be assigned.

Done at [insert place], on [insert date]

\_\_\_\_\_  
[Signature/Function]

\_\_\_\_\_  
[Signature/Function]

## ANNEX 6 to Call for tender ENER/C3/2010-414

### ANALYSIS OF THE ECONOMIC AND FINANCIAL CAPACITY (to be filled and signed by the tenderer)

The following ratios will be applied in order to determine the financial capacity of the tenderers.

**I. Financial independence =** 
$$\frac{\text{Capital and reserves} - \text{Start-up expenses}}{\text{Liabilities}}$$

**II. Self-financing index =** 
$$\frac{\text{Cash flow (Net profit/loss for the fiscal year after taxes + depreciation + provisions)}}{\text{Financial debts (short-term and long term)}}$$

**III. Liquidity =** 
$$\frac{\text{Available assets + realisable assets (cash at bank and in hand + investments + trade and other debtors falling due in less than 1 year)}}{\text{Current liabilities (debts falling due in less than 1 year)}}$$

**IV. Activity index =** 
$$\frac{\text{Tender price/Duration of the contract in years}}{\text{Turnover}}$$

The following algorithm will be applied in order to categorise the level of financial soundness (weak, satisfactory or good) :

Indexes to be taken into account	Results	Marks
Financial independence	Higher than 50%	2
	40% < FI < 50%	1.5
	30% < FI < 40%	1
	0% < FI < 30%	0.5
	FI < 0%	-1
Self-financing index	40% < SFI	2
	15% < SFI < 40%	1
	0% < SFI < 15%	0
	SFI < 0%	-1
Liquidity	100% < Liquidity	2
	75% < Liquidity < 100%	1
	Liquidity < 75%	0
Activity index	AI < 50%	2
	50% < AI < 100%	1
	100% < AI	0

The mark allocated to each ratio for the last 2 financial years will be added and the financial capacity will be evaluated in the following way:

Evaluation of financial soundness	Weak	Satisfactory	Good
Total marks	2 – 7	8 – 10	11 – 16

**DOCUMENTS TO BE PROVIDED BY THE TENDERER <sup>16</sup>**

- the presentation of balance sheets including the profit and loss accounts for the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established
- a statement of overall turnover and turnover concerning the services covered by the contract for the last three financial years.
- The completed form of this annex.

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<sup>16</sup> Point 5.1.2. of the Specifications



**FORM TO BE FILLED IN BY THE TENDERER**

Tenderer's legal name		
Date to which the last annual accounts were made up <sup>17</sup>		
Currency		
	Fiscal year N - 1	Fiscal year N-2
Capital and reserves <sup>18</sup>		
Start-up expenses		
Net profit/loss for the fiscal year after taxes		
Balance-sheet total <sup>19</sup>		
Depreciation allowance		
Transfers to (withdrawal from) the provisions for liabilities and charges		
Short-term financial debts		
Long-term financial debts		
Current liabilities <sup>20</sup>		
Turnover		
Availability <sup>21</sup>		
Readily realisable assets <sup>22</sup>		

Turnover corresponding to the services covered by the contract		
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Name of the legal representative of the tenderer:

Signature of legal representative of the tenderer:

Date:

- 17 The date to which the last accounts were made up cannot be more than 18 months before the deadline for the receipt of tenders. The financial data requested in the table must be based on these accounts.
- 18 Equity shareholders' funds = issued share capital + share premiums + increases in value resulting from revaluation + reserves + profit carried forward - loss carried forward + capital subsidies. If equity shareholders' funds are positive, they should be recorded with a "+" sign in the table; otherwise, they should be reported with a "-" sign
- 19 Balance sheet total = total assets = total liabilities.
- 20 Current liabilities = trade creditors falling due in less than one year + tax, salaries and social security contributions falling due in less than one year + other debts falling due in less than one year + financial debts falling due in less than one year.
- 21 Liquid assets = current bank accounts + cash in hand + treasury investments
- 22 Readily realisable assets = trade debtors falling due in less than one year + other amounts falling due in less than one year