

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

**Invitation to tender No. SRD MOVE/ENER/SRD.1/2012-409 concerning  
multiple framework contracts for the provision of services of legal, economic and technical  
assistance in the fields of energy and mobility and transport policies**

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## I. SPECIFICATIONS

### I.1. Introduction

The European Commission (referred to as "the Commission"), in particular the Shared Resource Directorate of the Directorate-General for Mobility and Transport and the Directorate-General for Energy (referred to as "Shared Resource Directorate MOVE/ENER"), is launching an invitation to tender for services, comprising six lots, with a view to concluding a **multiple framework contract with reopening of competition** for each of the lots valid for a period of one year from the starting date of the contract. The framework contracts shall be renewed automatically up three times under the same conditions, unless written notification to the contrary is sent.

The call for tenders is being issued on an inter-institutional basis, as the following agencies are also participating in the call:

Executive Agency for Competitiveness and Innovation (EACI)	Brussels
Trans-European Transport Network Executive Agency (TEN-T EA)	Brussels
Any other Executive Agencies which the Commission decides to establish in Brussels or Luxembourg, provided that they are under partial or full responsibility of DG MOVE or/and DG ENER and the volume of the contract for the latter Executive Agencies does not exceed 10% of the total volume of the contract.	Brussels / Luxembourg

The Commission will be the "leading institution" and will sign the interinstitutional framework contract on behalf of these agencies. The resulting contract will therefore also apply to them.

The tasks covered by this invitation to tender consist of legal, economic and technical assistance work for the Commission services in the field of energy and transport policies.

The contract is divided into six lots:

- Lot 1: Legal assistance in the field of energy
- Lot 2: Economic assistance in the field of energy
- Lot 3: Technical assistance in the field of energy
  
- Lot 4: Legal assistance in the field of mobility and transport
- Lot 5: Economic assistance in the field of mobility and transport
- Lot 6: Technical assistance in the field of mobility and transport

**Tenders can bid for the one or several lots by separate tenders.**

For each of the six lots a «Multiple Framework Contract with reopening of competition» will be concluded with a maximum of five of the best ranked tenders.

«Multiple framework contract with reopening of competition» means a situation whereby separate but identical framework contracts are concluded between the contracting authority and the selected tenderers, setting out the general contractual terms (legal, financial, technical, administrative, etc.) that apply during their period of validity and govern commercial relations between the Commission and the contractors. The award procedure for the framework contract is described in chapter IV of these Tender Specifications.

Following the conclusion of the framework contracts, the contracting authority (the Commission or a participating agency) may invite the selected contractors under a specific lot to submit a bid for a specific assignment. For each assignment a specific contract will be concluded, following the evaluation of the respective bids. More information about the **Specific Contracts** for carrying out an assignment can be found in chapter II.3 and the award procedure is described in chapter IV.4.

## I.2. Purpose of the contract

The purpose of the multiple framework contracts is to provide at short notice the contracting authority with highly qualified external expertise to support with objectivity the contracting authority in the design, preparation and implementation of EU policies and initiatives and legislative proposals.

The assistance services covered by the tender are divided into six lots in order to group the services requested into coherent batches corresponding to given professional sectors.

The required services are of intellectual nature in the areas of legal assistance (**lot 1 and lot 4**), economical assistance (**lot 2 and lot 5**) and technical assistance (**lot 3 and lot 6**) in the fields of **energy and mobility and transport**

The services required will involve a number of diversified tasks in the following areas:

1. General affairs in the field of energy or transport (planning, external dimension and enlargement, passenger rights);
2. Security of supply, energy markets, future role of conventional and unconventional fossil fuel and best practices in their safe and competitive production, networks and smartgrids,
3. New and renewable sources of energy, energy efficiency and innovation
4. Nuclear energy, nuclear safeguards, radiation protection and management of spent fuel and radioactive waste,
5. European mobility network (Trans-European networks, investment strategy, single European rail area, ports and inland navigation),
6. Innovative and sustainable mobility (clean transport and sustainable urban mobility, innovative and intelligent transport systems, road safety),
7. Logistics, maritime and land transport including safety issues,
8. Aviation (agreements, single European sky, airports, safety, security).

### **I.3. Description of services**

The list of services below is not to be considered as exhaustive and users may call on any additional expertise falling with the lot concerned. The specific Terms of reference, part of each specific Contract, shall describe the objectives of each individual assignment.

#### ***I.3.1. Legal assistance activities in the field of energy or mobility and transport (lot 1 and lot 4)***

The assistance required by the contracting authority may take the following forms:

- Analysis and studies concerning the completion and smooth operation of the internal market in energy or transport, including aspects relating to public services and sectoral regulation;
- Analysis of the conformity of the Member States national legislation as well as regulatory or administrative provisions with EU rules in the field of energy and transport (including the possibility to request translations of the national legislation). Analysis of the application of these rules;
- Analysis of specific cases in order to check their compatibility with the rules of EU law;
- Studies of questions likely to be raised in the context of the formulation of EU legislative initiatives, the application of directives with a view to their adaptation, and an examination of the relevant aspects of national, EU and international law;
- Studies and analyses of the legal or *de facto* national, international or EU situation relating to a particular sector of energy or transport or companies, and covering questions relating to market liberalisation with regard to the freedom of establishment of companies and freedom to provide services;
- Assessment and preparation of rules applicable to the energy and transport sectors relating to security, safety, interoperability and environmental protection;
- Analyses and studies of the legal aspects of EU external energy relations, including protecting and promoting investment in third countries, on production, transit or interconnection issues and in particular, questions relating to legal certainty, dispute-settlement procedures, guarantee and risk-coverage mechanisms, and the European Energy Charter
- Assistance in the examination of certain legal dossiers relating to energy and transport; analyses and studies of the relationship between EU legislative initiatives and the particular international legal system governing international aviation and other transport modes.
- Analyses and studies concerning regulatory simplification for the energy and transport sectors as well as simplification of transport documentation in the area of freight transport logistics.

#### ***I.3.2. Economic assistance in the field of energy or mobility and transport (lot 2 and lot 5).***

The services required may take the following forms:

- Economic analysis of the energy and transport markets, including questions relating to market access, market monitoring, market integration and organisation and logistics, analysis of relevant statistics or geographical data, aspect of employment as well as of consumer protection;
- Research, analysis and recommendations concerning the operability of the internal market, the effects of applying competition law, public services and State aid;
- Analysis, assessment and monitoring of the economic and financial situation of companies and organisations active in the energy and transport sectors, and the progress of related projects and activities, including questions concerning infrastructure funding;
- Analysis, assessment and monitoring of appropriations granted by EU Funds, auditing of public and private sector enterprises;
- Studies and analyses, including the social, regulatory and fiscal aspects, relating to a specific energy/mobility and transport sector, comprising questions relating to market liberalisation with regard to the freedom of establishment of companies and the freedom and the capacity to provide services;
- Studies and analyses of policies related to technology development and deployment, economic performance and contribution to the key energy policy objectives of competitiveness, sustainability and security of supply;
- Economic/statistical analyses and market studies relating to energy and transport networks and infrastructures in general and specific projects such as feasibility studies, financial assessment of investments, cost-benefit analysis, congestion management, and infrastructure charging and taxation schemes;
- Development of systems, including IT systems, for forecasting socio-economic developments in the energy or transport sectors, energy and transport systems modelling, aid for the formulation of policy strategies, identification of priorities and subjects requiring harmonisation;
- Assistance concerning the liberalisation of the energy market and related questions: elaboration of economic parameters such as the use of natural gas and charging, and liberalisation indicators;
- Design of projects relating to the security of energy supply and related questions, management of the demand for conventional energy sources, development and funding of the various renewable energy sectors; study of the geopolitical, economic and commercial aspects of the international trade in and transport of energy and external energy trade with the EU;
- Gathering/analysis of statistics and forecasts concerning the utilisation of commercial data and data relating to energy and transport supply and demand;
- Assessment of economic and other measures for the integration of environmental objectives into energy and transport policy;
- Analysis of data submitted by Member States and reports based on such data as is often required by EU legislation;
- Collection and processing of aviation and maritime data with a view to conducting economic/statistical studies, analyses and forecasts to support development of EU policy;
- Economic analysis on policies and actions – including lack of these – in the field of energy and transport security;

- Analysis of the cost and benefits resulting from proposed regulatory measures in the domain of energy/mobility and transport;
- Examination, evaluation and analysis of feasibility studies and/or economic and financial analyses related to energy and transport infrastructure;
- Data collection, databases and analysis;
- Analyses of socio-economic and sectoral dimensions of freight transport logistics.

***I.3.3. Technical assistance activities in the field of energy or mobility and transport (lot 3 and lot 6)***

The services may take the following forms:

- Technical assistance with the implementation of measures aimed at improving the operation of the internal market in energy and transport;
- Technical assistance with the progressing of studies under way, investment and infrastructure projects carried out in the context of the energy and transport “TENs”, Connecting Europe Facility (CEF) and projects of common interest (PCI) (infrastructure plans and congestion indicators) including technical assistance for market monitoring activities and studies;
- Technical assistance with the implementation of contracts relating to energy and transport under the Framework Programmes for Research and Technological Development (including demonstration) and Horizon 2020;
- Technical assistance with the implementation of the “Energy Framework Programme” and the clustering and progressing of projects and other types of measures, including the Local and Regional Energy Management Agencies and Intelligent Energy Europe;
- Assistance with the technical progressing of contracts under the specific programme for “Non-nuclear Energy”;
- Assistance with regard to environmental, safety and standardisation questions relating to energy demand management and efficiency technologies, and the application and market penetration of such technologies;
- Technical assistance to support the implementation of Energy Dialogues with Third Countries and the external aspects of the EU internal energy market;
- Provision of expertise and related technical and logistical support for assistance to third countries in the field of aviation;
- Technical assistance with regard to transport, and in particular, inland transport, aviation, maritime transport, intelligent transport systems and satellite navigation systems, and concerning conventional energies and new energies;
- Technical assistance regarding cost/benefit studies and analyses for standardisation of equipment;
- Technical assistance on measures in the field of energy and transport security, safety, and protection of the environment;

- Technical assistance in the field of emergency preparedness and crisis management, notably as regard the following aspects: inventory of organisational and operational resources, decision-making models, qualitative and quantitative risk analysis, risk control options;
- Technical assistance in the area of freight transport logistics, including assistance in the management of the bottleneck notification scheme and other activities emanating from the Logistics Action Plan;
- Technical assistance in the analysis and evaluation of project reports and proposals, including technical, environmental and socioeconomic aspects;
- Technical assistance in the formulation of the technical annexes of funding decisions;
- Technical assistance in the financial engineering of projects (this may as well be under lot 2);
- Technical assistance for the preparation of guidelines for applicants;
- Data collection and databases;
- Technical assistance for the management and administration of the submissions and the evaluation of proposals;
- Technical assistance in the monitoring, mid-term review and/or evaluation of projects;
- Technical controls and/or audits.

#### *1.3.4. For all lots*

- Language

The communication language between the Commission and the awarded contractors shall be English.

Depending of the service requested, the contractors may be required to cover any of the official languages of the EU Member States, the EFTA/EEA countries (Switzerland, Iceland, Liechtenstein and Norway), the Candidate Countries and any other country, where energy/mobility and transport issues are likely to be of European Union's interest. The deliverables as such will have generally to be submitted in English.

- Place of performance

It should, as a general rule, be possible to provide the requested services in all the EU Member States, in the EFTA/EEA countries (Switzerland, Iceland, Liechtenstein and Norway), in the Candidate Countries and any other country where energy/mobility and transport issues are likely to be of European Union's interest.

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



- Assignment implementation

Ensuring the quality of the assignment is one of the key responsibilities of the framework contractor. He is fully responsible for the quality of the reports or/and outputs required.

The framework contractor is responsible for the timely payment of his employees and experts, in line with the contractual terms (framework contractor's Methodology) and must make available appropriate logistical support to them. He must also ensure that his staff is covered by appropriate insurance.

## **II. TERMS OF THE FRAMEWORK CONTRACT**

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

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

### **II.1. Estimate of the amount of work involved**

For lot 1 the indicative maximum amount is EUR 2.000.000 (up to 4 years). Specific Contracts will not be signed once the budget is exhausted.

For lot 2 the indicative maximum amount is EUR 2.000.0000 (up to 4 years). Specific Contracts will not be signed once the budget is exhausted.

For lot 3 the indicative maximum amount is EUR 4.000.0000 (up to 4 years). Specific Contracts will not be signed once the budget is exhausted.

For lot 4 the indicative maximum amount is EUR 3.000.000 (up to 4 years). Specific Contracts will not be signed once the budget is exhausted.

For lot 5 the indicative maximum amount is EUR 6.000.0000 (up to 4 years). Specific Contracts will not be signed once the budget is exhausted.

For lot 6 the indicative maximum amount is EUR 1.500.0000 (up to 4 years). Specific Contracts will not be signed once the budget is exhausted.

The contracting authority reserves the right to contract services described in this call for tenders outside this framework contract.

### **II.2. Duration of the framework contract**

Each framework contract will be concluded for a period of one year from when it starts, and may be renewed for further three one-year periods, by tacit agreement. The total duration of a framework contract will not exceed 4 years from when it is first signed.

### II.3. Specific Contracts under this Framework Contract

Each time the contracting authority will ask legal, economical or technical assistance an invitation to submit an offer will be sent (by e-mail) to all Contractors for the relevant specific lot. The e-mail will contain a request for service and the related specific terms of reference.

Within the next working day, the contractors shall send by e-mail an acknowledgement of receipt and express their availability to carry out the services required. Within the number of calendar days specified in the request for services<sup>1</sup>, the contractors will provide the contracting authority with a written offer.

This offer shall detail the methodology, the deliveries, the composition of the team, the duration of work and the global price (including **all** expenses, with a labour cost component based on a single a «person-day» price which cannot exceed the one agreed in the framework contract).

The offers received will be evaluated based on the award criteria set out under section IV.4. and ranked on the basis of the best ratio quality/price. A specific contract will be then signed with the best ranked bidder.

For each specific contract the contractor and if applicable, the members of the group or association carrying out the task under the specific contract, will have to sign a declaration stating that he/she has no conflict of interest.

The contractors shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the contract (see Annex 6: Article II.3.1. of the draft contract). They must declare in the offer their contractual relations during the last five years with any stakeholders and/or companies directly involved in the programmes, projects and legislative activities, conducted or subcontracted by the Directorate-General Energy or the Directorate for Mobility and Transport, as appropriate, to be evaluated under this framework contract. During the validity period of this framework contract, tenderers must declare any changes in their situation regarding the contractual relations referred to in this paragraph.

Tenderers undertake to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the assignments and not already in the public domain. They shall continue to be bound by this undertaking after completion of the tasks (see annex 6: Article II.4).

The award of the specific contract will be conditioned by the availability of sufficient funds.

#### II.3.1. Reports and documents to be submitted

For specific contracts under this framework contract the specific contract shall determine the number, timetable and type of reports to produce. Contractors can expect the following reports:

- 1) an inception report ;
- 2) a progress report ( other type of report might be agreed in the specific contracts);
- 3) a final progress report (other type of report might be agreed in the specific contracts);
- 4) a new final progress report in accordance with the format established by Commission rules.

In principle, the deadlines set out in the specific contract cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties (except

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<sup>1</sup> Between 20 and 40 calendar days depending of the complexity of the subject

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.

All the agreed reports should be delivered in an electronic version (CD-ROM, DVD, USB flash drive or sent by e-mail), in PDF format as well as MS Word format or in case of data in Excel format. Additionally, the final report shall be delivered in hard copy version. The number of hard copies of the final report to be delivered will be defined in the Specific Contract. It shall not exceed 10. Each specific contract may establish other reports to be delivered. The reports are addressed to EU officials as an aid to decision-making. They have to be drafted in the language specified in the specific contract in a proper literate manner and must be fully comprehensible in terms of grammatical structure (complete sentences, punctuation, explanation of abbreviations, etc.), using clear and non-technical language for a non-specialised audience. Technical explanations shall be given in annexes.

### *II.3.2. Schedule for feedback concerning the reports*

The reports shall be sent to the Commission by the date fixed in the specific contract. The Commission shall be informed of any delay in meeting this deadline. The Commission will have the time specified in the Contract to make comments and to suggest any amendments to the reports.

On receipt of the Commission's comments, the Contractor will revise the report and the amended version will be sent to the Commission within the time specified in the Contract.

### *II.3.3. Change in the team*

For the specific contracts, changes or additions to the team initially proposed must be notified to the Commission in writing. The Commission will have the right to object to any changes of members of the team from those initially proposed. In case that the original team is no longer available, the Commission will have the right to cancel the specific contract.

## **II.4. Joint tenders**

In case of a joint tender submitted by a group of tenderers, these latter will be regarded as partners. If awarded the contract, they will have an equal standing towards the contracting authority in the execution of the contract.

The tenderers should indicate in their offer whether the partnership takes the form of:

a) a new or existing legal entity which will sign the contract with the Commission in case of award

or

b) a group of partners not constituting a new legal entity, who via a power of attorney (Annex5), signed by an authorised representative of each partner (except the lead partner), designate one of the partners as lead partner, and mandate him to sign the contract with the Commission in case of award.

If the contractor is a grouping or consortium of two or more persons, all such persons shall be jointly and severally liable to the Commission for the fulfilment of the terms and conditions of the contract. Such persons shall designate one of them to act as leader with full authority to bind the grouping or the consortium and each of its members. It shall be responsible for the

receipt and processing of payments for members of the grouping, for managing the service administration and for coordination. The composition and constitution of the grouping or consortium, and the allocation of the scope of tasks amongst the members, shall not be altered without the prior written consent of the Commission which can be withheld at discretion.

## **II.5. Subcontracting**

Subcontracting is permitted. Contractors must state in their offer what parts of the work, if any, they intend to subcontract, and to what extent (% of the total contract value), specifying the names, addresses and legal status of the subcontractors. Legal persons must produce a document containing a list of the professional qualifications of the subcontractor. Framework contractors may not choose subcontractors other than those mentioned in their bids (for the award of the framework contract or of a specific contract) unless they obtain the prior written authorisation of the contracting authority. In the terms of reference for a specific contract, the contracting authority may ask to the bidders to provide as part of their offer a declaration from the sub-contractors stating that they agree to be part of the project and perform the work assigned to them. The overall responsibility for the work shall remain with the contractor.

Contractors must ensure that Article II.20 of the draft framework contract (annex 6) can be applied to subcontractors. Once the contract has been signed, Article II.6 (annex 6) of the above-mentioned contract shall govern the subcontracting.

## **II.6. Terms of payment**

Payments related to specific contracts shall be made in accordance with the provisions specified in the draft framework contract (annex 6).

There will be no pre-financing. Interim payment(s) will take place only when intermediary deliverables (progress report) have been foreseen under the specific contract.

## **II.7. Inadequate performance**

If a Contractor completes work for one specific contract more than ten working days later than stipulated in the specific contract or is found to have executed an order inadequately, the Commission may automatically suspend, by registered letter, the award of any further work to the Contractor in question for a period of three months.

In general, should the Contractor fail to perform his obligations, the contracting authority may, without prejudice to its right to terminate the Contract, apply liquidated damages, reduce or recover payments in proportion to the scale of the failure.

With reference to penalties mentioned further under section IV.1.4., Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 10 % of the total value of the specific contract in question. That rate may be increased to 20 % in the event of a repeated infringement within five years of the date referred to in the first subparagraph.

Should it appear that a contractor is repetitively unable to make offer or its performance is repetitively of poor quality (non acceptance by the contracting authority of a deliverable after the 2<sup>nd</sup> presentation) or delayed, this will be considered as a breach of its obligations under the framework contract and the contracting authority may either suspend this framework contractor

for a given period from receiving any requests for services or, ultimately, terminate the framework contract in line with the provisions of the General Conditions.

Compensation and/or penalties foreseen under the Contract, whether for inadequate quality of work or delays in implementation, may apply cumulatively.

### III. FORM AND CONTENT OF THE TENDER

#### III.1. General

- Tenders can bid for the one or **several lots by separate tenders**.
- Tenders must be written in **one of the official languages** of the European Union and submitted in **triplicate** (one clearly marked "original" and two copies) as well as a copy of the offer on a CD-Rom. The attention of the tenderers is drawn to the fact that the majority of the deliverables requested under Specific Contracts will have to be submitted in English.
- Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled). 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.
- Tenderers must state their commitment to use economic models used by the Commission where feasible and appropriate.
- The original signature of the single tenderer's or lead partner's authorised representative) (preferably in blue ink) on the administrative identification form (Annex 1) shall be considered as the signature of the tender, binding the single tenderer or the group of partners to the terms included in the tender.

#### 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, 3, 4 and 5 as well other evidence required):

- 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/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm)

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

If the corresponding bank account of economic operators is already registered in the Commission's files they are not obliged to provide a new form on the condition that they confirm that no change in the information already provided as occurred. In case of doubt, we recommend submitting a new form.

- 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/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

In the case of a grouping, this form must be provided by all partners.

Economic operators already registered as a legal entity in the Commission's files (i.e. they are or have been contractors of the Commission) are not obliged to provide a new form on the condition that they confirm that no change in the information already provided as occurred, In case of doubt, we recommend submitting a new form.

- Declaration of honour with respect to the exclusion criteria and absence of conflict of interest (Annex 4)

An original must be filled and signed by (an) authorised representative(s) of all partners. Only sub-contractors with a part of the contract above 20% should the sign the form.

- Power of attorney (Annex 5) – in case of grouping only

An original must be filled and signed by (an) authorised representative(s) of each partner.

- All the supporting documentation for the purpose of checking the selection criteria (IV.2) have also be submitted under this section

The Commission reserves the right, however, to request clarification or 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*

The technical proposal should address all matters laid down in the specifications and should include models, examples and technical solutions to address problems raised in the specifications. Tenderers must present in their bids a proposal on the general methodology and the organisation of the work they will apply to the possible tasks under the specific contracts. The level of detail of the tender will be important for the evaluation of the tender.

The award criteria as set out in chapter IV.3 define those parts of the technical proposal to which the tenderers should pay particular attention as they will be the ground for the evaluation of the quality of the proposal.

### *III.2.3. Section Three: Financial proposal*

All tenders must contain a financial proposal. The tenderer's attention is drawn to the following points:

- Tenderers shall specify **one single maximum price per person-day** whatever the type of service and qualification requested. The person-day price must be a flat rate and **include all administrative costs (as backstopping costs, insurance, reports, communication costs, contractor's facilities,...), with the exception of travel, daily allowances and accommodation costs.** The amount quoted as the maximum person-day price will be considered as the **financial offer for the purpose of the evaluation of the price element in the award of the framework contract.** The maximum price per person-day shall be **valid for any services offered under a specific contract, but contractors may apply a lower price per person-day when bidding for a specific contract.**
- Price must be quoted **in euros**, including for 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.
- Price should be quoted **free of all duties, taxes and other charges**, i.e. also free of VAT, as the European Union and the European Atomic Energy Community are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union annexed to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community. Exemption is granted to the Union and to the Community 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 contracting authority is exempt from VAT.
- **Maximum price per person-day** shall be fixed and **not subject to revision** during the whole duration of the framework Contract.



#### IV. ASSESSMENT AND AWARD OF THE CONTRACT

Participation in tendering procedures is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement, under the conditions laid down in that agreement.

Where the Multilateral Agreement on Public Contracts concluded within the framework of the WTO applies, the contracts are also open to nationals of states which have ratified this Agreement, under the conditions provided for therein.

The procedure for the award of the contract, which will concern only admissible bids (see requirements in the invitation to tender, in particular, regarding the deadline for submission and the presentation of the offers and packaging), 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.

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.

##### IV.1. Exclusion criteria (exclusion of tenderers)

###### *IV.1.1. Exclusion criteria (Article 93 Financial Regulation<sup>2</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;
  - (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

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<sup>2</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)

- 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>3</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*

**1. In accordance with 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, where such advantage constitutes an illegal practice or involves corruption, either

<sup>3</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.

directly or indirectly, as an incentive or reward relating to performance of the Contract.

The Commission reserves the right to check the above information.

- b) **are guilty of misrepresentation** in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information.
- c) find themselves in one of the **situations of exclusion**, referred to in paragraph IV.1.1. above for this procurement procedure.

2. As mentioned under section III.2.1., the 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.

#### ***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>4</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 tenderer (or, for a consortium, total turnover of its members) must have an average annual turnover for the years 2008-2009-2010 of at least half of the amount mentioned under section II.1 for the lot concerned. 25% of this minimum turnover must be from the lead partner in the case of a consortium. If the tenderer submits an offer for several lots, the requirements are cumulative.

Evidence of this capacity shall be furnished on the basis of the following documents, for each partner:

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<sup>4</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.

- presentation of the profit and loss accounts for the years 2008, 2009 and 2010, where publication of this document is required under the company law of the country in which the economic operator is established. The figures to be taken into account must be clearly shown.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators may rely on the capacities of members of the consortium or of other entities.

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

1) The tenderer shall have successfully completed, as contractor, at least 2 studies in the field(s) related to the lot(s) concerned in the past 3 years representing together a total budget of at least 200.000€.

2) The tenderer shall have access to a pool of minimum 10 experts with very good communication and drafting skills in English and the following qualifications:

- for Lot 1: a university degree in law and 5 years' professional experience in Union law relating to energy or any related issue;
- for Lot 2: a university degree in economics and 5 years' professional experience in economic or statistical analysis.
- for Lot 3: a university science or technology degree and 5 years' professional experience in the fields of energy or any related issue.
- for Lot 4: a university degree in law and 5 years' professional experience in Union law relating to mobility and transport or any related issue;
- for Lot 5: a university degree in economics and 5 years' professional experience in economic or statistical analysis.
- for Lot 6: a university science or technology degree and 5 years' professional experience in the fields of mobility and transport or any related issue.

3) For all lots, the tenderer shall also have access to a multidisciplinary pool of experts (with legal, economic, technical education).

The following documentary proof is requested in order to check that the above criteria are fulfilled:

- A list of the principal services provided by the tenderer as contractor in the past three years and relevant to this tender, together with the indication of the price of the service, the period of work and whether the service was rendered to public or private clients (name of client to be indicated); a proof that the studies relevant to meet the criterion 1) have been carried out successfully has to be submitted (proof of payment of the full contract amount and/or certificate of satisfactory completion from the client). A reference cannot be used for several lots. In the case of framework

contracts, only specific contracts corresponding to assignments implemented under such framework contracts shall be considered.

- A report of the average annual staff in the last three years and the number of staff at senior and junior level, broken down by managerial level, data handling, surveying, research, economic, legal and statistical analyst staff.
- Detailed curriculum vitae of each team member proposed for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills. The CV's for all experts 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.
- Each expert not employed by the tenderer has to provide a declaration that he/she is willing to participate in the execution of the tasks defined in this framework Contract in the team of the tenderer.

### IV.3. EVALUATION OF TENDERS – AWARD CRITERIA FOR THE FRAMEWORK CONTRACT

The framework Contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender (quality/price ratio).

#### *IV.3.1. Evaluation of the technical offer*

The technical evaluation, weighted **100 points**, will be distributed between four sub-criteria as follows:

N°	Award Criteria	Maximum points/ Weighting	Thresholds
1	<b>Understanding of the objective of the tender</b> The tenderers must prove that they understand the objectives of the tender and of the issues involved, with special focus on the specificities of the fields concerned i.e. mobility and transport and/or energy and on the functioning of a framework contract with reopening of competition.	20	12
2	<b>Methodology of work</b> Quality of the methodologies and multidisciplinary approaches for undertaking the different tasks defined in the Terms of reference, methodology to collect and analyse data as demonstrated by two examples per lot concerned (based on previous experience or fictive example)	25	15

3	<b>Management and backstopping services</b> Overall framework contract management and work organisation to deliver the work in time : <ul style="list-style-type: none"> <li>• rapid response, timely availability of the specific expertise required</li> <li>• appropriateness and composition of the teams of experts made available for the different type of tasks; mechanisms to cover languages required</li> <li>• quality control, mechanism to guarantee continuous service</li> </ul>	40	24
4	<b>Completeness, clarity and presentation of the tender</b>	15	9
<b>Minimum total number of points necessary</b>			<b>70</b>

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 the evaluation of the financial offer.

#### ***IV.3.2. Evaluation of the financial offer***

The maximum price per person-day will be considered as the financial offer for the tender (as referred to under section III.2.3).

#### ***IV.3.3. Award***

The framework contract will be awarded to the tenderers which obtains the highest total points and which therefore are economically the most advantageous based on the award criteria set out under 3.1 and 3.2 above. The total points awarded to each tender will be as follows:

$$\begin{aligned}
&\text{Score for tender } x = \\
&\quad \frac{\text{price of lowest tender}}{\text{price of tender } x} \text{ multiplied by } 0.3 \\
&+ \\
&\quad \frac{\text{total quality score for award criteria for tender } x}{100} \text{ multiplied by } 0.7
\end{aligned}$$

All the bids which reached the minimum technical thresholds will be ranked according to the above formula. The number of awarded tenderers shall not exceed five per lot. The tender procedure may be cancelled for lots for which, an insufficient number of offers was received.

#### IV.4. AWARD OF SPECIFIC CONTRACTS

Once the framework contracts have been signed with the best ranked tenderers of each lot, the Commission, when the need arises, may send an invitation to submit offers for carrying out an individual assignment.

Offers must contain:

a. a technical part, detailing the methodology, the composition and skills of the team and the responsible team leader for the specific assignment taking into account of the technical award criteria as outlined in the present section;

b. a financial part, under the form of a **global price** ("all inclusive" offer).

For information, the composition of the global price shall be detailed as follows:

- the daily rate respecting the maximum price per person-day fixed in the framework contract (**can therefore be lower but it cannot be higher**) and total number of days (person/days) each member of staff will contribute to the project;
- the total labour costs (= person-day price x total of man-days);
- other categories of costs, including travel and subsistence costs, indicating the nature of the cost, the total amount, the unit price and the quantity.

The specific contract will be awarded according to the criteria given below, on the basis of the most economically advantageous tender (quality\*100000/price ratio).

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 award criteria** in their order of importance as weighted by percentage

N°	Award Criteria	Maximum points/ Weighting	Thresholds
1	<b>Understanding</b> This criterion serves to assess whether the tenderers have fully understood all the aspects of what is required for the specific contract, as presented in the request for services (terms of reference) .	30	18
2	<b>Methodology</b> The criterion serves to assess the existence of the necessary methodology to achieve the tasks and objectives required by the terms of reference.	35	21



3	<b>Project management and allocation of resources</b> This criterion relates to the quality of project planning, allocation of resources and organisation of the team to cope with and fulfil the obligations of the contract	25	15
4	<b>Completeness, clarity and presentation of the tender</b>	10	6
<b>Total number of points</b>		<b>100</b>	<b>70</b>

b) **Price:** Global price (including all categories of costs).

The Specific Contract will be awarded to the tenderer that offers the best quality\*100000/price ratio.

#### IV.5. INFORMATION FOR TENDERS

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

If a written request is received, the Commission will inform 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

- Annex 1: Identification of the Tenderer
- Annex 2: Financial Identification
- Annex 3: Legal Entity Form
- Annex 4: Declaration by the Tenderer (relating to the exclusion criteria)
- Annex 5: Power of attorney (mandate in case of joint offer)
- Annex 6: Draft framework service contract (with Annex I, II, III and IV to the framework contract)

# ANNEX 1

## IDENTIFICATION OF THE TENDERER

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

Call for tender SRD MOVE/ENER/SRD.1/2012-409

### Identity

Name of the tenderer

Legal status of the tenderer

Date of registration

Country of registration

Registration number

VAT number

Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance)<sup>5</sup>

### Address

Address of registered office of tenderer

Where appropriate, administrative address of tenderer for the purposes of this invitation to tender

### Contact Person

Surname:

First name:

Title (e.g. Dr, Mr, Ms) :

Position (e.g. manager):

Telephone number:

Fax number:

E-mail address:

### Legal Representatives

<sup>5</sup> For natural persons

**Names and function of legal representatives**  
and of other representatives of the tenderer who  
are authorised to sign contracts with third  
parties

**Declaration by an authorised representative of the organisation<sup>6</sup>**

I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.

Surname:

Signature:

First name:

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<sup>6</sup> This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

## **ANNEX 2**

### **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/contracts\\_grants/info\\_contracts/financial\\_id/financial\\_id\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm)

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

## ANNEX 3

### LEGAL ENTITY FORM

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

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

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

## ANNEX 4

### DECLARATION OF HONOUR WITH RESPECT TO THE EXCLUSION CRITERIA AND ABSENCE OF CONFLICT OF INTEREST

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

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

- in his/her own name *(if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator<sup>7</sup>)*
- or
- representing *(if the economic operator is a legal person)*

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

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

official address in full:

VAT registration number:

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

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

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<sup>7</sup> To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

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

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

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

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

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

Full name

Date

Signature

**ANNEX 5**  
**POWER OF ATTORNEY**

**mandating one of the partners in a joint tender as lead partner and lead contractor 8**

The undersigned:

Signatory (Name, Function, Company, Registered address, VAT Number)

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by Company 1, Company 2, Company N, and led by Company X, in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached
- 2) If the European Commission awards the Contract to the group of partners constituted by Company 1, Company 2, Company N, and led by Company X on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
  - (a) All partners shall be jointly and severally liable towards the European Commission for the performance of the Contract.
  - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
- 1) Payments by the European Commission related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: Provide details on bank address, account number.
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
  - (a) The lead partner shall submit the tender on behalf of the group of partners.
  - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
  - (c) The lead partner shall act as a single contact point with the European Commission in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the European Commission's express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the European Commission for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in ..... on dd/mm/yyyy

Place and date:

Name (in capital letters), function, company and signature:

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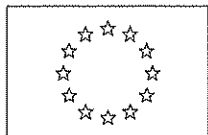
<sup>8</sup> To be filled in and signed by each of the partners in a joint tender, except the lead partner;



**ANNEX 6**  
**DRAFT FRAMEWORK CONTRACT**

Contract number: [complete]

Contract model of September 2011



**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT  
DIRECTORATE-GENERAL FOR ENERGY

Shared Resource Directorate  
The Director

**FRAMEWORK SERVICE CONTRACT**

CONTRACT NUMBER – [complete]

The European Union (hereinafter referred to as "the Union") and the European Atomic Energy Community (hereinafter referred to as "the Community"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr Bonucci, Director of the Shared Resource Directorate for the Directorates-General for Energy and for Mobility and Transport,

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]

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract.]

of the other part,

HAVE AGREED

the **Special Conditions** and the following Annexes and Specific Contract:

- Annex I**        (a)    General Conditions  
                     (b)    Model Specific Contract
- Annex II** –    Tender Specifications (Invitation to Tender No SRD MOVE/ENER/SRD1/2012-409 of [*insert date*])
- Annex III** –   Contractor's Tender (No [*complete*] of [*insert date*])

which form an integral part of this contract (hereinafter referred to as "the Contract" or "the framework 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 model specific contract (Annex I)
- The terms set out in the model specific contract (Annex I) shall take precedence over those in the other Annexes.
- The terms set out in the Tender Specifications (Annex II) shall take precedence over those in the Tender (Annex III).
- The terms set out in the Contract shall take precedence over those in the specific contracts.
- The terms set out in the specific contracts shall take precedence over those in the Requests for Services.
- The terms set out in the Requests for Services shall take precedence over those in the specific tenders.

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

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

- I.1.1 The subject of the Contract is a multiple framework contract with reopening of competition for the provision of services of legal, economic and technical assistance in the field of energy and mobility and transport policies.
- I.1.2 Signature of the Contract imposes no obligation on the Commission to purchase. Only implementation of the Contract through specific contracts is binding on the Commission.
- I.1.3 Once implementation of the Contract has commenced, the Contractor shall reply and execute the tasks in accordance with all terms and conditions of the Contract.
- I.1.4 The Contractor is selected for a multiple framework contract with reopening of competition between [~~complete~~] contractors.]
- I.1.5 The Framework Contract does not confer on the Contractor any exclusive right to provide the services described in Annex I to the Commission.

### **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 Under no circumstances may implementation commence before the date on which the Contract enters into force. Execution of the tasks may under no circumstances begin before the date on which the specific contract enters into force.
- I.2.3 The Contract is concluded for a period of 12 months with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4 The specific contracts shall be returned signed before the Contract to which they refer expires.  
  
The Contract shall continue to apply to such specific contracts after its expiry, but no later than 6 months after this date.
- I.2.5 The Contract shall be renewed automatically up to three times under the same conditions, unless written notification to the contrary is sent by one of the contracting parties and received by the other before expiry of the period indicated in Article I.2.3. Renewal does not imply any modification or deferment of existing obligations.

### **ARTICLE I.3 –PRICES**

- I.3.1 The price of services, whatever its nature, shall be calculated on the basis of a maximum fee rate of EUR ~~XXX~~ per person-day. The price indicated in the specific contract covers any fees payable to the Contractor in relation to the vesting of rights in the Union or the Community and where applicable the transfer of rights to the Union or the Community and any use of the results by the Commission.

The maximum amount of the Contract shall be ~~XXXXXX~~ EUR [*amount in figures and in word*].

**I.3.2** Prices shall be expressed in Euros.

## **ARTICLE I.4 – PAYMENTS AND IMPLEMENTATION OF THE CONTRACT**

### **I.4.1 Multiple framework contract with reopening of competition**

Within the number of working days specified in the request for services sent by the contracting authority to the contractors, the contracting authority shall receive the specific tender back, duly signed and dated. In the event of failure to observe these conditions the contractor shall be considered to waive his participation in the specific competition. The contracting authority may sign a specific contract with the contractor who has submitted the best specific tender on the basis of the award criteria set out in Annex II.

Within 15 calendar days of a specific contract being sent by the contracting authority to the contractor, the contracting authority shall receive it back, duly signed and dated. The period allowed for the execution of the tasks shall start to run on the date indicated in the specific contract.

#### **I.4.1. Interim payment**

The contractor shall submit an admissible invoice, indicating the reference number of the Contract and of the specific contract to which it refers, for an interim payment equal to 30 % of the total price referred to in the relevant specific contract.

Invoices for interim payment shall be admissible if accompanied by a progress report in accordance with the instructions laid down in the relevant specific contract.

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

Provided the progress report has been approved, the Commission shall have thirty days from the date of receipt of the relevant invoice to pay an interim payment

#### **I.5.2 Payment of the balance**

Within sixty days of completion of the tasks referred to in each specific contract, the Contractor shall submit an admissible invoice, indicating the reference number of the Contract and of the specific contract to which it refers, for payment of the balance.

The invoice shall be admissible if accompanied by the final progress report in accordance with the instructions laid down in the relevant specific contract.

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

Provided the final progress report has been approved, the Commission shall have thirty days from the date of receipt of the relevant invoice to pay the balance.

\*\*\*

*[For Contractors established in Belgium, the orders shall include the following provision: "En Belgique, l'utilisation de ce bon de commande vaut présentation d'une demande d'exemption de la TVA n° 450" or an equivalent statement in the Dutch or German language. The Contractor shall include 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 or to its implementation shall be made in writing and shall bear the Framework Contract and specific contract numbers. 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.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

### Commission:

European Commission  
Shared Resource Directorate MOVE/ENER  
Unit SRD1 - Financial Resources  
B-1049 Brussels

### Contractor:

Mr/Ms [complete]  
[Function]  
[Company name]  
[Official address in full]  
[fax number:]  
[e-mail:]

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

- I.8.1** The Contract shall be governed by Union law and, when the contracting Authority is the European Commission representing the European Atomic Energy Community"), also Community law complemented, where necessary, by the national substantive law of Belgium and by the national substantive law of Luxembourg, when the contracting Authority is a Commission service in Luxembourg.
- I.8.2** 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 or Luxembourg when the contracting Authority is a Commission service in Luxembourg

## **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 the Community and European Union law.

## **ARTICLE I.9 – USE OF RESULTS**

### **I.9.1 Modes of exploitation**

All studies, reports, materials, scientific work, documented data, database format and data produced within this Contract and for which the rights vest in the Union and in the Community and thereby the Union and the Community have acquired the ownership in accordance with Article II.10 may be used in the following way:

- i) distribution:
  - making available on internet
  - giving access on individual requests without right to reproduce or exploit, as provided for by Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents
  - publishing in paper copies, in electronic form as downloadable/non-downloadable file
  - specific contract may also further introduce:
    - (a) public presentation or display
    - (b) communication through a press information services
    - (c) inclusion in widely accessible databases or indexes
    - (d) other form (e.g. broadcasting)
- ii) storage:
  - in paper and electronic format
- iii) archiving in line with the applicable document management rules
- iv) modifications made by the Commission or by a third party:
  - making a summary
  - addition of new elements, paragraphs titles, bolds, legend, table of content, summary, graphics, subtitles, etc.,

- preparation as a presentation, slide-show, public presentation etc.
- translate in official languages of EU
- specific contract may also further introduce:
  - (a) modification of the content
  - (b) digitisation or converting the format for storage or usage purposes
  - translate in other languages if specified in the specific contract
  - (c) other modifications
- v) use for own purposes:
  - making available to the persons and entities working for the Commission or cooperating with it, including: contractors, subcontractors whether legal or natural persons, EU-institutions, agencies and bodies, Member States institutions
  - making a copy, reproducing
- vi) allow use of results by third parties:
  - for commercial or non commercial purposes,
  - without payment
  - specific contract may also further introduce possibilities of allowing
    - (a) assignment in full or in part
    - (b) unlimited in time
    - (c) against payment or against fulfilment of other conditions
    - (d) other use (e.g. licence)
- vii) for software to be developed within the Contract, the mode of exploitation will be specified in Specific Contract.

Where the Commission becomes aware that scope of modifications exceeds the scope envisaged in the Contract the creator shall be consulted. The creator will be obliged to provide his response within two weeks. He shall provide his agreement including any suggestions of modifications free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

The scope of rights to be transferred can be also decreased in the Specific Contract.

### **I.9.2 Pre-existing rights, intermediaries, creators' rights**

Where industrial and intellectual property rights, including rights of ownership and use of the Contractor and third parties, exist prior to the Contract being entered into, ("pre-existing rights") the Contractor shall establish a list which shall specify all pre-existing rights and disclose it to the Commission at the latest when delivering a final result.

All pre-existing rights to delivered results shall vest in the Union and in the Community and thereby under the terms of the Contract be effectively transferred to the Union and to the Community, as provided for in Article I.9.1.

The Contractor shall present relevant and exhaustive proofs of acquiring all necessary rights together with delivery of the final report at the latest. The latter should be fulfilled by presentation of the contractors', all subcontractors' intermediating in the transfer of rights and creators' statements prepared in accordance with Annex A1 and if requested in the Specific Contract the following possible information and documents:

- Name and version number of the software product
- Title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify origin easily
- Full identity of the author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer

- Copy of the licence to use the product or reference to it
- Agreement transferring the right to the product to the Contractor
- Text of the disclaimer notice
- Statements prepared in accordance with Annex [A2]

#### **ARTICLE I.10 – TERMINATION BY EITHER CONTRACTING PARTY**

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 2 months formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the services ordered before the termination date. Article II.14.4. applies accordingly.

#### **ARTICLE I.11 – CONTRACT CONCLUDED DURING STANDSTILL PERIOD**

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

This article is not applicable for contracts not covered by Directive 2004/18/EC and in cases indicated in Article 158a(2) of the rules for the implementation of the Financial Regulation (Regulation No 2342/2002).

#### **ARTICLE I.12 – INTER-INSTITUTIONAL CONTRACT**

I.12.1 This framework contract is inter-institutional. The Commission acts on its own behalf and on behalf of the institutions and bodies referred to in Article 185 of the Financial Regulation ("the contracting authorities") for which it has received power of attorney before framework contract signature. The Commission signs the Contract and possible amendments on behalf of itself and all other contracting authorities.

I.12.2 The Commission is the leading contracting authority responsible for the Contract, representing all participating contracting authorities. Each contracting authority is responsible for particular specific contracts they award.

I.12.3 In the event of the Contractor having a complaint in relation to the conclusion, execution or termination of an order form or specific contract, the Contractor remains bound to his obligations under the Contract and other specific contracts. Without prejudice to Article 1.7, the Contractor expressly commits not to compensate or suspend the execution of other specific contracts.

#### **ARTICLE I.11 – OTHER SPECIAL CONDITIONS**

##### **I.11.1 INADEQUATE PERFORMANCE**

Without prejudice to the Commission's right to terminate the Contract, if the Contractor completes work more than ten working days later than stipulated in the Specific Contract or is found to have executed a Specific Contract inadequately, the Commission reserves the right to suspend the Contract in accordance with Article II.13 and may exclude the Contractor from participation in up to three following competitions for an award of a Specific Contract under this Contract.



## ANNEX I

### **II – GENERAL CONDITIONS FOR SERVICE FRAMEWORK CONTRACTS**

#### **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 has 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.
- 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 at 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, 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 claim compensation or impose liquidated damages provided for in Article II.12.

## **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 sustained by the Commission in performance of the Contract, including in the event of subcontracting under Article II.6 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.

**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 unjustified 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.

## **ARTICLE II. 4 – CONFIDENTIALITY**

**II.4.1.** 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.4.2.** 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.5 - DATA PROTECTION**

**II.5.1** 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.5.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**II.5.3** 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.5.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

**II.5.5** 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 use 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.

## **ARTICLE II. 6 – SUBCONTRACTING**

- II.6.1 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.6.2 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.6.3 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.20.

## **ARTICLE II. 7 – AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties. An order form or a specific contract may not be deemed to constitute an amendment to the Contract.

## **ARTICLE II. 8 – ASSIGNMENT**

- II.8.1 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.8.2 In the absence of such authorisation, 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.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT**

- II.9.1 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 the Contract, in particular the identity of the Contractor, the subject matter, the duration and the amount paid. Where personal data is concerned, Article I.8 and II.5 shall apply.
- II.9.2 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 distribute or publish the documents or information supplied,

the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

**II.9.3** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by the Contractor shall require prior written authorisation from the Commission and, if so requested, shall mention that it was produced within a contract with the Commission. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

**II.9.4** 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. 10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY**

**II.10.1** A result shall be any outcome of the implementation of the Contract and provided as such by the Contractor.

A creator shall be any person who contributed to production of the result.

Pre-existing intellectual property rights, sometimes referred to as background technology, are any industrial and intellectual property rights which exist prior to the contract being entered into and include rights of ownership and use of the Contractor, the Commission and any third parties ("pre-existing rights").

It shall be a material term of the Contract and of the essence of the Contract that Contractors shall be under a duty to provide a list of pre-existing rights at the date of delivery of the final result the latest.

**II.10.2** The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be irrevocably and fully vested to the Union and to the Community, which may use them as described in the Contract. All the rights shall be vested on the Union and on the Community, from the moment the results were delivered and accepted by the Commission.

For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the Union and to the Community.

The payment of the fee under Article I.3 is deemed to include all forms of use by the Union and the Community of the results as set out in Article I.9.

The above vesting of rights in the Union and in the Community under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

**II.10.3** Any intermediary sub-result, raw data, intermediary analysis made available to the Commission by the Contractor cannot be used by the Union and the Community without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as self-contained result.

**II.10.4** The Contractor retains all right, title and interest in pre-existing rights not fully vested into the Union and the Community in line with Article I.9.2, and hereby grants the Union and

the Community for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results.

**II.10.5** The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Commission. This does not concern the moral rights of natural persons and rights referred to in Article II.10.4.

**II.10.6** The Contractor shall clearly point out all quotations of existing textual works made by the Contractor. The complete reference should include as appropriate: name of the author, title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify the origin easily.

**II.10.7** The Contractor shall clearly indicate all parts to which there are pre-existing rights and all parts of the result originating from external sources: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form).

For non-textual results or results provided in electronic form only, the description, instruction or information document shall list all parts coming from external sources: i) development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

**II.10.8** If the Commission so requires, the Contractor shall provide proof of ownership or rights to use all necessary rights to the materials referred to in Article II.10.7.

**II.10.9.** By delivering the results the Contractor confirms that the creators undertake not to oppose their names being recalled when the results are presented to the public and confirms that the results can be divulged.

The Contractor shall possess all relevant agreements of the creator and provide proof by way of documentary evidence.

**II.10.10.** By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he possesses the relevant rights or powers to execute the transfer. He also warrants that he has paid or has verified payment of all fees including fees to collecting societies, related to the final results.

**II.10.11.** The Contractor shall indemnify and hold the Union and the Community harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the Union's and Community's use of the works and in relation to which the Contractor has granted the Union and Community user rights.

## **ARTICLE II. 11 – FORCE MAJEURE**

**II.11.1** 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.11.2** Without prejudice to 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.11.3** 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.11.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **ARTICLE II. 12 – 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 per calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

*V* is the price of the relevant purchase;

*d* is the duration specified in the relevant order form or specific contract expressed in days

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. 13 – SUSPENSION OF THE CONTRACT**

Without prejudice to the Commission's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud the Commission may suspend execution of the Contract, pending order forms or specific contracts 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 shall as soon as possible give notice to the Contractor to resume the service suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, of the order forms or specific contracts, or of part thereof.

## **ARTICLE II. 14 – TERMINATION BY THE COMMISSION**

- II.14.1** The Commission may terminate the Contract, a pending order form or a specific 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 Community's or 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 under a pending order form or a specific contract has not actually commenced within fifteen days<sup>9</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;
- (l) when due to the termination of the contract with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

**II.14.2** In case of force majeure, notified in accordance with Article II.11, 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.14.3** 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.14.4 Consequences of termination**

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<sup>9</sup> This period can be modified in the Special Conditions depending on the nature of the contract.



In the event of the Commission terminating the Contract or a pending order form or specific 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 service. 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 execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

#### **ARTICLE II.14a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

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

#### **ARTICLE II. 15 – INVOICING AND PAYMENTS**

##### **II.15.1 Pre-financing guarantee**

Where required by Article I.4 or if the pre-financing is over €150 000, 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) 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 service rendered 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 guarantee shall be retained until the pre-financing has been cleared against interim payments or payment of the balance to the Contractor. It shall be released the following month or, in the absence of such clearing, four months after the issuance of a corresponding debit note. The cost of providing such guarantee shall be borne by the Contractor.

##### **II.15.2 Interim payments and payment of the balance**

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

At the end of each of the periods indicated in Annex II the Contractor shall submit to the Commission an invoice accompanied by the documents provided for in the Special Conditions.

If providing a progress 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 progress report.

Approval of the progress report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Where the Commission requests a new progress 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 progress report shall likewise be subject to the above provisions.

### **II.15.3. 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. 16 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.16.1** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

**II.16.2** 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 invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Commission may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

The Commission shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

**II.16.3** 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. 17 – TAXATION**

**II.17.1** 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.17.2** 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.17.3** 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.17.4** 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. 18 - REIMBURSEMENTS**

- II.18.1** Where provided by the Special Conditions or by Annex II, the Commission shall reimburse the expenses that are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.
- II.18.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.18.3** 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.18.4** 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.
- II.18.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.
- II.18.6.** Conversion between the euro and another currency shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union* of the day on which the expense was made or, failing that, at the monthly accounting rate established by the Commission and published on its website.

## **ARTICLE II. 19 – RECOVERY**

- II.19.1** If total payments made exceed the amount actually due 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.19.2** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.16.3. 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.19.3** 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 or the European Atomic Energy Community that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

## **ARTICLE II. 20 – CHECKS AND AUDITS**

- II.20.1** 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 of the last implementation.
- II.20.2** 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 of the last implementation.
- II.20.3** 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, or Parliament and Council Regulation (Euratom) no 1074/1999 where the Commission represent the European Atomic Energy Community, from signature of the Contract up to five years after payment of the balance of the last implementation.

# ANNEX I

## Model of Specific Contract

**SPECIFIC CONTRACT No [MOVE/ENER]201X/XX/XX**

(NB: to be completed with [DG] / [Unit] / [year]- [Vigie number] / [Sincom number])

**Under Service Framework Contract N° SRD MOVE/ENER/SRD1./2012-409**

[The European Union (hereinafter referred to as "the Union")] [The European Atomic Energy Community (hereinafter referred to as "the Community")] represented by the European Commission (hereinafter referred to as "the Commission")<sup>10</sup>, which is represented for the purposes of the signature of this contract by Ms/Mr [Name], Director in the Directorate-General for [Energy] [Mobility and Transport], Directorate [ ]

of the one part,

and

[official name in full]

[official legal form]<sup>11</sup>

[statutory registration number]<sup>12</sup>

[official address in full]

[VAT registration number]

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

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-a-vis the Commission for the performance of this contract.]

of the other part,

HAVE AGREED

### **ARTICLE III.1: SUBJECT**

**III.1.1** This specific contract implements Framework Contract No [complete] signed by the Commission and the Contractor on [complete date] [and renewed on [complete date]].

**III.1.2** The subject of this specific contract is [short description of subject]. [This specific contract relates to lot [complete] of the Framework Contract.]

<sup>10</sup> To replace by the relevant Agency where necessary

<sup>11</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>12</sup> 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.

III.1.3 The Contractor undertakes, on the terms set out in the Framework Contract and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the following tasks [:] [specified in Annex [complete].]

## **ARTICLE III.2: DURATION**

III.2.1 This specific contract shall enter into force on the date on which it is signed by the last contracting party] <sup>13</sup> [on [insert date] if it has already been signed by both contracting parties].

III.2.2 The duration of the execution of the tasks shall not exceed [complete] [days/months]. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from [the date of entry into force of this specific contract] [insert date]. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

## **ARTICLE III.3: PRICE**

III.3.1 The total price to be paid by the Commission under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.

This price also covers any fees payable to the Contractor in relation to the vesting of rights in the Union and in the Community and where applicable the transfer of rights to the Union and the Community and any use of the results by the Commission.

III.3.2 In addition to the price no reimbursable expenses are foreseen.

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[For Contractors established in Belgium, the provisions of this specific 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 (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.]

## **ARTICLE III.4: PAYMENTS**

Any request for payment relating to the performance of the present contract shall be sent to the following address:

European Commission  
Shared Resources Directorate MOVE/ENER  
Financial Management SRD3.  
DM 24 01/060  
B - 1049 Brussels

<sup>13</sup> As a rule the Commission signs last. In this case, the Contractor should be duly informed of the date on which the specific contract enters into force.

**ARTICLE III.5: USE OF RESULTS**

[Not applicable] or

[Details on the use of results to be inserted as allowed by the clause I.9 of the Special Conditions]

**ARTICLE III.6 : ADMINISTRATIVE PROVISIONS**

The persons responsible for implementing the services under this specific contract are:

For the Commission:

- Administrative and technical questions:

Mr/Ms [redacted]  
European Commission  
Directorate-General for [redacted]  
Unit [redacted]  
DM [redacted]  
B – 1049 Brussels

For the Contractor:

Mr/Ms [redacted]

All correspondence arising out of this specific contract shall be in writing and shall be sent to the persons in charge.

**ARTICLE III.7 : CHANGES IN THE TEAM**

Changes or additions to the team initially proposed must be notified to the Commission in writing. The Commission will have the right to object to any changes of members of the team from those initially proposed. In case that the original team is no longer available, the Commission will have the right to cancel the Specific Contract.

**ANNEXES**

**Annex A1** - Statement of Contractor concerning right to delivered result

**Annex B** – Terms of Reference of the request for service

**Annex C** - Contractor’s Specific Tender (no [complete] of [insert date])

**SIGNATURES**

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

For the Commission,  
[forename/surname/function]

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

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

Done at [redacted], [date]

Done at [Brussels/Luxembourg], [date]

In duplicate in English.

## Annex A1

### Statement of Contractor concerning right to delivered result

*[Option 1: general statement - low risk situations, e.g. limited use of the results]*

I, *[insert name of the authorised representative of the Contractor]* representing *[insert name of the Contractor]*, party to the Contract *[insert title and/or number of the contract]* warrants that the Contractor holds full right to the delivered *[insert title and/or description of result]* which is free of any claims, including claim of the creators who transferred all their rights and *[were fully paid]* *[will be paid as agreed within [complete] weeks from [delivery of this statement.] [receipt of confirmation of acceptance of the work].*

*[Option 2: detailed statement - higher risk situations, e.g. extensive use of the results]*

I, *[insert name of the authorised representative of the Contractor]* representing *[insert name of the Contractor]*, party to the contract *[insert title and/or number of the contract]* warrants that *[, except for [the parts listed in [complete by reference to the Tender Specification and/or offer]] [or list parts for which rights are not transferred],]*<sup>14</sup> the Contractor holds a right to the delivered *[insert title and/or description of result]* which is/are free of any claims of third parties.

Work was prepared by *[insert names of creators]* *[, except for [the parts listed in [complete by reference to the Tender Specification and/or offer]] [or list parts that pre-existed and for which rights are not transferred],]*<sup>15</sup> is *[original and]* free of rights of third persons. Creators transferred all their rights to the work (excluding moral rights of natural persons) to *[insert name of the entity that received rights from the creators]* *[through a contract of [insert date] [a relevant extract of which is] herewith attached.*

Creators *[received all their remuneration on [insert date]] [will receive all their remuneration as agreed within [complete] weeks from [delivery of this statement] [receipt of confirmation of acceptance of the work]. [The statement of the creators confirming payment is attached].*

Date, place, signature

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<sup>14</sup> In case not all IP rights were fully transferred

<sup>15</sup> In case parts of the work pre-existed and belonged to third parties



## Annex [A2]

### Statement of creator / intermediary in delivery

of the [*title of the result*]  
within the Framework Contract number [*complete*]  
Specific Contract No [*complete*]

concluded between the European Commission and [*name of the contractor(s)*]

I, [*insert name of the authorised representative of the intermediary*] representing [*insert name of the intermediary*] state that I am the right holder of: [*identify the relevant parts of the result*] [which I created] [for which I received rights from [*insert name*]].

I am aware of the above contract, especially Articles I.9, II.10 and point [*insert reference*] of the Request for Service and I confirm that I transferred all the relevant rights to [*insert name*].

I declare that [I received full remuneration.] [I agreed to receive remuneration by [*insert date*]].

[I also confirm that I do not oppose my name being recalled when the results are presented to the public and confirm that the results can be divulged.]<sup>16</sup>

Date, place, signature

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<sup>16</sup> Necessary for creators

# ANNEX B TO THE MODEL OF SPECIFIC CONTRACT

Specific Contract N° ~~200X/XX/XX~~

Under Service Framework Contract N° ~~XXXX~~

Terms of reference: task description, schedule, reports, reference documents.

# ANNEX C TO THE MODEL OF SPECIFIC CONTRACT

Specific Contract N° 200X/XX/XX

Under Service Framework Contract N° XXXX

Contractor's offer including CVs of the team members

