



EUROPEAN COMMISSION
DIRECTORATE-GENERAL ENERGY AND TRANSPORT

Brussels, 06/05/2006

INVITATION TO TENDER No. TREN/E2/150-2006

(open procedure)

Dear Sir/Madam,

1. The European Commission invites tenders for a service contract regarding the following project:
RAILTRAINING – Study on training needs and offers in the European railway area for the next 15 years

This invitation to tender follows the publication of the contract notice in OJEU **2006/S 87-091437 of 6/5/2006**

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

Tenders must be:

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

The tender must be sent by registered mail or by private courier, dispatched not later than 20/06/2006 (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

By registered mail

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

By private courier

European Commission
Directorate-General Energy and Transport - DM 28 - 0/110
Rue de Genève, 1
B-1049 Brussels (Evere)
Belgium

(b) **or delivered by hand**

Tenders must be delivered by hand at the **Central Mail of the European Commission** by 20/06/2006 **not later than 4 p.m.** (Brussels time), at the following address:

European Commission
Directorate-General Energy and Transport – DM 28 0/110
Rue de Genève 1
B-1140 Brussels (Evere)
Belgium

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

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

Call for tenders No. TREN/E2-150-2006
not to be opened by the internal mail department
DM 28 0/110 – Archives

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

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

4. Tenders will be opened at 10:00 a.m. on 30/06/2006, at 28 Rue De Mot (Directorate-General Energy and Transport, mail department, ground floor, office 110 1040-Brussels).
This opening session will be public. Each tenderer may be represented by not more than one person. At the end of the opening session, the Chairman of the opening committee will indicate the name of the tenderers and the decision concerning the admissibility of each offer received. The prices mentioned in the bids will not be communicated.
5. The specification, listing all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity and the draft contract are attached.
6. Tenders must be signed by the tenderer or his duly authorised representative and perfectly legible so that there can be no doubt as to words and figures.
7. Validity period of the tender: six months as from the final date for submission of tenders mentioned under point 2 above.
8. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification, in the draft contract and, where applicable, waiver of the tenderer's own general or specific terms and conditions. The terms and conditions are

binding on the tenderer to whom the contract is awarded during the performance of the contract.

9. Contacts between the awarding authority and tenderers are prohibited throughout the procedure except in exceptional circumstances and under the following conditions only:

Before the closing date for submission of tenders

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

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

Mr Heiko Kunst
European Commission
DM 28 - 4/88
B-1049 Brussels
Belgium

Fax (+ 32 2) 2920779
e-mail: heiko.kunst@cec.eu.int

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

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

After the opening of tenders

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

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

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

11. Tenderers will be informed of whether their tenders have been accepted or rejected.

12. The follow-up of your response to the invitation to tender will require the recording and further processing of personal data (i.e. name, address, CV, etc.). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. Unless if otherwise stated, replies to questions and personal data requested are necessary for the purpose of assessing your tender (according

to the specifications of the invitation to tender) and will only be processed within DG TREN as data controller, for this purpose. You may, upon request, have your personal data sent to you and rectify any inaccurate or incomplete particulars. Should you have any queries concerning the processing of your personal data, please address them to the entity acting as data controller within DG TREN. As regards the processing of your personal data, you have the right to bring the matter before the European Data Protection Supervisor at any time.

Yours faithfully,

(signed)

Enrico GRILLO PASQUARELLI
Director

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

Invitation to tender No. TREN/E2/150-2006 concerning
RAILTRAINING – Study on training needs and offers in the European railway area
for the next 15 years

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I. SPECIFICATIONS

I.1. Introduction

During the past decade, a new legal framework for European railways has been introduced to create a European Rail Area. As consequence, the requirements for professional competences necessary for the operation of trains and networks as well as for the maintenance of rolling stock and infrastructures have been subject to significant changes as new technologies have been and will be introduced. To achieve interoperability of European railways, Technical Specifications for Interoperability (TSIs) are providing essential requirements on technical standards and the harmonisation of operational rules. As consequence, staff needs to be trained in these new rules. In this context, a study on training and staff requirements in cross-border operations (Atkins 2002)¹ recommends the development of specific training modules e.g. for ERTMS/ETCS, common European operational rules and the common European safety approach. However the implementation of these recommendations is lacking.

Beside, legal requirements concerning professional competences are laid down in the Directives on the licensing of railway undertakings (1995/18/EC)² and on railway safety (2004/49/EC)³. In this framework, professional competence is an important precondition for a railway undertaking to obtain a license and a safety certificate.

This development will be enforced by the possible adoption of the draft Directive on the certification of locomotive drivers which has been proposed by the Commission on 3 March 2004 (COM(2004)142 final)⁴. This draft Directive aims at introducing a mechanism allowing a more precise definition of the skills and responsibilities in terms of training, assessment and recognition of qualifications of locomotive drivers and train crew responsible for safety aspects.

As a result of the opening of rail markets, new railway undertakings are emerging, which need qualified staff for their operations. As these newcomers do not have the size of the historical railway undertakings, most of them do not have own training facilities to provide the necessary professional training. They have to buy these services on the market, either from the training centres of the historical operators or from the few existing independent rail training centres. The European legislator has foreseen this potential obstacle for new market entrants and therefore, the Safety Directive 2004/49/EC defines in Article 13 the obligation for Member States to ensure the fair and non-discriminatory access to training facilities of certain staff. However, there are

¹ Study on “Training and staff requirements for railway staff in cross-border operations” prepared by Atkins for the European Commission (DG TREN), Final report 31/12/2002, available at the DG TREN website: http://europa.eu.int/comm/transport/rail/research/studies_en.htm

² Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings, *Official Journal L 143, 27/06/1995 P. 0070 – 0074, as amended by Directive 2001/13 of 26 February 2001, OJ L 75 of 15 March 2001.*

³ Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), *Official Journal of the European Union L 164 of 30 April 2004, p. 16 -39*

⁴ Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network, COM(2004)142 final of 3 March 2004

doubts if sufficient training offers could be provided in the next years. Furthermore, only little information is available on the present situation in the Member States.

Further to the requirements of Directive 91/440⁵, railway undertakings have to be managed according to the same principles that apply to any commercial company. This has led to the outsourcing or even disappearance of training facilities operated under the responsibility of the traditional railway undertakings. A report on Employment and working conditions in the European railway transport sector⁶ observed that ‘Providing a sufficient number of people with the rights skills could become a problem in the future since the number of apprenticeships in the state-owned companies has declined and new entrants are often weak in the area of training. However, reliable information on the issue is difficult to find’.

Another development that is likely to affect the railway sector, as many other sectors, is the impact of the ageing population and in particular the age pyramid of its labour force. The age structure of the labour force of the traditional (incumbent) railway undertakings is such that significant numbers of staff have to be replaced in the coming years⁷. This is expected to generate a significant amount of training needs for jobs within the railway sector.

To conclude, new requirements concerning professional competences of railways staff are leading to an increased need of training activities in the railways sector. Due to market changes (separation of railway undertakings and infrastructure managers; new market entrants), a strong demand for an open market for training services is likely to emerge. However, too little is known about the rapidly developing rail training market.

I.2. Purpose of the contract

For this study, substantial investigations are required within the rail sector. In particular, an inventory of existing offers of services related to training activity in the rail sector has to be established. Besides, information from Railway Undertakings and Infrastructure Managers on future training needs has to be collected.

In parallel, the current and future legal background (implementation of second railway package and legislation on interoperability) has to be analysed concerning its effects on requirements for professional competences.

To provide further analyses of the above mentioned problems and to provide the Commission with recommendations on future actions, the main tasks to be carried out are:

1. Analysis of training needs until 2020 deriving from technological and legal changes in European railways

A survey on the impact of the introduction of new technologies in European railways on the professional competences of rail staff and on the type and duration of training has to be carried

⁵ Council Directive 91/440/EEC of 29 July 1991 on the development of the Community’s railways, OJ L 237 of 24 August 1991, as amended by Directive 2001/12/EC of 26 February 2001, OJ L 75 of 15 March 2001 and Directive 2004/51/EC of 29 April 2004, OJ L 220 of 21 June 2004.

⁶ European Foundation for the improvement of living and working conditions: Employment and working conditions in the European railway transport sector, Dublin, September 2005.

⁷ As example: the age structure of the Belgian SNCB will lead to the retirement of 40% of its current staff members during the next 10 years, which needs to be replaced.

out. As following step, the subsequential future training needs have to be compiled. The following aspects shall be considered in this analysis (non-exhaustive list):

- Interoperability according to Directives 1996/48/EC⁸ and 2001/16/EC⁹ including the Technical Specifications for Interoperability,
- ERTMS/ETCS,
- Telematic applications for freight (TAF)
- Legal acts of the 2nd railway package, in particular Directives 2004/49/EC¹⁰ and 2004/50/EC¹¹
- Draft Directive on the certification of locomotive drivers which has been proposed by the Commission on 3 March 2004¹²
- Social partners agreement on the European licence for drivers carrying out a cross-border interoperability service¹³
- Directive 2005/47/EC on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector¹⁴

2. Analysis of training needs until 2020 deriving from market changes in European railways

The analysis aims at identifying new training needs which might emerge as consequence of the structural changes of European railways, in particular the separation of railway undertakings and infrastructure managers as well as the increasing importance of cross-border rail services. The development of the labour force of the traditional railway undertakings shall be taken into account as well, in particular the development of the future needs as the result of the expected retirements and the ‘demographical’ situation of the railway undertakings. The new market entrants with their specific training needs are another important issue to be investigated. In this

⁸ Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, *Official Journal L 235*, 17/09/1996 P. 0006 - 0024

⁹ Directive 2001/16/EC of 19 March 2001 of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system, *Official Journal L 110 of 20 April 2001*, p. 01 -27

¹⁰ DIRECTIVE 2004/49/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive)

¹¹ DIRECTIVE 2004/50/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system

¹² Proposal for a Directive of the European Parliament and of the Council on the certification of train crews operating locomotives and trains on the Community's rail network, COM(2004)142 final of 3 March 2004

¹³ Agreement concluded by the European Transport Workers' Federation (ETF) and the Community of European Railways (CER) on the European licence for drivers carrying out a cross-border interoperability service on 27 January 2004, <http://www.lokmann.no/ut/licence281003EN.pdf>

¹⁴ Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. *Official Journal L 195 of 27 July 2005*, p. 15 -17

context, information shall be compiled on the existence of own training centres or the use training services offered by other railway undertakings/ independent training centres.

For this analysis, a survey has to be carried out among various stakeholders including the social partners.

3. Analysis of existing rail specific training services

The contractor shall conduct a survey on the existing rail training centres (in particular legal status, basic economic figures, resources available, trainings offered on the market, prices). The survey shall quantify the presently available capacity of rail training facilities and the degree of their utilisation. Beside, the practical consequences of the separation of training centres for rail operation and infrastructure shall be assessed.

In addition, the accessibility/ conditions for new market entrants to rail training services shall be assessed regarding possible discriminations. Any problems and complaints related to the access conditions of such services shall be collected from various sources (e.g. regulatory bodies, national competition authorities, stakeholder survey, industry associations, etc.) and documented.

4. Evaluation of the current and expected future market for training services and assessment of the need for action

An evaluation of the current and future (until 2020) market for rail training services shall be carried out regarding the current and expected future demand and supply patterns. The need for action to ensure a sufficient provision of rail related services in view of facilitating the development of an integrated European rail transport market shall be assessed. This assessment shall be based on tasks 1, 2 and 3 and take account of the recorded and potential discrimination in the provision of rail related training services to newcomer or other railway undertakings.

Furthermore, potential synergy effects on the European rail training market shall be identified, e.g. regarding a possible co-operation of training centres by developing and offering common courses, common use of infrastructure like simulators or the co-ordinated specialisation of rail training centres.

Using the results of the market evaluation, the necessity for a harmonisation of rail training approaches at European level shall be examined.

The study shall address both, vocational and academic training at European and at national level. Beside basic training, in-service training for staff of railway undertakings, infrastructure managers and other relevant actors has to be considered. The study shall be confined to professional competences and training related to the operation of railways. In this context, all categories of personnel (such as train-drivers, other on-board staff responsible for train or passengers safety, staff responsible for rolling stock inspection, staff responsible for assembling trains, staff responsible for dispatching, control-command) should be covered.

The geographical coverage of the study shall be all Member States of the Community that have a railway system as well as Bulgaria, Romania, Norway and Switzerland.

The information gathering shall take into account existing studies, reports and other available information such as the Atkins study¹⁵ and the ongoing SERVRAIL¹⁶ study, that it will not duplicate.

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

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

A **kick-off meeting** will take place in Brussels, at the latest 10 working days following the signature of the contract, in order to settle all the details of the study, report, etc. to be undertaken.

Not later than four months after the signature of the contract a **second meeting** will be held in Brussels with the Commission and the contractor will be asked to present the draft interim report and discuss the comments of the Commission.

Within 20 working days after the submission of the draft final report the Commission will provide the contractor with its comments on the draft final report and arrange a **third meeting** which will be held in Brussels. The contractor will present the final report and discuss the comments of the Commission.

The contractor shall be prepared to present the findings to **one public workshop** in the Commission's premises in Brussels.

I.3.1. Interim reports

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

The interim report shall contain intermediate results of the analyses of training needs deriving from technological and legal changes/ market changes as well as of existing rail specific training services (tasks 1, 2 and 3).

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

I.3.2. Final report

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

¹⁵ Study on "Training and staff requirements for railway staff in cross-border operations" prepared by Atkins for the European Commission (DG TREN), Final report 31/12/2002

¹⁶ SERVRAIL – Study on the assessment of present and likely future conditions of providing rail-related services, ongoing study for the European Commission (DG TREN)

The final report shall contain all findings and conclusions of the four tasks described in section I.2 and proposals for recommended actions.

Within 20 working days after the submission of this draft final report the Commission will provide the contractor with its comments on the draft final report and the date of a third meeting in Brussels will be agreed in order to discuss the Commission's observations.

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

I.3.3. Report format and publication

10 copies of the reports in English shall be supplied in paper form and one copy in a format to be agreed during the kick-off meeting.

The Commission may publish the results of the study. For this purpose, the tenderer must ensure that there are no restrictions based on confidentiality and/or intellectual property rights expected from the third party. Should he intend to use the study data, which cannot be published, this must be explicitly mentioned in the offer.

I.4. Duration of the tasks

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

I.5. Place of performance

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

I.6. Estimate of the amount of work involved

The amount of work involved to carry out this contract is assessed at 150 man-days.

II. TERMS OF CONTRACT

In drawing up his offer, the tenderer should bear in mind the provisions of the draft contract attached to this invitation to tender (Annex 5). Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

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

II.1. Terms of payment

Payments shall be made in accordance with the provisions specified in Annex 5 of the draft service contract

II.2. Financial guarantees

Guarantee on pre-financing

For any pre-financing higher than 100,000 EUR, a financial guarantee equivalent to the amount of the pre-financing will be requested.

Depending on the financial situation of the tenderer, the Commission may ask for the financial guarantee for amounts lower than 100,000 EUR.

II.3. Subcontracting

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

Tenderers must inform the subcontractor(s) that Article II.17 of the contract (Annex 5) will be applied to them. Once the contract has been signed, Article II.13 of the above-mentioned contract shall govern the subcontracting.

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

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

III. FORM AND CONTENT OF THE TENDER

III.1. General

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

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

III.2. Structure of the tender

All tenders must include three sections i.e. an administrative, a technical and a financial proposal.

III.2.1. Section One: administrative proposal

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

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

Each service provider (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://europa.eu.int/comm/budget/execution/ftiers_fr.htm.

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

- Legal entities (Annex 3)

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

http://europa.eu.int/comm/dgs/energy_transport/legal_entities/index_en.htm.

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

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

III.2.2. Section Two: Technical proposal

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

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

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

III.2.3. Section Three: Financial proposal

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

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

- For each category of staff involved in the project, the tenderer must specify:
 - the total labour costs;
 - **the daily rates** and **total number of days** (man/days) each member of staff will contribute to the project;
 - other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity.

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

IV. ASSESSMENT AND AWARD OF THE CONTRACT

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

All the information will be assessed in the light of the criteria set out in these specifications. The procedure for the award of the contract, which will concern only admissible bids (see 2.3.1), will be carried out in three successive stages.

The aim of each of these stages is:

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

IV.1. Exclusion criteria (exclusion of tenderers)

To be eligible for participating in this contract award procedure, tenderers must not be in any of the following exclusion grounds¹⁷:

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

¹⁷ Article 93 of 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)

IV.1.1. Evidence to be provided by the tenderers

1. The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point (a), (b) or (e) above, the production of a recent extract from the judicial record 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.
2. The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such 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.

The documents referred to in paragraph 1 and 2 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.

IV.1.2. Other cases of exclusion

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

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

Tenderers must declare:

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

The Commission reserves the right to check the above information.

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

IV.1.3. Declaration

Tenderers must fill in and sign the forms attached to the specifications (Annex 4).

Where the bid involves more than one service provider (consortium or grouping), each provider must fill in and return the form, as well as the evidence specified in pt IV.1.1.

Subcontractors (when the subcontracted part exceeds 20% of the contract) must only provide the form in Annex 4.

Bids submitted by subcontractors which have not provided the abovementioned documents may not be taken into consideration.

The Commission reserves the right, however, to request any other document relating to the proposed tender for evaluation and verification purpose, within a delay fixed in its request.

IV.2. Administrative and financial penalties

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procedure will be excluded from all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

That period may be extended to three years in the event of a repeat offence within five years of the first infringement.

Tenderers or candidates who have been guilty of making false declarations will also incur financial penalties representing 2% to 10% of the total value of the grant being awarded.

Contractors who have been found to have seriously failed to meet their contractual obligations will incur financial penalties representing 2% to 10% of the value of the grant in question.

This rate may be increased to 4% to 20% in the event of a repeat offence within five years of the first infringement.

2. In the cases referred to in points IV.1, a), c), d), the candidates or tenderers will be excluded from all contracts and grants for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

In the cases referred to in points IV.1, b) and e), the candidates or tenderers will be excluded from all contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgment. Those periods may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

3. The cases referred to in point IV.1, e) cover:

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 participation 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.3. 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.3.1. Economic and financial capacity – References required

Tenderers must provide proof of their financial and economic capacity by means of the following documents: the balance sheets or extracts from balance sheets for the last three financial years, and a statement of overall turnover and turnover relating to the relevant services for the last three financial years.

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

IV.3.2. Technical and professional capacity – References required

To carry out the tasks described in section I.2 following educational qualifications and working experiences are required:

- Proven skills and at least 2 years of experience in carrying out studies and/or surveys covering several European countries.
- Proven skills, knowledge and at least 2 years of experience in transport economics, economic forecasting, European and national railway legislation and its implementation, in particular concerning the areas relevant for the study.

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

Tenderers should provide with their offer detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills.

The CV's shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.

IV.4. EVALUATION OF TENDERS – AWARD CRITERIA

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

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

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

N°	Award Criteria	Weighting
1	Understanding of the Commission's requirements	30
2	Methodology to be used and clarity of the proposed output	30
3	Composition of the study team	40
Total number of points		100

b) Total price

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

IV.5. INFORMATION FOR TENDERERS

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

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

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

V. ANNEXES

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria)
5. Draft Service Contract

ANNEX 1

IDENTIFICATION OF THE TENDERER

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

Call for tender TREN xx/xx/xxxx

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) ¹⁸	
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:	

¹⁸ For natural persons

Legal Representatives	
Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign contracts with third parties	
Declaration by an authorised representative of the organisation¹⁹ I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

¹⁹ This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

ANNEX 2

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

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

http://europa.eu.int/comm/budget/execution/ftiers_fr.htm.

FINANCIAL IDENTIFICATION

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

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

REMARKS :

BANK STAMP + SIGNATURE of BANK REPRESENTATIVE (Both Obligatory)

DATE + SIGNATURE of ACCOUNT HOLDER : (Obligatory)

ANNEX 3

Legal entity form

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

http://europa.eu.int/comm/dgs/energy_transport/legal_entities/index_en.htm.

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

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

ANNEX 4

DECLARATION BY THE TENDERER

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

1. In accordance with Article 93 of the Financial Regulation of the European Communities (Council Regulation 1605/2002 of 25.6.2002) published in Official Journal L 248 of 16 September 2002, I declare on my honour that I am not in any of the following situations which would exclude me from participating in this procurement procedure:
 - a) I am not bankrupt, being wound up or having my affairs administered by the courts, I have not entered into an arrangement with creditors, I have not suspended business activities, I am not the subject of proceedings concerning any such matters, and I am not in any similar situation arising from a similar procedure provided for in legislation or regulations;
 - b) I have not been convicted of an offence concerning my professional judgement by a judgment which has the force of res judicata;
 - c) I have not been found guilty of grave professional misconduct proven by any means which the contracting authority can justify;
 - d) I have not failed to fulfil obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which I am established or with those of the country or the contracting authority or those of the country where the contract is to be performed;
 - e) I have not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - f) as a consequence of another procurement or grant procedure financed by the Community budget, I have not been declared to be in serious breach of contract for failure to comply with my contractual obligations,
2. In addition, the undersigned declares on his or her honour:
 - a) that on the date of submission of the tender, the company or organisation I do represent and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; I undertake to inform the Commission without delay of any change to this situation after the date of submission of the tender.
 - b) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

Done at on.....

Name

Title

Signature:

ANNEX 5



EUROPEAN COMMISSION
DG
Directorate
Unit

DRAFT SERVICE CONTRACT

CONTRACT NUMBER – []

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr , Director in the Directorate-General for Energy and Transport, Directorate

of the one part,

and

[official name in full]

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

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

[official address in full]

[*VAT registration number*]

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

of the other part,

HAVE AGREED

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

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

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

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

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is [short description of subject].
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The duration of the tasks shall not exceed 10 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from *date of entry into force of the Contract*. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

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

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

I.4.1. Pre-financing:

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

- the receipt by the Commission of a duly constituted financial guarantee equal to at least EUR []
- the receipt by the Commission of a request for pre-financing with a relevant invoice

a pre-financing payment of EUR [] equal to 30 % of the total amount referred to in Article I.3.1. shall be made.]

I.4.2 Interim payment: **not applicable**

I.4.3. Payment of the balance:

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

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

provided the report has been approved by the Commission.

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

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

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

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

ARTICLE I.5 – BANK ACCOUNT

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

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

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

Commission:

European Commission
Directorate-General for energy and transports
[Directorate [complete]]
[Unit [complete]]
B-1049 Bruxelles

Contractor:

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

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1. The Contract shall be governed by the national substantive law of Belgium.

I.7.2. Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Belgium.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller within DG TREN without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the entity acting as data controller within DG TREN. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

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

[ARTICLE I.10 – OTHER SPECIAL CONDITIONS

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

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

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

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

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

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

ARTICLE II.2 – LIABILITY

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

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

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

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

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

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

II.3.3. The Contractor declares:

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

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

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing :

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

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

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

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

II.4.2. Interim payment:

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

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

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

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

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

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

II.4.3. Payment of the balance:

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

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

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

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

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

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

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

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

The Commission shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of

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

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

ARTICLE II.6 – RECOVERY

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

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

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

ARTICLE II.7 - REIMBURSEMENTS

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

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

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

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

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

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

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

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

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

ARTICLE II.9 – CONFIDENTIALITY

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

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

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

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

II.10.2. Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor

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

- II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.
- II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

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

ARTICLE II.12 – FORCE MAJEURE

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

ARTICLE II.13 – SUBCONTRACTING

- II.13.1.** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.13.2.** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.13.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

- II.14.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.
- II.14.2.** In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II.15 – TERMINATION BY THE COMMISSION

- II.15.1.** The Commission may terminate the Contract in the following circumstances:
- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
 - (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
 - (d) 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;
 - (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - (f) where the Contractor is in breach of his obligations under Article II.3;

- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months²⁰ of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

II.15.4. Consequences of termination:

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

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

On termination the Commission may engage any other contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.16 – LIQUIDATED DAMAGES

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

ARTICLE II.17 – CHECKS AND AUDITS

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

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

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

For the Commission,
[forename/surname/function]

signature[s]: _____

signature[s]:_____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

ANNEX I

Tender Specifications and Monitoring

The purpose of this Annex is to enable the Commission to conduct, throughout the duration of the Contract, an accurate appraisal of whether the Contractor is executing the tasks assigned to him in accordance with the provisions of the Contract.

So that the Commission can regularly identify the progress made in execution of the tasks in accordance with the Tender Specifications, appropriate monitoring, assessment, and supervisory procedures shall be set up. For these purposes, this Annex shall include all necessary details, in particular, where relevant, the following:

- (i) schedule of interim and final reports – terms for approval, structure and content (where provision is made for such reports and a specific annex is not necessary);*
- (ii) schedule of audits to be carried out in accordance with Article II.17 of the Contract.*

All details on Monitoring and Reporting are to be indicated and included in the Tender Specifications.