



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY AND  
TRANSPORT  
DIRECTORATE E



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Brussels, 18 August 2007

## INVITATION TO TENDER No. TREN/E1/55-2007

(open procedure)

Dear Sir/Madam,

1. The European Commission and the Swiss Confederation represented by the Swiss Federal Office of Transport invite tenders for a service contract regarding the following project:  
**Best Research on “Traffic Management Systems for Transalpine Road Freight Transport”.**

This invitation to tender follows the publication of:

- the contract notice in OJEU 2007/S 158-196409 of 18/08/2007.
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. You must, in addition, submit the technical proposal in PDF-format on a CD-Rom.

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 **1 October 2007** (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  
Avenue du Bourget, 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 **1 October 2007 not later than 4 p.m.** (Brussels time), at the following address:

European Commission  
Directorate-General Energy and Transport – DM 28 0/110  
Avenue du Bourget, 1  
B-1140 Brussels (Evere)  
Belgium

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

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

<p><b>Call for tenders No. TREN/E1/55-2007</b> <b><u>not to be opened by the internal mail department</u></b> <b>DM 28 0/110 – Archives</b></p>
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If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

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

4. Tenders will be opened at 10.00 h on 8 October 2007, 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 Günther Ettl  
European Commission  
DM 24- 2/48  
B-1049 Brussels  
Belgium

Fax (+ 32 2) 295 2165  
e-mail: [tren-e1-secretariat@ec.europa.eu](mailto:tren-e1-secretariat@ec.europa.eu)

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

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

For the European Commission:

*(signed)*

Enrico Grillo Pasquarelli  
Director

For the Swiss Confederation :

*(signed)*

Max Friedli  
Director of the Federal Office of Transport

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

**Invitation to tender No. TREN/E1/55-2007 concerning**

***Best Research on***  
***“Traffic Management Systems for Transalpine Road Freight Transport”***

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## **I. SPECIFICATIONS**

### **I.1. Introduction**

#### ***I.1.1. Declaration of Zurich concerning the improvement of road safety, in particular in the tunnels in the Alpine zone***

On 30 November 2001, in the presence of representatives of the European Commission and on the initiative of Switzerland, the Ministers of Transport of Germany, Austria, France, Italy and Switzerland adopted the “Declaration of Zurich concerning the improvement of road safety, in particular in tunnels in the Alpine zone”, in the light of serious accidents in the Alpine tunnels. Since then, three meetings of Ministers have taken place in order to consider the progress of the work and to adjust priorities, i.e. in Regensburg on 11 May 2004, in Sedrun on 14 November 2005 and in Lyon on 20 October 2006, when Slovenia joined the group as a member.

Having taken road safety issues as its starting point, the implementation of the declaration has proceeded to the stage of identifying measures to be coordinated between the signatory Alpine countries for regulating road traffic and encouraging a shift to an alternative mode of transport, with four main areas of work, one of them being

- the management and regulation of transalpine road freight transport.

On the occasion of the third Conference on 20 October 2006 in Lyon Ministers agreed to further strengthen the cooperation to permanently improve the safety of transalpine transport, to better cope with road freight transport, and to promote different types of infrastructure and alternative methods of transport, in particular by rail. In their conclusions the Ministers inter alia commissioned a study on “...the preconditions for the implementation of new systems for the regulation of Transalpine road freight transport...”. The complete paragraph which refers to the study reads as follows:

“Ministers decide to jointly finance a study regarding the type, the importance, the limits and the preconditions for the implementation of new systems for the regulation of transalpine road transport based on the following reservation system mechanism or “tradable transit permits” that have been developed in other sectors (environment, energy). The tender specifications will be elaborated jointly, without anticipating any conclusions. The final report of this study shall, if possible, be presented on the occasion of the next Ministerial Conference so as to enable Ministers to decide on further measures to be taken. In the mid-term review of the Transport White Paper, the European Commission mentioned the importance of such systems for the future, but without contemplating a specific study. Ministers hope that the European Commission will financially support this study to be effected with consideration of Alpine transport and traffic in Europe as a whole.”

Pursuing this ministerial mandate of Lyon 2006, the tender specifications have been elaborated without anticipating the conclusions of the next Ministerial Conference in 2008. The present tender specifications serve as a basis for the commissioning of a study, the final report of which will be presented at the Ministerial Conference in 2008 so as to enable Ministers to decide on further measures to be taken.

#### ***I.1.2. Organisation***

The follow-up of the Zurich Declaration is coordinated by the Steering Committee comprising representatives of its member countries and of the European Commission. The Steering Committee reports every two years to the Transport Ministers at the ministerial conference. For the period

2007/2008 Austria has been entrusted with the Presidency of the Committee. The meetings of the Steering Committee are held in Vienna. The Presidency also provides the secretariat of the Committee.

The coordination of the present study, including the organisation of the tender and the liaising with the contractor once chosen, has been assigned to the Advisory Board under the chairmanship of Austria. The Advisory Board holds its meetings in Vienna. The Advisory Board will represent the Steering Committee vis-à-vis the contractor.

### ***1.1.3. Existing transport policy framework and objectives***

**EU transport policy** has for a long time concentrated on providing mobility for the economy, businesses and people in an efficient and sustainable way. Creating an internal European transport market has been a target, focusing also on sustainable development and solving the environmental problems related to increasing transport demand. Rising levels of congestion, pollution and CO<sub>2</sub> emissions and lack of safety, notably in road transport, have been the main problems addressed in recent years.

Future EU transport policy needs therefore to provide the mobility for economic growth and social welfare while, in parallel, tackling the negative effects that the growing volume of traffic causes. The same objective was also addressed by the European Commission in its 2001 Transport White Paper, and in this context the term “sustainable mobility” was coined.

In June 2006, the European Commission adopted a mid-term review of the European Commission’s 2001 Transport White Paper (Keep Europe moving - Sustainable mobility for our continent) as an orientation for the future EU transport policy. In its review, the European Commission stated that the main goals of the White Papers of 1992 und 2001 are still valid. Next to actions foreseen in the 2001 White Paper, such as boosting rail and maritime connections for long distance freight transport, additional instruments will be needed to achieve these objectives. They include a freight logistics action plan; intelligent transport systems to make mobility greener and more efficient; a debate on how to change mobility of people in urban areas; an action plan to boost inland waterways; and an ambitious programme for green power in trucks and cars.

This mid-term review could therefore serve as a possible guideline for policies in the Alpine countries without prejudicing national legislation. For example, in point 6.3 of the mid-term review reference is made to smart charging:

“[I]n addition, where an increase in infrastructure capacity is not possible charging can help to optimise traffic. Fees may be modulated to take environmental impact or congestion risks into account, in particular in environmentally sensitive and urban areas. In such areas, other forms of capacity allocation could be used such as market exchanges of transit rights.”

Furthermore, possible guidelines for policies in the Alpine countries must be in conformity with the EU legal framework, such as Treaty principles (such as non-discrimination, free movement of goods, proportionality) and Directives/Regulations (e.g. Road charging Directive, Tunnel safety Directive, project and strategic impact assessment, noise, air and so on,) which combine different approaches and priorities at the European level. Also, the conclusions of the Commissions’ ongoing study on the internalization of external costs in the transport sector could lead to new perspectives in this field.

#### *Existing transport policy framework and objectives at the national level with regard to 1.1.2*

The Alpine countries (Germany, France, Italy, Slovenia, Liechtenstein, Austria and Switzerland) and the European Union signed the transport protocol to the Alpine Convention

on the protection of the Alps on 7 November 1991 and have reacted to the specific situation in the Alpine countries by adopting a wide variety of programmes and measures:

In **Austria**, a general transport plan and a national strategy for sustainable development as well as a strategy aiming at attaining the Kyoto objectives have been adopted. These three programmes are divided into measures allowing the objectives of the transport protocol to be reached.

In **France**, a national strategy for sustainable development has been adopted in 2003. This national strategy for sustainable development includes a programme of very practical actions in the field of transport (intended to separate economic growth from the environmental effects of transport), a health and environment plan (intended, in particular, to reduce diesel particle emissions), a noise pollution action plan (intended, in particular, to achieve sound proofing of homes), and a climate plan.

**Germany** completed its national strategy for sustainable development and adopted the Federal Transport Infrastructure Plan in 2003. This Federal Transport Infrastructure Plan aims, among other, at ensuring sustainable mobility compatible with the imperatives of the environment, and at reducing the negative effects on the environment. All projects, i.e. also those relevant to transalpine traffic, are, before their inclusion in the Federal Transport Infrastructure Plan, subject to a uniform evaluation according to the criteria relating to cost-benefit analyses, environmental protection and nature conservation and regional planning (including urban development).

In **Italy**, the national strategies are organized as a general transport and logistics plan (PGTL), which was adopted in 2001 and which favours transalpine and intra-alpine mobility. The PGTL is accompanied by transport plans at various local levels, preferably linked to local mobility. It aims at limiting the exponential growth of road traffic and its concentration to major routes. In March 2006 the Italian government's CIPE (Interministerial Committee for Economic Planning) also adopted a logistics plan prepared in January by "Consulta Generale dell' Autotrasporto e della Logistica".

In **Slovenia**, the Resolution on the Transport Policy of the Republic of Slovenia (Intermodality, Time for Synergy), which was adopted by the National Assembly at the beginning of 2006, defines – in terms of the starting points, vision, objectives and measures – the basic trends of a transport policy for the future. The main indicators of this transport policy originate in mobility, accessibility, the environment, safety, economic development, optimal exploitation of resources, intermodality/interoperability and a balance among transport systems.

In **Switzerland**, transport policy in the Alpine region focuses on a shift of freight from road to rail. The Swiss people have consented to this policy in several referendums. By building two new transalpine railway routes and by introducing a heavy-vehicle fee (HVF), Switzerland has taken important steps to move freight transport to rail in the past few years. In order to improve road safety after the fire in the St. Gotthard road tunnel, Switzerland has also developed the "Tropfenzählersystem" (drip count system) and launched several studies on future traffic management systems (reservation systems, Alpine Crossing Exchange).

## I.2. Purpose of the contract

In order to elaborate all necessary steps towards the identification of appropriate traffic management systems for transalpine road freight transport the following four step approach is envisaged:

1st step: “Best Research”: Search for applicable concepts

2nd step: Harmonisation of analysed concepts at the same scientific level, evaluation and comparison

3rd step: Ministers’ decision in autumn 2008

4th step: operational implementation of the models selected by Ministers (in-depth study)

The first two steps are subject of this invitation to tender:

### **Best Research on “Traffic management systems for Transalpine Road Freight Transport”**

According to the requirements laid down in chapter I.2.4, the study shall develop a “best research” assessment so as to:

- identify in sensitive and other feasible areas appropriate traffic management systems of allocating capacities, in order to reach
  - the general goals (maintenance of adequate and sustainable mobility, optimum guarantee of transport safety, increase in transport efficiency, i.e. optimum use of transport infrastructure, and reduction of negative impact on the environment)
  - specific goals (modal shift to sustainable modes, better use of transport infrastructure capacity, environmentally oriented improvement of vehicles, improvement of transport flows)
- describe the concepts systematically by specific criteria,
- give reasonable estimates for information not available,
- estimate impacts of the suggested measures,
- compare the concepts with a SWOT-analysis and
- finally, provide a „Best Research“ result and a harmonisation of the analysed models at the same scientific level.

The wording “**best research**” is used in this context to describe the process of searching, evaluating and assessing different concepts, and to describe the most suitable solutions for traffic management systems for transalpine road freight transport. This could also include a combination of the features of different systems to achieve an improved system.

The **concepts** taken into consideration will be rather different according to the status of implementation: They can vary from applications already put into practise to general ideas developed in studies.

Thus, the work of this project shall be designed along the following work packages:

#### ***1.2.1. Work package 1: Data Input***

The work package is aiming to take over key reference data from the awarding authority, to collect some additional studies and data from other sources and to consolidate all information in a way to fulfil the tasks of the contract in a most efficient way. Thus, the data are an important input for the evaluation of the different concepts which are carried out in the work packages. The way the data are treated and the concrete input for the work extracted from the different sources have to be documented in order to enable reproducing the data input according to scientific rules.

The key reference data placed at the contractor's disposal by the awarding authority are:

- The reference data base describing transport demand of Alpine crossing freight transport is the CAFT-Database (CD-ROM will be provided). CAFT data form the basic quantity structure for assessing transport impacts (e.g. amount of traffic carried, modal shifts) and the impacts directly related to transport quantities (e.g. environmental impact). They reflect the spatial interaction of road and rail traffic flows for every Alpine crossing in 1999 and 2004.
- ALPINFO (<http://www.bav.admin.ch/themen/verkehrspolitik/00501/01414/index.html>), describing the development of Alpine crossing transport,
- A forecast on the development of future transport demand.  
Starting from existing forecasts concerning transalpine freight transport and comparison studies, a survey of the overall transalpine freight transport volume broken down into the modes road and rail will be compiled by the awarding authority and delivered to the contractor.

This compilation will distinguish two horizons: a medium-term horizon (about 10 years in which transalpine railway capacities are not yet expected to increase substantially) and a long-term horizon (about 20 years assuming that the transalpine railway routes- which either are currently discussed or are partly implemented or which are being under construction- will be implemented).

- The “Report on the State of the Alps 2006”, coordinated by the permanent secretary of the Alpine Convention, giving among other a comprehensive picture on the situation of the environment and its affection by transport.
- Information provided by the final report, called “Traffic management systems for transalpine road freight” from 12 September 2006 in the framework of the implementation of Zurich Declaration.
- Information provided by the EU-Swiss transport observatory (as far as already available).
- Already available and adequate results of the MONITRAF-Project in the framework of INTERREG III/B/Alpine Space programme (<http://www.monitraf.org>), could be used as an input.
- An assessment of future exhaust emissions arising from the projected volumes of transport should be made by the Contractor. Emission factors should be taken from the Emission Factors Manual which is based on the results of the EU project ARTEMIS taking into account the development of the structure of the vehicle fleet (<http://www.trl.co.uk/ARTEMIS>).

If the bidder considers that one of these data sources is not adequate for carrying out the task, this has to be declared in the tender and alternative sources have to be stated.

Other studies or data relevant for carrying out the tasks of this contract shall be investigated by the contractor and taken into consideration, in particular:

- Studies analysing measures regulating the transport flow on the environment.
- Studies evaluation concepts which aim at shifting transport volume from road to rail or shifting transport volume to other modes of transport by detouring the Alps (e.g. by using maritime transport).

### ***1.2.2. Work package 2: State of the Art of Research & Implementation***

This work package consists

- initially, of the selection of appropriate concepts
- and then of the analysis of the selected concepts by defined criteria.

The selection should give an overview of state of the art research concepts for traffic management systems focussing on road freight transport. Even if there is a strong focus on Alpine freight transport, also concepts developed for other sensitive areas or even urban areas or concepts developed in economic sectors, such as tradable emission rights, shall be taken into consideration, as far as they could in principle also be applied in the Alpine region.

In particular, the following concepts which can be in principal divided into 2 “families” of systems (systems which refer to a limitation of transport capacity and systems only aiming at the management of traffic flows; see also the report called “Traffic management systems for transalpine road freight” from 12 September 2006) have to be taken into consideration in any case:

- Swiss concept of “Alpentransitbörse”,
- Swiss concept “Reservationsystems”,
- Austrian Study on Emission Trading (Akademie der Wissenschaften),
- the French concept of a system for toll modulation according to the time of the day,

In principle, theoretical concepts, developed in research and studies, and concepts, already implemented in operative systems, shall be considered.

The concepts to be selected are not restricted to the Alpine region but only concepts whose findings can be applied to the Alpine area should be presented. Possible environmental impacts should refer to the Alpine Convention area, while the economic impact should refer to the whole area of Alpine countries.

#### Important Notice:

- The concepts to be taken into consideration will have a different level of implementation (legal, practical and technical aspects of implementation, control mechanism, etc.). Some studies will have developed a detailed scheme of implementation; others will stay on a more general level.

- However, the evaluation of the studies has also to take into account possible problems and hindrances of implementation.
- An estimation of the feasibility of the implementation, including at least qualitative statements on investments and operational costs therefore has to be provided for those studies which have not developed a sufficient concept of implementation. These estimations will be based on the experience of the Contractor and will take comparable systems into consideration and should enable a comparison of the different studies. The development of detailed implementation schemes of the concepts considered is not part of this tender.

The concepts taken into consideration have to be described and classified at least by the topics listed below (within the tender, a proposal for a detailed list of indicators shall be given). The reason of this description and the classification is twofold: On the one hand it should provide a comparable overview of the different concepts, on the other hand it should act as an input into the evaluation procedure described in Work package 4 (Chapter I.2.4). Those items, which are used for the evaluation in Work package 3, have to be prepared in a way to enable an evaluative comparison of concepts (at least at an ordinal scale level).

- Status quo and current developments
  - e.g. determining the phases: planning, preparing, implementation, proofing, regular operation
- The principle idea of the concept
  - Purpose and scope of suggested measures: Classified
    - by the issue of limiting capacities (Number of vehicles, emission/immission ceilings) and
    - by the way the limited capacity is assigned (“first-come-first-serve”, trade, quota-schemes,...) and
    - according to the type of unrestricted capacity regulation
  - rules and procedure of establishing upper limits
- Organisational and operational concept, technical and operational questions, such as
  - Technical System description: installation and operation
  - Requirements for infrastructure, operation, vehicles, technical processes, ...
- Connection and integration of other modes
- Practicability, such as
  - The general feasibility, usability and acceptance by users
  - Possibilities for the enforcement
- Institutional and legal issues, such as

- Restrictions/exemptions/priorities
- Compatibility with European law and applicable terms of agreements and national rules
- Transferability of the system, from the technical and legal point of view
- Costs of investment, operation and administration

Concepts that are based on systems which have been already implemented in practice shall be explained by additional criteria:

- success and difficulties during
  - the implementation phase
  - and during the operational phase

### ***1.2.3. Work package 3: Impacts of the suggested measures***

This work package deals with impact assessment, both as regards selected concepts and their practical implementations.

The impact assessment has to include at least the following criteria: (Within the tender a proposal for a detailed list of indicators shall be given.)

- Impacts (benefits & losses) on traffic & transport conditions, such as
  - Maintenance of adequate and sustainable mobility (at the regional, supra regional level and transit),
  - Improved accessibility conditions,
  - Improved logistics at European level,
  - possible shifts to other modes of transport (modal split),
  - Possibility of detouring the Alps
  - Increase of transport safety and
  - Impact on prices and costs of road freight transport.
- Impacts (benefits & losses) on the quality of the environment and out of it resulting living conditions, such as impacts on
  - the capability of the ecological systems,
  - a preserving use of resources and
  - the quality of life and on the health of the population both in city regions and in rural areas;

- Impacts (benefits & losses) on the economic development of those countries which are mostly affected, in particular for each Member State of the Declaration of Zurich (and by indicating significant parameters), such as impacts on
  - the free movements of goods,
  - the macroeconomic welfare (transport sector and related sectors),
  - the regional welfare and equity of distribution (on a non-discriminatory basis and securing neutrality of competition),
  - Logistics and regional economics,
  - the macroeconomic employment and
  - state revenues;
- Impacts (benefits & losses) on social arrangement, such as impacts on
  - individual mobility,
  - regional cohesion and
  - socio-economic fairness.
- Compatibility with European legislation

At least a qualitative assessment of these criteria has to be carried out. However, as far as possible also quantitative approaches to identify the effects shall be applied. The concrete list of criteria and the implementation of the assessment methods have to be developed taking into account the goals of Work package 4.

In the case of traffic management concepts that aim to limit the overall volume of transport, the impact will depend on the degree of such limitations. The degree of limitation is an external quantity and does not depend on the type of concept. Concepts by this group should therefore be evaluated on the basis of scenarios. Generally, two scenarios should be prepared:

- The first scenario should be based on a quantitative restriction of HGV journeys. The Contractor should assume ceilings based on justifiable professional considerations within a realistic range (maximum, minimum) and in line with the objectives laid down in I.1.2 and its annex.
- The second scenario should take account of environmental standards in the Alpine area according to the relevant European legal foundations (Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management and Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air).

Ceilings defined in the scenarios are virtual operands and do not represent any agreed political manifestation of the will of the Alpine countries.

As it may be assumed that the definition of the upper limits within the scenarios will have a great impact on the results of evaluations, the evaluation of concepts should also explain what

impacts are due to the features of the individual concepts and what are due to the assumptions made in the scenarios.

In the case of traffic management concepts that do not aim at limiting the overall volume of transport the contractor shall work out relevant scenarios for relevant parameters (e.g. fees).

#### ***1.2.4. Work package 4: Comparison and total evaluation of the analysed concepts and implementations***

All concepts and implementations which have been selected and evaluated according to chapter I.2.2 have to be compared under the following aspects, based on criteria comparing the features of the different concepts (Work package 2) and the estimation of impacts (Work package 3). The impacts on each country of the Alpine region should be shown in terms of:

- Practicability (operational, technical and organisational practicability),
- Costs,
- Connection and integration of other modes,
- Impacts on the transport conditions (routes, transport enterprises, logistics, modal shift, quality of traffic flows),
- Impacts on the population and on the quality of the environment,
- Impacts on the economic development,
- Impacts on the social conditions of transport (legal provisions) and social arrangement,
- Transferability of the system, from technical and legal point of view.
- Economic impacts on the road freight transport sector

The method of comparison has to contain at least a SWOT – analysis, pointing out strengths and weaknesses of the different systems. The evaluation of the systems shall give an integrative overview of the different systems, as a main input for the following decision making process.

#### ***1.2.5. Work package 5: Key results of „Best Research“ and recommended course of action***

The key results of the other work packages shall be used to answer the following questions:

- Which concepts are most suitable to be implemented in the Alpine Region?
- What are the strengths and weaknesses of those concepts?
- What are the relevant hindrances?
- What timeframe is envisaged for the implementation of these concepts?

The stability of these answers has to be proved by sensitivity analyses that provide information regarding the reliability of the answers if the framework changes.

Based on these results, a general road map for further steps of the implementation shall be developed, concentrating on the question:

- Which further actions are necessary to implement the concepts?

The document presenting the results of Work package 5 has to provide support for the decision of the Ministers.

### **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 or Vienna at the latest 21 days following the signature of the contract, in order to settle all the details of the study, report, etc. to be undertaken.

- 2<sup>nd</sup> meeting, discussing the results of the interim report, at the latest 14 weeks following the signature of the contract.
- 3<sup>rd</sup> meeting discussing the results of the draft final report, at the latest 30 weeks following the signature of the contract.

#### ***I.3.1. Interim report***

The **interim report** showing progress of the work shall be submitted to the awarding authority at the latest ten weeks after the date of signature of the contract. The interim report has to contain the results of work package 1 and a proposal of concepts to be taken into consideration according to work package 2 and a workout of the methods to be applied, including application of the methods with a selected concept.

The interim report to be agreed with the awarding authority shall be written in English and an executive summary shall be translated by the Contractor into German, French, Italian and Slovenian and be submitted.

The awarding authority shall have 45 days from receipt to approve or reject the report. Within 20 days of receiving the awarding authority'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 awarding authority at the latest 24 weeks after the signature of the contract.

The awarding authority shall have 52 days from receipt to approve or reject the draft final report, and the Contractor shall have 20 days of receiving the Awarding authority's comments to submit additional information or a new final report.

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

14 copies of the reports in English shall be supplied in paper form and one copy in electronic form, either in MS Word or in HTML format.

The final report to be agreed with the awarding authority shall be translated by the Contractor into German, French, Italian and Slovenian.

The awarding authority 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 are 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 8 months. This period is calculated in calendar days from the entry into force of the contract.

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

The tasks will be performed on the Contractor's premises. However, meetings between the Contractor and the awarding authority may be held on premises in Brussels or Vienna.

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

The expected maximum value of the contract has been estimated at EUR 240,000 (exclusive of value-added tax).

## **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 awarding authority may, before the contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

### **II.1. Terms of payment**

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

## **II.2. Financial guarantees**

### **Guarantee on pre-financing**

For any pre-financing higher than 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 awarding authority may ask for the financial guarantee for amounts lower than 100,000 EUR.

A performance guarantee corresponding to 10% of the total value of the Contract shall be constituted by deduction from the interim payment. Release of the guarantee implies final acceptance of the services.

## **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 or the person heading the project, who will be, vis à vis the awarding authority, the only contracting party responsible for the performance of this contract. Tenders from a consortium of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member of the consortium or group. Each member must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria, selection criteria (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 tenderer (including subcontractor(s) or any member of a consortium or grouping) must complete and sign the identification forms in Annex 1 and also provide above-mentioned documents. However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the contract.*

- Financial identification (Annex 2)

The **bank identification form** must be filled in and signed by an authorised representative of the tenderer and his/her banker. A standard form is attached in Annex 2 and a specific form for each Member State is available at the following Internet address:

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

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

- Legal entities (Annex 3)

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

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

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

The awarding authority 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.

The tenderer's concrete ideas and concepts have to be explained within the tender to enable the assessment of the tenders. In particular, it has to contain

- a summary of the task, as it is understood from the bidders point of view,
- an overview, which concepts and systems (according to chapter I.2.2) at least will be considered and which attempts of identifying others will be done,
- a detailed description of the method that will be applied to fill the gaps concerning the implementation of concepts, proposed in more general studies,
- a detailed list of indicators to describe and evaluate the different concepts (according to chapter I.2.2) ,
- a detailed description of the method applied for the assessment of impacts (chapter I.2.3 including the information, which indicators will be assessed quantitatively) and
- a detailed description of the method applied for the total evaluation according to chapter I.2.4.
- a description of the organisation of work including measures of quality control.

### ***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, will be carried out in three successive stages.

The aim of each of these stages is:

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

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

###### ***IV.1.1. Exclusion criteria (Article 93 Financial Regulation<sup>1</sup>)***

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

- (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

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<sup>1</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)

- 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.

#### ***IV.1.2. Other cases of exclusion (Article 94 Financial Regulation)***

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

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

Tenderers must declare:

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

The awarding authority 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. Evidence to be provided by the tenderers***

When submitting their bids, each tenderer (including subcontractor(s) or any member of a consortium or grouping) shall provide a declaration on their honor, 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.

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:

1. The awarding authority 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.
2. The awarding authority 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 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.

When the subcontracted part is above 20% of the contract value, the subcontractor(s) must also provide the above-mentioned evidence.

The awarding authority 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.

**Remark:**

The bidders 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 Directorate General for Energy and 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 will specify in its offer the reference of the call for tender for which the documents have been provided.

***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 Community 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>2</sup>

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<sup>2</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, last amended by Commission Regulation (EC, Euratom) n° 478/2007 of 23 April 2007, OJ L 111 of 28 April 2007, p.1.

## **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 – References required***

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

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

### ***IV.2.2. Technical and professional capacity – References required***

#### 1) Educational qualifications

In addition to experience in the transport sector each member of the tenderer's team shall have a very good knowledge of the English language for the communication with the members of the Advisory Board; additionally the languages French, Italian, German and Slovenian must be represented within the tenderer's team.

#### 2) Working experience

Minimum five years experience in the field of transport planning, in carrying out research studies and in other fields (economics, environment and Community law).

3) Measures that the tenderers will take to guarantee the good execution of the tasks, i.e. proof of the existence of an access authorization to specific databases or the capacity to obtain this access should the contract be awarded to them.

4) List of the main services and tasks delivered during the last five years as well as related amounts, dates and beneficiaries with mention of the sector they belong to (private/public)

A reference list of relevant studies/projects carried out in the last 5 years needs to be included in the tender.

5) The part of the contract which the service provider intends to subcontract needs to be clearly specified in the tender.

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.3. EVALUATION OF TENDERS – AWARD CRITERIA

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

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

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

No.	Award Criteria	Weighting
1	<b>Methodology to be used and clarity of the proposed output:</b> It will be evaluated whether the proposed methodology is suitable, coherent and sufficiently detailed while being capable of effectively meeting the terms of reference.	30
2	<b>Understanding of the requirements made by the awarding authority:</b> clarity of the relevant statements in the tender and compliance with the requirements detailed in the tender specifications.	25
3	<b>Composition of the study team and distribution of work:</b> The general composition of the study team will be evaluated with account taken of the work within the study team; proven availability of the members of the study team and capacity to perform in accordance with a strict timetable	20
4	<b>The quality of the tender:</b> The clarity, accuracy, plausibility and transparency of the tender will be evaluated. Contents should be sufficiently detailed, precise and concise.	15
5	<b>Quality Management:</b> It will be evaluated whether the quality assurance measures proposed in the tender meet the terms of reference.	10
<b>Total number of points</b>		<b>100</b>

b) Total price

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

### IV.4. INFORMATION FOR TENDERERS

The awarding authority 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 awarding authority 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.E1/55/2007

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>3</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:	

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<sup>3</sup> For natural persons

<b>Legal Representatives</b>	
<b>Names and function of legal representatives</b> and of other representatives of the tenderer who are authorised to sign contracts with third parties	
<b>Declaration by an authorised representative of the organisation<sup>4</sup></b>	
I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

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<sup>4</sup> 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://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.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 :

<b>BANK STAMP + SIGNATURE of BANK REPRESENTATIVE</b> (Both Obligatory)
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<b>DATE + SIGNATURE of ACCOUNT HOLDER :</b> (Obligatory)
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## **ANNEX 3**

### **Legal entity form**

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

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

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

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

# ANNEX 4

## DECLARATION BY THE TENDERER

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

1. In accordance with Article 93 of the Financial 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 conduct by a judgment which has the force of *res judicata*;
  - c) I have not been found guilty of grave professional misconduct proven by any means which the contracting authority can justify;
  - d) I have not failed to fulfil obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which I am established or with those of the country or the contracting authority or those of the country where the contract is to be performed;
  - e) I have not been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
  - f) I am currently not subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation<sup>5</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 Community budget.
  
2. In addition, the undersigned declares on his or her honour:
  - a) that on the date of submission of the tender, the company or organisation I do represent and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; I undertake to inform the Commission without delay of any change to this situation after the date of submission of the tender.
  - b) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

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

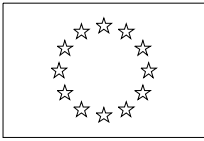
Name ..... Signature: .....

Title .....

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<sup>5</sup> Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

## ANNEX 5



COMMISSION EUROPÉENNE

DIRECTION GÉNÉRALE ÉNERGIE ET TRANSPORTS

DIRECTION E



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

## 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 Enrico Grillo Pasquarelli, Director in the Directorate-General for Energy and Transport, Directorate E,

and

the Swiss Confederation, represented by Mr. Max Friedli, Director of the Federal Office of Transport,

(hereinafter referred to as "the Contracting Authority")

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 Contracting Authority, 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 the carrying out of a study on appropriate traffic management systems for transalpine road freight transport.
- 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 **8 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 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 under the Contract by the Commission shall be EUR [1/7 of the total price] and the maximum total amount to be paid by the Swiss Confederation shall be EUR [6/7 of the total price] covering all tasks executed.
- I.3.2** The total amount referred to in the above paragraph shall be fixed and not subject to any revision.

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

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

#### **I.4.1 Swiss VAT:**

To the amounts payable by the Swiss Federal Roads Office mentioned below the Swiss VAT of 7.6% has to be added when making out the invoices.

#### **I.4.1. Pre-financing:**

Following signature of the Contract by the last contracting party, a pre-financing payment of EUR equal to 30 % of the total amount referred to in Article I.3.1. shall be made.

The request for payment shall be made as follows:

The Contractor makes out two invoices, one for an amount of EUR addressed to the European Commission, DG TREN, Directorate E, B-1049 Brussels, and one for an amount of EUR addressed to the Federal Roads Office, CH-3003 Berne.

#### **I.4.2 Interim payment:**

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

- an interim technical report in accordance with the instructions laid down in Annex I.
- the relevant invoices

provided the report has been approved by the Contracting Authority.

The Contracting Authority shall have 45 days from receipt to approve or reject the report. Within 20 days of receiving the Contracting Authority's observations, the Contractor shall submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Contracting Authority, an interim payment corresponding to EUR equal to 40 % of the total amount referred to in Article I.3.1 shall be made.

The request for payment shall be made as follows:

The Contractor makes out two invoices, one for an amount of EUR addressed to the European Commission, DG TREN, Directorate E, B-1049 Brussels, and one for an amount of EUR addressed to the Federal Roads Office, CH-3003 Berne.

#### **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 Contracting Authority.

The Contracting Authority shall have 45 days from receipt to approve or reject the report. Within 20 days of receiving the Contracting Authority's observations, the Contractor shall submit additional information or a new report.

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

The request for payment shall be made as follows:

The Contractor makes out two invoices, one for an amount of EUR      addressed to the European Commission, DG TREN, Directorate E, B-1049 Brussels, and one for an amount of EUR      addressed to the Federal Roads Office, CH-3003 Berne.

#### **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:

Contracting Authority:

European Commission  
Directorate-General for energy and transports  
Directorate E, unit E.1  
Mr. Günther Ettl  
B-1049 Bruxelles

and in copy to

Mr. Jean-Claude Schneuwly  
Swiss Federal Office of Transport  
CH-3003 Berne

Contractor:

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

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

**I.7.1.** The Contract shall be governed by Community law complemented, where necessary, by the national substantive law of Belgium.

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

#### **ARTICLE I.8 – DATA PROTECTION**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller within DG TREN without prejudice to possible transmission to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the 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 - SPECIAL CLAUSES**

Article II.1.5 of the General Conditions applies also to the Swiss Confederation.

## **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 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 or Swiss public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who executes 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 Contracting Authority;
  - the Contracting Authority 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 Contracting Authority any right arising from the contractual relationship between the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority. 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 Contracting Authority 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 Contracting Authority may impose penalties or liquidated damages provided for in Article II.16.

## **ARTICLE II.2 – LIABILITY**

- II.2.1.** The Contracting Authority 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 Contracting Authority.
- 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority in connection with performance of the Contract, the Contractor shall assist the Contracting Authority. Expenditure incurred by the Contractor to this end may be borne by the Contracting Authority.
- 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 Contracting Authority 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 Contracting Authority in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Contracting Authority 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 Contracting Authority, 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority's account is debited.

**II.5.2.** The payment periods referred to in Article I.4 may be suspended by the Contracting Authority 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 Contracting Authority 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 Contracting Authority shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

**II.5.3.** In the event of late payment the Contractor shall be entitled to claim interest, provided the calculated interest exceeds EUR 200. However, in the event of payment due before 1<sup>st</sup> January 2008, the Contractor may claim interest only within two months of receiving the payment. 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 Contracting Authority 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 Contracting Authority.

**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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority.

**II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Contracting Authority 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 Contracting Authority'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 Contracting Authority 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 European 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 Contracting Authority nor cause the Contract to be performed in fact by third parties.
- II.13.2.** Even where the Contracting Authority authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the

Contracting Authority 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 Contracting Authority 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 Contracting Authority.

**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 Contracting Authority.

#### **ARTICLE II.15 – TERMINATION BY THE CONTRACTING AUTHORITY**

**II.15.1.** The Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months<sup>6</sup> of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Contracting Authority;
- (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 Contracting Authority 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 Contracting Authority may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Contracting Authority may engage any other contractor to complete the services. The Contracting Authority 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.

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## **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 Contracting Authority's right to terminate the Contract, the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority's right to terminate the Contract, the Contracting Authority 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 Contracting Authority 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**

This contract drawn up in three original copies: one for the Contractor, and two for the Contracting Authority.

For the Commission,

Mr. Enrico Grillo Pasquarelli, Director TREN.E

signature:\_\_\_\_\_

Done at Brussels, [date]

For the Swiss Confederation,

Mr. Max Friedli, Director of the Swiss Federal Office of Transport

signature:\_\_\_\_\_

Done at Berne, [date]

For the Contractor,

[*Company name/forename/surname/function*]

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

Done at [place], [date]

## **ANNEX TO THE SERVICE CONTRACT**

### **Tender Specifications and Monitoring**

*The purpose of this Annex is to enable the Contracting Authority 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.*

*In order to enable the Contracting Authority to 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.*

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