European Commission
Enterprise & Industry Directorate General

CALL FOR TENDER

No: 112/PP/ENT/CIP/11/C/N06S001

TITLE

RAW MATERIALS: STUDY ON INNOVATIVE TECHNOLOGIES AND POSSIBLE PILOT PLANTS

Open procedure

TENDER SPECIFICATIONS

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1. TECHNICAL SPECIFICATIONS

1.1. DESCRIPTION OF TASKS

The specific tasks to be accomplished by the contractor shall be as follows:

(1) Identifying possible innovative plants and technical applications and describing their status of pre-commercial development. This shall also cover case-studies other than those directly related to the raw materials value chain, so long as they are transferable.

(a) Terminology: Scientific and technological innovation can be considered as a transformation of an idea into a new or improved product introduced on the market, or as a new or improved operational process used in industry or commerce, or as a new approach to a social service. Therefore, innovation consists of the successful production, assimilation and exploitation of new ideas in the economic and social spheres[1].The meaning given to the term "innovation" varies depending on the context and the precise meaning depends on the specific objectives for measurement or analysis. So far, international standards for data collection, such as those proposed in the Oslo Manual[2], have been developed for technological innovations. In the context of this study, the terms "innovation" and "innovative" not only refers to basic and applied research, development of new technologies and new equipment, facilities, machineries, methods and demonstrating installations; they also refer to technical processes and product innovations which also include, for instance the reorganisation of a process flow.
In the context of this study, pilot plants are seen as demonstration installations where technical processes can be demonstrated on a large scale. Experimental / laboratory installations need to be convincingly scaled up before they are brought to market. Those demonstration installations are seen as being at the forefront of market implementation and large scale industrial installations. Hence, this concept includes equipment, facilities and machinery for technical processes.
The OECD Frascati Manual[3] shall be used as the basic criteria for distinguishing between research and development (R&D) and other related activities.

(b) Fields to cover: exploration and exploitation of raw materials on land and in marine environments, such as computer-animated modelling and simulation, geo-engineering, microbiology, mining engineering, remote-controlled underground mining and related mechanical engineering, innovations for collecting, sorting, and re-use and recycling technologies including product and service design including efficient dismantling aimed at increasing the quantity and quality of recycled materials.

Specific attention shall be given to the following main areas:

- Exploration, and safe exploitation, including environmentally-sound mining technologies or extraction technologies;

[1] http://europa.eu/legislation_summaries/research_innovation/research_in_support_of_other_policies/n26021_en.htm.
[2] http://www.oecd.org/dataoecd/35/61/2367580.pdf.
[3] http://www.oecd.org/document/6/0,3746,en_2649_34451_33828550_1_1_1_1,00.html

- mineral processing and refinements technologies, solutions for high-grade recycling including accumulation, enrichment, collecting and sorting;

- alternatives / substitution for three critical raw materials; or those of a significant hazardous potential

(2) Proposing a choice of innovative technologies and techniques, which would be discussed together with the Commission in order to decide which ones should be analysed in detail, based on the above listed main areas.

(3) Mapping and matrix analysis of the state of play of cutting-edge technologies, technical developments and innovative solutions in the fields identified as possible innovation priorities (i.e. exploration, exploitation / extraction, processing, substitution, collecting…) or those solutions that would likely be transferable to these fields in order to provide jobs and wealth for society. The different categories of technological installations listed in the Frascati Manual 2002 need to be part of this analysis. Although "best available techniques" (BAT) are not necessarily the most advanced technologies, they will have to be included in the inventory of the matrix analysis. The potential of developments in basic research, which will most likely reach the pre-feasibility status by 2015, shall also be considered and a forecast of solutions of the future (time horizon of 2030) shall be indicated. The focus should be on innovative solutions, which have the potential for significantly-improving sustainability and supply of raw materials - in particular critical raw materials - along the entire value chain.

(4) The matrix analysis shall contain, in particular, information regarding:

- Which players/companies are (could be) involved?

- Which role do (could) they hold?

- Where (could) the innovative solution is (be) implemented?

- How has (could) it been (be) implemented?

- What are or could the impacts of these innovative solutions be (e.g. impact on resource efficiency - recovery rate of by-products, energy and water savings, competitiveness to other key societies)?

- What targets could realistically be achieved by 2020?

The mapping and matrix analysis shall provide an overview for all 27 EU Member States (EU, national, regional, local). New approaches undertaken outside of the EU should also be included. In addition, between two and five countries outside the EU shall be selected as case studies. In making this selection, the tenderer shall consider countries which provide a good basis for a first stocktaking analysis on innovative technological process, pilot plants and techniques in support of innovation in the required area. In addition, this selection shall include countries, whose economies are similar in nature to that of the EU, in that they strongly rely on sustainable management of raw materials and for which innovation is crucial or such in which sustainable mining with a high acceptance by the society take place. Following the signature of the contract, and in cooperation with the Commission, the contractor will revise the proposed list of countries and select at least 10 EU Member States and other relevant countries. The selection criteria will be based on political context,

economic performance, environmental/climate conditions and density of population of Member States. The selection needs to reflect the current situation in different Member States, as well as in the various broader regions (e.g. Barents Region, Mediterranean Region and Central Europe).

(5) Some manufacturers business will be at risk where they have difficulty gaining access to the materials they need for the technologies they use and/or produce. Hence, a Business-as-usual (BAU) situation, that is where supply remains at current levels, would in this case result in a slow down in the adaption of certain technologies, thereby reducing competitiveness. The effect of this on society at large needs to be analysed. Such analysis should include the treatment of questions such as: (a) are these technologies crucial to the EU economy and the global society? and (b) to what extent can less important (in a socio-economic sense) technologies more easily accept alternative materials or methods than can crucial technologies, and (c) if so, should such less important technologies be encouraged to "go alternative", thereby relieving supply for more crucial technologies.

(6) Based on this mapping, a list of promising innovative technologies, pilot plants and techniques (to be agreed with the Commission) should be proposed. This list should include at least three technologies for each of the key areas as identified for further analysis in detail as case-studies. In composing this list, due consideration should be given to the various conditions in Member States while taking into account the principal of subsidiarity, method developments and technological realisation of extraction, separation, refinement, purification, recovering and high-grade recycling of raw materials, including drilling technologies, by-products recovery, related chemical and biochemical engineering and energy and water savings.

(7) Specifications and criteria to evaluate potential innovative technologies and techniques shall be provided. These shall fully respect the suggested targets of the EU2020 strategy and in particular of the Innovation Union flagship initiative[4]. These means for example:

- Elaboration of (i) prioritisation criteria for the substitution of critical raw materials[5] (CRM) or those of negative environmental impact for specific applications; and (ii) indication of some priority cases. As an indicative and non exhaustive example, the criteria will expectedly include e.g. geological availability of Raw Materials (reserves and resources), commercial availability of Raw Materials (RM), projections up to 2020, environmental and safety considerations, processing and manufacturability of RM and related issues, need of CRM for high-added value products of major interest for EU society and/or industry, recyclability.

- Provision of an in-depth analysis covering a selection of a minimum of two cases per key area (as identified above), based on the bullet points above and agreed by DG ENTR. This includes an assessment of these selected pilot actions and identification of the relevant steps to be taken in order to realise these actions by 2020. Their advantages and disadvantages need to be carefully analysed.

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[4] The Europe 2020 is the EU's growth strategy for the coming decade. It sets out 5 targets for the EU in 2020 and developed 7 flagships as new tools to achieve those targets timely; http://ec.europa.eu/europe2020/index_en.htm.

[5] See EU Commission report 2010 on "critical raw materials to the EU economy", developed by an ad hoc group of the Raw Materials Supply Group.

- Development of indicators for evaluating these pilot actions, including methods used to estimate their impact on access, acceptance, sustainability and safety. These indicators need to be developed and agreed with Commission services. These indicators should at least cover the effectiveness and efficiency of these pilot actions in supporting innovation (e.g. identifying in a comparable form the costs and benefits), ease of implementation, transferability (with reference to EU and MS' competences in this area), applicability to identified innovation priorities, and the likely impacts on various stakeholder groups, on each segment of the value chain and on the environment. Their effect on competition should also be considered. This evaluation should provide for a good understanding of the limiting factors/weaknesses of existing practices, a cost-benefit-analysis of the pilot actions and any other key performance indicator calculations that the contractor may propose. Such indicators need to be clear and easy to understand. In order to recommend indicators questions to be addressed include: a) how to finance pilots, b) who should be involved in realising them, c) how to make them operational, d) which identification criteria are needed to give the label European Innovation Partnership (EIP) pilot plant, e) who will do the identification process, f) what are the market needs of these pilots and g) where could they be best located as they need to convincingly demonstrate progress made, and h) what is needed to verify them as show cases.

(8) The contractor shall answer specific questions, for example:

- In which area / step of the value chain the highest impact provided by innovation can be achieved, taking into consideration the impact this would have on job creation and on the public funds (including taxes) available. This should also include which area of the value chain needs specific attention and which area needs coherent action at political, societal and private / industrial level. In other words, in which area these innovations will most likely not happen without the support Innovation Partnership in the framework of EU 2020 Innovation Union or might develop towards different targets;

- What are the obstacles to the large scale realisation of those innovative technologies pilot plants and techniques (provide recommendations to overcome those hurdles);

- Outline the benefits to society resulting from these innovation activities;

- Outline the role of SMEs and other stakeholders in supporting innovation in the areas mentioned above;

- Formulate recommendations for applying good practices as evaluated (using the indicators defined above), in particular for innovations in the raw materials value chain that have been identified as priorities for the Innovation Partnership. These recommendations should also take into consideration the limitations faced by current practices and propose ways to overcome these limitations. This would involve making recommendations on the possible priorities for potential action.

1.2. BACKGROUND

The study is to be awarded in the context of the EU 2020 strategy[6] flagship initiative on Innovation Union[7] and on the basis of the European Raw Materials Initiative[8]. Therefore, it covers all aspects of the entire value chain of non-energy, non-agricultural raw materials and needs to take into account related environment directives on land and in the marine environment[9] were appropriate in this context.

The purpose of the proposed study is to support the European Commission in carrying out an analysis of potential pilot plants, technological processes and techniques which could demonstrably improve the availability of non-energy non-agricultural raw materials. This study should also serve to demonstrate the potential contribution such pilot plants could make to improve the competitiveness of the European economy. It should cover the entire raw materials value chain including exploration, extraction, processing, and substitution or respectively finding alternative solutions of these materials as well as recycling and land use planning.

This means that clear improvements should be shown in terms of economic feasibility and environmentally-sound management of raw materials (primary and secondary), management of downstream products as well improvements in resource efficiency and social impacts. In terms of content, the study will, in particular, identify and assess the desirability, feasibility and added value (cost and benefits, including acceleration of benefits to the civil society) of possible new innovative plants and technical applications in the areas mentioned above that may act as drivers for new business models that would provide a real advantage for Europe.

The study report will provide technical input to the future work of the Commission in relation to its policies and organisational structures involved in Innovation.

The Raw Materials Strategy

Non-energy raw materials are vital inputs for the EU's economy, and are particularly crucial for the development of modern environmentally-friendly technologies such as electric cars and photovoltaics. These are comprised of a number of very different materials such as aggregates and industrial minerals, but also metals used in high technology industries such as cobalt, platinum, rare earths, and titanium. However, with growing demand and with global raw material markets increasingly distorted by protectionist trade policies, maintaining sustainable access to these materials for EU industry and citizens is more and more difficult.

The quantity and composition of future demand will also be driven by the rapid diffusion of emerging and key enabling technologies. Demand emanating from foreseeable technical innovations may for example increase more than 20 times for gallium between 2006 and 2030, 8 times for indium and germanium and 7 times for neodymium, during the same period[10].

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6 COM(2010) 2020.

7 COM(2010) 546.

8 COM(2008) 699 and COM (2011) 25 and Staff working document; SEC(2008) 2741

9 Habitats Directive 92/43/EEC; Birds Directive 2009/147/EC, Natura 2000, EU legislation on mining waste e.g. Directive 2006/21/EC – see http://ec.europa.eu/environment/nature/legislation/index_en.htm; INSPIRE Directive 2007/2/EC.

10 See Commission report on critical raw materials and its annex V published 2010, http://ec.europa.eu/enterprise/policies/raw-materials/critical/index_en.htm

The EU's capacity to deploy these key enabling technologies, and ultimately remain globally competitive, depends on its access to critical raw materials, notably for advanced materials, photonics, nanotechnology and micro- and nano electronics.

Within the EU, exploration and extraction face increased competition for different land uses and need to comply with environmental regulations which may be more stringent than the regulations in place in other areas of the world. Key challenges to be tackled include:- decreasing overall demand by using material in a more efficient way, substituting or respectively finding alternatives for critical raw materials or environmentally harmful raw materials, increasing European supply and improving recovery of material from waste are key challenges.

On 2 February 2011 the European Commission adopted a new strategy document[11], which sets out targeted measures to secure and improve access to raw materials for the EU. Based on the first Communication on the Raw Materials Initiative (RMI) published in November 2008, this new strategy document further pursues and reinforces the RMI's 3 pillar-based approach to improving access to raw materials for Europe. These pillars are:

1. Fair and sustainable supply of raw materials from international markets
2. Fostering sustainable supply within the EU
3. Boosting resource efficiency and promoting recycling

This new strategy also covers important considerations relating to the stability and transparency of commodity prices.

In parallel to the Raw Materials Strategy, the Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP) Action Plan is also in place. It includes a series of proposals on sustainable consumption and production that will contribute to improving the environmental performance of products and increase the demand for more sustainable goods and production technologies. It also seeks to encourage EU industry to take advantage of opportunities to innovate in this area. The Council endorsed the Action Plan in its conclusions adopted on 4 December 2008. This Plan will be reviewed in 2012.

A range of policies at EU and national level already foster resource efficient and eco-friendly products as well as raise consumer awareness of these issues. The proposals complement these policy instruments and provide measures where gaps exist.

The Thematic Strategy on Waste

The Thematic Strategy on the prevention and recycling of waste is one of seven thematic strategies programmed by the 6th Environmental Action Plan[12]. The Thematic Strategy covers several fields including sustainable use of natural resources.

At the beginning of 2011, the Commission published a report on this Strategy[13.] This report reviewed progress made since 2005 in moving towards meeting the EU's long-term goal of becoming a "recycling society" by seeking to avoid waste and using waste as a resource. The best

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[11] Communication on commodity markets and raw materials; COM (2011) 25 .

[12] The Plan sets out the framework for environmental policy-making in the European Union for the period 2002-2012 and outlines actions that need to be taken to achieve them.

[13] COM(2011) 13 The progress report and its annex, which include detailed results for individual MS, is available from: http://ec.europa.eu/environment/waste/strategy.htm

example of progress was made in 2008 with the adoption of simplified and modernised waste rules. The revised Waste Framework Directive in particular introduced the 'life cycle thinking' approach into waste policy together with a binding 5-step waste hierarchy where prevention of waste generation is prioritised followed by re-use, recycling, then recovery and waste disposal as the last resort. A number of recycling targets were also introduced. For example, a recycling target for construction and demolition waste of 70% was included in the Directive.

In addition, the progress report highlighted the need for greater consistency between product design and waste policies to boost the use of recycled materials, to ensure the recyclability of the products placed on the EU market and to increase their reparability and durability.

Finally the report includes an analysis of future trends and proposes a number of new and strengthened objectives for waste and resource policy.

The Management of Waste from the Extractive Industry

Waste from extractive operations (i.e. waste from extraction and processing of mineral resources) is one of the largest waste streams in the EU. In order to allow access to the mineral resource to be mined, it involves removing materials, such as topsoil, overburden and waste rock, as well as the management of tailings remaining after minerals have been largely extracted from the ore.

Impacts relating to mining and processing activities can have lasting environmental and socio-economic consequences. Remedial measures are often extremely difficult and costly. Wastes from the extractive industries have therefore to be properly managed in order to ensure in particular the long-term stability of disposal facilities and to prevent or minimise any water and soil pollution arising from acid or alkaline drainage and leaching of heavy metals.

The legal framework covering how to manage this is addressed by the Directive 2006/21/EC on the management of waste from the extractive industries. The Directive refers to the concept of Best Available Techniques (BAT) for the management of tailings and waste-rock in mining activities. Activities are covered related to tailings and waste-rock management of ores that have the potential for a significant environmental impact. Mining techniques and mineral processing are only covered as relevant to tailings and waste-rock management. Formally-adopted reference documents are also known as BREFs[14]. It is the intention of the Commission to update the BREFs in the mid term, notably to provide for recent technological developments.

In addition, a proposed amendment of the Seveso II Directive 96/82/EC should include in its scope mineral processing of ores and, in particular, tailings ponds or dams used in connection with such mineral processing as soon as the thresholds of the Seveso Directive are met.

The possible Innovation Partnership on Raw Materials

Innovation is the cornerstone of the Europe 2020 strategy for smart, sustainable and inclusive growth. The Union's strategy for innovation is spelled out in the 'Innovation Union' flagship initiative, proposed by the European Commission in October 2010. It covers the whole research and innovation cycle, from support to basic science and major research infrastructures to the promotion of open markets for new innovative products, making full use of regulations, standards, public procurement and intellectual property protection.

[14] More information can be found following http://ec.europa.eu/environment/waste/mining/bat.htm

The EU raw materials strategy recognises that innovation policy, which covers demand-based and supply-side measures, can play a crucial role in achieving the main policy goals set out in this strategy. It states that there is a need for innovation along the entire value chain, including exploration, extraction, sustainable processing, eco-design, recycling, new materials, substitution, resource efficiency and land use planning. For this reason, the Commission is considering the launch of an Innovation Partnership on Raw Materials – in line with the 'Innovation Union' flagship initiative.

The proposed partnership should stimulate innovation

- to explore and extract more efficiently and safely;
- to re-use and recycle more;
- to find alternatives/substitutes for critical or environmentally/energy demanding raw materials;
- to be more resource efficient by decoupling resource use from growth, and;
- to mitigate the overall negative impact by global extraction and use of raw materials.

These goals shall contribute to the mid and long term security of raw materials supply, which is essential for the competitiveness of the EU industries. It will lead to increased resource efficiency in the EU and to the development of new European based recycling activities. In particular for the success of the latter the involvement of SMEs will be needed.

Three main approaches could be used by the Innovation Partnership in order to meet its overall objectives:

1. Support the development of innovative technologies and business models;
2. Support possible innovative regulatory action and/or cooperation with Member States;
3. Promote standardisation and public procurement instruments.

Work packages, have already been identified as possible priority areas, in the areas of technology oriented actions, regulatory framework conditions, knowledge-based and infrastructure and as a horizontal approach to all areas in the international framework[15]:

The role of innovative technological processes, pilot plants and techniques is to demonstrate innovation success.

Related work carried out by the Commission / Existing documentation and information

Tenderers should familiarise themselves with the work already undertaken by the Commission in order to avoid duplication and to add depth to the sources of information available. A short description of the key work already undertaken is provided below. An additional list of relevant documents is provided below.

The possible actions of a potential Innovation Partnership on raw materials were discussed during a first workshop on "Raw Materials for a Modern Society" held on the 28th of February 2011 with

[15] For further information on the workshop and for the description of the potential work packages and possible concrete targets by 2020 see http://ec.europa.eu/enterprise/policies/raw-materials/sustainable-supply/workshop/index_en.htm

different stakeholders, including those organised already under the umbrella of the relevant and related European Technology Platforms (ETP). As a follow-up to this workshop, several meetings were organised by these platforms to further discuss issues, including options for pilot plants able to demonstrate innovation by 2020. The European Technology Platforms, and in particular the Sustainable Mineral Resources (ETP-SMR) and SusChem Platforms, have been focal points for this particular topic on pilot plants and technology driven innovation. These groups will provide a first stakeholders' report on pilot plants which should be available by June 2011 and will be provided to the successful tenderer.

Documents and studies

- A comprehensive framework for the safe management of waste from extractive industries at EU level is now in place comprising the Directive 2006/21/EC, BAT reference documents and the Seveso II Directive. http://ec.europa.eu/environment/seveso/review.htm.

- Assessing Metals as Supply Chain Bottlenecks in Priority Energy Technologies; JRC Scientific and Technical Report, 2011.

- Communication on tackling the challenges in commodity markets and on raw materials, COM(2011) 25: http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/communication_en.pdf.

- Communication on the Raw Materials Initiative - Meeting our Critical Needs for Growth & Jobs in Europe, COM(2008) 699: http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc_id=894&userservice_id=1.

- Critical Raw Materials for the EU – Report of the Ad-hoc Group on defining critical raw materials; http://ec.europa.eu/enterprise/policies/raw-materials/files/docs/report_en.pdf.

- Directive 2006/21/EC on the management of waste from the extractive industries ("the mining waste directive") http://ec.europa.eu/environment/waste/mining/legis.htm

- Ongoing study on the assessment of Resource Efficiency Indicators and Targets.
  Objective: This study will make an appraisal of resource efficiency targets. In particular, the study should assess the possibility of setting targets and their likely impacts. The study should remain at the appropriate level of aggregation (whole economy, sectors, EU/country/region) and take fully into account the results of other studies, in particular those made in this framework contract.

- Reference Document on Best Available Techniques (BAT) for the management of tailings and waste-rock in mining activities; http://eippcb.jrc.ec.europa.eu/reference/

  The Commission has launched a study in January 2011 aiming at establishing guidance on inspection activities, exchange of information of rehabilitation of the closed and abandoned facilities and assessing the utility of updating the best available technique reference document. The final report of a designed consortium led by DHI Denmark (lead person: M Ole Hjelmar, oh@dhigroup.com) is expected by early 2012.

- Study on Supporting the thematic strategy on waste prevention and recycling, 2010 http://ec.europa.eu/environment/waste/pdf/Final%20Report%20final%2025%20Oct.pdf

Others relevant documents

- Frascati Definitions Limits to Experimental Development, Foundation for Research Science & Technology, 314005.1 - http://www.frst.govt.nz/files/Frascati%20Definitions.pdf.
- Frascati Manual 2002, proposed standard practice for surveys on research and experimental development, OECD 2002, ISBN 92-64-19903-9.
- Gheorgiou, L, Varet, J., Laredo, P (editors) (2011) Breakthrough technologies: for the security of supply of critical minerals and metals in the EU. Synthesis report. Farhorizon, 2011.
- Governance of innovation systems. Case studies in cross sectoral policy, Vol 3, OECD 2006, ISBN-92-64-03571-0
- Governance of innovation systems. Case studies in innovation policy, Vol 2, OECD 2005, ISBN-92-64-01344-X.
- Oslo Manual: Guidelines for Collecting and Interpreting Innovation Data, 3rd Edition, OECD 2005; ISBN: 9789264013100.
- Recycling rates of metals, a status report, UNEP 2011, ISBN 978-92-807-3161-3
- Science, Technology and Innovation Indicators in a Changing World; OECD 2007; ISBN 978-92-64-03965-0.
- Study on Rare Earths and Their Recycling, Final Report for the Greens/EFA Group in the European Parliament, Öko-Institut 2011.
- Chain approach in raw materials and waste, Final report III, European Partners for the Environment (EPE)
- Critical raw materials strategy December 2010 (US DOE report)
- Lanthanide Resources and Alternatives, A report for Department for Transport and Department for Business, Innovation and Skills UK, Oakden Hollins 2010 (United Kingdom)
- Material Scarcity; Stichting Materials innovation institute (M2i) 2009 (The Netherlands)
- Rare Earth Elements: The Global Supply Chain, Congressional Research Service 2010, 7-5700, http://opencrs.com/document/R41347 (USA)
- Rohstoffe für Zukunftstechnologien; Einfluss des branchenspezifischen Rohstoffbedarfs in rohstoffintensiven Zukunftstechnologien auf die zukünftige Rohstoffnachfrage; IZT and ISI Fraunhofer, 2008 (Germany)
- Scarcity of Minerals, The Hague Centre for Strategic Studies 2009 (The Netherlands)
- Study into the feasibility of protecting and recovering critical raw materials through infrastructure development in the south east of England. Final report, Environment Agency, 2011 (United Kingdom)
- Study on "special metals", Swedish GeoSurvey (Sweden): http://www.sgu.se/dokument/service_sgu_publ/perpubl_2011-1.pdf

1.3. REPORTS AND DOCUMENTS

The Contractor is to provide the required reports and documents in accordance with the conditions of the standard service contract appended in Annex 6.2.

The contractor shall deliver different reports at various key stages of the process:

- Inception report, detailing the approach and first working assumptions;
- Monthly brief status reports summarising the project performance and draft deliverable;
- Matrix analysis;
- First interim report; including final matrix analysis's;
- Second interim report;
- Draft final report,
- Final report, including a 2-3 page summary of the main findings, conclusions and recommendations to be provided in English, French and German.

All required reports have to be drawn up in English of publishable quality and delivered both in paper and electronic form. All reports have to be submitted electronically (Microsoft Word format) to the functional mailbox of DG ENTR/G3, ENTR-METALS-MINERALS-RAW-MATERIALS@ec.europa.eu.

The contractor must ensure that all reports under the contract are clear, concise and comprehensive. Each report must focus and clearly report what is new, the status of any findings/conclusions/recommendations (e.g. whether they are tentative or more final) with clear supportive arguments and examples, any problems encountered and how they will be surmounted, and the next steps and timetable.

<u>The timetable for delivery of the different reports shall be as follows:</u>

1. As the contract is foreseen to start on the 1st of January 2012 the **kick-off meeting** will take place within this month.
2. Not later than in the calendar week 8 of 2012, an **inception report** will be delivered. It will specify the detailed work programme and planning for the study and describe the methodological approaches and working assumptions to be used for the tasks defined. The report will also identify any additional needs. More specifically, it should provide for a list of proposed countries to be analysed, in addition to EU level, which will be subject of approval by DG ENTR. It shall include a preliminary list of innovative technological process, pilot plants and techniques and identified documents that will require analysis. The inception report will also provide for an initial list of people to be contacted, among EU, national, regional or local officials and the main beneficiaries of suggested innovative technological processes, pilot plants and techniques in the raw materials value chain to the society. This document should be adapted within two weeks following the reception of the Commission services' comments.

3. Not later than in the calendar week 14 of 2012: a **matrix analysis** will be delivered. It will present the preliminary findings of the stocktaking exercise, including the first results of the interviews and of the analysis and comprehensive map (matrix analysis) of innovative actions in place which have a high potential to make significant impact but need to be promoted or high potential ideas which in a pre-feasibility and feasibility status. The Commission will discuss those findings with the contractor during a **meeting with selected team members**. Not later than two weeks after the delivery, the Commission will provide comments and the contractor will adapt and revise as needed.

4. Not later than in the calendar week 19 of 2012: a **first interim report** will be delivered. It will present the findings of the matrix analysis of innovative actions in place which have a high potential to make significant impact but need to be promoted or high potential ideas which are in a pre-feasibility and feasibility status. Based on these findings and the comments of the Commission service, it will propose a ranged list of high potential innovative technological processes, pilot plants and techniques to be further analysed. It will also propose a detailed list of indicators to be used in the further assessment of the proposed innovative technological processes, pilot plants and techniques. It will raise any problems encountered with sufficient information to permit reorientation if appropriate and required. It will give clear indications and detailed planning of the work to be carried out during the rest of the period of completion of the tasks. It will be discussed with the Commission during a **first progress meeting** within two weeks after the delivery; the Commission will provide comments on the document within 2 weeks after the progress meeting. On receipt of the Commission's comments the Contractor will revise the report and the amended version will be sent to the Commission within 2 weeks.

5. Not later than in the calendar week 34 of 2012: the **second interim report** will be delivered to the Commission. It will include (in addition to all the above elements), the final results of the stocktaking exercise, the results of the assessment of the high potential innovative technological processes, pilot plant and techniques. Based on this assessment of current practices or of possible new practices to overcome their limitations, it will provide for a first set of recommendations as to which good practices could be applicable to the subject of this study (innovations along the raw materials value chain). It will give clear indications and detailed planning of the work to be carried out during the rest of the period of completion of the tasks. It will be discussed with the Commission during a **second progress meeting** within two weeks after the delivery; the Commission will provide comments on the document within 2 weeks after the progress meeting. On receipt of the Commission's comments the Contractor will revise the report and the amended version will be sent to the Commission within 2 weeks.

6. Not later than in the calendar week 45 of 2012: a **progress meeting** will take place in order to discuss the preparation process of the final draft report and further deliveries/ presentations.

7. Not later than in the calendar week 4 of 2013: the **draft final report** will be delivered to the Commission. Based on the assessment of the potential innovative technological processes, pilot plants and techniques, it will include (in addition to all the above elements) final factually based conclusions and recommendations. It shall be accompanied by an executive summary of not more than three pages. It will be discussed with the Commission during a **progress meeting** within four weeks of the delivery.

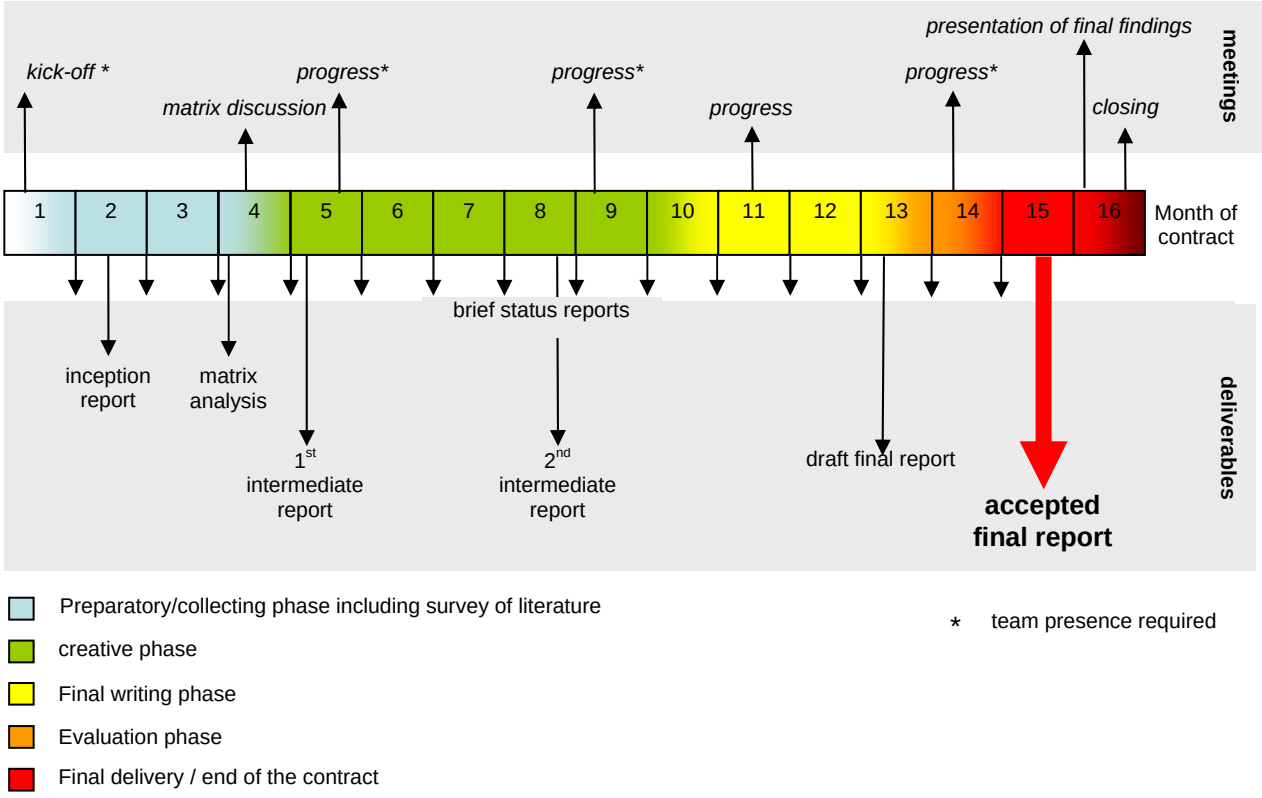
8. Not later than in the calendar week 13 of 2013: the **final report and the executive summary** has to be of publishable quality and should be delivered both in electronic and in paper form (5 copies). The executive summary has to be delivered in English, French and German. The report shall be drafted in a proper literate manner and must be fully comprehensible in terms of grammatical structure (complete sentences, punctuation, explanation of abbreviations, etc.). Technical explanations should be given in annexes.

   The contractor will also provide a PowerPoint presentation of the main elements of **the final report** in a DG ENTR-approved format.

   On receipt of the Commission's comments the Contractor will revise the report taking into account the Commission's comments; and the amended version will be sent to the Commission within four weeks.

9. By the calendar week 18 of 2013: the contract ends and all deliverables shall be complete in full respect of the contract, including personal presentations of the final findings to the Commission and a wider audience (selected by the Commission).

The Commission decides on the dissemination of findings and conclusions and its related materials produced under this contract. For these purposes the Contractor must ensure that there are no restrictions based on confidentiality and/or intellectual property rights expected from a third party.



2. CONTRACTUAL CONDITIONS

2.1. NATURE OF THE CONTRACT

This is a service contract for carrying out an analysis of potential pilot plants, technological processes and techniques which could demonstrably improve the availability of non-energy non-agricultural raw materials.

2.2. STARTING DATE OF THE CONTRACT AND DURATION OF THE TASKS

This specific contract shall enter into force on the date on which it is signed by the last contracting party.

It is expected to be signed in December 2011

The duration of the tasks shall not exceed 16 months.

The execution of the tasks may not start before the contract has been signed. The period of execution of the tasks may be extended, only with the written agreement of the contracting parties, before the end of the period originally stated in the contract.

2.3. TERMS OF PAYMENT

Payments shall be made in accordance with Articles I.3, I.4 & II.4 of the draft service contract (Annex 6.2).

The payment scheme will consist of

- Pre-financing of 15 %
- Two interim payments of 20%
- And the balance of 45 %.

The schedule and the procedure for the approval of payments and the documents to be submitted are described in Articles I.4, II.4, II.5 and II.7 and in Annex I to the draft contract referred to above.

2.4. GUARANTEES

The Contractor may be required to provide a guarantee for pre-financing of 15% of the amount specified under I.3.1 of the contract, in compliance with article II.4.1 of the draft contract. The Commission reserves the right to cancel the pre-financing foreseen, according to its management risk analysis or in the case the awarded tenderer refuses such pre-financing guarantee, and to modify the final version of the contract accordingly.

A model guarantee is provided in annex 6.3 of these tendering specifications.

2.5. PLACE OF PERFORMANCE

The place of performance of the tasks shall be the Contractor's premises or any other place indicated in the tender, with the exception of the Commission's premises.

2.6. SUBCONTRACTING

Subcontracting is defined as the situation where a contract has been or is to be established between the Commission and a contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other legal entities for performing part of the service. However, the **Commission has no direct legal commitment with the subcontractor(s)**.

At the level of the liability towards the Commission, tasks provided for in the contract may be entrusted to subcontractors, but **the contractor retains full liability towards the Commission for performance of the contract as a whole**.

Accordingly:

- The Commission will treat all contractual matters (e.g. payments) exclusively with the contractor, whether or not the tasks are performed by a subcontractor;
- The Commission will privilege direct contacts with the contractor, who is responsible for executing the contract;
- Under no circumstances can the contractor avoid liability towards the Commission on the grounds that the subcontractor is at fault. The contractor remains notably fully responsible for timely execution.

A contract which includes subcontracting is subject to certain general conditions in particular the provisions on subcontracting, checks and audits, and confidentiality. Where justified by the subject matter of the contract, a statement of confidentiality may be required to be submitted to the Commission. **The subcontracting arrangement between the contractor and his subcontractor is supposed to render directly applicable all those contractual obligations with regard to the Commission to the subcontractor**.

Consequently, the bid must clearly identify the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set out in paragraph 3.3, in particular article II.17 of the standard service contract by returning the form in annex 6.5, filled in and signed.

Tenderers must inform the subcontractor(s) and include in their sub-contracting documents that Article II.17 of the standard service contract (Annex 6.2) may be applied to sub-contractors.

Once the contract has been signed, Article II.13 of the above-mentioned service contract shall govern the subcontracting.

2.7. JOINT OFFERS

A joint offer is a situation where an offer is submitted by a group of tenderers. If awarded the contract, the tenderers of the group will have an equal standing towards the Commission in executing a supply, service or works contract.

The Commission will not request consortia to have a given legal form in order to be allowed to submit a tender, but reserves the right to require a consortium to adopt a given legal form **before the contract is signed** if this change is necessary for proper performance of the contract. This can take the form of an entity with or without legal personality but offering sufficient protection of the Commission's contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

Grouping of firms must nominate one party to be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration, and for coordination. The documents required and listed in the present specifications must be supplied by every member of the grouping; the checklist in annex 6.7 will help verifying the level of information to be provided according to the role of each entity in the tender.

Each member of the grouping assumes a joint and several liability towards the Commission.

The offer has to be signed by all members of the group. However, if the members of the group so desire they may grant an authorisation to one of the members of the grouping. In this case they should attach to the offer a power of attorney (see model in annex 6.6). For groupings not having formed a common legal entity, model 1 should be used, and for groupings with a legal entity in place model 2.

The contract will have to be signed by all members of the group. If the members of the group so desire, they may grant authorisation to one of the members of the grouping by signing a power of attorney. The same model as above duly signed and returned together with the offer (see annex 6.6) is valid also for signature of the contract.

Partners in a joint offer assume joint and several liability towards the Commission for the performance of the contract as a whole.

Statements, saying for instance: "that one of the partners of the joint offer will be responsible for part of the contract and another one for the rest", or "that more than one contract should be signed if the joint offer is successful", are thus incompatible with the principle of joint and several liability. The Commission will disregard any such statement contained in a joint offer, and reserves the right to reject such offers without further evaluation, on the grounds that they do not comply with the tendering specifications.

An economic operator can only participate once as a tenderer, whether as single tenderer, lead organisation in a consortium/joint bid or partner in a consortium. **The economic operator may however agree to act as a subcontractor in a distinct bid** from which it is participating as either of the aforementioned options. However, such a situation is not advisable for the high potential of conflicts of interest it may generate.

3. ADMINISTRATIVE INFORMATION CONCERNING THE INVITATION TO TENDER

These specifications follow the publication of:

- the prior information notice in OJ : 2011/ S 127-209986

3.1. DATE AND PLACE OF OPENING OF THE TENDERS

Tenders will be opened on 19/09/2011 at 02.30 PM

at the following location:

Office address:

European Commission
Enterprise and Industry Directorate General
Invitation to tender No: 112/PP/ENT/CIP/11/C/N06S001
Unit ENTR/G3, Metals, Minerals, Raw Materials
Office adress: Avenue d'Auderghem 45 – Room 12/ST01
B - 1049 Brussels

An **authorised representative** of each tenderer may attend the opening of the bids. Companies wishing to attend are requested to notify their intention by sending a fax or e-mail at least 48 hours in advance to the address given under 3.2. This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will attend the opening of the bids on the tenderer's behalf.

3.2. CONTACT BETWEEN THE TENDERER AND THE COMMISSION

Contacts between the Commission and the tenderers may take place only in **exceptional circumstances** and under the following conditions only:

- Before the final date for submission of tenders:

  * Potential tenderers may request clarifications with regard to the tender documents and the nature of the contract.

  * The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or other clerical error in the text of the call for tenders.

- After the opening of tenders :

  If clarification is requested or if obvious clerical errors in the tender need to be corrected, the contracting authority may contact the tenderer provided the terms of the tender are not modified as a result.

The requests for additional information may be made **to the address below by letter, fax or e-mail**.

European Commission Enterprise Directorate-General Invitation to tender No: 112/PP/ENT/CIP/11/C/N06S001 Unit G 3, Metals, Minerals, Raw Materials Administrative address Avenue d'Auderghem 45 B-1049 Brussels – BELGIUM Fax: (+32-2)-299.80.37 e-mail: Functional mailbox ENTR-CFT-11-112-innotech-g3@ec.europa.eu

Insofar as it has been requested in good time, the additional information will be made available to all economic operators who requested specifications or showed interest in submitting a bid no later than six calendar days before the final date for the receipt of bids or, in the case of requests for information received less than eight calendar days before the final date for the receipt of bids, as soon as possible after the request for information has been received.

Potential tenderers are encouraged to formulate, at least six days before the time limit to submit tenders, any remark, complaint or objection they would have in relation to all aspects of this call for tender in order that the Commission can evaluate the need for corrective measures and implement them before the submission of tenders.

The answers to the requests for additional information will be made available at the following Internet address:

Raw Materials: Study on Innovative Technologies and Possible Pilot Plants

3.3. GENERAL TERMS AND CONDITIONS FOR THE SUBMISSION OF TENDERS

The present tender documents are drawn up in respect of the Financial Regulation applicable to the general budget of the European Communities (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 as amended by Council Regulation (EC, Euratom) N° 1995/2006 of 13 December 2006), as well as its implementing rules (Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 as amended by i) Commission Regulation 1261/2005 of 20 July 2005, ii) Commission Regulation 1248/2006 of 7 August 2006 and iii) Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007), hereinafter referred to as the Financial Regulation.

Participation in tendering procedures is open on equal terms to all natural and legal persons from one of the EU Member States and to all natural and legal persons in a third country which has a special agreement with the European Union in the field of public procurement on the conditions laid down in that agreement.

Where the Plurilateral Agreement on Government Procurement (GPA) concluded within the WTO applies, the contracts are also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down. In that connection, it should be noted that the services under Annex IIB to Directive 2004/18/EC and the R&D services listed in category 8 of Annex IIA to that Directive are not caught by the Agreement.

The parties to the GPA can be consulted on the following web page: http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm#parties.

Operators in third countries which have signed a bilateral or multilateral agreement with the European Union in the field of public procurement must be allowed to take part in the tendering procedure on the conditions laid down in this agreement. The Commission refuses tenders submitted by operators in third countries which have not signed such agreements for the present call for tender.

Submission of a tender implies acceptance of the terms and conditions set out in this invitation to tender, in the tendering specifications and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. It is binding on the tenderer to whom the contract is awarded for the duration of the contract.

Once the Commission has accepted the tender, it shall become the property of the Commission and the Commission shall treat it confidentially.

The Commission shall not reimburse expenses incurred in preparing and submitting tenders.

The Protocol on the Privileges and Immunities or, where appropriate, the Vienna Convention of 24 April 1963 on Consular Relations shall apply to this invitation to tender.

Variants are not allowed.

3.4. NO OBLIGATION TO AWARD THE CONTRACT

This invitation to tender is in no way binding on the Commission. The Commission's contractual obligation commences only upon signature of the contract with the successful tenderer.

Up to the point of signature, the contracting authority may either abandon the procurement or cancel the award procedure. This decision must be substantiated and the tenderers notified.

No compensation may be claimed by tenderers whose tender has not been accepted, including when the Commission decides not to award the contract.

3.5. DATA PROTECTION

If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by DG ENTR G3. Details concerning processing of your personal data are available on the privacy statement at the page http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf.

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

Data of economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation[16] 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.

3.6. OPPORTUNITIES FOR SMALL AN D MEDIUM SIZED ENTERPRISES

The Directorate General for Enterprise and Industry has the task to promote opportunities for Small and Medium sized Enterprises (SMEs) and is aiming in its activities to facilitate the activities of SMEs. In this context, **SMEs are particularly encouraged to submit tenders** either on its own if feasible or by constituting a bid using either of the options mentioned in paragraphs 2.6 and 2.7.

The **Enterprise Europe Network** provides advice on tender opportunities and training in relation to procurement, which may be of assistance to newly initiated tenderers. Please refer to the following web-site for further details:

http://www.enterprise-europe-network.ec.europa.eu/services/advice-eu-law-and-standards

The Commission has further published a brochure on "Doing business with the European Commission – Tips for potential contractors":
http://ec.europa.eu/budget/library/biblio/publications/business/doing_business_en.pdf

This brochure intends to give tips for interested parties on how to deal with procurement procedures in general.

[16] Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 (OJ L 248 of 16.09.2002), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390 of 30.12.2006)

4. FORM AND CONTENT OF THE TENDER

4.1. HOW TO SUBMIT A TENDER

Tenderers shall observe precisely the indications in point 1 and 2 of the invitation to tender in order to ensure their tenders are admissible.

Evidence of timely submission by post or courier service will be constituted by the date of dispatch, the postmark or the date of the deposit slip. In the case of hand-delivery, the signed and dated receipt will serve as evidence.

Late delivery will lead to the non admissibility of the tender and its rejection from the award procedure for this contract. Offers sent by e-mail or by fax will also be non admissible. Envelopes found open at the opening session will also lead to non admissibility of the tender. Consequently, tenderers must ensure that their bids are packed in such a way as to prevent any accidental opening during its mailing.

4.2. STRUCTURE OF THE TENDER

- Tenders must be **perfectly legible** so that there can be **no doubt as to words and figures**.
- Tenders must be **clear** and **concise**, with **continuous page numbering**, and **assembled in a coherent fashion** (e.g. bound or stapled, etc.).
- Tenders must be written in **one of the official languages of the European Union**.
- Tenders **must include** all the **information and documents requested by the Commission** in order to assess the tender. In order to help tenderers presenting a complete tender, **a checklist of the documents to submit is provided in annex 6.7**. This checklist does not need to be included in the tender but we encourage to use it in order to ease the assessment of the tenders;
- **Prices must be established in Euros.**

All tenders must be presented in five sections:

Section one:	Administrative information
Section two:	The exclusion criteria form
Section three:	Evidence relating to the selection criteria
Section four:	Technical Proposal – Addressing technical specifications and award criteria
Section five:	Financial Proposal

4.2.1. Section One: Administrative proposal

Tenderers may choose between presenting a **joint bid** (see 2.7) and introducing a bid as a **sole contractor,** in both cases with the possibility of having one or several subcontractors (see 2.6).

Whichever type of bid is chosen, the tender must stipulate the legal status and role of each legal entity in the tender proposed and the monitoring arrangements that exist between them and, failing this, the arrangement they foresee to establish if they are awarded the contract (see 2.6 and 2.7).

a) To identify himself the tenderer must fill in a Legal Entity Form and a Financial Identification Form:

- The **Legal Entity Form** is to be **signed by a representative of the tenderer authorised to sign contracts with third parties**.

- The form is available for individuals, private entities and public entities at the following address :

  http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

  The Legal Entity Form **must be accompanied by all the information** indicated in the form. When neither this form nor the evidence to be attached to them includes the following information, the tender must include:

  For private and public entities:

  - a legible copy of the notice of **appointment of the persons authorised to represent the tenderer in dealings with third parties** and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

  For Individuals:

  - Where applicable, a proof of **registration,** as prescribed in their country of establishment, on one of the **professional or trade registers** or any other official document showing the registration number.

- The **Financial identification form** shall be duly filled in and signed by an authorised representative of the tenderer and his or her banker. A specific form for each Member State is available at the following Internet address:

  http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

b) The tender must include a **statement confirming the validity of the tender** (preferably in blue ink) signed by the authorised representative.

c) The tender must indicated the **name of a contact person** in relation to the submission of the bid.

! ***All tenderers, as part of a consortium or a joint bid if applicable, must provide their legal entity files as well as the necessary evidence. Only subcontractors are requested to provide solely the legal entity file without evidence.***
! ***Economic operators already registered as a legal entity in the Commission's files (i.e. they are or have been contractors of the Commission) are not obliged to provide the evidence requested in the form, on condition they indicate in their offer the references of the procedure and the Commission's department for which this evidence was already provided.***
! ***In case of a joint bid or a bid presenting subcontracting, only the co-ordinator is obliged to return the financial identification form.***

4.2.2. Section Two: The Exclusion Criteria Form

Tenderers or their representatives shall provide a declaration on their honour, duly signed and dated in which they:

- state whether or not they are in one or more of the situations referred to in Articles 93 and 94 of the Financial Regulation and detailed in the form;
- undertake to submit to the Commission any additional document relating to the exclusion criteria, that the Commission considers necessary to perform its checks, within seven calendar days following the receipt of the Commission's request.

To this end, tenderers must fill in and sign the form in Annex 6.1 to these specifications.

Where the bid involves more than one legal entity (including subcontractors), each entity must provide the form.

Any total or partial omission for which one or more legal entities involved in the tender are responsible may lead the Commission to exclude the tender from the procedure, in accordance with Articles 93 and 94 of the Financial Regulation.

4.2.3. Section Three: Evidence relating to the selection criteria

Tenderers must provide proof of their economic and financial capacity by submitting the documents stated under paragraph 5.2.2 below.

They must equally provide proof of their professional and technical capacity by submitting the documents required under paragraph 5.2.3 below.

4.2.4. Section Four: Technical proposal

Tenderers must include in their bids the **technical proposal addressing all aspects detailed in the technical specifications** set out in section 1.1.

The technical proposal must respond to these technical specifications and provide, as a minimum, all the information needed for the purpose of awarding the contract.

The following aspects should be taken into consideration when drafting the tender:

(a) methodology for implementation;

(b) reasons for the proposed methodology;

(c) how do you intend to build on and link with previous activities (where applicable);

(d) project management and procedures for internal evaluation;

(e) level of involvement and activity of other stakeholders;

(f) role of each partner (in case of a consortium, joint bid and/or use of subcontractors);

(g) team proposed for implementation of the contract The composition of the team, which will be implementing the project must be properly described. Team staff should be singled out by function (E.g. project managers, administrator, secretary, expert, technical assistant);

(h) a plan of action with description of activities and their timing.

Due consideration should also be given to the award criteria and method as stipulated under section 5.3 in this document.

Please note that, to grant equal treatment of all tenders**, it is not possible to modify offers after their submission in relation to the technical and financial proposals**. As a consequence, **incompleteness in this section can only result in negative impact for the evaluation of award criteria**. Please note also, that proposals deviating from the technical specifications may be rejected for non-conformity.

The technical specifications and the tenderer's bid shall be integral parts of the contract and will constitute annexes to the contract.

4.2.5. Section Five: Financial proposal

Tenderers must use the following format to formulate their financial proposal.

Price component	*Unit price*	*Quantity*	*Total*
Human resources			
Person X (role)			
Person Y (role)			
…..			
Subtotal (1)			
Other			
Item X			
Item Y			
…..			
Subtotal (2)			
TOTAL (1+2) – (Incl.Travel)			

The tenderer's attention is drawn to the following points:

- **prices must be expressed in Euros;**
- **prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the European Union is exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

  For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT;
- **Prices shall not be conditional and be directly applicable by following the technical specifications.**
- **Prices shall be fixed and not subject to revision**
- The reference price for the award of the contract shall consist of **the amount in payment of the tasks executed**, as stated in Article I.3.1 of the contract.

For each category of staff to be 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. Flat-rate amounts should be avoided. If, exceptionally, they are used, specimen quotations for the flat-rate amounts must be provided;

The following information is intended to help tenderers to estimate the maximum amount of expenses (only travel and subsistence and related costs are to be foreseen here):

- Meetings with the Commission:

<u>Meetings and travel:</u>

- In January 2012, a kick-off meeting will take place in Brussels, with all major members of the team proposed by the contractor.
- A minimum of three but not more than five progress meetings in Brussels to present the status of the work and steer the next period – schedule to be convened by the Commission.
- On maximum two events to take place in Brussels: key team members are requested to present the final findings to a group on selection by the Commission.

Bids involving more than one legal entity must specify the amounts for each legal entity.

! The Commission will reject tenders where no technical offers or financial offers are proposed.

! Non-conformity with the technical specifications in section 1.1 will also result in rejection from award.

! The Commission reserves the right, however, to request clarification or additional evidence in relation to the exclusion and selection stages after the opening within a time-limit stipulated in its request and in the conditions explained in section 3.3.

5. ASSESSMENT AND AWARD OF CONTRACT

The assessment will be based on the information provided in the tender. The Commission reserves the right to use any other information from public or specialist sources.

This assessment will be performed by applying the criteria set out in these specifications. To award the contract, the assessment of admissible bids (see paragraph 1 and 2 of the Invitation to tender) will be carried out in three successive stages. Only bids meeting the requirements of one stage will be examined in the next stage.

The aim of each of these stages is:

1) to check, in the first stage (exclusion criteria), whether tenderers can take part in the tendering procedure and, where applicable, be awarded the contract;

2) to check, in the second stage (selection criteria), the technical and professional capacity and economic and financial capacity of each tenderer who has passed the exclusion stage;

3) to assess on the basis of the award criteria the technical and financial offers and establish a ranking list, by order of merit, of all tenders having passed the exclusion and selection stages, as well as the quality thresholds set for the assessment of the award criteria.

5.1. STAGE 1 – APPLICATION OF EXCLUSION CRITERIA AND EXCLUSION OF TENDERERS

5.1.1. Declaration

As mentioned above under paragraph 4.2.2, tenderers or their representatives shall provide the form in Annex 6.1 duly signed and dated in which they declare:

- not to be in one or more of the situations referred to in Articles 93 and 94 of the Financial Regulation and detailed in the form;

- to undertake to submit to the Commission any additional document relating to the exclusion criteria, that the Commission considers necessary to perform its checks, within seven calendar days following the receipt of the Commission's request.

5.1.2. Grounds for disqualification

In accordance with Articles 93 and 94 of the Financial Regulation, tenderers shall be excluded from the selection and award procedures if they do not satisfy criteria a) to f) specified in the standard form in annex 6.1.

In addition, contracts may not be awarded to tenderers who, during the procurement procedure are subject to a conflict of interest (criteria g) or 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 (criteria h) or fall into one of the situations as specified under criteria a) to f).

If a member of a consortium is subject to exclusion, the rest of the consortium shall be excluded.

If a subcontractor is subject to exclusion, the tender shall be excluded.

5.1.3. Evidence

The tenderer to whom the contract is to be awarded shall provide, within the 15 days following the receipt of the letter informing him of the proposed award of the contract and preceding the signature of the contract, the following evidence confirming the declaration referred to in paragraph 5.1.1:

1. The Commission shall accept as satisfactory evidence that the tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, **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 Commission shall accept, as satisfactory evidence that the tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a **recent certificate issued by the competent authority of the State**.

3. Where the document or certificate referred to in paragraph 1 & 2 is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, 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.**

4. Depending on the national legislation of the country in which the tenderer is established, the documents referred to in paragraphs 1, 2, 3 shall relate to legal persons and/or natural persons including, where necessary, company directors or any person with power of representation, decision-making or control in relation to the tenderer. This would be the case when the national legislation concerned gives juridical responsibility of the acts committed by a legal entity (moral persons) to their legal representatives. The tenderer shall provide information on the ownership or on the management, control and power of representation of the legal entity whenever necessary for the proper understanding of the evidence submitted or whenever the Commission requests it.

5. Where they have doubts as to whether tenderers are in one of the situations of exclusion, the Commission may itself apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.

6. The Commission may waive the obligation of a tenderer to submit the documentary evidence referred to in paragraphs 1 and 2 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided to the Commission in a previous procurement procedure and confirm that no changes in his situation have occurred. He shall indicate in its tender all the references necessary to allow the Commission services to check this evidence.

You may refer to the e-Certis web-site listing the certificates available in EU Member States:

http://ec.europa.eu/markt/ecertis/login.do

5.1.4. Administrative and financial penalties

By returning the form in Annex 6.1, duly signed, tenderers confirm that they have been notified of the following points:

Administrative or financial penalties may be imposed by the Commission on tenderers who are in one of the cases of exclusion provided for in 5.1.2 above after they have been given the opportunity to present their observations.

These penalties are detailed in Article 96 of the Financial Regulation and Articles 133a and 134b of the Regulation laying down the rules for the implementation of the Financial Regulation. We invite tenderers to read carefully these two articles.

5.2. STAGE 2 - APPLICATION OF SELECTION CRITERIA (SELECTION OF TENDERERS)

This part of the tender concerns the criteria and evidence relating to the technical and professional capacity and economic and financial capacity of the service provider(s) involved in the bid. It should also contain any other document that the tenderer(s) wish(es) to include by way of clarification.

An economic operator may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. In that case, evidence must be provided that it will have at its disposal the resources necessary for performance of the contract, for example by producing a clear undertaking on the part of those entities to place those resources at its disposal.

If several service providers are involved in the bid, each of them must have the professional and technical capacity to perform the tasks assigned to them in the tender and the necessary economic and financial capacity.

This rule applies to all legal entities once they have chosen to be tenderers. If the tender includes subcontractors, the Commission reserves the right to request

evidence of their economic and financial capacity if the tasks subcontracted represent a substantial part of the contract.

5.2.1. Selection criteria

SELECTION CRITERIA
1. FINANCIAL AND ECONOMIC CAPACITY
1.1 Sufficient economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract. 1.2 Sufficient financial capacity in relation to the pre-financing foreseen under the contract. 1.3 Reliability of the mitigating measures presented to cover possible deficiencies in the evidence presented for the above criteria. 1.4 Sufficient turnover in relation to the volume of tasks under this contract.
2. TECHNICAL AND PROFESSIONAL CAPACITY
2.1 Proven practical and theoretical experience of at least 5 years in the area of engineering and minerals processing and in the field of exploration and exploitation of primary and secondary raw materials has to be provided by at least three members of the team. 2.2 Good knowledge of the micro- and macro-economic constrains of the application oriented raw materials sector, including setting up of new facilities or innovative projects, the global relationships of the raw materials supply chain and needs to stay competitive. 2.3 Proven practical reputation for applied research and development in all required fields (exploration, exploitation, processing and recycling…). 2.4 Significant academically reputation in all required fields (exploration, exploitation, processing and recycling) and a higher academic background. Higher education degrees in geology/mineralogy, engineering, minerals processing and at least 3 years experience in the field of method or technical facility development has to be provided by at least one member of the team. 2.5 Reliability of the tenderer to perform the services in terms of human and technical resources, including language skills needed, and quality control systems. 2.6 Access to relevant scientific, research and business based fora and good experience in the working procedures used by these fora.

These criteria will be assessed on the basis of the documents referred to in 5.2.2 and 5.2.3.

5.2.2. Evidence of the economic and financial capacity of the service provider(s)

All tenderers must provide proof of their economic and financial capacity by submitting the following documents:

a) A full copy of the concerned legal entities' annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) of the last two years, as approved by the general assembly of the company and, where applicable, audited and/or published. These documents must be signed by the authorised representative of the tenderer;

b) Alternatively to a), by filling Annex 6.4, consisting of an extract of the concerned legal entities' annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) of the last two years, as approved by the general assembly of the company and, where applicable, audited and/or published. These documents must be signed by the authorised representative of the tenderer.

c) a statement of overall turnover and turnover concerning the tasks, supplies or services covered by this contract for the last three financial years;

d) Appropriate statements from banks or evidence of professional risk indemnity insurance, for legal entities facing the impossibility to fully present evidence a).

If, for some exceptional reason which the Commission considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Commission considers appropriate. In any case, the Commission must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

5.2.3. Evidence of the technical and professional capacity of the service provider(s)

The ability of service providers to perform services will be assessed in particular with regard to their know-how, efficiency, experience and reliability as specified in paragraph 5.2.1.

Evidence of the technical and professional capacity of the providers involved in the tender may be furnished on the basis of the following documents:

a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of

the person or persons responsible for providing the services or carrying out the tasks; The Europass curriculum vitae format (http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1) shall be filled in and signed, by each person involved in the execution of the tasks foreseen in the tender. The precise contractual link with the tenderer will also be described.

This evidence refers to selection criteria 2.1, 2.2, 2.3, 2.4 2.5 and 2.6

b) a list of the services carried out in the last three years, with the sums, dates and place.

c) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;

d) an indication of the proportion of the contract which the service provider may intend to subcontract.

By submitting a tender, each legal entity involved therein accepts the possibility of a check being carried out by the Commission on its technical capacities and, if necessary, on its research facilities and quality control measures.

In addition, all tenderers are informed that they may be asked to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a professional or trade register or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

5.3. STAGE 3 - APPLICATION OF AWARD CRITERIA (ASSESSMENT OF TENDERS)

The contract will be awarded to the **most cost-effective tender**. The following award criteria will be applied:

No	Qualitative award criteria	Weighting (maximum points)
1.	**Understanding**: compliance to tender specifications as described in detail under sections 1.1. and 1.2., including comprehensive understanding of: (a) the environment under which the study is conducted as detailed in section 1.2, (b) the EU's needs and objectives as provided in the policy descriptions of section 1.2.. c) the scope in which the requested matrix analysis needs to be performed; and, (d) the tasks as provided in section 1.1. in particular points 1 to 8.	40
2.	**Methodology:** for each of the tasks as described in section 1.1. a) quality and suitability of the proposed work programme and; b) adequacy of approach, including a detailed description of the matrix approach. c) Demonstration that the proposed work programme is appropriate to meet the requirements.	30
3.	**Project management and resources:** quality of proposed planning and organisation of the team to cope with and fulfil the obligations of the contract in the time required. Adequacy of the allocation of the tasks within the team.	20
4.	**Completeness, clarity and presentation of the tender**	10
	Total number of points	100

The selected tender is assessed according to the above qualitative award criteria and the weighting applicable to each criterion.

Tenders scoring

*** less than 75 % in the overall points total or**

*** less than 50% in the points awarded for a single criterion**

will be excluded from the rest of the assessment procedure.

Award criterion
Total price

! **Tenders presenting a total price superior to the maximum amount of 900.000, 00€ will be excluded from the rest of the assessment procedure.**

The contract will be awarded to the tender which is the most cost-effective (offers the best value for money) on the basis of the ratio between the total points scored and the price according to the following weighting of price and total points scored:

Final Evaluation
30% for price and 70% for points reach for evaluation of qualitative award criteria Where the total score for a tender x = ((Lowest price eligible /price of tender x) * 30) + ((total points for qualitative award criteria/100) * 70)

Tenders should elaborate on all points addressed by these specifications in order to score as many points as possible. The mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, will only result in a very low score. In addition, if certain essential points of these specifications are not expressively covered by the tender, the Commission may decide to give a zero mark for the relevant qualitative award criteria.

5.4. INFORMATION FOR TENDERERS

The Commission will inform tenderers of decisions reached concerning the award of

the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

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

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

5.5. AWARD OF THE CONTRACT

The procurement procedure is concluded by a contract signed by the parties. In this case, the General Terms and Conditions applicable to service contracts referred to above shall apply.

After the period of validity of the tender has expired, conclusion of the contract shall be subject to the tenderer's agreement in writing.

The Commission shall not sign the contract or framework contract with the successful tenderer until a standstill period of 14 calendar days has elapsed, running from the day after the simultaneous dispatch of the award decisions and decisions to reject.

After the award, during standstill period, the Commission will request to the tenderer proposed for award the evidence on exclusion criteria defined in section 5.1.3. If this evidence was not provided or proved to be unsatisfactory the Commission reserves the right to cancel the award procedure or to change the award decision to the benefit of the next best ranked tenderer on condition that he satisfies with the provision of the evidence on exclusion.

6. ANNEXES

ANNEXES

6.1. EXCLUSION CRITERIA FORM INVITATION TO TENDER NO 112/PP/ENT/CIP/11/C/N06S001

Exclusion Criteria Form

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

1. in his/her own name *(if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator[17])*

or

2. representing *(if the economic operator is a legal person)*

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

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

official address in full:

VAT registration number:

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

a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;

c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;

d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;

e) has not been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;

f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

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[17] To be used depending on the national legislation of the country in which the tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

In addition, the undersigned declares on their honour:

g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;

h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;

i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;

j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.

k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above[18].

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

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

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

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

Full name Date Signature

[18] Mandatory for contracts of value above €125 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.

6.2. DRAFT SERVICE CONTRACT

EUROPEAN COMMISSION
DG ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Directorate G: Chemicals, metals, mechanical, electrical and construction industries; Raw materials
Unit G3: Metals, Minerals, Raw Materials

SERVICE CONTRACT

CONTRACT NUMBER – **30-CE-0000000/00-00 SI2.500000**

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr Heinz Zourek, Director-General for the Enterprise and Industry Directorate-General or his Authorised Representative.

of the one part,

and

[official name in full]
[*official legal form*][19]
[*statutory registration number***]**[20]
[official address in full]
[*VAT registration number*]

(hereinafter referred to as "the Contractor"[21]), *[represented for the purposes of the signature of this contract by* [forename, surname and function,]*]*

of the other part,

HAVE AGREED

[19] Delete if contractor is a natural person or a body governed by public law.
[20] 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.
[21] In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: “The parties identified above and hereinafter collectively referred to as ‘the Contractor’ shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract”.

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

Annex I – Tender Specifications **No: 112/PP/ENT/CIP/11/C/N06S001** of [*complete*]) and Monitoring

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

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

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

I.1.1. The subject of the contract is a Study on Raw Materials- Innovative Technologies and Possible Pilot Plants

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 1 January 2012 if it has already been signed by both contracting parties.

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 16 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than 90 before expiry of the period of execution or with less than one third of the period of execution left to run, whichever period is the shorter.

ARTICLE I.3 – CONTRACT PRICE

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

I.3.2 The total amount referred to in the above paragraph shall be fixed and not subject to revision.

I.3.3. Not Applicable

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

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

I.4.1. Pre-financing:

A pre-financing payment of EUR [*complete amount in figures and in words*] equal to 15% of the total amount referred to in Article I.3.1

shall be made

I.4.2 Interim payment:

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

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

Provided the report has been approved by the Commission.

1) Within 30 days of the date on which the first Interim report is approved by the Commission, an interim payment corresponding to the relevant invoice, *EUR* [*complete amount in figures and words*]equal to 20 % of the total amount referred to in Article I.3.1 shall be made.

2) Within 30 days of the date on which the Second Interim report is approved by the Commission, an interim payment corresponding to the relevant invoice EUR *[*complete *amount in figures and words]* equal to 20 % of the total amount referred to in Article I.3.1 shall be made.

I.4.3. Payment of the balance:

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

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

Provided the report has been approved by the Commission.

Within 30 days of the date on which the report is approved by the Commission, payment of the balance corresponding to 45 % of the total amount referred to in Article I.3.1 shall be made.

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

I.4.4. Performance guarantee: Not Applicable

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro[22], identified[23] 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*[24] *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 and invoices shall be sent to the following addresses:

Commission: (For invoices only)

European Commission
Directorate-General for Enterprise and Industry
Directorate G – Mr Gwenole Cozigou
Brey 12/088
B-1049 Brussels

Commission: (For all other matters)

European Commission
Directorate-General for Enterprise and Industry
Directorate ENTR/G3 - Mr Abraaho Carvalho
Brey 11/197
B-1049 Brussels

22 Or local currency where the receiving country does not allow transactions in EUR.
23 By a document issued or certified by the bank.
24 BIC or SWIFT code for countries with no IBAN code.

Contractor:

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

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

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

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. The data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by [*entity acting as data controller*] without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in application of Union law. The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to [entity acting as data controller]. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
Where the Contract requires the processing of personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council 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. The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

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

a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
   aa) unauthorised reading, copying, alteration or removal of storage media;
   ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
   ac) unauthorised persons from using data-processing systems by means of data transmission facilities;
b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

c) record which personal data have been communicated, when and to whom;
d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE 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 one month 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.

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 staffs performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.

II.1.5. The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.

II.1.6. The Contractor shall have sole responsibility for the staff who 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 Commission;

- the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.

II.1.7. In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

II.1.8. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own

initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

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

ARTICLE II.2 – LIABILITY

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

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

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

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

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

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

II.3.3. The Contractor declares:

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

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

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

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

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

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

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

II.4.2. Interim payment:

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

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

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

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

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

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

II.4.3. Payment of the balance:

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

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

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

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

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

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

II.4.4. Payment currency and costs:

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

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

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

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

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

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

ARTICLE II.6 – RECOVERY

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

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

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

ARTICLE II.7 - REIMBURSEMENTS

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

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

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

a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;

b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;

c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;

d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

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

a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;

b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;

c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;

d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

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

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

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

ARTICLE II.9 – CONFIDENTIALITY

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

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

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

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

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

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

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

ARTICLE II. 11 – TAXATION

II.11.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.11.2. The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

II.11.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

II.11.4. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

II.12.1. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

II.12.2. Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

II.12.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

II.12.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

II.13.1. The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.

II.13.2. Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

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

ARTICLE II.14 – ASSIGNMENT

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

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

ARTICLE II.15 – TERMINATION BY THE COMMISSION

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

(a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;

(c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;

(d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;

(e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;

(f) where the Contractor is in breach of his obligations under Article II.3;

(g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;

(h) where a change in the Contractor’s legal, financial, technical or organisational situation could, in the Commission’s opinion, have a significant effect on the performance of the Contract;

(i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;

(j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;

(k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

II.15.4. Consequences of termination:
In the event of the Commission terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

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

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

ARTICLE II.15a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

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

ARTICLE II.16 – LIQUIDATED DAMAGES

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

ARTICLE II.17 – CHECKS AND AUDITS

II.17.1. Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance.

II.17.2. The Commission or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.

II.17.3. In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

For the Contractor, [*Company name*/forename/surname/function]	For the Commission, [forename/surname/function]
signature[s]: _____	signature[s]:_____
Done at [Brussels], [date]	Done at [Brussels], [date]

In duplicate in English.

6.3. MODEL GUARANTEE

[MODEL] LETTER FOR PRE-FINANCING FIRST DEMAND GUARANTEE[25]

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

European Union
Represented by the European Commission
Directorate-General […] – [Unit]
B – 1049 Belgium

Reference: Contract N° and exact title: […]

ARTICLE 1 – DECLARATION ON GUARANTEE, AMOUNT AND PURPOSE

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

EUR [in figures: …] (in words: … EUR)

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

ARTICLE 2 – EXECUTION OF GUARANTEE

If the Commission gives notice that the Contractor has for any reason failed to reimburse pre-financings paid by the Commission, we, acting by order and for account of the Contractor, shall undertake to immediately pay up to the above amount, in EUR, without exception or objection, into [Option 1: *a bank account designated by the Commission*] [Option 2: *the following bank account: (…)*], on receipt of the first written request from the Commission sent by registered letter or by courier with acknowledgement of receipt. We shall inform the Commission in writing as soon as the payment has been made.

ARTICLE 3 – OBLIGATIONS OF THE GUARANTOR

1. We waive the right to require exhaustion of remedies against the Contractor, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the Commission under the contract or in connection with it or on any other grounds.

[25] The footnotes are internal instructions for the authorising officers only and must be deleted before the guarantee is signed. [Plain text]: items to be filled in. [*Text in italics*]: these items are optional and may be deleted depending on the context of the guarantee.

2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by the Commission with the Contractor which may concern his obligations under the contract.

3. We shall undertake to immediately inform the Commission in writing, by registered letter or by courier with acknowledgement of receipt, in the event of a change of our legal status, ownership or address.

ARTICLE 4 – DATE OF ENTRY INTO FORCE

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

ARTICLE 5 – END DATE AND CONDITIONS OF RELEASE

1. We may be released from this guarantee only with the Commission's written consent.

2. This guarantee shall expire on return of this original document by the Commission to our offices by registered letter or by courier with acknowledgement of receipt.

3. [Option 1: *This must occur at the latest one month after the payment of the balance under the contract has been made or three months after the issuance of the corresponding recovery order.*[26]]

   [Option 2: *This must occur at the latest during the month after the pre-financing under the contract has been cleared through interim payment[s].*]

   [Option 3: *This must occur in any case, at the latest, on* (indicate a precise date[27]).]

4. After expiry, this guarantee shall become automatically null and void and no claim relating thereto shall be receivable for any reason whatsoever.

ARTICLE 6 – APPLICABLE LAW AND COMPETENT JURISDICTION

Option 1

1. *This guarantee shall be governed by and construed in accordance with the law applicable to the contract.*

2. *The courts having jurisdiction for matters relating to the contract shall have sole jurisdiction in respect of matters relating to this guarantee.*

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[26] In any case, this period should never be reduced.

[27] This mention has to be inserted where the law applicable to the guarantee imposes a precise expiry date.

Option 2

Any dispute concerning this guarantee shall be governed by and construed in accordance with the Law [of the country of establishment of the [Contractor][Bank]] and fall within the sole competence of the [corresponding national] Courts.

ARTICLE 7 - ASSIGNMENT

The rights arising from this guarantee may not be assigned [*without our written consent*].

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

_____	[_____]
[Signature/ Function at the Financial Institution/Bank]	[Signature/ Function at the Financial Institution/Bank]

6.4. FINANCIAL AND ECONOMIC CAPACITY OVERVIEW FORM (INVITATION TO TENDER NO *112/PP/ENT/CIP/11/C/N06S001*)

Financial and Economic Capacity Overview			
Currency : *EURO*			**Figures** ***(000)***
	N* (* most recent figures available)	**N-1**	**N-2**
Total Balance Sheet			
TRADE DEBTORS *Amounts due by commercial customers*			
CAPITAL and RESERVES (Equity) *Amounts owned by the company*			
TRADE CREDITORS *Amounts due to commercial suppliers*			
SHORT TERM DEBT			
LONG TERM DEBT			
LIQUIDITY *Bank accounts, cash at hand*			
About PROFIT & LOSS			
TURNOVER			
ORDINARY RESULT			
EXTRAORDINARY RESULT			
INCOME TAX			
NET RESULT			

You may add any data that you would consider of vital relevance for your organisation and for the understanding of the above figures.

Comments: Please explain BRIEFLY important variations from one year to another if appropriate. In case of negative equity or repeated losses, please explain how the future of the organisation will be ensured.

6.5. SUBCONTRACTOR / LETTER OF INTENT *112/PP/ENT/CIP/11/C/N06S001*

RAW MATERIALS : Study on Innovative Technologies And Possible Pilot Plants

The undersigned**:** …….

Name of the company/organisation**:** ……

Address: ……

Declares hereby the intention to collaborate in the execution of the tasks subject to the above call for tender, in accordance with the terms of the offer to which the present form is annexed, if the contract is awarded to … …. *(name of the tenderer).*

Declares hereby accepting the general conditions attached to the tendering specifications for this call for tender, and in particular Article II.17 in relation with checks and audits.

Full name **Date** **Signature**

.....

6.6. POWER OF ATTORNEY

POWER OF ATTORNEY – MODEL 1

Agreement / Power of Attorney

(DESIGNATING ONE OF THE COMPANIES OF THE GROUP AS LEADER AND GIVING A MANDATE TO IT)

We the undersigned:

– Signatory 1 (Name, Function, Company, Registered address, VAT Number)
– Signatory 2 (Name, Function, Company, Registered address, VAT Number)
– …..
– Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company, HEREBY AGREE AS FOLLOWS:

In case the European Commission awards [Framework] Contract …. (« **the Contract** ») to Company 1, Company 2, …, Company N (« **the Group Members** »), based on the joint offer submitted by them on … ….. for the supply of ….. and/or the provision of services for … (« **the Supplies and/or the Services** »).

(1) As co-signatories of the Contract, all the Group Members:

(a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.
(b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(2) To this effect, the Group Members designate Company X as **Group Leader**. *[N.B.: The Group Leader has to be one of the Group Members*]

(3) Payments by the European Commission related to the Supplies or the Services shall be made through the Group Leader's bank account .[*Provide details on bank, address, account number, etc.*].

(4) The Group Members grant to the Group Leader all the necessary powers to act on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks:

(a) The Group Leader shall sign any contractual documents —including the [Framework] Contract, [Specific Agreements] and Amendments thereto— and issue any invoices related to the Supplies or the Services on behalf of the Group Members.

(b) The Group Leader shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. It shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present agreement / power of attorney shall be subject to the European Commission's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the European Commission in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in …… on …….. ……
Name
Function
Company

Name
Function
Company

Name
Function
Company

Name
Function
Company

POWER OF ATTORNEY – MODEL 2

Agreement / Power of Attorney

(CREATING THE GROUP AS SEPARATE ENTITY, APPOINTING A GROUP MANAGER AND GIVING A MANDATE TO HIM/HER)

We the undersigned:

– Signatory 1 (Name, Function, Company, Registered address, VAT Number)
– Signatory 2 (Name, Function, Company, Registered address, VAT Number)
– …..
– Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company, HEREBY AGREE AS FOLLOWS:

In case the European Commission awards [Framework] Contract …. (« **the Contract** ») to Company 1, Company 2, …, Company N (« **the Group Members** »), based on the joint offer submitted by them on … ….. for the supply of ….. and/or the provision of services for … (« **the Supplies and/or the Services** »).

(1) As co-signatories of the Contract, all the Group Members:

(a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.

(b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(2) To this effect, the Group Members have set up under the laws of ……. the Group ….. (« **the Group** »). The Group has the legal form of a …... [*Provide details on registration of the Group: VAT Number, Trade Register, etc.*].

(3) Payments by the European Commission related to the Supplies or the Services shall be made through the Group's bank account . [*Provide details on bank, address, account number, etc.*].

(4) The Group Members appoint Mr/Ms ……. as **Group Manager**.

(5) The Group Members grant to the Group Manager all the necessary powers to act alone on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks :

(a) The Group Manager shall sign any contractual documents —including the [Framework] Contract, [Specific Agreements] and Amendments thereto— and issue any invoices related to the Supplies or the Services on behalf of the Group Members.

(b) The Group Manager shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. He/she shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present agreement / power of attorney shall be subject to the European Commission's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the European Commission in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in ……... on …….. ……
Name
Function
Company

Name
Function
Company

Name
Function
Company

Name
Function
Company

6.7. CHECKLIST OF DOCUMENTS TO BE SUBMITTED

The purpose of the table below is to facilitate the preparation of the tender by providing an overview of the documents that must be included (marked by ■) depending on the role of each economic operator in the tender (coordinator/group leader in joint bid, partner in joint bid, single contractor, main contractor, subcontractor).

Some of the documents are only relevant in cases of joint bids or when subcontractors are involved. Additional documents might be necessary depending on the specific characteristics of each tender.

Description	Section	Coordinator or group leader in joint bid	All partners in joint bid	Single or Main contractor	Sub-contractor
Power of attorney of partners in joint bid indicating the group leader (see annex 6.6)	1		■		
Letter of intent of subcontractor (see annex 6.5)	1				■
Legal Entity Form (see section 4.2.1) Download the form from : http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm	1	■	■	■	■
Supporting documents for the Legal Entity File Form	1	■	■	■	
Financial Identification form (see section 4.2.1) Download the form from: http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm	1	■		■	
Exclusion Criteria form (see section 5.1.1 and annex 6.1)	2	■	■	■	■
Evidence of Economic and financial capacity (see section 5.2.2 and annex 6.4)	3	■	■	■	
Evidence of Technical and professional capacity (see section 5.2.3) Go to the following page to fill in the CV: http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1	3	■	■	■	■

The following sections must be provided in the bid, their absence would mean rejection of the bid for incompleteness:

Description	Section	Coordinator or single tenderer
Technical Proposal (see section 4.2.4 and 1)	4	■
Financial Proposal (see section 4.2.5)	5	■