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## **Specifications – Invitation to tender No VT/2007/055**

Economic and social impact of the agreement concluded between social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.....

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### **1. Title of the contract**

***Economic and social impact of the agreement concluded between social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector***

### **2. Background**

#### **a) General background**

*In its Social Agenda (2005-2010), the Union has fixed as its overall strategic goal to promote more and better jobs and to offer equal opportunities for all. The realisation of the Social Agenda relies on a combination of instruments comprising EU legislation, the implementation of open methods of coordination in various policy fields and financial incentives such as the European Social Fund.*

*Until now, the implementation of the open methods of coordination in the employment and social inclusion/social protection fields relied on two distinct Community programmes. Equally the promotion of gender equality and of the non-discrimination principle was at the core of two distinct Community programmes. And lastly promotion of labour law including health and safety regulations were dealt with by separate interventions.*

*With the view of fostering greater coherence and simplification in the way Community programmes are delivered, the Commission proposed that all these separate programmes be now integrated into one framework programme, PROGRESS.*

*The Decision n°1672/2006 establishing a Community programme for employment and social solidarity – PROGRESS was adopted by the European Parliament and the Council on 24 October and published in the OJ on 15 November.*

*PROGRESS overall aim is to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.*

*It aims at supporting the core functions of the European Community towards fulfilling its Treaty-delegated tasks and powers in its respective areas of competence in the employment and social sphere. It will support initiatives aimed at reinforcing the role of the Community in proposing EU strategies; implementing and following-up EU objectives and their translations into national policies; transposing and following-up of EU legislation's application in a coherent way through Europe; promoting the co-operation and co-ordination mechanisms between Member States and cooperating with social partners and organisations that represent civil society.*

*More specifically, PROGRESS will support:*

- (1) the implementation of the European Employment Strategy (section 1);*
- (2) the implementation of the open method of coordination in the field of social protection and inclusion (section 2);*
- (3) the improvement of the working environment and conditions including health and safety at work and reconciling work and family life (section 3);*
- (4) the effective implementation of the principle of non-discrimination and promotion of its mainstreaming in all EU policies (section 4);*
- (5) the effective implementation of the principle of gender equality and promotion of its mainstreaming in all EU policies (section 5).*

*It is divided up into five policy sections which are (1) Employment, (2) Social inclusion and social protection, (3) Working conditions, (4) Non-discrimination and (5) Gender Equality.*

*Against this background, PROGRESS pursues the following general objectives, as set out in article 2.1 of the Decision:*

- (1) to improve the knowledge and understanding of the situation prevailing in the Member States (and in other participating countries) through analysis, evaluation and close monitoring of policies;
- (2) to support the development of statistical tools and methods and common indicators, where appropriate broken down by gender and age group, in the areas covered by the programme;
- (3) to support and monitor the implementation of Community law, where applicable, and policy objectives in the Member States, and assess their effectiveness and impact;
- (4) to promote networking, mutual learning, identification and dissemination of good practice and innovative approaches at EU level;
- (5) to enhance the awareness of the stakeholders and the general public about the EU policies and objectives pursued under each of the policy sections;
- (6) to boost the capacity of key EU networks to promote, support and further develop EU policies and objectives, where applicable.

The present Call for tenders is issued in the context of the implementation of the 2007 annual plan of work which is consultable at [http://ec.europa.eu/employment\\_social/progress/docs\\_en.html](http://ec.europa.eu/employment_social/progress/docs_en.html).

## **b) Specific background**

The Council adopted Directive 2005/47/EC ('the Directive') on 18 July 2005. The Directive implements the agreement on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services concluded on 27 January 2004 between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF). This agreement is afterwards referred to in these specifications as 'the Agreement'.

The Agreement has to be placed in the context of the development of rail transport, which will entail the development of inter-operable trans-European traffic.

The Agreement seeks to facilitate developing rail transport within the EU while at the same time protecting the health and safety of mobile workers engaged in interoperable cross-border services. It does so through avoiding competition solely based on differences in working conditions, by creating common rules on minimum standard working conditions for mobile workers assigned to interoperable cross-border services.

The Agreement also expects that the number of mobile workers engaged in inter-operable cross-border services will increase in the coming years.

The main provisions of the Agreement are as follows:

- Clause 3: daily rest at home of 12 consecutive hours per 24-hour period; possibility of reduction to 9 hours once every 7-day period.
- Clause 4: daily rest away from home of 8 consecutive hours per 24-hour period, which has to be followed by a daily rest at home. Social partners nevertheless agreed that a second consecutive rest away from home could be negotiated between social partners at undertaking or national levels.<sup>1</sup>
- Clause 5: break of at least 45 minutes for working time longer than 8 hours, 30 minutes for working time between 6 and 8 hours.
- Clause 6: weekly rest period of 24 hours plus the 12 hours of daily rest.
- Clause 7: driving time maximum of 9 hours day shifts, 8 hours during night shifts.

The signatories agreed to evaluate the provisions of the Agreement two years after its signing and to review its provisions two years after the implementation period.

During the negotiations in the Council of the proposal for the Directive, Clause 4 was particularly discussed. Some delegations expressed concerns about the adequacy of this Clause, due to the length of some routes and to the time needed to operate these routes.

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<sup>1</sup> The Agreement also provides that at European level, the question of the number of consecutive rests away from home as well as compensation for rest away from home will be renegotiated two years after its signature.

*At the time of adoption of the Directive, the Commission made the following statement:*

"The Commission attaches great importance to the development of rail transport resulting from the Community Directives adopted to develop European railways, including moves towards opening up the market. It hopes that the social partners will contribute to this development and that the social dialogue will reflect the evolution of the sector. It intends forthwith to ask the social dialogue committee to widen its representativity in line with that evolution.

In this context, the Commission proposes to submit to the Council before the date referred to in Article 5 of the Directive a report taking account of the economic and social impact of the social partners' agreement on undertakings and workers and of the social dialogue talks held under Clauses 10 and 11 of the agreement on all pertinent issues, including Clause 4.

It intends to take the initiatives necessary, by proposing an amendment to the Directive, should the social partners reach any new agreement, even if it is concluded before the date referred to in Article 5 of the Directive".

### **3. Subject of the contract**

The purpose of the contract is threefold:

- to provide an overview of the development of interoperable cross-border transport in the railway sector within the EU (and, as applicable, the EEA countries), based essentially on existing research;
- to assess the economic impact of the Agreement annexed to the Directive, especially of Clause 4, on undertakings, with particular regard to any impact on new companies and the development of cross-border activities
- to assess the economic and social impact of the Agreement annexed to the Directive, especially of Clause 4, on cross-border mobile workers, with particular regard to the protection of health and safety.

### **4. Participation**

Please note that:

The competition is open to any physical person or legal entity coming within the scope of the Treaties and any other physical person or legal entity from a third country which has concluded with the Communities a specific agreement in the area of public contracts, under the conditions provided for in that agreement.

Where the Multilateral Agreement on Public Contracts concluded within the framework of the WTO applies, the contracts are also open to nationals of States that have ratified this Agreement, under the conditions provided for therein. It should be noted that research and development services, which come under category 8 of Annex II A of Directive 2004/18/CE, are not covered by this Agreement.

In practice, the participation of applicants from third countries that have concluded a bilateral or multilateral agreement with the Communities in the area of public contracts must be allowed, under the conditions provided for in that agreement. Bids submitted by applicants from third countries that have not concluded such an agreement may be accepted, but may also be rejected.

### **5. Tasks to be carried out by the contractor**

The contractor will give a detailed overview of the development of interoperable cross border transport activities in the railway sector within the EU (and, where relevant, EEA). He/she will provide statistical and qualitative information on the number of companies operating cross border activities, routes operated, type of goods carried, number of workers engaged in these activities, working hours of workers concerned, working time arrangements, rest periods, and working conditions in general.

The contractor will assess the economic and social impact of the provisions of the Agreement annexed to the Directive, especially of Clause 4, and estimate the future impact taking into account

the foreseeable development of the cross border activities. The contractor will focus particularly on the protection of workers' health and safety, and on the new companies which have entered into the market following the completion of the internal market in the rail transport sector and the implementation of the railway packages.

The contractor will collect the views of the social partners at national and European level, as well as those of European organisations representing existing and new operators.

### **Description of the tasks**

The contractor will:

- identify the railway companies operating cross-border interoperable services;
- - identify the cross-border routes operated by each company and types of goods carried;
- collect information on number of workers engaged in cross-border activities, working hours of workers concerned, working time arrangements, working conditions in general, etc.
- identify the main patterns of working time which were in effect before the conclusion of the Agreement, any changes already made as a result of the Agreement, and those which will be required in order to comply with the Directive
- assess the benefits to workers' health and safety of the implementation of the minimum requirements contained in the Directive, whether further change should be considered regarding working time, and the expected social and economic impact of such changes
- assess whether the application of the provisions of the Directive will entail changes in the operation of the current routes;
- estimate the economic and social costs, if any, of the application of the Directive and their importance compared with total costs of exploitation;
- estimate whether the application of the provisions of the Directive could hinder the development of new routes in the future.
- on the basis of the previous results, identify the areas where improvements could be made to the text.

### **Guide and details of how the tasks are to be carried out**

The tenderer shall submit the methodology s/he intends to follow. The methodology should combine documental and statistical research and contacts with the companies concerned, employers' and employees' organisations, through visits, questionnaires, etc.

The PROGRESS Programme aimed at promoting gender mainstreaming in all its five policy sections and commissioned or supported activities. Consequently, the Contractor will take the necessary steps to ensure that its proposed team and/or staff respects the gender balance at all levels. It will also pay due attention when appropriate to the gender dimension of the service s/he is asked to deliver as detailed in the description of tasks.

Equally, needs of disabled people shall be duly acknowledged and met while executing the requested service. This will in particular entail that where the Contractor organises training sessions, conference, issues publications or develops dedicated websites, people with disabilities have equal access to the facilities or the services provided.

Finally, the Contracting Authority encourages the Contractor to promote equal employment opportunities for all its staff and team. This entails that the Contractor shall foster an appropriate mix of people, whatever their ethnic origin, religions, age, and ability.

The Contractor will be required to detail in its activity report accompanying the request for the final instalment the steps and achievements it made towards meeting these contractual provisions.

#### **6. Professional qualifications required**

See Annex IV of the draft contract, experts' CVs.

#### **Additional requirements:**

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#### **7. Time schedule and reporting**

See Article I.2. of the contract.

*In accordance with the General conditions, the Contractor is under the obligation to acknowledge that the present service is delivered on behalf of/with the support of the Community in all documents and media produced, in particular final delivered outputs, related reports, brochures, press releases, videos, software, etc, including at conferences or seminars, as follows.*

*This study is supported by the European Community Programme for Employment and Social Solidarity (2007-2013). This programme was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.*

*The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA and EU candidate and pre-candidate countries.*

*The Programme has six general objectives. These are:*

- (1) to improve the knowledge and understanding of the situation prevailing in the Member States (and in other participating countries) through analysis, evaluation and close monitoring of policies;*
- (2) to support the development of statistical tools and methods and common indicators, where appropriate broken down by gender and age group, in the areas covered by the programme;*
- (3) to support and monitor the implementation of Community law, where applicable, and policy objectives in the Member States, and assess their effectiveness and impact;*
- (4) to promote networking, mutual learning, identification and dissemination of good practice and innovative approaches at EU level;*
- (5) to enhance the awareness of the stakeholders and the general public about the EU policies and objectives pursued under each of the policy sections;*
- (6) to boost the capacity of key EU networks to promote, support and further develop EU policies and objectives, where applicable.*

*For more information see:*

*[http://ec.europa.eu/employment\\_social/progress/index\\_en.html](http://ec.europa.eu/employment_social/progress/index_en.html)*

*For publications it is also necessary to include the following reference: "The information contained in this publication does not necessarily reflect the position or opinion of the European Commission".*

*With regard to publication and any communication plan linked to the present service, the Contractor will insert the European Union logo, and any other logo developed for the employment and social solidarity fields, and mention the European Commission as the Contracting Authority in every publication or related material developed under the present service contract.*

**Additional requirements** (specific deadlines for the performance of tasks):

7.1 *The work shall be completed within a maximum of 9 (nine) months from the date of signature of the contract. It shall cover the following steps:*

7.2 *No later than 4 (four) months after the signature of the contract, the contractor shall submit an interim report, in French or English, including the various elements described in Section 5 above to the European Commission (Unit EMPL F/2).*

7.3 *No later than 7 (seven) months after the signature of the contract, the contractor shall submit a draft final report in French or English, including the various elements described in Section 5 above to the European Commission (Unit EMPL F/2). The Commission (Unit EMPL F/2) may, within 30 days of receiving the draft, submit objections and comments to the contractor. The contractor shall then submit the final report within 15 days of receiving the above objections and comments, (or within 9 months of the signature of the contract, whichever is the later), taking the objections and comments into account or presenting another point of view.*

*As a matter of principle, with a view to favouring appropriate monitoring and valorisation by the European Commission of all results obtained and outputs delivered under PROGRESS programme, the Contractor will be required to provide in addition*

- *Presentation of the key points of the service delivered in one page. Key points should be concise, sharp and easily understandable. They shall be provided in English, French and German.*
- *An executive summary in 5/6 pages and in English and French.*

7.4 *In the absence of objections and/or comments from the European Commission (Unit EMPL F/2) within a period of 45 (forty-five) days after reception, (or within a period of 9 months of the signature of the contract, whichever is the later), the draft final report shall be considered as definitive. .*

## **8. Payments and standard contract**

### **8.1. Pre-payment**

*Following signature of the contract by the last contracting party, within 30 days of receipt by the Commission of a request for pre-financing with a relevant invoice, a pre-financing payment equal to 30% of the total amount referred to in Article 1.3.1 of the model contract shall be made.*

### **8.2. Payment of the balance**

*The request for payment of the balance by the contractor shall be admissible if accompanied by:*

- *the final report drawn up in accordance with the instructions in point 7.*
- *the relevant invoices*

*provided that the report has been approved by the Commission.*

*The Commission shall have 45 days from receipt of this report to approve or reject it and the contractor shall have 30 days in which to submit additional information or a new report.*

*Within 30 days of the date on which the report is approved by the Commission, the balance corresponding to the invoices concerned shall be paid.*

*In drawing up the bid, the tenderer should take into account the provisions of the standard contract comprising the "General terms and conditions applicable to service contracts".*

## **9. Prices**

*Under the terms of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the latter are exempt from all charges, taxes and duties, including value added tax; such charges may not therefore be included in the calculation of the price quoted. The amount of VAT is to be indicated separately.*

*The price must be stated in EUR(€), net of VAT (using, where appropriate, the conversion rates published in the C series of the Official Journal of the European Union on the day when the invitation to tender was issued), and broken down according to the model in Annex III included in the attached standard contract.*

### **■ Part A: Professional fees and direct costs**

- Fees, expressed as the number of person-days multiplied by the unit price per working day for each expert proposed. The unit price should cover the experts' fees and administrative expenditure, but not the reimbursable expenses referred to below.  
These include .....*
- Other direct costs (please specify)*

### **■ Part B: Reimbursable expenses**

- Travel expenses (other than local transport costs)*
- Subsistence expenses of the Contractor and his staff (covering the expenditure incurred by experts on short-term trips outside their normal place of work)*
- Expenses for the shipment of equipment or unaccompanied luggage, directly connected with performance of the tasks specified in Article I.1 of this Contract*
  
- Contingencies*

*Total price = Part A + Part B*

*Offer prices should not exceed €90.000 in total.*

## **10. Groupings of economic operators or consortia**

*Tenders can be submitted by groupings of service providers/suppliers who will not be required to adopt a particular legal form prior to the contract being awarded, but the consortium selected may be required to assume a given legal form when it has been awarded the contract if this change is necessary for proper performance of the contract<sup>2</sup>. However, a grouping of economic operators 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 following points 11 and 12 must be supplied by every member of the grouping.*

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

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<sup>2</sup> *These entities 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).*

*The contract has to be signed by all members of the group, or by one of the members, which has been duly authorised by the other members of the grouping (a power of attorney or sufficient authorisation is to be attached to the contract), when the tenderers have not formed a legal entity.*

## 11. **Exclusion criteria and supporting documents**

1) Bidders must provide a declaration on their honour, duly signed and dated, that they are not in one of the situations referred to in Articles 93 and 94 a) of the Financial Regulation.

Those articles are as follows :

Article 93 :

Applicants or tenderers shall be excluded if:

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

Article 94:

Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:

- a) are subject to a conflict of interest;

2) The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in Article 134 of the implementing Rules, confirming the declaration referred to in point 1 above.

*Article 134 of the Implementation Arrangements – Supporting documents*

1. *The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in points (a), (b) or (e) of Article 93 of the Financial Regulations, production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that these requirements are met.*

2. *The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93 of the Financial Regulations, a recent certificate issued by the competent authority of the State concerned.*

*Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.*

3. *Depending on the national legislation of the country in which the tenderer or applicant is established, the documents referred to in paragraphs 1 and 2 above shall relate to legal entities and/or physical persons, including, where considered necessary by the awarding authority, company directors or any person with powers of representation, decision-making or control in relation to the tenderer.*

**See Annex I to these specifications (which may be used as a checklist) for the supporting documents accepted by the European Commission to be provided by applicants, tenderers or tenderers to whom the contract will be awarded.**

3) The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in Article 134 of the Implementing Rules, if such evidence has already been submitted to it

for the purposes of another procurement procedure launched by DG EMPL 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 candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

## **12. Selection criteria**

*All bids shall also contain the documents listed below testifying to the tenderer's financial and economic standing, technical capability and professional qualifications. In particular, the Commission shall examine:*

### *a) Economic and financial capacity:*

*- Turnover during the previous financial year at least equivalent to 75 % of the proposed price of the contract (90,000 €):*

*- Balance sheets and profit and loss accounts for the past two financial years, if the legislation of the country in which the tenderer is established requires them to be published;*

*- Regular accounts for the quarter preceding that in which the notice of invitation to tender was published if the full accounts for the previous financial year are not yet available*

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### *b) Technical capacity:*

*- Description of the technical capability and practical experience of the tenderer in the fields referred to in points 3, 5 and 6 of these specifications. For consortia of companies or groups of service providers, this description shall relate specifically to the tasks to be performed by each of their various members.*

*- Examples demonstrating the tenderer's technical capability and practical experience.*

*- The tenderer shall provide the names and curriculum vitae (3 pages maximum) of the persons responsible for the specific tasks described in paragraph 5 of these specifications with a view to ascertaining their practical experience in the field referred to.*

## **13. Award criteria**

*Of the bids which satisfy the requirements in points 11 and 12 above, the contract will be awarded to the bid offering the best price/quality ratio, taking account of the following criteria:*

- clarity and comprehensiveness of the technical and methodological approach (30%)*
- quality of the work plan proposed (30%)*
- degree of understanding of the assignment, its context and results to be achieved (20%)*
- organisation and management of the work (20%)*

*Please note that the contract will not be awarded to any bid that receives less than 70 % in the award criteria. The points total will then be divided by the price, with the highest-scoring bid being chosen.*

## **14. Content and presentation of bids**

### **Content of bids**

*Tenders must include:*

- all information and documents necessary to enable the Commission to appraise the bid on the basis of the selection and award criteria (see points 12 and 13 above);*
- a bank ID form duly completed and signed by the bank;*
- a "legal entity" form duly completed;*

- *the price;*
- *the detailed CVs of the proposed experts;*
- *the name and function of the contractor's legal representative (i.e. the person authorised to act on behalf of the contractor in any legal dealings with third parties);*
- *proof of eligibility: tenderers must indicate the State in which they have their registered office or are established, providing the necessary supporting documents in accordance with their national law.*

#### **Presentation of bids**

*Bids must be submitted in triplicate (i.e. one original and two copies).*

*They must include all the information required by the Commission (see points 10, 11, 12, and 13 above).*

*They must be clear and concise.*

*They must be signed by the legal representative. **Unsigned bids will be rejected.***

*They must be submitted in accordance with the specific requirements of the invitation to tender, within the deadlines laid down.*

## Annex I

<b>Exclusion criteria (Article 93(1) FR)</b>	<b>Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded</b>	
	<b>Procurement (Article 93(2) FR; Article 134 IR)</b>	
<b>1. Exclusion from a procurement procedure, Article 93(1) FR :</b> « Candidates or tenderers shall be excluded from participation in a procurement procedure if:		
<b>1.1. (subparagraph a)</b> they are bankrupt or being wound up,  are having their affairs administered by the courts,  have entered into an arrangement with creditors have suspended business activities, are the subject of proceedings concerning those matters,  or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations <sup>3</sup> ;	– Recent extract from the judicial record <b>or</b> recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance <b>or</b> – Where no such certificate is issued in the country concerned : 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	
<b>1.2. (subparagraph b)</b> they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata <sup>4</sup> ;	<i>Cf. supporting documents for Article 93(1)(a) FR above</i>	
<b>Exclusion criteria</b>	<b>Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded</b>	

<sup>3</sup> See also Article 134(3) IR : Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

<sup>4</sup> Cf. footnote n° 1.

<b>(Article 93(1) FR)</b>	<b>Procurement (Article 93(2) FR; Article 134 IR)</b>		
<p><b>1.3. (subparagraph c)</b> they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</p>	<p><i>Declaration by the candidate or tenderer that he is not in the situation described</i></p>		
<p><b>1.4. (subparagraph d)</b> they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed<sup>5</sup>;</p>	<p>Recent certificate issued by the competent authority of the State concerned confirming that the candidate is not in the situation described <b>or</b> – Where no such certificate is issued in the country concerned : 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</p>		
<p><b>1.5. (subparagraph e)</b> they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests<sup>6</sup>;</p>	<p><i>Cf. supporting documents for Article 93(1)(a) FR above</i></p>		
<p><b>1.6. (subparagraph f)</b> following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations. »</p>	<p><i>Declaration by the candidate or tenderer that he is not in the situation described</i></p>		

<sup>5</sup> Cf. footnote n°1.

<sup>6</sup> Cf. footnote n° 1.

<b>Exclusion criteria (Article 94 FR)</b>	<b>Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded</b>	
	<b>Procurement</b>	<b>Grants</b>
<b>2. Exclusion from a procurement or grant award procedure Article 94 FR :</b> « Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:		
<b>2.1. (subparagraph a)</b>  are subject to a conflict of interest;	Statement by the applicant, tenderer or bidder confirming the absence of conflict of interests, to be submitted with the application, bid or proposal	
<b>2.2. (subparagraph b)</b> are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information» <sup>7</sup> .	<ul style="list-style-type: none"> <li>– No specific supporting documents to be supplied by the applicant, tenderer or bidder</li> <li>– It is the responsibility of the authorising officer, represented by the evaluation committee, to check that the information submitted is complete<sup>8</sup> and to identify any misrepresentation</li> </ul>	

<sup>7</sup> Cf. Article 146(3) of the FR Implementing Rules: « ...the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within a specified time-limit. » and Article 178(2) of the FR Implementing Rules: « The evaluation committee may ask an applicant to provide additional proof or to clarify the supporting documents establishing financial and operational capacity, within a specified time-limit. »

<sup>8</sup> Cf. footnote n°1

# **DECLARATION ON HONOUR**

*I, the undersigned, Mrs./Mr....., in the capacity of.....(indicate your job title),  
certify that the.....(indicate company name)*

## **Article 93**

- a)** is not bankrupt or being wound up,  
does not have their 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,  
or 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 their 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 authority can justify;
- d)** has fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed
- e)** has not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f)** following another procurement procedure or grant award procedure financed by the Community budget, has not been declared to be in serious breach of contract for failure to comply with their contractual obligations. »

## **Article 94**

- a)** is not subject to a conflict of interest;

*Date:.....*

*Signature: .....*

*Name :.....*

*Job title :.....*