
Tender specifications – open invitation to tender No VT/2009/056

Contract to further develop a methodology for the systematic evaluation of Health and Safety at Work Directives and to test the methodology in a pilot evaluation of Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace

1. TITLE OF THE CONTRACT

Contract to further develop a methodology for the systematic evaluation of Health and Safety at Work Directives and to test the methodology in a pilot evaluation of Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace¹.

2. BACKGROUND

2.1 Progress Programme

The Social Agenda (2005-2010) 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.

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 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. PROGRESS mission is to strengthen the EU contribution in support of Member States' commitments and efforts to create more and better jobs and to build a more cohesive society. To that effect, PROGRESS will be instrumental in:

- providing analysis and policy advice on PROGRESS policy areas;
- monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;
- promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
- relaying the views of the stakeholders and society at large.

More specifically, PROGRESS will support:

¹ First individual directive within the meaning of Article 16(1) of Directive 89/391/EEC (OJ L 393, 30.12.1989, p. 1).

- (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).

The present call for tenders is issued in the context of the implementation of the 2009 annual plan of work which is consultable at:

<http://ec.europa.eu/social/main.jsp?catId=327&langId=en>

2.2 Background information specific to this contract

One step on the way to achieving the goal of the EU Lisbon Strategy to promote more and better jobs is the provision of an appropriate legal framework for business activities within the European Union. The legal framework should be effective in reaching its aims.

In order to assess the effectiveness of the existing legal framework, Unit EMPL/F/4 has in the past carried out evaluations of the practical implementation of the EU Health and Safety at Work Directives (COM(2004) 62², COM(2008) 698³). Further evaluations will be finalised and published in 2009. Major input to these evaluations is provided by the national reports provided by the Member States which are based on a common outline established by the Unit EMPL F/4 in collaboration with the Advisory Committee on Safety and Health at Work (ACSH) and which also indicate the opinions of the social partners. The Commission's evaluations also build on an independent experts' report, analysing the implementation of the Directives in all sectors, including the public sector. Finally, these evaluations reflect the experience gained by the Commission in its work of monitoring the transposition of the Directives into national laws and their application across the economy.

The current initiative to further develop a methodology for a systematic evaluation of OSH Directives and to assess Directive 89/654/EEC follows the recent Commission undertaking⁴ to assess the implementation of the regulatory framework with a view to improving it.

In 2006 a new initiative in the area of health and safety at work was launched by a group of Member States and a European Working Group was formed by several EU Member States

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment).

³ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the practical implementation of Health and Safety at Work Directives 92/57/EEC (temporary and mobile sites) and 92/58/EEC (safety signs at work).

⁴ In the communication *Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work*, COM(2007) 62 final, 21.2.2007.

to study the effectiveness and efficiency of existing EU legislation in this area. To this aim, an ex post evaluation of Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment⁵ was launched in six EU Member States: the Czech Republic, Denmark, Finland, Germany, the Netherlands and the United Kingdom. This evaluation took the form of a pilot study, aimed not only at analysing the specific legislation related to visual display units (VDU), but also at showing the general possibilities and limitations of the evaluation instrument.

Each of the participating Member States conducted its own evaluation. As a common basis for the national evaluations the Working Group produced two papers:

1. "Common Requirements for the Evaluation of the VDU Directive", which describes the fundamental aims and framework conditions of the evaluation; and
2. "Overview about Terms of Reference for the Preparation of Empirical Investigations" (TOR), in order to establish a minimum level of comparability between the various national evaluations.

These documents are available on the following website of DG EMPL:

<http://ec.europa.eu/social/main.jsp?catId=625&langId=en>

Apart from guidelines on the contents of the evaluation, the Terms of Reference also contained some requirements regarding the choice of methodology for the evaluation. However, the final decisions on the data collection methodology and details of sampling etc. were agreed at national level. This led to certain differences between methodologies in the various countries which put some restrictions on cross-national comparison.

Despite these methodological limitations, the key general results of the different national evaluation projects were able to be compared and analysed from a cross-national perspective, albeit often at an aggregated level only. It was concluded that an ex-post evaluation of European OSH legislation is feasible and produces additional and valuable input for the ongoing debate on smarter and better regulation. It was therefore recommended that the European Commission conduct further empirical evaluations of the practical implementation of specific Directives in the area of occupational health and safety. The final integrated cross-national evaluation report⁶ is available on the following website of DG EMPL:

<http://ec.europa.eu/social/main.jsp?catId=625&langId=en>

Consequently, the Advisory Committee on Safety and Health at Work⁷ has set up a working party on the "Evaluation of OSH Directives" (hereafter "ACSH Working Group") mandated to assist the Commission in the development of a pilot evaluation project on the "Workplace" Directive 89/654/EEC, taking advantage of the methodology and the results of the evaluations of the VDU Directive (and its implementation) in a number of Member States. Further development of the evaluation methodology and the evaluation of Directive 89/654/EEC, subject of this contract, should therefore be carried out in close cooperation with the ACSH Working Group, which is composed of members representing national governments, trade unions and employers' organisations in several EU Member States. The multi-country composition of the ACSH Working Group ensures that differences in the national context are taken into account from the very beginning of the project.

⁵ OJ L 156, 21.6.1990, p. 14.

⁶ The development of a methodology to assess the quality of EU directives: a pilot study on basis of the Directive on Visual Display Units (Directive 90/270 EEC) — Integrated cross-national report (author: TNS Infratest Sozialforschung GmbH).

⁷ Council decision of 22 July 2003 setting up an Advisory Committee on Safety and Health at Work (OJ 2003/C 218/01).

The evaluation of Directive 89/654/EEC also has the status of a pilot study, as the common methodology for a systematic evaluation of OSH Directives will be used for the first time to evaluate a specific OSH Directive in all 27 Member States and a sample of EFTA-EEA countries. Unlike the evaluation of the VDU Directive conducted by various national contractors, the evaluation of Directive 89/654/EEC will be carried out by a single contractor selected through the present invitation to tender. The aim of this evaluation is not confined to the assessment of Directive 89/654/EEC; it will also serve as a means for testing and improving the common methodology for ex-post evaluation of EU OSH Directives to be further developed by the contractor with a view to allowing better comparability of the situation in the various Member States and efficient involvement of all stakeholders.

The results and recommendations of this pilot evaluation should also contribute to the formulation of the Community strategy 2013-2018 on health and safety at work.

3. SUBJECT OF THE CONTRACT

This invitation to tender invites bids for further developing a methodology for the systematic evaluation of OSH Directives and testing it in a pilot evaluation of Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace.

The work to be carried out by the contractor therefore has two outcomes.

On the one hand, the contractor must provide, before starting the evaluation, a common evaluation methodology for assessing the EU OSH legislation, building on the methodology developed in the evaluation of the VDU Directive, and making it possible to achieve the necessary improvements and eliminate the shortcomings identified in the course of testing the methodology in the pilot evaluation of the VDU Directive. In this regard, the contractor's evaluation methodology must *inter alia* allow the comparability of the results of the various evaluations carried out at national level, the assessment of relevance and effectiveness of European OSH legislation and the subsequent development recommendations to improve this relevance and effectiveness.

The evaluation methodology must make it possible to assess both the quality of the European OSH legislation and the actual practical implementation at the workplaces of this legislation.

On the other hand, he/she must carry out the evaluation of specific legislation, namely the "Workplace" Directive 89/654/EEC in which he/she will use and test his improved methodology. This evaluation will thus also serve for further improvements of the contractor's evaluation methodology.

The contractor will therefore deliver two final reports, one including an effective and efficient common evaluation methodology for the systematic assessment of EU OSH legislation applicable to all EU Member States and the other one containing the cross-nationally comparative evaluation of Directive 89/654/EEC in all 27 Member States and a sample of EFTA-EEA countries.

The tasks to be carried out are described in section 5.

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.

5. TASKS TO BE CARRIED OUT BY THE CONTRACTOR

5.1 General description of tasks

5.1.1 The Assignment

The contractor shall in a first step develop a common evaluation methodology for the systematic evaluation of EU OSH legislation.

The evaluation methodology should make it possible to assess both the quality of the European OSH Directives and the actual practical implementation at the workplaces including promoting and inhibiting factors.

The contractor shall subsequently carry out an evaluation of Directive 89/654/EEC in all EU 27 Member States and a sample of EFTA-EEA countries and summarise the results of the national evaluations in a cross-national evaluation report. In this evaluation, the contractor shall apply and test the common evaluation methodology he had developed. He is expected to have developed this methodology *ex ante*, i.e. before starting the evaluation itself. Nevertheless, he/she will further improve the methodology according to the practical experiences he/she will obtain during the evaluation.

5.1.2 Demands on the Methodology

The contractor is requested to develop a methodology for the systematic evaluation of the European OSH Directives. This methodology should be based on the methodology used for the pilot evaluation of the VDU Directive and set out in the "Common requirements for the Evaluation of the VDU Directive" and the "Overview about Terms of Reference for the Preparation of Empirical Investigations" (see section 2.2.). The methodology should also take into account the work of the working party of the Advisory Committee on Safety and Health at Work on the development of the structure and questionnaire for the national practical implementation reports to be transmitted by the Members States to the Commission according to Article 17bis of Directive 89/391/EEC.

The contractor is also expected to apply a creative approach and look for best solutions.

To avoid the shortcomings of the evaluation of the VDU Directive it should pay particular attention to the

- (1) Comparability of evaluation results across MS;
- (2) Measurement of costs and benefits;

- (3) The definition of empirical indicators which allow an assessment of the effectiveness of the individual requirements;
- (4) The concept of "relevance" of the legislation and an interpretation and operationalisation which is compatible between MS.

The final integrated cross-national evaluation report of the evaluation of the VDU Directive includes a relevant set of recommendations.

The evaluation methodology to be developed by the contractor should identify the core of indicators and sources common for the assessment of all EU H&S at work Directives as well as the indicators and sources likely to vary according to the characteristics and specific objectives of individual Directives or their categories.

With respect to development of these indicators, the contractor is requested to make, where possible, a clear distinction between:

- A. the quality of the European OSH legislation
- B. the actual practical implementation at the workplaces

Ad A: Quality of European OSH legislation

The contractor is requested to analyse the quality of the European OSH Directives. The contractor's indicators should therefore make it possible to, *inter alia*, answer the following questions:

1. Have the requirements of a Directive been chosen adequately?
2. Have the objectives of the Directive been achieved with the instruments used (effectiveness of the instruments)? Which intended and unintended side effects did it produce?
3. Have the instruments been used efficiently?
4. What is the relevance of the Directive?
5. Which changes related to the policy and regulatory framework and/or practice would have happened anyway in the subject covered by the Directive? Could the same objectives have been reached with other instruments than legislation?
6. Has the Directive led to a level playing field between MS with regard to OSH?
7. Are the obligations laid down in the Directive clearly formulated?

Ad B: Implementation at the workplace

The methodology developed by the contractor should also allow an assessment of the practical implementation of European OSH Directives. It should, *inter alia*, ensure an answer to the following questions:

8. What is the level of practical implementation of the provisions of the Directive (including (technical) requirements of the annex (s))? This includes also the question whether the different groups involved in its implementation, in particular employers, workers and workers representatives with specific responsibility for the safety and health of workers are aware of the Directive and have adequate knowledge. Note: "Knowledge" is not necessarily equivalent to "literal" knowledge of the European Directives and/or the national laws!
9. What is the level of the fulfilment by the employers of general legal obligations laid down in Directive 89/391/EEC (e.g. risk assessment, information of workers, consultation of workers, workers participation and training) in the context of the implementation at workplace of the specific Directive under evaluation?

10. What are the results of the comparison with the workers/workers representatives/experts estimations as regards the fulfilment of legal obligations by the employers?

Finally, the application of the methodology should, *inter alia*, result in the identification of answers to the following questions, interlinking the quality of the legislation and its practical implementation:

11. What are the reasons for the successes/shortcomings found (e.g. the Directive itself/the national transposition/the national enforcement strategies/other factors)?
12. Should there be changes in
 - the legal provisions
 - the implementation at company level
 - the enforcement strategies of national authorities
 - other accompanying measures for improving OSH at workplaces (e.g. economic incentives, awareness raising, practical tools)?
13. Has the Directive had particular effects on any type of establishments (e.g. depending on sector, size etc.) and workers (depending on sex, age occupation etc.)?
14. Has the Directive had an impact on the rates of occupational accidents and diseases?

In addition, the broader economic effects need to be addressed in this evaluation. The relevant questions in this respect are:

15. How to measure compliance cost of the Directive for employers?
16. Do the benefits of the Directive outweigh the costs linked to its implementation and enforcement?
17. Did the Directive have macroeconomic effects (for example on employment, productivity, competitiveness)? How can these effects be measured and assessed?

The approach should aim at quantification whenever this is reasonable or explain why quantification is not adequate or actually not possible.

Use and Collection of Data

The contractor is requested to make use of available data from European level as well as from national level whenever possible (e.g. statistics on occupational accidents or data on health problems attributed to workplace conditions). Such sources can be official statistics as well as any other relevant and reliable sources of information.

The contractor will take due account of the results of and practical experience with the pilot evaluation of the VDU Directive, and in particular the organisational and methodological changes recommended for future evaluations in the aforementioned final integrated cross-national evaluation report. In the light of those recommendations, the contractor is expected to perform, *inter alia*, the following tasks:

- In order to establish real cross-national comparability of the evaluations, the contractor should carry out an ex-ante harmonisation of the evaluation methodology to be applied in all countries concerned. In this context, the contractor should among other things develop an English core master questionnaire for all those

indicators for which strict cross-national comparability is desirable. To this end, he should use also the research questions of the Terms of Reference referred to in section 2.2. of this invitation to tender and operationalise them, i.e. transform them into a practical questionnaire.

- The contractor should devise a common and efficient data collection methodology (e.g. mode of data collection, choice of respondents including a common definition for the establishment of size-classes and sectors of activity). This data collection methodology should be uniform across all countries and guarantee that differences between countries appearing in the analysis phase are genuinely due to differences in reality and not merely the result of methodological differences.
- For the data collection method, semi-structured qualitative and/or quantitative interviews with employers, workers and workers' representatives with specific responsibility for the safety and health of workers, and other OSH experts or other stakeholders within the selected establishment, conducted by telephone or face-to-face, should be given priority over online interviews and phone interviews and especially mail questionnaires, which tend to have a much stronger self-selection bias than methods involving an interviewer.
- Sampling for the establishment survey should be carried out in an appropriate way ensuring that from each size-class a sufficiently high number of interviews is available for later analysis to be carried out by the contractor. Sampling should also take place in all the private and/or public sectors of economic activity. The results should then in any case be weighted so that they are really representative of the economy in a country. The weighting may be made establishment – or employee-proportional – consideration should be given to presenting results on both bases. When making cross-country comparisons, the same type of proportionality has to be used for the data of all national evaluations. Special attention should be given to small and medium-sized enterprises (SMEs) and to micro-sized organisations.
- In addition to the individual employers, workers, workers' representatives with specific responsibility for the safety and health of workers or other actors within the enterprises, the contractor should conduct qualitative, semi-structured interviews with a number of additional stakeholders. These should include, for example, employer's federations, formal worker's representative organisations (e.g. trade unions), institutions responsible for enforcement (e.g. the labour inspectorate), officials of national OSH authorities and national OSH research institutes, relevant insurance companies, manufacturers and suppliers of the equipment and devices required by the specific Directive evaluated.
- The strictly cross-nationally comparable evaluation indicators to be developed by the contractor should make it possible to measure differences in the degree of application, awareness, effectiveness etc. of the legislation in the countries concerned. A cross-country study should therefore be possible on the basis of such indicators, enabling researchers to analyse for example how far different approaches with regard to the transposition of European law into national law or with regard to national dissemination and implementation strategies lead to different results. In this way, the most successful implementation and dissemination strategies should be identified so that other countries have the chance to learn from these "good practice" models. This, rather than the production of country rankings, should be the ultimate aim of making the indicators cross-nationally comparable.
- The European and national practical implementation reports can give hints as to potentially conflictual or problematic issues in the legislation itself or its practical implementation and can indicate recent or future developments which might call for

changes in the legislation. Such hints should be taken up and empirically investigated in the framework of an evaluation.

5.1.3 Organisation of Work

The contractor will carry out his/her work in close collaboration with the ACSH Working Group and European Commission (Unit EMPL F/4) and take due account of all their suggestions, contributions and proposed arrangements.

The contractor will: take part in eight (8) meetings - four (4) with the Commission (Unit EMPL F/4) and four (4) with the ACSH Working Group. The latter will take place the day after each meeting with the Commission. These meetings will be organised by the Commission (Unit EMPL F/4) and held on the Commission premises in Luxembourg.

5.1.4 Outcome

The outcome of this evaluation shall be two main reports, namely:

a report developing the evaluation methodology covering at least 30 pages plus annexes and one page with an executive summary. This report is expected to be in English.

a final report, containing a cross-nationally comparative evaluation of Directive 89/654/EEC in all 27 Member States and a sample of EFTA-EEA countries; this report should be in English and cover at least 80 and max. 120 pages including an executive summary in English, French and German.

Furthermore the consultants should provide references to all sources used during their work. In particular data collected in the course of the project should be made accessible – while respecting the principles of data protection.

5.2. Emphasis

Bids must contain evidence of the tenderer's ability to perform the tasks laid down in section 5.1 of these specifications, the rigour of the proposed approach (methodology) and the ability to meet the requirements set out in section 3 ("Subject of the contract") which will also be among the factors governing the award of the contract.

Tenderers may choose not to give full details of their evaluation methodology unless they are awarded the contract. But in their bid they **must clearly indicate** the fundamental elements of the methodology allowing the objectives set out in section 3 of these specifications to be achieved. In this case, they must indicate their intention in their bid, and include a summary of the methodology.

The methodology must enable the various elements cited in sections 3 and 5.1 of this invitation to tender to be identified, analysed and assessed and should not be restricted to documentary identification and analysis. It must also show the approach envisaged and its suitability for reflecting correctly the requirements set out in sections 3 and 5.1 as well as the work plan, which will be among the factors governing the award of the contract.

The methodology described above and the work plan proposed will be among the factors governing the award of the contract.

5.3. Guide on how the activities shall be carried out

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:

- Gender equality issues are taken into account when relevant for the drafting of the technical offer by paying attention to the situation and needs of women and men;
- Implementation of the requested tasks includes a gender perspective by considering systematically women and men dimension.
- Performance monitoring includes the collection and gathering of data disaggregated by sex when needed.
- His proposed team and/or staff respects the gender balance at all levels.

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. SKILLS AND PROFESSIONAL QUALIFICATIONS REQUIRED

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

Additional requirements:

Tenderers must have at their disposal a team with confirmed experience in the specific field of health and safety at work as well as in applying analysis and assessment methods and techniques and in collecting information. In order to carry out the required evaluation and methodology development properly, tenderers and their teams must be familiar with the existing evaluation tools and with EU legislation in the field of health and safety at work.

7. TIMETABLE AND REPORTING

7.1. Specific deadlines for the performance of tasks:

The work must be completed within a maximum of **twenty-four (24) months** from the date on which the contract is signed. The various stages are as follows.

1. **One (1) month** after signature of the contract, a **first (1st) meeting** of the contractor with the Commission and the day after with the ACSH working group will take place to further explain the purpose of the study, coordinate the dates of the meetings, explain the role of the ACSH working group and exchange other useful information.
2. Not later than **three (3) months** after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4), in English, a **draft evaluation methodology** for assessing the EU OSH legislation as well as **the working method for applying this methodology** to the evaluation of Directive 89/654/EEC, together with the work schedule.
3. Not later than **five (5) months** after signature of the contract, the contractor must give a presentation to the Commission and the ACSH Working Group on the draft evaluation methodology for assessing the EU OSH legislation, on the application of this methodology to the evaluation of Directive 89/654/EEC and on the aspects referred to in section 5.1 of this invitation to tender at the **second (2nd) meeting** with the Commission (Unit EMPL F/4) and the day after with ACSH Working Group following the signature of the contract. The contractor will take into account the suggestions and recommendations made at those meetings by the members of the ACSH Working Group as well as the proposals made by the Commission (Unit EMPL F/4). He will subsequently adapt the evaluation methodology as well as the working method for applying this methodology to the evaluation of Directive 89/654/EEC no later than **six (6) weeks** after the meeting with the ACSH Working Group and inform the Commission what are these adaptations.
4. No later than **twelve (12) months** after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) an **interim report** in English, describing the progress made in relation to the envisaged timetable, together with a summary of the results obtained so far, both as regards the development of the evaluation methodology and the evaluation itself. This interim report must also indicate whether any methodological adjustments to the evaluation methodology were made during the evaluation and what exactly were such adjustments. This interim report must be presented and discussed at the **third (3rd) meeting** with the Commission (Unit EMPL F/4) and the day after with the ACSH Working Group. The contractor will take into account the suggestions and recommendations made at those meetings by the members of the ACSH Working Group as well as the proposals made by the Commission (Unit EMPL F/4). He will subsequently adapt the evaluation methodology as well as the working method for applying this methodology to the evaluation of Directive 89/654/EEC no later than **four (4) weeks** after the meeting with the ACSH Working Group.
5. **Eighteen (18) months** after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) a **preliminary draft final report** in English including the final evaluation methodology for assessing the EU OSH Directives and describing the results of the evaluation of Directive 89/654/EEC. This preliminary draft final report must be presented and discussed at the **fourth (4th) meeting** with the Commission (Unit EMPL F/4) and the day after with the ACSH Working Group. The conclusions of those meetings will be taken into account by the contractor in preparing the draft final report.
6. **Twenty-one (21) months** after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) a **draft final report** in English. This draft final report will contain both an effective and efficient common evaluation methodology for the systematic assessment of European OSH legislation applicable to all EU Member States and a cross-nationally comparative evaluation of Directive 89/654/EEC in all 27 Member States and a sample of EFTA-EEA countries.

7. The European Commission (Unit EMPL F/4) may communicate any objections and comments to the contractor **within sixty (60) days of receiving** the draft final report. **Within thirty (30) days of receiving** such objections and comments, the contractor must submit a **final report** in English taking account of them. Having done so, the contractor can obtain written acceptance. If there are no objections and/or comments from the European Commission (Unit EMPL F/4) **within the sixty (60) days** of receiving the draft final report, the report will be regarded as accepted.

The final report submitted by the contractor must cover the various aspects referred to in section 5 above.

The detailed methods and plan of work and the various reports mentioned in this section must be submitted to the Commission (Unit EMPL F/4) both in hard copy (in triplicate) and in a widely used electronic format. The contractor must also provide a copy of the information collected and used in preparing the final report. At the contractor's request, this information will be treated confidentially.

7.2. Publicity and information requirements

In accordance with the General conditions, all contractors are under the obligation to acknowledge that the present service has been commissioned for 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. In the context of the Community Programme for Employment and Social Solidarity – PROGRESS, the following formulation shall be used:

This (publication, conference, training session etc) is commissioned under the European Community Programme for Employment and Social Solidarity - PROGRESS (2007-2013). This programme is managed by the Directorate-General for Employment, social affairs and equal opportunities of the European Commission. It 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-EEA and EU candidate and pre-candidate countries.

PROGRESS mission is to strengthen the EU contribution in support of Member States' commitment. PROGRESS will be instrumental in:

- *providing analysis and policy advice on PROGRESS policy areas;*
- *monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;*
- *promoting policy transfer, learning and support among Member States on EU objectives and priorities; and*
- *relaying the views of the stakeholders and society at large*

For more information see:

<http://ec.europa.eu/social/main.jsp?catId=327&langId=en>

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 activity, the Contractor will insert the European Union logo and mention the European Commission as the Contracting Authority in every publication or related material developed under the present contract.

7.3 Reporting requirements

PROGRESS will be implemented through a results-based management - RBM. Managing for outcomes and results is about working to maximise results for European citizens. This includes:

- Identifying the most important results for European citizens;
- Managing for these results, including setting clear desired results, implementing plans based upon these results and learning about ‘what works’ in the process;
- Seizing opportunities to work together whenever this helps achieve the results.

As a first step, a Strategic Framework for the implementation of *PROGRESS* has been developed in collaboration with Member states and organisations from the civil society. The Strategic Framework provides the framework for implementing *PROGRESS*, complemented by the Performance Measurement, which defines *PROGRESS* mandate, its long-term and specific outcomes. See in Annex the overview of *PROGRESS* performance measurement framework. For more information on the strategic framework, please visit *PROGRESS* website.

The Commission will in that context monitors the effect of *PROGRESS* supported or commissioned initiatives and considers how these initiatives contributes to *PROGRESS* outcomes as defined in the Strategic Framework. In that context, the Contractor will be asked to loyally work in close cooperation with the Commission and/or persons authorised by it to define their expected contributions and the set of performance measures against which their contribution will be assessed. The Contractor will be asked to collect and report on its own performance to the Commission and/or persons authorised by it against a template which will be annexed to the contract. In addition, the Contractor will make available to the Commission and/or persons authorised by it all documents or information that will allow *PROGRESS* performance measurement to be successfully completed and to give them the rights of access.

8. PAYMENTS AND STANDARD CONTRACT

When preparing their bids, tenderers must take account of the provisions of the standard contract, which includes the “general conditions applicable to service contracts”.

8.1. Pre-financing

Following signature of the contract by the last contracting party, a pre-financing payment equal to 30% of the total referred to in Article 1.3.1 of the model contract will be paid within 30 days of the date of receipt of a request for pre-financing, accompanied by a corresponding invoice.

8.2. Interim payments

The contractor can request an interim payment. To be acceptable, such request must be accompanied by:

- an interim technical report in accordance with the instructions laid down in section 7,
- the relevant invoices,
- statements of reimbursable expenditure in accordance with Article II.7 of the draft contract

provided the report has been approved by the Commission.

The Commission has 60 days from receipt of the report to approve or reject it, and the contractor has 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, an interim payment corresponding to the relevant invoices, up to a maximum of 40% of the total amount referred to in Article 1.3.1 of the draft contract shall be made.

8.3. Payment of the balance

To be acceptable, the contractor's request for payment of the balance must be accompanied by:

- a final technical report in accordance with the instructions laid down in section 7,
- the relevant invoices,
- statements of reimbursable expenditure in accordance with Article II.7 of the draft contract.

The said report must have been approved by the Commission.

After receiving the report, the Commission has 60 days in which to accept or reject it, and the contractor has 30 days in which to submit new documents.

The balance corresponding to the relevant invoices will be paid within 30 days following the date of approval of the report by the Commission.

9. PRICE

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 (VAT); 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 in number of person/days and unit price per working day for each expert proposed. The unit price covers the experts' fees and administrative expenditure, but not the reimbursable expenses referred to below.
- Translation costs, where applicable

■ Part B: Reimbursable expenses

- Travelling expenses (not including local transport)
- Subsistence expenses of the contractor and his staff (covering the expenditure incurred by experts on short-term trips outside their normal place of work)
- Cost of transporting equipment or unaccompanied baggage directly linked to the performance of the tasks set out in Article I.1 of the standard contract
- Contingencies

The total price = Part A + Part B, with a maximum of € 500,000

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 contract⁸. 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.

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 situation 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 judgment which has the force of res judicata;*
- c) *they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;*
- d) *they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;*
- e) *they have been the subject of a 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) *they are currently subject to an administrative penalty referred to in Article 96(1)⁹.*

⁸ 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.

⁹ "Article 96(1) : the contracting authority may impose administrative or financial penalties on the following :

- a) candidates or tenderers in the cases referred to in point (b) of Article 94;
- b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

Article 94:

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

- a) are subject to a conflict of interest.*
- 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 ¹⁰.*

2) The tenderer to whom the contract is to be awarded must 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 Implementing Rules – Evidence

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

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(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

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

§4. 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 (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 who 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 DG EMPL procurement procedure and provided the documents were issued no more than one year ago and are still valid.

(...)"

¹⁰ 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 the time limit it specifies. » and Article 178(2) of the FR Implementing Rules: « The evaluation committee may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, in particular in the case of obvious clerical errors. »

In such a case, the candidate or tenderer must declare on his honour that the documentary evidence has already been provided in connection with a previous procurement procedure and must confirm that there have been no changes in his situation.

12. SELECTION CRITERIA

All bids must also contain the documents listed below, testifying to the tenderer's financial and economic standing, technical capability and professional qualifications. In particular, the European Commission will verify:

12.1. Financial and economic standing: on the basis of the following documents:

- turnover during the previous financial year (statement on the overall turnover – at least twice the value of the contract, i.e. €1.000.000)
- balance sheets and profit and loss accounts for the past three 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.

12.2 Technical capability of the tenderer:

- a description of the tenderer's technical capability and practical experience in the field referred to in section 3, 5 and 6 of these specifications, and in particular as regards the specific field of health and safety at work as well as the application of analysis and assessment methods and techniques and in collecting information. Furthermore, the tenderer and his team should be familiar with the existing evaluation tools and with EU legislation in the field of health and safety at work. For consortia of companies or groups of service providers, this description must relate specifically to the tasks to be performed by each of their various members;
- samples of work demonstrating tenderer's practical experience in the field referred to in section 3 of these specifications;
- the tenderer must provide the names and curricula vitae (three pages maximum) of the persons responsible for the specific tasks described in section 5 of these specifications, with a view to ascertaining their technical capability and practical experience;
- a description of the parts of the services to be provided by each consortium of companies or groups of service providers (where applicable).

13. AWARD CRITERIA

Taking the bids which meet the requirements of sections 11 and 12 above, the contract will be awarded to the best-value-for-money tender, on the basis of:

13.1. Quality of the offer (max. 100 points)

The evaluation of the quality of the offers will be done accordingly to the following criteria:

- | | |
|---|-----------|
| - Understanding of the scope of work, objectives and tasks: | 25 points |
| - Quality and consistency of methodological approach
(as regards both the development of the common methodology for the systematic assessment of the EU legislation and the evaluation of Directive 89/654/EEC): | 45 points |

- Quality of the work plan proposed: 15 points
- Organisation of the work and management of the project: 15 points

13.2. Financial proposal

13.2.1 Minimum requirements

Tenders for which the assessment of the quality of the bid result in less than **65 points** of a perfect score (100) will be considered to be of an unacceptably low quality. Only tenderers having scored an average of 65 points or more on the bids evaluation may participate in the financial evaluation.

The total score obtained in this way will be considered together with the **price** (for method used, see 13.2.2 Financial evaluation), and the contract will be awarded to the most cost-effective tender.

The Commission will reject the bid if the price proposed is in excess of the budget allocated to this project.

13.2.2 Financial evaluation

Method used:

1. The best-value-for-money offer is determined by weighting the quality of the offer **70%** and the financial proposal **30%** using the following method:
2. In order to reflect the **70%** weighting to be given to the quality of the proposal, the tender with the best quality as evaluated under 13.1 is awarded the maximum **70**. Other tenders which received the minimum score of 65 points on the quality of the offer (see 13.2.1) receive points calculated according to the following equation:

Points **T** = (initial score of bid in question/initial score of best bid) x **70**

- (3) In order to reflect the **30%** weighting to be given to the financial proposal the lowest financial offer is automatically awarded the maximum of **30**.

Other tenders receive points calculated according to the following equation:

Points **F** = (least expensive price/price of tender in question) x **30**.

Final score = T+F

The highest scoring firm is deemed to have made the best-value-for-money offer.

14. CONTENT AND PRESENTATION OF BIDS

14.1 Content of bids

Bids must include:

- a presentation letter duly signed by the legal representative;
- all the information and documents necessary to enable the Commission to appraise the bid on the basis of the selection and award criteria (see sections 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.

14.2 Presentation of bids

- Bids must be submitted in triplicate (i.e. one original and two copies).
- They must be clear and concise.
- They must be signed by the legal representative.
- They must be submitted in accordance with the specific requirements of the invitation to tender, within the deadlines laid down.

Annex I

Exclusion criteria (Article 93(1) FR)	Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded	
	Procurement (Article 93(2) FR; Article 134 IR)	
1. Exclusion from a procurement procedure, Article 93(1) FR : <i>« Candidates or tenderers shall be excluded from participation in a procurement procedure if:</i>		
1.1. (subparagraph a) <i>they are bankrupt or being wound up,</i> <i>are having their affairs administered by the courts,</i> <i>have entered into an arrangement with creditors have suspended business activities, are the subject of proceedings concerning those matters,</i> <i>or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations¹¹;</i>	Recent extract from the judicial record or Recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance or 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	
1.2. (subparagraph b) <i>they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata¹²;</i>	Cf. supporting documents for Article 93(1)(a) FR above	
1.3. (subparagraph c) <i>they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</i>	Declaration by the candidate or tenderer that he is not in the situation described	
1.4. (subparagraph d) <i>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 performed¹³;</i>	Recent certificate issued by the competent authority of the State concerned confirming that the candidate is not in the situation described or 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	
1.5. (subparagraph e) <i>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 interests¹⁴;</i>	Cf. supporting documents for Article 93(1)(a) FR above	
1.6. (subparagraph f) <i>they are currently subject to an administrative penalty referred to in Article 96(1)¹⁵. »</i>	Declaration by the candidate or tenderer that he is not in the situation described	

¹¹ 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.

¹² Cf. footnote n° 11.

¹³ Cf. footnote n° 11.

¹⁴ Cf. footnote n° 11.

¹⁵ Article 96(1) FR: The contracting authority may impose administrative or financial penalties on the following:
(a) candidates or tenderers in the cases referred to in point (b) of Article 94;
(b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

Exclusion criteria (Article 94 FR)	Supporting documents to be provided by applicants, tenderers or tenderers to who the contract will be awarded.	
	Procurement	Grants
2. Exclusion from a procurement or grant award procedure Article 94 FR : « <i>Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:</i>		
2.1. (subparagraph a) <i>are subject to a conflict of interest;</i>	atement by the applicant, tenderer or bidder confirming the absence of conflict of interests, to be submitted with the application, bid or proposal	
2.2. (subparagraph b) <i>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»¹⁶.</i>	No specific supporting documents to be supplied by the applicant, tenderer or bidder It is the responsibility of the authorising officer, represented by the evaluation committee, to check that the information submitted is complete ¹⁷ and to identify any misrepresentation	

¹⁶ 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 the time limit it specifies. » and Article 178(2) of the FR Implementing Rules: « The evaluation committee may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, in particular in the case of obvious clerical errors. ». »

¹⁷ Cf. footnote n°16

Annex II

Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest

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

- in his/her own name (*if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator¹⁸*)
or
- representing (*if the economic operator is a legal person*)

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

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

official address in full:

VAT registration number:

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

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

¹⁸ To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

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 above¹⁹.

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

¹⁹ Mandatory for contracts of value above €133 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.