



EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change

Study Service Contract

Contract title **Implementation of Directive 2005/47/EC on the Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.**

Contract ref. no. **VC/2010/0880**
The above title and reference no. **must** be quoted in **all** correspondence with the Commission.

Contractor
.....

Other administrative information

Department **DG EMPL/F/2**

Pre-information notice O.J. publication ref. no: —
Call for tenders DG EMPL ref. no: VT/2010/031 of

Contract notice O.J. publication ref. no:

EPIC (CIAME) ref. no:/.....

Databases SMART ref. no:

Service category no: A11

Other accounting information

Commitment no. **SI2.**
This commitment no. **must** be quoted in correspondence relating to **invoices / payments.**

Type of Contract **V/SE/STUSEC02**

The European Union (hereinafter referred to as “**the Union**”),
represented by the European Commission (hereinafter referred to as “**the Commission**”),
which is represented for the purposes of the signature of this Contract by Armindo SILVA,
Acting Director - EMPL/F, Employment, Social Affairs and Equal Opportunities DG,

on the one part,

AND

.....(*official name in full*),
registered legal form:,
statutory registration number:,
official address in full:,
VAT registration number:,
(hereinafter referred to as “**the Contractor**”),
represented for the purposes of the signature and management of the present Contract by
.....(*forename and name in full*),(*function*),

of the other part,

HAVE AGREED

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

- **Annex I** Tender Specifications (Invitation to Tender no. VT/2010/031 of) and Monitoring
- **Annex II** Contractor's Tender (Registre CAD ref. no. of
- **Annex III** Breakdown of prices
- **Annex IV** CVs and classification of experts
- **Annex V** Fiscal provisions regarding invoicing by the Contractor
- **Annex VI** Final technical report to be submitted

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

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

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

I. **Special conditions**

Article I.1 **Subject**

I.1.1. The subject of the Contract is the following study: **Implementation of Directive 2005/47/EC on the Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector..**

I.1.2. The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

Article I.2 **Duration**

I.2.1. The Contract shall enter into force on the date on which it is signed by the last contracting party. The date of signature of the present Contract is that of the date stamp applied by the postal services of Employment, Social Affairs and Equal Opportunities DG on the title page of the present Contract after it has been signed by both parties.

I.2.2. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.

I.2.3. The duration of the tasks shall not exceed 9 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than 30 days before expiry of the period of execution or with less than one third of the period of execution left to run, whichever period is the shorter.

Article I.3 **Contract price**

I.3.1. *Maximum total amount*

The maximum total amount to be paid by the Commission under the Contract shall be EUR 200 000.00 covering all tasks executed.

I.3.2. *Price revisions*

Not applicable.

I.3.3. *Travel, subsistence and shipment expenses*

Not applicable.

Article I.4 **Payment periods and formalities**

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

I.4.1. Pre-financing

Following signature of the Contract by the last contracting party, within 30 days of the receipt by the Commission of a request for pre-financing with a relevant invoice, a pre-financing payment equal to 20% of the total amount referred to in Article I.3.1 shall be made.

I.4.2. Interim payment

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

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

provided the report has been approved by the Commission.

The Commission shall have 60 days from receipt to approve or reject the report, 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, an interim payment corresponding to the relevant invoices, up to maximum 30% of the total amount referred to in Article I.3.1, shall be made.

I.4.3. Payment of the balance

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

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

provided the report has been approved by the Commission.

The Commission shall have 60 days from receipt to approve or reject the report, 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, payment of the balance of the total amount referred to in Article I.3.1 shall be made.

I.4.4. Performance guarantee

Not applicable.

Article I.5 Bank account

Payments shall be made to the Contractor's bank account denominated in euro ¹, identified ² as follows:

- Name of bank:
- Address of branch in full:
- Exact designation of account holder:
- Full account number including codes:
- IBAN or, if non available, BIC code: —

Article I.6 General administrative provisions

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

Commission

European Commission
Directorate-General Employment, Social Affairs and Equal Opportunities
EMPL/F/2
B-1049 Brussels (Belgium)

¹ Or local currency where the receiving country does not allow transactions in EUR.

² By a document issued or certified by the bank.

Contractor

..... (Mr/Mrs/Ms + forename and name)

..... (function)

..... (company name)

..... (official address in full)

Article I.7 Applicable law and settlement of disputes

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

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

Article I.8 Data protection

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by Employment, Social Affairs and Equal Opportunities DG without prejudice to possible transmission to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Union.

The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to Employment, Social Affairs and Equal Opportunities DG. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

Article I.9 Termination by either contracting party

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 30 days formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

II. General conditions

Article II.1 Performance of the Contract

II.1.1. The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

II.1.2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

II.1.3. Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

II.1.4. The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.

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

II.1.6. The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
- the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.

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

II.1.8. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

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

Article II.2 Liability

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

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

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

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

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

Article II.3 Conflict of Interests

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

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

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

II.3.3. The Contractor declares:

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

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

Article II.4 Payments

II.4.1. Pre-financing

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

may be replaced by a joint and several guarantee by a third party. The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part. The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor). The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. Interim payment

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

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

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed. Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.3. Payment of the balance

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

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

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed. Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

Article II.5 General Provisions concerning Payments

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

II.5.2. The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount

is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

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

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

Article II.6 Recovery

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

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

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

Article II.7 Reimbursements

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

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

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

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

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

- (a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;

- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- (d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

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

Article II.8 Ownership of the Results – Intellectual and Industrial Property

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

Article II.9 Confidentiality

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

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

Article II.10 Use, Distribution and Publication of Information

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

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

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

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

Article II. 11 Taxation

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

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

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

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

Article II.12 **Force Majeure**

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

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

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

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

Article II.13 **Subcontracting**

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

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

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

Article II.14 **Assignment**

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

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

Article II.15 **Termination by the Commission**

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

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject

- of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
 - (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
 - (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
 - (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
 - (f) where the Contractor is in breach of his obligations under Article II.3;
 - (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
 - (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
 - (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
 - (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
 - (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

II.15.4. Consequences of termination

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

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

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

Article II.15a Substantial errors, irregularities and fraud attributable to the Contractor

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

Article II.16 Liquidated Damages

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

Article II.17 Checks and Audits

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

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

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

Article II.18 Amendments

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

Article II.19 Suspension of the Contract

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

Signatures

1. For the Contractor,
..... (forename and name)
..... (position)
..... (company name)

2. For the Commission,
Armando SILVA
Acting Director - EMPL/F
Employment, Social Affairs and Equal
Opportunities DG

Done at (place), Done at Brussels,
..... (date) (date)

In duplicate in English.



Tender Specifications and Monitoring

ANNEX I Tender No. VT/2010/031 of

1. Title of contract

Implementation of Directive 2005/47/EC on the Agreement [...] on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector

2. Background

a) General context

Progress³ is the EU's employment and social solidarity programme, set up to provide financial support for the attainment of the European Union's objectives in employment, social affairs and equal opportunities as set out in the Social Agenda⁴. A combination of various EU instruments will be used to implement the Social Agenda, ranging from EU legislation to open methods of coordination in various policy fields and financial incentives, such as the European Social Fund.

The purpose of the PROGRESS programme is to strengthen the EU's contribution in support of Member States' commitments and efforts to create more and better jobs and to build a more cohesive society. To that end, PROGRESS will help in:

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

More specifically, PROGRESS supports:

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

This call for tenders is issued in the context of the implementation of the 2010 annual work programme, which can be consulted at: <http://ec.europa.eu/social/main.jsp?catId=658&langId=en>

b) Specific context

³ Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress, OJ L 315, 15.11.2006.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Renewed social agenda: Opportunities, access and solidarity in 21st century Europe, COM(2008) 0412 final of 02.07.2008.

The railway transport sector in Europe has undergone a great many economic, social and regulatory changes over a number of years. The market share of the railways in freight and passenger transport has fallen regularly since 1995 in EU-27. EU policy on rail transport is therefore intended to revitalise it and make it more competitive within European transport policy. The EU has therefore adopted three 'railway packages', the objectives of which include opening up the international railway freight and passenger transport markets and fostering safety and interoperability between high-speed and conventional railway systems⁵. The freight transport market has been open to competition since 1 January 2007, and the passenger transport market since 1 January 2010. According to recent data,⁶ 62 companies are involved in international rail transport in Europe, and the number of mobile workers within those companies making international journeys is estimated to be 10 240 (20 000 by 2020).

This policy was to be supported by social measures intended, in particular, to protect the health and safety of mobile workers by avoiding competition based solely on differences in working conditions. On 27 January 2004, the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) therefore concluded an Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (hereinafter referred to as 'the Agreement'). This Agreement provides for minimum standards concerning working conditions, driving times, breaks and daily and weekly rest periods. Because these standards are more specific requirements under Article 14 of Directive 2003/88/EC concerning certain aspects of the organisation of working time, that Directive does not apply to these particular points. On 18 July 2005, the Council adopted Directive 2005/47/EC (hereinafter referred to as 'the Directive'), making the Agreement binding in all EU Member States.

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 nine hours once every seven-day period.
- Clause 4: daily rest away from home of eight consecutive hours per 24-hour period, which has to be followed by a daily rest at home. The social partners agreed that a second consecutive rest away from home as well as compensation for rest away from home could be negotiated between social partners at company or national level⁷.
- Clause 5: break of at least 45 minutes for a working time longer than eight hours, and of at least 30 minutes for a working time of between six and eight hours.
- Clause 6: weekly rest period of 24 hours, plus 12 hours of daily rest.
- Clause 7: maximum driving time of nine hours for day shifts, and eight hours for night shifts.

The Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 27 July 2008, after consulting the social partners.

To date five Member States have yet to transpose the Directive in full, namely Italy, Portugal, Estonia, France and Luxembourg.

During discussions on the Directive, particular attention was given to Clause 4 of the Agreement, according to which a daily rest period away from home must be followed by a daily rest period at home, with the option for the social partners of negotiating a second consecutive rest period away from home at railway company or national level. Some national delegations expressed fears that this provision would slow development in the sector in view of the length of certain routes and the time necessary for their operation. Pursuant to Clause 4 of the Agreement, the social partner organisations which signed the Agreement at European level have initiated negotiations on the number of consecutive rest periods away from home and compensation for rest periods away from home.

⁵ Train interoperability means their ability to run on all parts of the international network.

⁶ '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', TNO Quality of Life, September 2008. The report is available at: http://ec.europa.eu/employment_social/labour_law/docs/2008/final_report_r08678_en.pdf

⁷ The Agreement also provides that, at European level, the question of the number of consecutive rest periods away from home and of compensation for rest away from home will be renegotiated two years after its signature.

In order to monitor the impact of the Agreement and Clause 4 thereof on the development of the market, the Commission undertook, in a declaration made when the Directive was adopted,⁸ to submit a report to the Council, taking account of the economic and social impact of the Agreement on companies and workers and of the discussions between social partners on all the relevant topics, including Clause 4. The Commission has declared itself willing to take any measures necessitated by any new agreement between the social partners, by proposing an amendment to the Directive.

The Commission met its commitment on 15 December 2008 by adopting the Communication from the Commission to the Council on the 'Economic and social impact of the Agreement appended to Directive 2005/47/EC concluded on 27 January 2004 between the social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector',⁹ COM(2008) 855 final, 15.12.2008.

The Communication, based on a study by TNO, describes the economic and social impact of the Directive on the international railway sector. At the time that the study was undertaken, 62 railway companies were operating in the EU international railway sector in goods and passenger transport. Many new companies have entered the goods transport market since its full opening in 2007. The number of mobile workers covered by the Directive represented the equivalent of 10 240 full-time workers across the sector; this was expected to increase by an additional 10 000 workers by 2020. Since the current rules in the Member States already seem to comply with the provisions of the Agreement, its short-term social impact should be limited.

The economic impact of the Agreement on the development of the sector appears to be limited, as human resources account, on average, for an estimated 8.5 % of the total operating costs of a cross-border rail freight business. Any staff increase due to the Agreement would therefore have a negligible influence in comparison with other operating costs, such as the energy bill or infrastructure costs. Very few companies have entered into negotiations at company level for a second consecutive day of rest away from home as permitted by the Agreement. It would be very useful to ascertain whether this is still the case today. This would provide a vital indication of the sector's needs in this area.

Under Clause 4 of the Agreement, the social partners at European level have initiated renegotiations on the number of consecutive rest periods away from home and on compensation for rest periods away from home.

The negotiations have now run into difficulties and seem to be practically suspended. One of the problems raised by the social partners is the lack of information concerning interoperable cross-border transport operations. The signatories had agreed to evaluate the provisions of the Agreement two years after it had been signed (Clause 11 of the Agreement) in the light of initial experience in developing interoperable cross-border transport, but the evaluation has not yet been completed.

In this respect, the Commission must meet its obligation under Article 3 of Directive 2005/47/EC to report before 27 July 2011 to the European Parliament and the Council, after consulting management and labour at European level, on the implementation of the Directive in the context of the development of the railways sector. As well as the legal aspects linked to the implementation of the Directive, the report must assess its economic and social impact, so that the Commission can be given the power to judge whether a legislative initiative is necessary to revise the Directive.

3. Subject of the contract

The purpose of the contract is to carry out a study with three objectives:

1. To describe and analyse the national legislative measures transposing Directive 2005/47/EC into the national law of all the Member States concerned. This includes assessing the compatibility of the relevant national legislation with EU legislation and providing an overview of recent research, studies and case-law on this subject.

⁸ PV/CONS 46, Addendum to draft minutes, 2676th meeting of the Council of the European Union held in Brussels on 18 July 2005.

⁹ Communication from the Commission to the Council on the 'Economic and social impact of the Agreement appended to Directive 2005/47/EC concluded on 27 January 2004 between the social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector', COM(2008) 855 final, 15.12.2008.

2. To provide an overview of the development of interoperable cross-border activities in the railway sector within the European Union, in particular by updating the data contained in the TNO study¹⁰ carried out for the Commission in 2008.
3. To assess the economic and social impact of the Agreement annexed to the Directive on cross-border mobile workers, taking particular account of health and safety aspects and the need to reconcile working time and family life, and on companies by examining the impact on the development of cross-border activities. The data from the above-mentioned TNO study must be taken into account.

4. Participation in the tendering procedure

Please note that:

Participation is open on equal terms to all natural or legal persons coming within the scope of the Treaties and any other natural or legal persons from a third country which has concluded a specific agreement with the EU in the area of public contracts, subject to the conditions provided for in that agreement.

Where the Multilateral Agreement on Public Contracts concluded within the framework of the World Trade Organisation applies, the contracts are also open to nationals of States which 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 to Directive 2004/18/EC, are not covered by this Agreement.

5. Tasks to be carried out by the contractor

a) General provisions for carrying out the activities and tasks

The PROGRESS Programme aims to promote gender mainstreaming in its five policy sections and in commissioned or supported activities. Consequently, the contractor must take the necessary steps to ensure that:

- gender equality issues, including the situation and needs of women and men, are duly taken into account when necessary for the drafting of the technical bid;
- the gender dimension is systematically taken into account when providing the service;
- performance monitoring includes the collection and compilation of data broken down by gender when needed;
- the proposed team and/or staff respect(s) the gender balance at all levels.

Equally, the needs of disabled people must be duly acknowledged and respected in providing the requested service. This will in particular entail ensuring that, when the contractor organises training sessions or conferences, issues publications or develops dedicated websites, people with disabilities have equal access to the facilities or services provided.

Lastly, the contracting authority encourages the contractor to promote equal employment opportunities for all its staff and team. The contractor is therefore encouraged to ensure an appropriate mix of people, regardless of their ethnic origin, religion, age or qualifications.

In its activity report accompanying the request for the final instalment, the contractor will be required to detail the steps and achievements it made towards meeting these contractual requirements.

Methodology:

¹⁰ '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', TNO Quality of Life, September 2008. The report is available at: <http://ec.europa.eu/social/BlobServlet?docId=2804&langId=en>

The study will require theoretical and methodological approaches appropriate to the subject matter described. The proposed methodology for the collection of the information and its analysis should be explained and justified in the bid.

The tenderer will submit a work plan and a detailed breakdown of how the tasks are distributed among the research team members.

To carry out the study, the contractor shall:

– identify and make use of existing sources of information, documentation, reports and studies on these matters, including statistical data;

– carry out its own research in all EU Member States and EEA countries. Information will be gathered from the competent authorities of the Member States, employers' organisations, businesses and unions in the sector in question. To this end, the contractor will send out questionnaires (drawn up by the contractor and approved by the Commission) to those bodies asking them for information relating to the implementation of the Directive in practice, and will conduct interviews with the stakeholders should this be deemed necessary.

- as regards the point raised in parts 3(3) and 5(b)(iii) of this document, the contractor must also carry out field research in at least 10 EU Member States or EEA countries and establish contact with stakeholders in the sector. The 10 countries in which a more thorough field study will be carried out must always include Germany, France, the Netherlands, the United Kingdom, Hungary and Poland. The tenderer will then explain its choice of the four other countries and ensure a fair balance taking account of geographical, economic and demographic factors, the specific characteristics of the rail sector organisation and particular experiences on the questions raised in certain countries. The questionnaire must be adapted to those countries and will lead to interviews on the ground with the interested parties;

– identify and contact the interested parties at European and national level.

- The contractor must arrange to take part in at least one of the sectoral dialogue meetings attended by the signatories to the Agreement.

b) Specific provisions for carrying out the activities and tasks

(i) Analysis of the Directive's implementation

The contractor must prepare a first part of the report covering the EU Member States' transposition into their national legislation and application of Directive 2005/47/EC and the appended Agreement. All Member States must be covered, except Cyprus and Malta, which have declared that they do not have a railway on their territory. Particular attention must be paid in this analysis to the non-regression clause in Article 2(2)¹¹ of the Directive and Clause 9¹² of the Agreement. Any instance of 'regression' found must be identified with a description of the situation preceding the regression, the new situation and why it constitutes a regression. As regards the five Member States that have yet to transpose the Directive in full, namely Estonia, France, Italy, Luxembourg and Portugal, an analysis of the situation, and of any draft transposition measures being adopted, must be carried out.

This part must cover the following aspects:

a) Legal instrument (law, decree, collective agreement, etc.) applicable in each Member State:

¹¹ The term 'Article' refers to Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. OJ L 195, 27.07.2005, p. 15.

¹² The term 'Clause' refers to the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services. OJ L 195, 27.07.2005, p. 18.

Describe and analyse the provisions adopted and put into force by the Member States to comply with Articles 4 and 5 of Directive 2005/47/EC. If there have been difficulties or delays in the process of transposing the Directive, describe and analyse the factors behind the delays or failure to transpose.

b) Scope and definitions:

Describe and examine whether the definitions and scope of the Directive are implemented correctly (Clauses 1 and 2). The Directive covers certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. Describe the criterion chosen by each Member State to apply the Directive to mobile workers, especially for 'mixed-use' workers (those working on the national network and the international network)¹³.

c) Provisions of the Directive on working conditions:

(i) Describe and examine whether the provisions set out below are implemented correctly by the Member States. Reference should be made to any aspects that might constitute breaches of EU law.

– Clause 3: daily rest at home of 12 consecutive hours per 24-hour period; possibility of reduction to nine hours once every seven-day period.

– Clause 4: daily rest away from home of eight consecutive hours per 24-hour period, which has to be followed by a daily rest at home. The social partners agreed that a second consecutive rest period away from home as well as compensation for rest away from home could be negotiated between social partners at company or national level¹⁴.

– Clause 5: break of at least 45 minutes for a working time longer than eight hours, and of at least 30 minutes for a working time of between six and eight hours.

– Clause 6: weekly rest period of 24 hours, plus 12 hours of daily rest.

– Clause 7: maximum driving time of nine hours for day shifts, and eight hours for night shifts.

(ii) Describe how these provisions are applied in practice in companies.

d) Monitoring:

- Describe and analyse whether the requirements with regard to keeping a record of the daily working hours and rest periods of the mobile workers mentioned in Clause 8 have been met.

e) Role of the social partners:

Examine and describe the role of the social partners at national level in implementing the agreement and their opinion on this matter.

(ii) Analysis of the development of the sector

The contractor must draw up a second part of the report updating the previous report written by TNO in 2008. In particular, the contractor must carry out the following tasks:

- to update the data on the number of companies involved in cross-border transport operations, the type of goods transported and the main routes/corridors used by those companies;

- to collect information on the number of workers carrying out cross-border activities, in particular by assessing the number of workers trained and authorised to work on this type of operation and the number of workers actually carrying out this type of operation. Particular attention must be paid to 'mixed-use' workers (those working on the national and the international network);

¹³ All other staff employed in the railway sector are covered by Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

¹⁴ The Agreement also provides that, at European level, the question of the number of consecutive rest periods away from home and of compensation for rest periods away from home will be renegotiated two years after its signature.

- to collect information on the number of hours worked per day and per week by mobile workers; an analysis must be carried out on the various tasks performed by these workers and the time spent on each task (driving, loading/unloading, service, administrative tasks, etc.) and on working time arrangements.

Please note that the Commission is currently drawing up a report on the situation of and outlook for the international railway market, which is due to be published in 2010. The contractor must take this into account when drawing up this part of the study.

(iii) Analysis of the economic and social impact of the Agreement

The contractor must draw up a third part of the report analysing the economic and social impact of the implementation of the Directive on companies and mobile workers in the international railway sector. As far as possible, a distinction must be drawn between freight companies and passenger companies, small and medium-sized enterprises and new and old businesses on the market.

It should be remembered that the primary objectives of this legislation are to:

- protect mobile workers' health and safety;
- ensure the safety of cross-border traffic;
- prevent competition based solely on differences in working conditions.

The contractor must, by means of a detailed study in the 10 Member States, analyse the impact of the implementation of the Directive with specific regard to these objectives and any other relevant objectives by referring to the EU's social and economic policies, such as the need to reconcile working time with family life, maintaining and creating jobs and the development of competitive railway markets. In particular, the contractor must:

- describe and specify whether agreements were concluded between social partners at company or national level regarding a second consecutive rest period away from home, as well as compensation for rest away from home. Also state whether such agreements are under negotiation and describe the content of the negotiations, including whether they cover other aspects than those of Clause 4.

If no such agreements have been reached, the contractor must indicate, in particular after questioning the social partners:

- ① - whether they were not interested in negotiating such an agreement, and if so why not;
- ② - whether they were interested but negotiations were unsuccessful, and the reasons for such a result;
- ③ - whether arrangements are already in place without being based on an agreement.

- assess the effects on workers' health and safety of applying the minimum requirements of the Directive;

- assess the effects of applying the minimum requirements of the Directive with regard to the need to reconcile workers' working time and family life; highlight, where relevant, any gender-related aspects;

- assess the Directive's impact on job creation in the sector (including by contract type and gender);

- assess whether application of the Directive will bring changes to the operation of current routes or prevent the development of new routes;

- assess whether application of the Directive is helping or hindering the opening up of railway markets to competition;

- estimate the administrative costs for companies, if any, of the application of the Directive and their ratio to the total costs of exploitation.

The study must propose a set of conclusions identifying, *inter alia*, any aspects warranting revision or clarification of the agreement implemented by the Directive.

6. Professional qualifications required

The scientific coordinator must meet the requirements for a Level I or Level II expert. The vast majority of the other experts must be at least Level III.

The general expertise, whether it be academic or gained in the field, must cover all the relevant issues covered by the study (and, in particular, thorough knowledge of EU law and labour law and sufficient language ability to cope with each legal system studied for the part of the study described in point 3(1) of these specifications, knowledge of health and safety in the railway sector, and the ability to analyse the economic and social impact of public policy for the parts of the study described in points 3(2) and 3(3) of these specifications.

See Annex IV to the model contract and part 12 of these specifications

7. Time schedule and reporting

See Article I.2. of the contract.

a) Specific deadlines for the performance of tasks

The work must be completed within a maximum of 9 (nine) months from the date of signature of the contract.

It must cover the following steps:

(i) Within 30 days of signature of the contract, the contractor must submit an initial report, in French or English, to the European Commission (Unit EMPL F/2) containing:

- a detailed presentation of data collection tools and an analytical framework, as well as definitions of key terms and concepts;
- a list of persons and institutions to be contacted and/or interviewed as part of the information-gathering process;
- a revised and more detailed work programme based on the provisional work programme submitted in response to the call for tenders, along with an overall timetable.

(ii) Within 4 (four) months of signature of the contract, the contractor must 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).

(iii) Within 7 (seven) months of signature of the contract, the contractor must 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 final report will be submitted within nine months of signature of the contract, taking account of, or presenting counter-arguments to, any objections and comments.

As a matter of principle, and in order to enable the European Commission to follow and evaluate all the results obtained under the PROGRESS programme, the contractor will also be required to provide the following:

- a one-page presentation detailing the key points of the service provided. The presentation should be concise, precise and easily understandable. It must be provided in English, French and German;
- a five/six-page executive summary in English and French.

b) Additional requirements

i) Meeting requirements

The tenderer may be invited to take part in three meetings with the Commission in Brussels: the first to open the study, the second to examine the initial report within 30 days of its receipt and the third to examine the interim draft study within 30 days of its receipt.

ii) Publicity and information requirements

In line with the general conditions, all contractors are obliged to acknowledge, in all documents and media produced, in particular in deliverables, reports, brochures, press releases, videos, software, etc., and also at conferences or seminars, that the service concerned has been commissioned by the European Union. As part of the EU programme for employment and social solidarity – PROGRESS – this acknowledgement must be mentioned in the following manner:

This (publication, conference, training session) has been carried out under the EU 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.

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

- *providing analysis and policy advice on its specific areas of activity;*
- *monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;*
- *promoting policy transfer, the exchange of knowledge and support among the Member States as regards EU objectives and priorities;*
- *relaying the views of stakeholders and of society at large.*

Further information is available at: <http://ec.europa.eu/progress>

The following reference must be included in all publications: "The information contained in this publication does not necessarily reflect the position or opinion of the European Commission".

In any communication or publication of the information or related material developed under this contract, the contractor must insert the European Union logo and mention the European Commission as the contracting authority.

iii) Reporting requirements

PROGRESS is implemented in line with the principle of results-based management (RBM). Management centred on outcomes and results aims to maximise the impact for European citizens and involves:

- identifying the most important results for European citizens;
- setting clear objectives by implementing plans based on these results and learning about 'what works' in the process;
- seizing opportunities to work together whenever this helps meet the objectives.

In this context, a strategic framework for the implementation of PROGRESS has been developed in cooperation with the Member States and civil society organisations. Together with the performance measurement, it sets out the mandate for the PROGRESS programme and its specific short- and long-term outcomes. The performance measurement framework is summarised in the Annex. For more information on the strategic framework, please visit the PROGRESS website.

The Commission monitors the impact of the initiatives supported or commissioned by PROGRESS and considers how these initiatives contribute to the results specified in the strategic framework. Accordingly, the contractor will be asked to work in close cooperation with the Commission and/or persons authorised by it to define the expected contributions and the set of performance measurements against which the contribution will be assessed. He will be expected to compile data on performance and report back to the Commission and/or designated persons, using a model which will be attached to the contract. In addition, he must make available and give right of access to the Commission and/or designated persons to any documents or information making it possible to accurately assess the performance of the PROGRESS programme.

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Contractor's Tender

ANNEX II

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See attached document: pages.

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ANNEX III Breakdown of prices

1. Breakdown of prices

| <i>Description</i> | <i>Unit price in €</i> | <i>Max. No of units</i> | <i>Unit type</i> | <i>Sub-total per item</i> | <i>Total amounts in €</i> |
|---|----------------------------|---------------------------------|----------------------|-------------------------------|-------------------------------|
| FEES AND DIRECT COSTS (fixed prices) | | | | | |
| <i>Experts' fees (to be specified for each expert)</i> | | | | | 0,00 |
| Details | 0,00 | 0 | w.d. | 0,00 | |
| <i>Other direct costs (to be specified)</i> | | | | | 0,00 |
| Details | 0,00 | 0 | unit | 0,00 | |
| Sub-total "Fees and Direct Costs" (Art. I.3.1) | | | | | 0,00 |
| <i>Travel expenses</i> 0,00 | | | | | |
| Journneys for experts as mentioned in Annex I | | | | | |
| Details | 0,00 | 0 | trip | 0,00 | |
| Provision for supplementary journneys effected upon request of the Commission | | | | | |
| Details | 0,00 | 0 | trip | 0,00 | |
| <i>Accommodation expense</i> 0,00 | | | | | |
| Hotel for experts as mentioned in Annex I | | | | | |
| Details | 0,00 | 0 | pers. | 0,00 | |
| Provision for supplementary accommodation upon request of the Commission | | | | | |
| Details | 0,00 | 0 | pers. | 0,00 | |
| <i>Subsistence expense</i> 0,00 | | | | | |
| Subsistence expenses for experts as mentioned in Annex I | | | | | |
| Details | 0,00 | 0 | w.d. | 0,00 | |
| Provision for supplementary subsistence upon request of the Commission | | | | | |
| Details | 0,00 | 0 | w.d. | 0,00 | |
| <i>Shipment and/or other reimbursements (to be specified)</i> 0,00 | | | | | |
| Details | 0,00 | 0 | unit | 0,00 | |
| <i>Other direct costs</i> 0,00 | | | | | |
| Calculation base | | | | | 0,00 |
| Overall Total | | | | | 0,00 |

w.d. = 1 working day for 1 expert

2. Calculation of amounts due under the present Contract

2.1. Fees

Initial calculation based on unit price(s) per w.d. of expert(s) depending on the level of qualification of the expert(s) executing the mission. The unit price(s) is (are) expected to cover the expert(s) fees, the Contractor's administrative expenses, as well as the costs of producing the contractual number of copies of the required report(s)¹⁵ in the required format(s), but does not include the reimbursable expenses defined below.

N.B. Duration of the services: This includes, besides the time necessary for the carrying out of the services themselves, the necessary time for preparatory work, trips and travelling back and forth between the offices of the Contractor and/or the expert(s) and the places where the services are being

¹⁵ All details on Monitoring and Reporting are to be indicated and included in the Tender Specifications.

carried out and for meetings with the services of the Commission, as well as time for the preparation of reports and output documents related to the work.

2.2. Reimbursements

If the reimbursement of expenses is foreseen in the Special Conditions, the Commission will reimburse only:

- the subsistence expenses of the Contractor and his staff,
- travel expenses (other than local transport costs),
- expenses for the shipment of equipment or unaccompanied luggage,

directly connected with performance of the tasks specified in Article I.1. of this Contract.

2.2.1 DSAs (Daily Subsistence Allowances)

The daily subsistence allowance (DSA) is paid as a flat-rate amount and is considered to cover breakfast and two main meals, local travel, the cost of telecommunications, including fax and Internet, and all other sundries. They will be paid for each calendar day spent on mission away from the usual place of work, provided that the corresponding assignment is of a short-term nature. The DSA will vary according to the country in which the missions are to be carried out.

Daily subsistence allowances (DSA) are to be calculated as follows according to the length of the mission:

- 6 hours or less: reimbursement of actual expenses (on production of supporting documents);
- more than 6 hours but not more than 12 hours: 0.5 DSA;
- more than 12 hours, but not more than 24 hours: 1 DSA;
- more than 24 hours but not more than 36 hours: 1.5 DSA;
- more than 36 hours but not more than 48 hours: 2 DSA;
- more than 48 hours but not more than 60 : 2.5 DSA, and so on.

The agreed rates (in EUR per calendar day) to be used for the purposes of the present Contract are set as follows:

| Destinations | | DSA in EUR | Maximum hotel price in EUR | Destinations | | DSA in EUR | Maximum hotel price in EUR |
|--------------|--------------------|------------|----------------------------|--------------|---------------------|------------|----------------------------|
| AL | Albania | 50,00 | 160,00 | LI | Liechtenstein | 80,00 | 95,00 |
| AT | Austria | 95,00 | 130,00 | LT | Lithuania | 68,00 | 115,00 |
| BA | Bosnia-Herzegovina | 65,00 | 135,00 | LU | Luxembourg | 92,00 | 145,00 |
| BE | Belgium | 92,00 | 140,00 | LV | Latvia | 66,00 | 145,00 |
| BG | Bulgaria | 58,00 | 169,00 | ME | Montenegro | 80,00 | 140,00 |
| CH | Switzerland | 80,00 | 140,00 | MK | F.Y.R. of Macedonia | 50,00 | 160,00 |
| CY | Cyprus | 93,00 | 145,00 | MT | Malta | 90,00 | 115,00 |
| CZ | Czech Republic | 75,00 | 155,00 | NL | The Netherlands | 93,00 | 170,00 |
| DE | Germany | 93,00 | 115,00 | NO | Norway | 80,00 | 140,00 |
| DK | Denmark | 120,00 | 150,00 | PL | Poland | 72,00 | 145,00 |
| EE | Estonia | 71,00 | 110,00 | PT | Portugal | 84,00 | 120,00 |
| EL | Greece | 82,00 | 140,00 | RO | Romania | 52,00 | 170,00 |
| ES | Spain | 87,00 | 125,00 | RS | Serbia | 80,00 | 140,00 |
| FI | Finland | 104,00 | 140,00 | SE | Sweden | 97,00 | 160,00 |
| FR | France | 95,00 | 150,00 | SI | Slovenia | 70,00 | 110,00 |
| HR | Croatia | 60,00 | 120,00 | SK | Slovakia | 80,00 | 125,00 |
| HU | Hungary | 72,00 | 150,00 | TR | Turkey | 55,00 | 165,00 |
| IE | Ireland | 104,00 | 150,00 | UK | United Kingdom | 101,00 | 175,00 |
| IS | Iceland | 85,00 | 160,00 | XK | Kosovo | 80,00 | 140,00 |
| IT | Italy | 95,00 | 135,00 | | | | |

2.2.2 Travel expenses

Travel expenses shall be reimbursed following the provisions of Article II.7.3.

3. Additional provision

It is understood that the Parts “Fees and Direct Costs” and “Reimbursable Expenses” are set as provisions only. They constitute a maximum for the overall cumulative value of all services rendered by the Contractor under the present Contract – they will be due only if services are actually rendered to the Commission according to this Contract and its Annexes, both in quantity and in quality.

ANNEX IV CVs and classification of experts

1. Classification of experts according to level of expertise

| <i>Level of qualification</i> | <i>Category of personnel</i> |
|-------------------------------|--|
| I | Highly qualified expert having assumed important responsibilities in his/her profession, recruited for his/her management/supervisory, thought and creativity skills as regards professional practise. He/she must have at least 15 years professional experience of which at least 7 must be connected with the professional sector concerned and the type of tasks to be performed. |
| II | Highly qualified expert having assumed responsibilities in his/her profession, recruited for his/her management/supervisory, thought and creativity skills as regards professional practise. He/she must have at least 10 years professional experience of which at least 4 must be connected with the professional sector concerned and the type of tasks to be performed. |
| III | Certified expert having received a high-level training in his/her profession, recruited for his/her thought and creativity skills as regards professional practise. He/she must have at least 5 years professional experience of which at least 2 must be connected with the professional sector concerned and the type of tasks to be performed. |
| IV | Junior expert, newcomer to the profession but holding a university degree or equivalent training related to the professional sector concerned and the type of tasks to be performed. |

2. List of experts assigned

| <i>Full names of experts assigned</i> | <i>Level of Qualification (I to iv, see above)</i> |
|---------------------------------------|--|
| | I |
| | II |
| | III |
| | |

3. CVs of experts assigned

See Annex II.

Fiscal provisions regarding invoicing by the Contractor

Choose 1 out of 4 options:

- (**option 1:** the Contractor is subject to VAT and his place of fiscal imposition is in Belgium)

Local supplies and services

Supplier with fiscal imposition place in Belgium – delivery address in Belgium

1. VAT exemption – Exemption level

In Belgium, the terms of the present Contract have the same value as the VAT exemption request No 450 (VAT exemption – Article 42, par. 3.3, VAT Code).
The Commission benefits of a direct VAT exemption for all invoices EUR 123.95 and more.

2. Invoicing the Commission

An invoice will be made for each payment related to the present Contract. The applied VAT rate and amount shall be specified.

In view of VAT exemption, invoices addressed to the Commission should bear the mention:

“Exonération de la TVA, article 42, § 3.3, du code de la TVA” or

“Vrijstelling van BTW, artikel 42, § 3.3, BTW-Wetboek”.

The above indication is given only as piece of information. The Contractor must refer to the Belgian national laws.

- (**option 2:** the Contractor is subject to VAT and his place of fiscal imposition is a Member State other than Belgium)

Intra-community supplies and services

Supplier with fiscal imposition place in a Member State other than Belgium – delivery address in Belgium

1. VAT exemption level

The Commission benefits of a direct exemption of VAT for all invoices of EUR 123.95 and more.

2. Use of form 15.10

To allow the Contractor to justify to the fiscal authorities an invoicing to the Commission using a 0% VAT rate (direct exemption) or to enable the benefit of the exemption by reimbursement, it is necessary to use the form 15.10.

These forms have recently been up-dated, and the new versions are the only ones to remain in official use. They entered into force on 01.04.1997, with a new ref. XXI/03278 – 01.04.1997.

See attached document: 2 pages and 1 page of explanatory notes.

3. Signature of the form 15.10 – Delegation of signature

The forms must normally be signed by the fiscal authorities of Belgium. However, a delegation of signature has been awarded by the Belgium authorities to the Commission – ref. ET 76430 of

22.12.1992 (this ref. No. should be inserted in box 7 of new form 15.10). The Commission being represented for the present Contract by Armindo SILVA, Acting Director - EMPL/F of Employment, Social Affairs and Equal Opportunities DG, form 15.10 will therefore be signed by the latter.

4. Invoicing the Commission

An invoice will be made for each payment related to the present Contract. The applied VAT rate and amount shall be specified. Concerning the direct VAT exemption or VAT exemption by the way of reimbursement, the invoice shall bear all the necessary mentions.

The above indication is given only as piece of information. The Contractor must refer to the national laws in force in his Member State of fiscal imposition.

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- ▶ **(option 3: the Contractor is not subject to VAT)**

Not applicable to the present Contract.

- ▶ **(option 4: the country of fiscal imposition of the Contractor is unknown)**

Provisions to be applied depending on the country of fiscal imposition of the Contractor.

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ANNEX VI **Final technical report to be submitted**

See attached document(s): 10 pages.

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