

SPECIFICATIONS

To Invitation to Tender ECFIN/E/2004/004

OJEU S 172 dated 03/09/2004

Study on methods of analysis of the impact of state aid on competition

These specifications follow the publication of
- the prior information notice in OJEU S-35/2004 of 19/02/2004
- the contract notice in OJEU S-172

Part 1: Technical description
Part 2: Administrative details
Part 3: Assessment and award of a contract
Part 4: Draft service contract

Annex 1: Financial Identification Form
Annex 2 : Declaration of the candidate's eligibility
Annex 3 : Legal entity Form

• PART I : TECHNICAL DESCRIPTION

1. Background

A full evaluation of the welfare effects of a subsidy needs to take account of the impact on competition in the affected markets, which may include not only the economic activity directly targeted by the aid but also neighbouring markets. The analysis of the competition effects of state aids is therefore important both for the Commission, which is charged with control of state aid under the EC Treaty, and for policy-makers in the aid-giving bodies in the Member States.

The state aid rules of the EC Treaty require Member States to notify the Commission and obtain its approval before granting or awarding any state aid. On receiving a notification or becoming aware of a non-notified aid, the Commission first has to determine whether the measure is subject to the state aid rules. In order to reach such a determination, the Commission has to assess, amongst other things, whether the measure affects trade and whether it distorts or threatens to distort competition. For this purpose, it is generally sufficient to consider that competition is distorted whenever a firm derives a competitive advantage from a state aid, i.e. whenever there is a spillover effect on rivals. However, in the next step, the Commission has to decide whether a derogation should be granted in favour of the aid. In doing so, the Commission needs to balance the benefits of the aid, in terms of an objective of EU policy, against the costs arising from distortions of competition and trade. This requires a more complex analysis of the competition effects.

It is extremely difficult to measure the size of the impact of an aid on the affected market(s). The economic literature on the competition effects of state aids is relatively sparse. To a large extent, it consists of trade theory literature, mainly relating to export subsidies, which are, in any case, outlawed in the EU and under the WTO subsidies code. Other contributions include:

- Rüdiger Soltwedel et al "Subventionssysteme und Wettbewerbsbedingungen in der EG", Institut für Weltwirtschaft, Kiel, 1988.
- D. Neven and P. Seabright, "European industrial policy: the Airbus case", *Economic Policy*, October 1995.
- T. Besley and P. Seabright, "The effects and policy implications of state aids to industry: an economic analysis", *Economic Policy*, April 1999.
- European Commission, DG ECFIN, "State aid and the Single Market", *European Economy Reports and Studies no.3*, 1999.
- David R. Collie, "Prohibiting State Aid in an Integrated Market: Cournot and Bertrand Oligopolies with Differentiated Products", *Journal of Industry, Competition and Trade*, Vol. 2, no.3, September 2002.

Nevertheless, the Commission has developed a number of broad rules to limit the harm to competition that may result from state aid. For example, in its frameworks and guidelines it lays down maximum aid intensities (aid as a proportion of the eligible costs), which are lower for large firms than for SMEs. It also limits or prohibits some types of aid to sectors with structural difficulties and imposes special restrictions on regional investment aid for large projects. Member States are not allowed to grant regional aid for large investments if the beneficiary's market share exceeds 25% or if the project will increase capacity by more than 5% of the market size.

2. Objectives of the study

The main aim of the study is to improve the economic basis for analysing the impact on competition of state aid. The study will construct an analytical framework for evaluating competition effects in terms of the impact on rivals (rent-stealing, foreclosure) and on consumer welfare, distinguishing between domestic effects and cross-border spillovers. On this basis, it will define a set of criteria and indicators that can be used (a) to assess the importance of the impact of individual aid awards on competition, (b) as a starting point for developing some general rules that can be applied to aid schemes, where the identity of the beneficiaries is not known in advance, in order to limit the potential harm to competition and (c) to contribute to the development of a method for identifying state aids that are unlikely to have a significant impact.

3. Contents of the study

The study will consist of four parts.

The first part will consist of a survey of the theoretical and empirical literature on the impact of state aid or subsidies on output, prices, market structure, entry barriers, the location of economic activity etc.

The second part will be an analysis of the relevant aspects of the Commission's current practice, based on Commission decisions and interviews with officials. In this part, the contractor will discuss, in economic terms, the meaning of the notions of distortion of competition and effect on trade, as well as the major decision-making criteria, e.g. the size of the recipient firm, capacity utilisation, market growth and the notion of operating aid.

The third part will present an analytical framework, based on the results of the first two stages, for assessing the competition impact of state aid. The starting point for the framework will be an operational definition in economic terms of the notions of distortion of competition and effect on trade. While paying due attention to the special characteristics of state aid cases, the framework should be coherent with the approaches adopted in anti-trust and merger cases. It will provide a typology of the various channels through which state aid may impact on the conditions of competition. It will also identify the main indicators and criteria that are relevant to the analysis of awards of aid to individual companies, distinguishing between the impact on competition in general (including rent-stealing, foreclosure and effects on consumer welfare) and cross-border spillovers in particular. The analytical framework should pay close attention to the problem of identifying the incentives created by the aid, i.e. the changes in behaviour which it brings about. The declared intentions of the aid-giving authority may not necessarily be a reliable guide in this respect. The ex ante analysis of the incentives created by an aid should therefore also take account of the characteristics of the aid (e.g. eligibility criteria, conditions attached to the aid, definition of eligible expenditure, financial instrument used), as well as the characteristics of the beneficiary and of the market.

Part Three should also consider the role played in determining the competition effects of a state aid by the following factors:

- the definition of the relevant market(s),
- the market structure and the market share of the recipient firm,
- structural problems of the sector concerned (e.g. chronic over-capacity),
- the role of technology and innovation,
- entry and trade barriers,
- demand-side characteristics, including demand growth.

The majority of state aid cases treated by the Commission concern schemes rather than individual awards of aid. Where schemes are concerned, the precise identity of the aid beneficiaries is not known in advance and a wide range of sectors and markets may potentially be affected. Part Four of the study should therefore identify those results which can be regarded as "typical" or capable of generalisation over a fairly wide range of circumstances. In addition, the contractor will make recommendations concerning criteria and indicators that could be used to identify state aid cases whose impact on competition is likely to be negligible. The Commission's recent proposals concerning state aids of "lesser concern" should be the starting point for these recommendations.

4. Reports and documents to be submitted

The physical and intellectual products generated by the contractor's assignment will remain the property of the Commission. The contractor undertakes not to use these products outside this assignment without the written agreement of the Directorate-General for Economic and Financial Affairs.

The work carried out by the contractor in performance of the contract will be the subject of the following reports, two copies of which must be sent to the Commission by the contractor at the following address:

European Commission,
Directorate-General for Economic and Financial Affairs,
Directorate E, Economic Evaluation Service,
BU1 2/211,
B - 1049 Brussels.

The following reports in English or French must be provided by the contractor:

- The first interim report will delineate the methodological approach that the contractor intends to follow and provide an annotated outline of the study. It will include a critical review of the relevant literature. A draft of this first interim report must be submitted no later than 2 months after signature of the contract. The Commission will then either inform the contractor that it accepts the draft or send him/her its comments within 30 days.
- The second interim report will present the second and third parts of the study, as described in section 3 above, i.e. the review of the practice of the Commission and the analytical framework. A draft of this second interim report must be submitted to the Commission no later than 6 months after the signature of the contract. The Commission will then either inform the contractor that it accepts the draft or send him/her its comments within 30 days.

- The final report will present in full the results of all parts of the study, as well as issues for further investigation. A draft of the final report must be submitted to the Commission no later than 10 months after the signature of the contract. The Commission will then either inform the contractor within 30 days that it accepts the draft or send him/her its comments. Within one month of receiving any such comments, the contractor shall send the final report to the Commission in 6 paper copies and one copy in electronic form (Word 97 compatible). This final report will either take account of the comments made by the Commission or put forward alternative points of view.
- After the submission of each of the above-mentioned draft reports, the contractor will be required to attend a meeting in the offices of the Commission in Brussels in order to present and discuss the report.
- A fourth meeting in the Commission's premises in Brussels will be convened with the Contractor to present the results of the study to a broader audience of Commission officials. The Contractor will present the results of the study maximum two weeks after the submission of the final report.

5. Starting date of the contract and duration of the tasks

The contract is due to be signed in October-November 2004.

The study should be completed within **12 months** of the signature of the contract (see point 4).

The execution of the tasks may not start before the contract has been signed.

6. Place of performance

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

PART 2: ADMINISTRATIVE DETAILS

1. Administrative provisions

- Fulfilment of adjudication or invitation to tender procedure shall not involve the Commission in any obligation to award the contract.
- The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be liable in the event of its deciding not to award the contract.
- Changes to tenders will be accepted only if they are received on or before the final date set for the receipt of tenders.
- Expenses incurred in respect of the preparation and presentation of tenders cannot be refunded.
- No information of any kind will be given on the state of progress with regard to the evaluation of tenders.
- Once the Commission has accepted the tender, it shall become the property of the Commission and the Commission shall treat it confidentially.

2. Payments

Payments shall be made in accordance with Article I.4 of the Draft Service Contract.

3. Content of the tender

All tenders must be presented in three sections

3.1. Administrative proposal

- full name of organization, legal status, address, person to contact, person authorized to sign on behalf of the organization, telephone number, facsimile number, VAT number. In addition, a duly completed and signed financial identification form (see annex 1) and legal entity form (see annex 3), proof of enrolment (declaration or certificates) in one of the professional or trade registers in country of establishment;
- if the tenderer is a natural person, she/he will be required to provide proof of her/his status as a self-employed person. To this end she/he must supply details of her/his social security cover and situation with regard to VAT regulation.
- a declaration of the candidate's eligibility; certifying that he/she is not in one of the situations listed in articles 93 and 94 of the Financial Regulation of the European Communities (Official Journal L 248 of 16/09/2002) (see annex 2)

- Documents relating to the selection criteria (see part 3 point 2.1. Financial and Economic capacity)
- the service provider's educational and professional qualifications and those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services (curriculum vitae)
- a list, for the past three years, of the principal studies, services contracts, consultancy work, surveys, publications or other work previously carried out in English, indicating the name of the client and stating which, if any, were done for the European Commission.
- tenders from consortiums of firms or groups of service providers must specify the role, qualifications and experience of each member (see also part 3, points 1, 2 and 3 – exclusion, selection and award criteria)

3.2. Technical proposal

- A study proposal with the methodology to fulfil the requirements mentioned in Part 1, point 3. The tender should give indications on the theoretical background used, the methodology used in the empirical study that will be undertaken and on its appropriateness for this purpose, in conformity with the guidelines included in the approach. It should also give indications on the data to be used and their reliability.

3.3. A financial proposal

The price must be quoted in euro, including for the countries which do not form part of the euro zone. For the tenderers of the countries which do not form part of the euro zone, the amount of the offer cannot be revised because of exchange rate movements. The choice of exchange rate belongs to the tenderer, who assumes the risks or opportunities associated with these exchange rate movements.

The price must be a fixed amount, inclusive all expenses.

The price will not be subject to revision.

For your guidance, the maximum budget allocation to this study is fixed at € 80.000,00.

The price quotation must be signed by the tenderer or his duly authorised representative.

The price must be quoted free of all duties, taxes and other charges, including VAT, as the Communities are exempt from such charges under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities. The amount of VAT should be shown separately.

PART 3: ASSESSMENT AND AWARD OF A CONTRACT

The assessment will be based on each tenderer's bid.

All the information will be assessed in the light of the criteria set out in these specifications. The procedure for the award of the contract, which will concern only admissible bids, will be carried out in three successive stages. Only bids meeting the requirements of stage one will be examined in the following stage.

The aim of each of these stages is:

- 1) to check, in the first stage (exclusion criteria), whether tenderers can take part in the tendering procedure and, where applicable, be awarded the contract (see annex 2);
- 2) check, in the second stage (selection criteria), the technical and professional capacity as well as the economic and financial capacity of each tenderer who has passed the exclusion stage (see Part 3, point 2 – selection criteria);
- 3) to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages (see Part 3, point 3 - Award criteria).

In the case of consortia, the exclusion, selection and award criteria will be applicable to all the members of the consortium. The same principle will also be applied in the case that there are sub-contractors.

The bid must clearly identify the subcontractors and document their willingness to accept the task and thus acceptance of the terms and conditions set out in Part 2 1.

Tenderers must inform the subcontractors that Article II.17 of the standard service contract will be applied to them.

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

1. EXCLUSION CRITERIA

Tenderers falling within one or more of the following categories will automatically be excluded from the tendering procedure.

Tenders will not be considered if the candidates are in any of the following situations:

- (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) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations;
- (g) they are faced with a conflict of interest;
- (h) they have been guilty of misrepresentation in supplying the information required or have failed to supply this information.

2. SELECTION CRITERIA

Only the tenders fulfilling all the selection criteria will be examined in the light of the award criteria. The selection criteria are set out below

2.1. Financial and Economic capacity may be shown by means of one or more of the following : ,:

- financial statements for the past 3 financial year,
- declaration concerning the sales turnover related to the field associated with the invitation to tender during the past 3 exercise,
- other substantiating documents if the candidate or tenderer cannot, for valid reasons, provide those indicated above.

2.2. Technical and professional competence:

The next criteria will be used to assess the candidate' ability to complete the proposed work programme :

- 1) Candidates should have at least 3 years experience in the field of economic research, as well as in the area of quantitative techniques ;
- 2) The candidate's technical and professional capacity of producing high quality reports on economic issues in English ;
- 3) The Commission reserves the right not to select any tender if the amounts tendered exceed the budget envisaged for this project.

3. AWARD CRITERIA

The Commission will award the contract to the bidder who presents the most economically advantageous tender on the basis of the following award criteria:

Award criteria and their relative weights *points*

TECHNICAL SCORE	70
Demonstration of understanding the requirements and clarity of the proposal (10 points)	
Approach and method proposed for project management, planning and implementation including activity scheduling and task assignment to team members (10 points)	
Merits of the methodology proposed	
<ul style="list-style-type: none">• The theoretical basis of the proposed methodology (15 points)• The feasibility of the proposed methodology (15 points)• The potential for deriving policy-relevant conclusions (20 points)	
PRICE	30

Having examined the tenders from a technical point of view, the evaluation committee will proceed considering which is the economically most advantageous offer taking into account **only those tenders that have obtained at least a technical score of 60 %**. The evaluation committee will then proceed with the financial comparison of the tenders retained for further consideration according to the following procedure.

The retained tender with the lowest total price receives a financial score equal to the maximum score received for the technical award criteria. The other retained tenders are awarded points by means of the following formula:

$$\text{Financial score} = (\text{lowest total price} / \text{total price of the tender being considered}) \times (\text{maximum score in the technical award criteria})$$

The most economically advantageous tender is established by means of the computation of a final score according to the following formula:

$$\text{Final score} = (\text{Technical score}) + (\text{Financial Score}).$$

4. OPENING OF TENDERS

The tenders received will be opened on 18/10/2004 at 11h00 in the Commission building at Avenue Beaulieu 1, room BU-1 2/161, B-1160 Brussels.

It would be appreciated if tenderers wishing to attend would inform Mr. Meiklejohn in advance, by electronic mail, fax or letter (see address above).

One authorised representative of each tenderer may attend the opening of tenders.

5. AWARD COMMITTEE

The process of awarding will take place in October 2004. An awarding committee is to be set up for this purpose.

6. INFORMATION FOR TENDERERS

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

PART 4

DRAFT SERVICE CONTRACT Nr ECFIN-.....-2004/SI2.....

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities, hereinafter referred to as "the Commission", which is represented for the purposes of the signature of this contract by Mr Jan Schmidt, Director of the Economic Evaluation Service, Directorate General Economic and Financial Affairs,

of the one part,

and

[official name in full]

[*official 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 of this contract by (name in full and function),

of the other part,

HAVE AGREED

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

Annex I – Tender Specifications (Call for Tenders no. ECFIN/E/2004/004)

Annex II – Tender of the Contractor (no. [complete] of [complete])

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

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is a study on methods of analysis of the impact of state aid on competition
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

ARTICLE I.2 - DURATION

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The tasks shall be carried out in accordance with the requirements set out in Annex I.
- I.2.4.** The duration of the tasks shall not exceed 12 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 on which the contract is signed by the last contracting party. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

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

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. First interim payment:

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

- the first interim report in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the report has been approved by the Commission.

On receipt, the Commission shall have 30 days to approve or to send its comments.

Within 30 days of the date on which the report is approved in writing by the Commission, an interim payment corresponding to (complete amount in figures) EUR (amount in figures and in words) equal to 30% of the total amount referred to in Article I.3 shall be made.

I.4.2. Interim payment:

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

- the second interim report in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the report has been approved by the Commission.

On receipt, the Commission shall have 30 days to approve or to send its comments.

Within 30 days of the date on which the report is approved in writing by the Commission, an interim payment corresponding to (complete amount in figures) EUR (amount in figures and in words) equal to 20% of the total amount referred to in Article I.3 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 report in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the report has been approved by the Commission.

Within 30 days of the date on which the report is approved in writing by the Commission, payment of the balance corresponding to (complete amount in figures) EUR (amount in figures and in words) equal to 50% of the total amount referred to in Article I.3 shall be made.

ARTICLE I.5 – BANK ACCOUNT

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

Name of bank: [complete]

Address of branch in full: [complete]

Exact designation of account holder: [complete]

Full account number including codes: [complete]

[*IBAN code*: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

Commission:

European Commission

Directorate Economic & Financial Affairs

Head of Unit R-2

Contract n°: **ECFIN-...-2004/SI2.....**

B-1049 Brussels

Belgium

Contractor:

Mr/Mrs/Ms [complete]

[Function]

[*Company name*]

[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1. The Contract shall be governed by the national substantive law of Belgium.

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

ARTICLE I.8 – TERMINATION BY EITHER CONTRACTING PARTIES

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 3 months formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

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 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 IV 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 IV;
- 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 III 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 IV;
- 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 by registered letter with acknowledgement 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 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 Communities 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 Community 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 Community, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.9– CONFIDENTIALITY

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

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

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

II.10.1. The Contractor shall authorise the 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 Community. 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 Communities.
- II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgement 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 been convicted of an offence concerning his professional conduct by a judgement which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;

- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the 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 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 acknowledgement 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.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 European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.
- II.17.2.** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

Without prejudice to the 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 acknowledgement of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,

For the Commission,
Jan Schmidt,

Director of the Economic Evaluation
Service,
Directorate General Economic and
Financial Affairs

Signature:

Signature:

Done at Brussels, [date]

Done at Brussels, [date]

In duplicate in English.

Declaration of the candidate's eligibility

Tenders will not be considered if the candidates are in any of the following situations:

- (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) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations;
- (g) they are faced with a conflict of interest;
- (h) they have been guilty of misrepresentation in supplying the information required or have failed to supply this information.

..... (Nom)

..... (Signature)

..... (Date)