

SPECIFICATIONS

To Invitation to Tender ECFIN/E/2006/003

Study on methods to evaluate the effectiveness of competition policy

**These specifications follow the publication of
- the contract notice in OJEU S - 167-178579 dated 02/09/06**

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

1. Background

Since EU competition legislation is subject to periodic review, it is important to develop robust methodologies for assessing the impact of competition policy, drawing on experience not only at the EU level but also at the national level and in non-member countries. In the context of continuing structural reforms to achieve the Lisbon objectives, it is also important to evaluate the effectiveness of national competition authorities in the EU. The purpose of this study is to develop methodologies for evaluating the impact of competition policy in a way that makes it possible to draw conclusions about the characteristics that make a competition policy effective.

The overall impact of competition policy has been the subject of very little research up to now. There is a more substantial literature of individual case studies and there are also some studies of particular aspects of competition policy, such as merger control¹ or, more specifically, the remedies agreed in merger cases².

There are two basic approaches to the problem of evaluating the overall impact of competition policy: bottom-up and top-down. The bottom-up approach is exemplified by a study on consumer savings arising from competition policy, carried out by Davies and Majumdar for the UK Office of Fair Trading in 2002³. That study concentrates mainly on merger control and estimates a lower bound for total annual consumer savings by extrapolating from a sample of cases. The basic approach of Davies and Majumdar is to sum the estimated consumer savings arising from decisions of the UK competition authorities and to add some allowance for deterrent effect. A different bottom-up approach is adopted in a survey article by Crandall and Winston⁴, who assemble the results of a selection of case studies and conclude therefrom that U.S. competition policy does not improve consumer welfare. A major drawback of the bottom-up approach is that it does not provide a means of estimating the deterrent effect of competition policy. Not only is the deterrent effect impossible to measure by assembling case studies but it cannot necessarily be assumed to be always positive. It may be that welfare-enhancing practices or mergers are not even being proposed because the policy is too restrictive. Furthermore, there is always the theoretical possibility that a competition policy intervention in one market may have unintended negative consequences in a related market.

A top-down approach would attempt to estimate the impact of competition policy on macroeconomic or sectoral indicators such as the entry and exit of firms, indicators of innovation, mark-ups or even GDP growth. An example of such a study is that of Dutz and

¹ e.g. Duso, T., Neven, D. and Röller, L.-H., "The political economy of European merger control: evidence using stock market data", Discussion Paper FS IV 02-34, Wissenschaftszentrum Berlin, 2003.

² e.g. Duso, T., Gugler, K. and B. Yurtoglu, "EU Merger Remedies: a Preliminary Empirical Assessment", CIC Working Paper No. SP II 2005-16, Wissenschaftszentrum Berlin, September 2005.

³ Davies, Stephen and Adrian Majumdar, "The development of targets for consumer savings arising from competition policy", Report prepared for the Office of Fair Trading, London, OFT386, June 2002. It should be noted that the Davies-Majumdar study was not really intended as an evaluation but as a contribution to a target-setting exercise.

⁴ Crandall, Robert W. and Clifford Winston, "Does Antitrust Policy Improve Consumer Welfare? Assessing the Evidence", *Journal of Economic Perspectives*, Vol.17, No.4, Fall 2003, pp 3-26.

Hayri (2000)⁵, who find that an effective competition policy is positively and significantly correlated with long-run growth. Their measure of the effectiveness of competition policy is derived from a World Economic Forum questionnaire answered by 3000 top executives of large firms in 53 countries⁶.

One important limitation of the Dutz and Hayri study is that the measure of effectiveness is the subjective judgement of business executives. Another shortcoming is that the design of the study does not allow us to identify any of the features of competition policy that contribute to the effectiveness of competition policy. The mere existence of a competition law, unless it is well designed and effectively enforced, is unlikely to have an impact. One approach to the problem that this poses is to try to construct a synthetic index of the strength of competition policy on the basis of the presence or absence of certain legal provisions and the resources available to the competition authority in each country⁷. However, the method of constructing an index by awarding points for certain characteristics and then summing the points overlooks the possibility that the absence of one crucial feature (e.g. adequate penalties for contravention of the competition law) may severely impair the effectiveness of the whole policy. Furthermore, a synthetic index is of little use for an analysis of the sort envisaged here, which attempts to identify the characteristics which make a competition policy effective.

The problems with such an analysis might include insufficient temporal variation in the competition policy variables and the fact that in the EU (and to some extent the USA) two competition policies are applicable in parallel in each state. However, where clear-cut and significant policy shifts have occurred, it may be possible to derive useful policy conclusions by tracing the impact of these shifts⁸.

A second best approach, which would not capture deterrent effects, might be an ex post analysis of a large sample of past decisions, covering subsequent developments in the market. An attempt might then be made to compare the observed outcome with a counterfactual assuming no intervention by the competition authority.

2. Objectives of the study

The main aim of the study is to develop and test a methodology or methodologies for evaluating the effectiveness of competition policy and for identifying the features of the policy which have a measurable impact on its performance. For the purposes of the study, competition policy will be defined as antitrust (Articles 81 and 82 EC) and merger control. However, interactions with closely related policy areas, such as state aid control and the regulation of network industries should be taken into account. If possible, the study should also consider the role of competition authorities as advocates for competition in the policy-making process of governments.

⁵ Dutz, M.A. and A. Hayri, "Does more intense competition lead to higher growth?", Washington D.C., World Bank, Policy Research Working Paper WPS2320, 30 April 2000.

⁶ The question asked refers to "anti-trust or anti-monopoly policy", which presumably is intended to exclude the regulation of network industries and state aid control.

⁷ See Nicholson, Michael W., "Quantifying Antitrust Régimes", Washington, Federal Trade Commission, Working Paper 267, 5 February 2004. A more sophisticated "competition law and policy indicator" is described in "Product market competition in OECD countries: a synthesis", OECD Economics Department, ECO/CPE/WP1(2005)17.

⁸ For an example of such an approach, see Annett, T., "Case studies and beyond: Lessons from successful labour market reformers in Europe and implications for its social model", IMF Working Papers, forthcoming.

Because of the difficulties associated with the evaluation of competition policy, which are outlined in the background section above, the study will be divided into two stages.

The Stage 1 will start with a critical survey of the relevant literature, including:

- general studies of the impact of competition policy in general,
- studies of specific aspects of the policy,
- theoretical and empirical work on the link between the intensity of competition and economic performance⁹.

The advantages and disadvantages of different methodological approaches will be assessed together with possible alternatives.

Stage 1 will then consider the possible measures of effectiveness and their links to the objectives of competition policy. One type of measure of effectiveness relates to the intensity of competition and includes:

- market concentration
- industrial concentration
- volatility of market shares
- rates of entry and exit of enterprises
- mark-ups
- pass-through rates of changes in exchange rates, indirect taxes, customs duties etc

(This list is not exhaustive.)

Recent studies of relevance to the selection of competition indicators include:

- NERA, "Empirical indicators for market investigations", OFT749, September 2004, London, Office of Fair Trading,
- Gual, Jordi and Nuria Mas, "Industry characteristics and anti-competitive behaviour: evidence from the EU", paper presented to the CEPR workshop on effectiveness of competition policy, Paris, 17-18 November 2005.

The analysis of the advantages and drawbacks of these measures will consider possible ambiguities in these variables as indicators of the intensity of competition. This analysis will also examine the robustness of the links between them and economic performance (growth, innovation, productivity, price levels etc). Data availability (length of the time-series and geographical coverage) and reliability must also be taken into account.

Another type of variable that could be used to assess the impact of competition policy comprises economic performance indicators, such as:

- GDP growth
- price levels and inflation
- productivity growth

⁹ For example: Aghion, P., N. Bloom, R. Blundell, R. Griffith, and P. Howitt, "Competition and innovation: an inverted U relationship", NBER Working Paper no. 9269, Cambridge MA, 2002; Griffith, R. and R. Harrison, "The link between product market reform and macro-economic performance", Economic Paper no. 209, Brussels, European Commission, 2004.

- R&D expenditure
- measures of innovation

(This list is not exhaustive.)

Performance indicators are more closely related to the ultimate objectives of competition policy, i.e. an increase in total or consumer welfare or economic growth. However, the assessment of these variables must consider critically the link between them and consumer welfare. Again, data availability and reliability must be taken into account.

The Contactor will identify sources of data and construct a database of the indicators considered most suitable for the measurement of the effectiveness of competition policy.

As mentioned in the “Background” section, the mere existence of a competition law is unlikely to have a discernible impact in itself. The aim of this study is to develop a methodology which helps to identify the features of competition policy which have a significant impact. The next part of Stage 1 will therefore examine the characteristics that may prove to be significant. The features to be considered could include, amongst others:

- the scope of competition policy (e.g. whether any sectors are excluded),
- the types of market behaviour covered by the policy, including whether mergers are controlled,
- the severity of penalties,
- whether criminal law is applied,
- the resources of the competition authority, measured in terms of manpower and or budget,
- the degree of autonomy of the competition authority,
- the number of cases investigated and own-initiative inquiries carried out.

Much of the relevant information is available from annual reports on competition policy made by national governments to the OECD. However, there are gaps in this information and the Contractor will be expected to make his best efforts to find other sources of data.

The Contactor will identify sources of data and construct a database of the competition policy characteristics which are identified as the most important.

Stage 1 will conclude with a discussion of possible methodologies for exploiting the data to evaluate the impact of competition policy in such a way as to identify as far as possible the role played by different features of the policy. A reasoned proposal for a preferred methodology will be presented. The study may be terminated at the end of Stage 1 if the Commission considers that, in the light of data availability, technical and other factors, the application of the methodology is unlikely to yield reliable and policy-relevant results.

Stage 2 will consist of the application of the preferred methodology to a reasonably large sample of countries, interpretation of the results, recommendations for further research and suggestions for improving data availability.

The study will have to take account of the fact that in the EU, and to some extent in the USA, two competition authorities have largely parallel jurisdictions in each state. The study will also have to address the following problems:

- ensuring comparability over time and between countries, especially since it will be necessary to use qualitative information,
- some of the data may exhibit insufficient variation over time,
- controlling for influences other than competition policy,
- many measures of competition cannot be meaningfully aggregated across sectors or markets (e.g. concentration measures).

3. Contents of the study

The study will be carried out in two stages.

Stage 1 will consist of four parts:

1. A critical survey of the existing literature on the evaluation of competition policy or specific aspects of the policy, together with an assessment of the advantages and disadvantages of the indicators and methodologies applied in the literature and possible alternatives.
2. A discussion of possible measures of effectiveness, bearing in mind the need to relate these measures as directly as possible to the objectives pursued by competition policy. This part will include a review of indicators of the intensity of competition, their advantages and disadvantages, with a survey of sources, availability (length of time-series and geographical coverage) and reliability of the data. This part will consider not only the usefulness of these indicators as measures of competitive constraints but also their theoretical and empirical links with measures of economic performance. In this part of the study the contractor will assemble a data base of the variables identified as useful indicators of the intensity of competition.
3. An analysis of the features of competition policy that is likely to play a major role in determining its impact, together with a survey of the availability of the relevant information, considering both temporal and geographical dimensions. The contractor will identify, giving reasons, the competition policy characteristics that are feasible subjects for further analysis in the next parts of the study. The contractor will assemble a data base of the selected characteristics.
4. A reasoned specification of a preferred evaluation methodology for a broad assessment of the selected features of competition policy, stating how the contractor intends to control for the effect of influences other than competition policy.

At the end of Stage 1, the Commission will consider whether the study should continue in the light of its assessment of the probability of obtaining results which are useful for policy-making purposes.

If the Commission decides to continue the study, Stage 2 will consist of the application of the preferred methodology, on the basis of the available data, to a reasonably large sample of

countries and analysis of the robustness of the results, drawing conclusions from the results, together with recommendations for further research and for improving data availability.

4. Deliverables 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. Any physical material that must be delivered by the contractor to the Commission, including the six paper copies of the final report, should be sent to the following address:

EUROPEAN COMMISSION
Directorate-General for Economic and Financial Affairs
DG ECFIN-E Economic Evaluation Service
To the attention of Fabienne Ilzkovitz, Head of Unit E-2.
BU1 2/211
B-1049 BRUSSELS

Fabienne.Ilzkovitz@ec.europa.eu

The work carried out by the contractor in performance of the contract will be the subject of the following deliverables, which should be provided in English.

- A first interim report, which will provide an annotated outline of the study based on the methodological approach described in the tender. It will also include a critical review of the existing evaluation literature on competition policy in general or specific aspects of the policy, as well as the literature on the links between product market competition and economic performance. A draft of this report must be submitted electronically no later than one month after signature of the contract. After the submission of the draft report, a meeting between representatives of the Contractor and the Commission will be held in Brussels to discuss it. The Contractor will be expected to pay his/her expenses in connection with this meeting. Within 30 days of receipt of the draft the Commission will either inform the Contractor in writing that it accepts the draft, accept the draft on condition that its remarks be integrated in the second interim report, or ask for a revision of the first interim report on the basis of its comments.
- A second interim report, a draft of which will be submitted electronically no later than seven months after signature of the contract. It will describe the work carried out in accordance with points 2 to 4 of Stage 1 as described in Section 3 above (Contents of the study). After the submission of the draft report, a meeting between representatives of the Contractor and the Commission will be held in Brussels to discuss it. The Contractor will be expected to pay his/her expenses in connection with this meeting. Within 30 days of receipt of the draft the Commission will either inform the Contractor in writing that it accepts the draft, accept the draft on condition that its

remarks be integrated in the final report, or ask for a revision of the second interim report on the basis of its comments. After formal acceptance of the second interim report the Commission may terminate the study if, in the light of this report, it considers that the application of the evaluation methodology is unlikely to yield results which are useful for policy-making purposes.

- If the Commission decides to continue to Stage 2, the final report, which 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 12 months after the signature of the contract. After the submission of the draft final report, the Contractor will present the results at a workshop organised by the Commission in Brussels. The Contractor will be expected to pay his/her expenses incurred in attending this workshop. Within 30 days of the submission of the final report, the Commission will either inform the contractor in writing 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 shall either take account of the comments made by the Commission or put forward alternative points of view.
- On termination of the study at any point, or on its completion, the contractor will supply to the Commission, in an electronic form to be agreed with the latter, the numerical data and tabulated qualitative data collected and collated in execution of the contract, together with the metadata needed in order to identify sources and interpret the data.

The European Commission expects the contractor to adhere to the highest scientific and professional standards in his/her report. In particular, the methodology and the techniques used to meet the requirements of the study shall derive from accepted standards of the profession. The reports should contain clear objectives and means deployed to reach those objectives. The reports shall in addition be original in its content and/or findings and represent a contribution with value-added compared to existing materials. The European Commission retains the right to refuse a study that does not meet those standards

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

The contract is due to be signed in the last quarter of 2006.

The maximum duration of the tasks shall be 14 months. This will be reduced to nine months if the Commission decides not to proceed to Stage 2 of the study.

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

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. General terms and conditions for the submission of tenders

- Submission of a tender implies that the Contractor accepts all the terms and conditions set out in these specifications (including the annexes) and waives all other terms of business.
- Submission of a tender binds the Contractor to whom the contract is awarded during performance of 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.
- The protocol on the Privileges and Immunities or, where appropriate, the Vienna Convention of 24 April 1963 on Consular Relations shall apply to this invitation to tender.

2. No obligation to award the Contract

- 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.

3. Joint tenders

When a partnership or a consortium is envisaged three cases can arise:

1. The offer originates from a consortium already formally set up as a separate and legal entity able to submit its statutes, mode of operation, technical and financial capacity, such as result from the contributions of its various members. It is such a consortium that will bear the technical and financial responsibility for the contract and will present the requested financial guarantee.
2. The offer originates from companies not yet having created a consortium as a separate legal entity but planning to constitute one as referred to in item 1, if their joint offer is accepted. In such a situation, the Tenderer will have to provide the legal form, the envisaged draft statutes and mode of operation of the consortium, the various technical and financial contributions as well as the guarantees envisaged.

3. The offer originates from companies not wishing to constitute formally a consortium as a separate legal entity and thus constituting effectively an association. In such a case, the offer will be submitted in the form of subcontracting (cf. 4), in which case one of the companies shall assume the total responsibility for the offer. This company will sign the contract in its name, the other companies then being regarded as subcontractors of the first.

In all cases of joint tenders, the information required below under point 6.1 “administrative information” and under Part 3, points 1 “information for assessment of exclusion criteria” and 2 “information for assessment of selection criteria” must be provided for all members participating in the tender.

4. Subcontractors

- Where, in a bid, the amount of the services executed by a subcontractor is equal to or exceeds 20% of the contract, the subcontractor must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria, selection criteria (as a whole) and award criteria. Where those services represent less than 20% of the contract, the subcontractor shall not be required to provide documents on his financial and economic capacity.
- The bid must clearly identify the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set out in 1 above.
- Tenderers must inform the subcontractor(s) 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 the subcontracting.

5. Details of the contract

5.1 Terms of payment

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

5.2 Contractual terms

- In drawing up his bid, the tenderer should bear in mind the provisions of the standard contract attached to this invitation to tender (Part 4)

6. Content of the tender

All tenders must be presented in three sections

6.1 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 persons responsible for providing the services (curriculum vitae including a list of publications);
- 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).

6.2 Technical proposal

A study proposal with the methodology and project management to fulfil the requirements mentioned in Part 1. The tender should give indications on the theoretical background used, describe the methodology used in the study that will be undertaken and on its appropriateness for this purpose, in conformity with the guidelines included in the approach.

6.3 Financial proposal

Prices 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 must be quoted SEPARATELY for stage 1 and 2 of the study. The assessment of the price will be done on the total price of the two stages.

The price will not be subject to revision.

For your guidance, the maximum budget allocation to this study is fixed at € 120.000, 00.

Any tender exceeding the budget envisaged for this project will not be accepted.

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

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

For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubts about the applicable VAT system, it is the tenderer's responsibility to contact his national authorities to clarify the way in which the European Community is exempt from VAT;

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) to 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:¹⁰

- (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;

¹⁰ In compliance with articles 93 and 94 of the Financial Regulation applicable to the general budget of the European Communities

- (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.

Tenderers or their representatives must fill in and sign the form in Annex 3 to these specifications. By completing this form, tenderers:

- state whether or not they are in one or more of the situations described in the form; and
- undertake to submit to the Commission any document relating to the exclusion criteria that the Commission may see fit to request.

2. Selection criteria

Only the tenders fulfilling all the selection criteria will be examined in the light of the award criteria.

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

If several service providers are involved in the bid, each of them must have and show that they have a) the professional and technical capacity to perform the tasks assigned to them in the tender, and b) the required economic and financial capacity. This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to be tenderers. However, if the tender includes subcontractors whose tasks represent less than 20% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity.

2.1. Financial and Economic capacity may be shown by means of the following:

- financial statements for the past 3 financial years,
- declaration concerning the sales turnover related to the field associated with the invitation to tender during the past 3 exercises,

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

2.2. Technical and professional competence:

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

Evidence of the technical and professional capacity of the providers involved in the tender may be furnished on the basis of documents certifying the following (see also Part 2, point 6.1.):

- 1) The team to conduct the analysis should consist of at least one person with a university degree in economics or statistics and with at least 5 years or more of professional experience in conducting quantitative economic analysis. The team leader should have professional experience in managing projects of similar scale as this call for tender.
- 2) The candidate's technical and professional ability to produce high quality reports on economic issues in English.

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

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

Tenderers' attention is drawn to the fact that any total or partial omission of information for which one or more service providers involved in the tender are responsible may lead the Commission to exclude the tender from the rest of the procedure.

3. Award criteria

Subject to the provisions of these terms of reference, the contract will be awarded in favour of the economically most advantageous offer on the basis of the following award criteria:

A. the Technical Score

1. Quality of the team proposed by the tenderer to conduct the study (30 points)
 - Professional experience in the field of the study;
 - Credentials in economic, econometric or statistical analysis;
 - Publication records in refereed economic journals in the fields listed or in related topics;
2. clarity of the proposal, understanding of the background to the study and relevance to the requirements of this call for tenders (15 points);
3. method of project planning, management and implementation, including activity scheduling, assignment of tasks to team members and quality control (15 points);
4. quality of the proposed methodology for carrying out the study (40 points).

B. the Price

Having examined the tenders from a technical point of view, the evaluation committee will proceed to consider which of them the economically most advantageous offer is, taking into account **only those tenders that have obtained at least a technical score of 60 points**. 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 the tender

The tenders received will be opened on 16/10/2006 at 11:00am in the Commission building at Avenue Beaulieu 1, room BU-1 3/139, B-1160 Brussels.

It would be appreciated if tenderers wishing to attend would inform Mr R. Meiklejohn in advance, by electronic mail, fax or letter. His address is:

Directorate General Economic and Financial Affairs

BU-1 02/167,

B-1049 Brussels

Belgium

e-mail: roderick.meiklejohn@ec.europa.eu

fax: +32 (02) 299 35 02

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

5. Award committee

The process of awarding will take place in October/November 2006. 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-.....-2006/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/2006/003)

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 objective of the study is to develop and test a methodology or methodologies for evaluating the effectiveness of competition policy and for identifying the features of the policy which have a measurable impact on its performance.

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 14 months. This maximum duration shall be reduced to 9 months should the Commission decide to terminate the study at the end of Stage 1 as provided for in Part 1 of Annex 1. These periods 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

I.3.1. The total amount for stage 1 to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.

I.3.2. The total amount for stage 2 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

- a draft of 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 of the draft report, the Commission shall have 30 days to approve, to approve under the condition of the integration of its remarks in the second interim report, or to ask for a review of the first interim report based on 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 50% of the total amount referred to in Article I.3.1. shall be made.

I.4.2. Second interim payment:

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

- a draft of the second interim report in accordance with the instructions laid down in Annex I
- Data gathered in the course of the study in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the report has been approved by the Commission.

On receipt of the draft report, the Commission shall have 30 days to approve, to approve under the condition of the integration of its remarks in the final interim report, or to ask for a review of the second interim report based on 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 50% 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 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 of the draft final report, the Commission shall have 30 days to approve, to approve under the condition of the integration of its remarks in the report, or to ask for a review of the final report based on its comments.

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 the total amount referred to in Article I.3.2. 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-...-2006/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 OF THE 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.

In the case of termination by the Commission at the end of Stage 1 as provided for in Part I of Annex I, the Contractor shall be entitled to a total payment equal to 75% of the contract price referred to in Article I.3.

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.

Annex I – Tender Specifications (Call for Tenders no. ECFIN/E/2006/003)

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

Annex 1: Financial Identification Form

http://ec.europa.eu/budget/execution/ftiers_fr.htm

Annex 2: 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)

Annex 3 : Legal entity Form

http://ec.europa.eu/budget/execution/legal_entities_fr.htm