

GENERAL INVITATION TO TENDER

No ECFIN/A2/2006/001

SPECIFICATIONS

Financial Data Supply Services

**These specifications follow the publication of the contract notice
in OJEU 2006/S 120-127432 dated 28/06/2006**

Part 1: Presentation

Part 2: Technical description

Part3: Administrative details

Part 4: Assessment and award of a contract

Annex 1: Compulsory reply form for legal entity details

Annex 2: Compulsory reply form for bank details

Annex 3: Compulsory reply form for the declaration of the candidate's eligibility

Annex 4: Compulsory reply form for the financial proposal

Annex 5: Draft service contract

PART 1 : PRESENTATION

1. NATURE OF THE CONTRACT

The purpose of this invitation to tender is to conclude two service contracts with companies capable of assuming the continuity of service for financial data provision, as current contracts for two financial databases in use at the Commission approach their expiry date. The first contract relates to Mergers and Acquisitions data and the second one relates to Annual Accounts data.

2. BACKGROUND

The Treaty on the European Union (EU) places upon the European Commission, Directorate General Economic and Financial Affairs (DG ECFIN), specific tasks of economic policy and analysis for the Euro Area and the EU as a whole.

To ensure the smooth functioning of Economic and Monetary Union, DG ECFIN's responsibilities focus on economic surveillance, monitoring of budgetary policy, public finances, economic policy coordination and forecasting, integration of EU capital markets, freedom of capital movements, economic relations with third countries and other important financing operations.

In order to assume these tasks, a comprehensive array of relevant, reliable and timely statistical information is required. Official economic statistical information on the EU is mainly produced through the European Statistical System, and it is conveniently accessible for users in DG ECFIN. However, as user requirements go far beyond the stock of public available data, supplementary information for various domains is necessary.

3. OBJECTIVES

The services required by the Commission are not only for the provision of high quality financial data but also for the technical requirements (detailed below under Part 2 "Technical Description), to ensure compatibility and continuity of service by allowing existing systems to continue to be used.

Data obtained via this call for tenders will be used internally. In addition, some of this data may be quoted in Commission publications, with due acknowledgement to the source. However, regular publication of specific data series is not foreseen.

Providers will perform the tasks requested by the Commission and will carry out their work taking into account existing systems and working in cooperation with the relevant Commission departments, and in particular the DG ECFIN's "*Economic databases and statistical coordination*" and "*Management of IT resources*" units.

4. STARTING DATE AND DURATION OF THE CONTRACTS

The execution of the tasks is due to start on 15th December 2006. The contracts should be signed by November 2006.

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

The initial duration of the Contract shall be 12 months and may be renewed up to three times if both parties agree, by means of a written agreement. Each renewal would be for a further 12 months, provided that satisfactory results had been achieved on the previous period, and according to budgetary availability.

5. PLACE OF PERFORMANCE

Financial data services shall be provided in Brussels.

PART 2: TECHNICAL DESCRIPTION

The services covered by the tender are grouped into two coherent lots corresponding to different types of data. The same company can submit a bid for one or two lots. A separate bid must be submitted for each individual lot, specifying the number of the lot in order to enable the Commission to evaluate each lot separately.

LOT 1 – MERGERS AND ACQUISITIONS

1. Context

DG ECFIN requires data on mergers and acquisition for the production of its 'Mergers and Acquisitions Note', for which they are the main input¹. This note is composed of two parts: a descriptive part describing current trends in merger activity and an analytical part on a selected topic. Furthermore the data are used for internal analytical work on market integration and globalisation.

The data to be provided will be used internally by the European Commission and for its own publications. In the latter case, the source will be quoted. The data will not be sold to other parties and will primarily serve to feed an internal database of the European Commission.

¹ http://ec.europa.eu/economy_finance/publications/structural_policies/mergers_acquisitions_en.htm

2. Nature of the data and linked services to be provided

2.1 Basic criteria for Data on Mergers & Acquisitions

The tenderer is requested to define the terms Mergers & Acquisitions and if applicable, joint ventures in the context of data supplied.

Data on Mergers & Acquisitions needs to meet the following basic criteria:

1. **Time coverage:** The day of each deal should be given. The tenderer will indicate the earliest date covered.
2. **Geographical coverage:** World coverage required, and a high coverage for the EU is essential.
3. **Sectoral coverage:** All sectors of economic activities. Preference will be given to more recent standard classifications such as NACE or ISIC. The level of detail should be at the 4-digit level.
4. **Company status:** It is essential that non quoted companies as well as quoted companies are fully covered (though possibly subject to a size threshold).
5. **Basic data for the deals** to be provided :
 1. Name, nationality, main sectoral activity of the targets and bidders.
 2. Name, nationality, main sectoral activity of the owners of the targets.
 3. Date information (date announced, date effective/completed or date of withdrawal of the deal recorded in the database).
 4. Value of the transaction in million € Information should be supplied about what value thresholds are applied.
 5. Nature of the deal. Information should be supplied on how mergers are distinguished from acquisitions (and possibly joint ventures, cf. point 2.2 below).
 6. Indication of the % of shares acquired by the acquirer and % of the shares owned after the transaction.
 7. A reference number for each deal.
 8. A table containing the countries present in the database with their ISO code.
 9. There must be a unique identifier for company. A table containing CUSIP, SEDOL and/or any other specific code and associated companies concerning all the companies present in the database.
 10. A table containing specific codes for all the types of deals present in the database.
 11. Information about the mode of financing (e.g. cash or shares).
 12. Inclusion of data on deals with unknown value
6. **Aggregates:** The data will be used to compute **statistical aggregates** for the purposes of macroeconomic analysis. The tenderer is requested to propose possibilities for aggregating data by elements if these are available.

2.2 Data on joint ventures

It would be useful if similar data to Mergers & Acquisitions could be provided for joint ventures if this is available.

The tables for ISO country codes and company codes can be common both to joint ventures and to Mergers & Acquisitions data.

2.3 Specific IT requirements

Just one individual PC will access the data.

The files containing the data can be provided in any appropriate file format or in an ASCII format with any delimiters to separate the fields. An XML format would be preferred.

The data must be either

- downloadable under HTTP protocol or under FTP protocol
- or made available on a media support (DVD, CD-ROM)

Companies should have unique ID's

DG ECFIN may request a sample file (the tenderer may instead grant free access for a trial period) for evaluation purposes.

2.4 Delivery of the data

Data must be available at least twice a year, though ECFIN may wish to choose delivery four times a year for some years of the contract if this is possible. Tenderers should give via the form in Annex 4 the annual prices for delivery at least twice a year, and the annual prices for delivery at least four times a year if this is possible and they are different.

LOT 2 – ANNUAL ACCOUNTS

1. Context

One of the various missions of DG ECFIN consists in the evaluation of the financial situation of EU companies. A goal of this evaluation is to assess the reciprocal influence of the realisation of the Internal Market and the Economic and Monetary Union on the corporate sector. Diverse policy should be studied such as taxation, market power and concentration, mark-ups, the situation of small and medium companies, corporate structure, financial situation, etc. The Directorate General needs to have statistical data to achieve this goal. The data is for internal use, though a small amount of highly aggregated data may be used in publications.

2. Nature of the data and linked services to be provided

2.1 Basic criteria for Data on Annual Accounts

Data on financial accounts of companies need to meet as close as possible the following basic criteria:

- 1) **Periodic coverage:** Annual basis. Data should go back as far as possible.
- 2) **Geographical coverage:** **EU-25** (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Ireland, Luxembourg, Portugal, Spain, Sweden, The Netherlands, United Kingdom, Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, Slovenia,), **USA, Japan and Candidate Countries** (Bulgaria, Romania, Turkey). An alternative selection of countries can be proposed.
- 3) **Sectoral coverage:** As many sectors of economic activities as possible.
- 4) **Sectoral classification:** At least NACE rev.1 3-digit classification and/or SIC 3-digit classification.
- 5) **Currency:** At least euro (or Ecu) and USD.
- 6) **Language:** Items should be proposed at least in English or in French.
- 7) **Basic data to be provided:**

(1) **Name**, international company code (SEDOL, CUSIP), nationality, country code (ISO), address, legal status, main sectoral activity of the company (NACE rev.1 3-digits and/or SIC 3-digits), secondary sectoral activities of the company (NACE rev.1 3-digits and/or SIC 3-digits).

(2) **Information on subsidiaries** including Name, international company code (SEDOL, CUSIP), nationality, country code (ISO), address, legal status, main sectoral activity (NACE rev.1 3-digits and/or SIC 3-digits), percentage of control, and link to its accounts if in the database.

(3) Information on shareholders including Name, international company code (SEDOL, CUSIP), nationality, country code (ISO), address, legal status, main sectoral activity (NACE rev.1 3-digits and/or SIC 3-digits), percentage of control, and link to its accounts if in the database.

(4) General economic information on the company:

- turnover.
- operating profit.
- total assets.
- number of employees.
- main sector of activity (NACE rev.1 3-digits and/or SIC 3-digits).
- secondary sector(s) of activity (NACE rev.1 3-digits and/or SIC 3-digits).

(5) Specific information on the company:

- indication whether accounts are consolidated or not (both should be provided if possible).
- Balance sheet (see the description given below).
- Profit and Loss account (see the description given below).
- Information on the notes (see the description given below).

(6) Additional general information:

- table describing each item used.
- table describing exchange rates.
- table describing the links between the different sectoral classification codes used.
- conversion table describing the corrections made to national accounts to harmonise data.
- table with country codes (ISO) description.
- table with company codes description (SEDOL, CUSIP).
- user manual.

8) **Data provided must be in conformity with the basic regulation:**

(1) **Fourth Council Directive :** Data provided must follow as close as possible the description laid in the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies². The detailed description hereunder follows articles 9 and 23 of the directive. In case the database does not follow this description, tenderers have to explicitly specify and explain the differences.

(2) **International Accounting Standards:** when available, the accounts shall also be provided following the International Financial Reporting Standards (IFRS/IAS).

2.2 Detailed description of the data to be provided

The data provided shall follow as close as possible the following description as detailed below:

- 1) Balance sheet : Assets
- 2) Balance sheet: Liabilities
- 3) Profit and Loss Account
- 4) Explanatory notes

² Official Journal L 222 , 14/08/1978 p. 0011 - 0031 .

Amended by **179H**

Amended by [383L0349](#) (OJEU L 193 18.07.1983 p.1)

Amended by [384L0569](#) (OJEU L 314 04.12.1984 p.28)

Completed by **185I**

Amended by [389L0666](#) (OJEU L 395 30.12.1989 p.36)

Amended by [390L0604](#) (OJEU L 317 16.11.1990 p.57)

Amended by [390L0605](#) (OJEU L 317 16.11.1990 p.60)

Amended by **194N**

Incorporated by [294A0103\(72\)](#) (OJ L 001 03.01.1994 p.517)

Amended by [394L0008](#) (OJ L 082 25.03.1994 p.33)

Implemented by [394L0008](#) (OJ L 082 25.03.1994 p.33)

Amended by [399L0060](#) (OJ L 162 26.06.1999 p.65)

1) Balance sheet – Assets

A. Subscribed capital unpaid

of which the part that has been called

B. Formation expenses

C. Fixed assets

I. Intangible assets

1. Costs of research and development.
2. Concessions, patents, licences, trade marks and similar rights and assets.
3. Goodwill.
4. Payments on account.

II. Tangible assets

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

III. Financial assets

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares

D. Current assets

I. Stocks

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

II. Debtors (Amounts becoming due and payable after more than one year to be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid
6. Prepayments and accrued income.

III. Investments

1. Shares in affiliated undertakings.
2. Own shares
3. Other investments.

IV. Cash at bank and in hand

E. Prepayments and accrued income

F. Loss for the financial year

2) Balance sheet – Liabilities

A. Capital and reserves

- I. Subscribed capital
- II. Share premium account
- III. Revaluation reserve
- IV. Reserves
 - 1. Legal reserve.
 - 2. Reserve for own shares
 - 3. Reserves provided for by the articles of association.
 - 4. Other reserves.
- V. Profit or loss brought forward
- VI. Profit or loss for the financial year

B. Provisions for liabilities and charges

- 1. Provisions for pensions and similar obligations.
- 2. Provisions for taxation.
- 3. Other provisions.

C. Creditors

(Amounts becoming due and payable within one year and amounts becoming due and payable after more than one year to be shown separately for each item and for the aggregate of these items.)

- 1. Debenture loans, showing convertible loans separately.
- 2. Amounts owed to credit institutions.
- 3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.
- 4. Trade creditors.
- 5. Bills of exchange payable.
- 6. Amounts owed to affiliated undertakings.
- 7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.
- 8. Other creditors including tax and social security.
- 9. Accruals and deferred income

D. Accruals and deferred income

E. Profit for the financial year

3) Profit and loss accounts

1. Net turnover (if possible with an indication of the geographical repartition)
2. Variation in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.
4. Other operating income.
5. Cost of materials and consumables.
 - (a) Raw materials and consumables.
 - (b) Other external charges.
6. Staff costs:
 - (a) Wages and salaries;
 - (b) Social security costs, with a separate indication of those relating to pensions.
7. Value Adjustments.
 - (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
 - (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
8. Other operating charges.
9. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
10. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
11. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
12. Value adjustments in respect of financial assets and of investments held as current assets.
13. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
14. Tax on profit or loss on ordinary activities.
15. Profit or loss on ordinary activities after taxation.
16. Extraordinary income.
17. Extraordinary charges.
18. Extraordinary profit or loss.
19. Tax on extraordinary profit or loss.
20. Other taxes not shown under the above items.
21. Profit or loss for the financial year.

4) Information on the notes

Statement of investment.

- A. Acquisitions of intangible fixed assets.
- B. Sales and disposals of intangible fixed assets.
- C. Acquisitions – sales and disposals (i.e. balance).
- D. Acquisitions of tangible fixed assets.
- E. Sales and disposals of tangible fixed assets.
- F. Acquisitions – sales and disposals (i.e. balance).
- G. Acquisitions of financial assets.
- H. Sales and disposals of financial assets.
- I. Acquisitions – sales and disposals (i.e. balance).

Statement of depreciation.

- K. Accumulated depreciation on intangible assets.
- L. Accumulated depreciation on tangible assets.
- M. Accumulated depreciation on financial assets.

Use of profit.

- N. Distribution of profit for the current year.
- O. Distribution of profit for the previous year.

2.3 Specific IT requirements

Just one individual PC will access the data in the first year of the contract. For the subsequent renewals, the Commission may wish to have simultaneous access from up to three PCs, and so the annual cost for access by up to two additional PCs should be supplied via the form in Annex 4.

The files containing the data can be provided in any appropriate files format or in an ASCII format with any delimiters to separate the fields. An XML format would be preferred.

The data must be either

- downloadable under HTTP protocol or under FTP protocol
- or made available on a media support (DVD, CD-ROM)

DG ECFIN may request a sample file (the tenderer may instead grant free access for a trial period) for evaluation purposes.

Companies should have unique ID's .

2.4 Delivery of the data

Data must be available on a yearly basis.

PART 3: 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 Annexes 1 to 4) and waives all other terms of business. The Commission's draft Service Contract (Annex 5) is its preferred one, though the tenderer may propose an alternative, provided that it conforms to the Commission's financial regulations.
- 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.
- One original and four copies of the tender should be submitted.
- Once the Commission has received 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 (see Part 3 – point 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 section 6.1, “Administrative proposal” 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 and 2 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. TERMS OF PAYMENT

Payments shall be made in accordance with Articles I.4.2 of the Draft Service Contract (Annex 5)

6. CONTENT OF THE TENDER

All tenders / bids must be presented in three sections

6.1. Administrative proposal

This should be submitted using the forms given in Annexes 1 to 4. The information required includes:

- the tenderer's name and/or business name;
- a clear description of the tenderer's legal form, and the address of the tenderer's registered office;
- the tenderer's telephone and fax numbers, e-mail address and where available, internet address;
- the names of the legal representatives (directors, etc.) of the tenderer, authorised to sign contracts with third parties on behalf of the organization;
- the tenderer's VAT number and trade-register entry number;
- banking details: bank name, branch address, account name, account number and code (only the IBAN and the BIC address of the bank if they exist);
- a legal entity form (see Annex 1);
- a bank identification form filled in and signed by an authorised representative of the tenderer **and his bank** (see Annex 2);
- 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 3);
- proof of financial and economic capacity: documents listed in Part 4 (2.1);
- proof of technical and professional competence: documents listed in Part 4 (2.2);
- other substantiating documents if the candidate or tenderer cannot, for valid reasons, provide those indicated above;
- Financial Proposal in Annex 4 ;
- optionally, a draft Service Contract. This must be entirely compatible with the Commission's financial regulations. The one in Annex 5 will be applicable in the absence of a draft Contract from the tenderer.

6.2 Technical proposal

This section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract. Attention is also drawn to the award criteria (Part 4 – Point 3), which define those parts of the technical proposal to which the tenderers should pay particular attention.

The technical proposal must meet the technical description (Part 2) and provide, as a minimum, all the information needed for the purpose of awarding the Contract. The level of detail of the tender will be extremely important for the evaluation of the tender.

The technical proposal should address all matters laid down in the specifications (Part 2) giving an answer to each of the points mentioned. The technical proposal should include models, examples and technical solutions to issues raised in the specifications.

6.3 Financial proposal

Prices should be quoted in euro, including for the countries which do not form part of the euro zone. Offers quoted in non EU currencies will also be considered. In the latter case, the tender would be evaluated by converting the price into euro at the exchange rate prevailing on the date of the opening of the offers. The amount of the offer in the currency quoted in the offer cannot be revised because of exchange rate movements. For bids in euro, the choice of exchange rate belongs to the tenderer, who assumes the risks or opportunities associated with exchange rate movements.

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; Potential tenderers are informed that the Commission will take no account of VAT in examining the prices indicated in the various tenders.

The price must be a **fixed amount** for each year, inclusive of all expenses. The price will not be subject to revision.

The price quotation (in annex 4) must be signed by the tenderer or his duly authorised representative.

PART 4: 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 one stage 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 below point 1 – exclusion criteria and Annex 3);
- 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 below 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 below 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 if 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 3.

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:³

- (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.

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.

³ In compliance with Articles 93 and 94 of the Financial Regulation applicable to the general budget of the European Communities.

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 the professional and technical capacity to perform the tasks assigned to them in the tender and 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 represents 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 one or more of the following:

All tenderers (and subcontractors whose tasks are equal to or exceed 20% of the Contract) must provide one or more of the following proof of economic and financial capacity:

- a complete copy, certified by the tenderer's authorised representative, of the tenderer's audited annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks) for the past three years, as approved by the general assembly of the company and, where applicable, published. These documents must be certified by the tenderer;
- a statement of overall turnover and turnover concerning the tasks, supplies or services covered by this contract for the last three financial years;
- 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 next criteria will be used to assess the candidate's ability to supply the data on the basis of the following documents:

Expertise and experience

- Examples of work done in the areas covered by this tender in the past three years in the fields of economic and financial data providing; if this work was done in part by subcontractors, tenderers must clearly indicate their own role and contribution.

- List of main clients and services provided during the last three years, indicating the value, the date and the public or private recipient of the services rendered.
- Tenders from consortia of undertakings or groups of service providers must specify the role, qualifications and experience of each of the members of the consortia or group. In such cases, one of the tenderers must be designated as the main contractor.

By submitting a tender, each service provider involved therein accepts the possibility of a check being carried out by the Commission on his technical and professional competence.

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

The Commission will award contracts to the bidders who present the most economically advantageous tenders on the basis of the award criteria described below.

Award criteria and their relative weights <u>for each one of the lots</u>	<i>Maximum points</i>
1) Price schedule for the various services relating to this call for tenders	30
2) Technical evaluation based on the information relating to the proposed approach and the services offered	70
TOTAL	100

1) Price schedule for the various services relating to this call for tenders

Tenderers should establish their price schedule and submit prices on the compulsory form given in Annex 4. Details of the price must be quoted in euros, or, if in some other currency, they will be converted to euros at the exchange rate prevailing on the date of the opening of the offers. The prices must be for a fixed amount covering all expenditure incurred by the tenderer.

Prices should be submitted for an initial contract of a year, and for three further annual renewals of the contract.

The formula for obtaining the score for the price schedule is as follows: Let p be the total price for the whole period (the initial year and renewals) for option 1 (see annex 4), and let n be the number of years involved. The average annual price, P , is defined as:

$$P = p / n$$

Let P_{\min} be the lowest average annual price from amongst the tenders scoring at least 50% for each one of the quality criteria and scoring at least a total of 47 points in the technical evaluation.

Then the score, B , out of 30, is calculated as:

$$B = 30 P_{\min} / P$$

SINCE ASSESSMENT OF THE TENDERS WILL FOCUS ON THE QUALITY OF THE PROPOSED SERVICES, TENDERS SHOULD ELABORATE ON ALL POINTS ADDRESSED BY THESE SPECIFICATIONS IN ORDER TO SCORE AS MANY POINTS AS POSSIBLE. THE MERE REPETITION OF MANDATORY REQUIREMENTS SET OUT IN THESE SPECIFICATIONS, WITHOUT GOING INTO DETAILS OR WITHOUT GIVING ANY ADDED VALUE, WILL ONLY RESULT IN A VERY LOW SCORE. IN ADDITION, IF CERTAIN ESSENTIAL POINTS OF THESE SPECIFICATIONS ARE NOT EXPRESSLY COVERED BY THE TENDER, THE COMMISSION MAY DECIDE TO GIVE A ZERO MARK FOR THE RELEVANT QUALITATIVE AWARD CRITERIA.

2) Technical evaluation based on the information relating to the proposed approach and the services offered

A score of less than 50% for each one of the quality award criteria or a total score of less than 47 out of the maximum of 70 points for the technical evaluation will result in the elimination of the tenderer.

LOT 1 – MERGERS AND ACQUISITIONS

Quality Award Criteria Points will be attributed for the completeness and consistency according to :	Documents to be supplied
1. Geographical coverage (maximum 20 points)	As referred under Part 2 – Lot 1 – Point 2.1, tenderers should provide a structured description of the geographical coverage for each one of the basic data for the deals
2. Other Basic criteria (maximum 40 points)	As referred under Part 2 – Lot 1 – Point 2.1, tenderers should provide:
Definition	a definition of M&A
Time coverage	a structured description of the periods covered, broken down if necessary by category and period covered (For example, availability may differ by variable, country or sector).
Sectoral coverage	a structured description of the covered sectors of economic activities. Details on the type of classification used.
Company Status	an explanation on the companies status covered by the data supplied
Basic data requested for deals	a structured description of each of the existing basic data for the deals
Joint Ventures	if applicable: a description of the information and variables available on joint ventures
Possibilities for aggregating data by elements	The possibilities for aggregating data by elements if these are available.
3. Specific IT Requirement (maximum 10 points)	Tenderers should provide a description of the format of the files and the way there are downloadable as requested under Part 2 – Lot 1 – Point 2.4 The Evaluation Committee may request bidders to supply by e-mail a sample file which would be taken into account in the evaluations.

LOT 2 – ANNUAL ACCOUNTS

Quality Award Criteria Points will be attributed for the completeness and consistency according to :	Documents to be supplied
1. Basic criteria (maximum 40 points)	As referred under Part 2 – Lot 2 – Point 2.1, tenderers should provide a structured description for the periodic coverage, geographical coverage, sectoral coverage, sectoral classification, currency, language, basic data provided, conformity of the data with the basic regulations
2. Detailed description of the data to be provided (maximum 20 points)	As referred under Part 2 – Lot 2 – Point 2.2, tenderers should present 3 tables containing their available detailed list of items for balance sheet – assets and liabilities, profit and loss accounts and explanatory notes.
3. Specific IT requirement (Maximum 10 points)	Tenderers should provide a description of the format of the files and the way there are downloadable as requested under Part 2 – Lot 2 – Point 2.3 The Evaluation Committee may request bidders to supply by e-mail a sample file which would be taken into account in the evaluations.

3) Award of the contract

The contract will be awarded to the most economically advantageous tender on the basis of the award criteria, where the final score is calculated as follows:

Lot 1: Total score for the tender = Points awarded for quality (Geographical coverage + Other Basic criteria + Specific I.T. requirements) + points awarded as a result of the price comparison.

Lot 2: Total score for the tender = Points awarded for quality (Basic criteria + Detailed description of the data to be provided + Specific IT requirement) + points awarded as a result of the price comparison.

4. OPENING OF TENDERS

The tenders received will be opened on 20/09/2006 at 10h00 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. Schönborn in advance, by electronic mail, fax or letter. His address is:

Mr Frank Schönborn,
Head of Unit, Economic Databases and Statistical Coordination,
Directorate General Economic and Financial Affairs
B-1049 Brussels
e-mail: ecfin-databases@cec.eu.int
fax: +32 (02) 295.74.99

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

5 AWARD COMMITTEE

The process of awarding will take place in October and 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.

**COMPULSORY REPLY FORM FOR LEGAL ENTITY DETAILS
INVITATION TO TENDER, RATINGS AND RESEARCH SERVICES
(ECFIN/A2/2006/001)**

The tenderer may download the appropriate form at:

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

LEGAL ENTITIES	
<u>PRIVATE COMPANIES</u>	
TYPE OF COMPANY	<input type="text"/>
NGO	YES <input type="checkbox"/> NO <input type="checkbox"/> (Non Gouvernemental Organisation)
NAME(S)	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
ABBREVIATION	<input type="text"/>
ADDRESS OF THE HEAD OFFICE	<input type="text"/> <input type="text"/> <input type="text"/>
POSTAL CODE	<input type="text"/> P.O. BOX <input type="text"/>
CITY	<input type="text"/>
COUNTRY	<input type="text"/>
VAT	<input type="text"/>
PLACE OF REGISTRATION	<input type="text"/>
DATE OF REGISTRATION	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <small>D D M M Y Y Y Y</small>
REGISTRATION NR	<input type="text"/>
PHONE	<input type="text"/> FAX <input type="text"/>
E-MAIL	<input type="text"/>
CONTACT PERSON	<input type="text"/>
<p>THIS "LEGAL ENTITY" FORM SHOULD BE FILLED IN AND RETURNED TOGETHER WITH:</p> <p>* A COPY OF ANY OFFICIAL DOCUMENT (E.G. OFFICIAL GAZETTE, REGISTER OF COMPANIES, ETC.) SHOWING THE CONTRACTOR'S NAME AND ADDRESS AND THE REGISTRATION NUMBER GIVEN TO IT BY THE NATIONAL AUTHORITIES;</p>	
<i>DATE AND SIGNATURE</i>	

COMPULSORY REPLY FORM FOR BANK DETAILS

INVITATION TO TENDER, RATINGS AND RESEARCH SERVICES

(ECFIN/A2/2006/001)

The tenderer may download the appropriate form
at: http://ec.europa.eu/budget/execution/ftiers_en.htm

FINANCIAL IDENTIFICATION

This information is to be stored in the Commission's accounting records for use in its payment procedures.
Commission staff carrying out such procedures will be able to consult it for this purpose.

ACCOUNT HOLDER	
NAME	<input type="text"/>
ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>
VAT NUMBER	<input type="text"/>
CONTACT PERSON	<input type="text"/>
TELEPHONE	<input type="text"/>
FAX	<input type="text"/>
E - MAIL	<input type="text"/>

BANK	
BANK NAME	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/>
POSTCODE	<input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN	<input type="text"/>

REMARKS :

BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE (Both Obligatory)(1)
--

DATE + SIGNATURE ACCOUNT HOLDER : (Obligatory)
--

(1) The bank stamp and signature of its representative are not required if this form is accompanied by a copy of a bank statement. The signature of the account holder is obligatory in all cases.

**COMPULSORY REPLY FORM FOR MINIMUM CONDITIONS
CALL FOR TENDERS – RATINGS AND RESEARCH SERVICES ECFIN/A2/2006/001**

Declaration of the candidate's eligibility

By signing this form, I certify that the tenderer does not find him/herself in any of the following situations:¹

- (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.

..... (Name)
..... (Signature)
..... (Date)

**COMPULSORY REPLY FORM FOR THE FINANCIAL PROPOSAL
CALL FOR TENDERS**

ECFIN/A2/2006/001

LOT 1 MERGERS AND ACQUISITIONS DATA

NB:

1) Value added TAX.

Tenderers are required to indicate prices exclusive of VAT. Tenderers subject to VAT in Portugal and the Netherlands, which operate a system of VAT reimbursement to the Commission, are required to indicate the VAT rate applicable to the fixed costs quoted: Applicable VAT RATE.....%

2) Tenderers are reminded to provide sufficient information to enable their offer to be assessed on the basis of the award criteria. Please indicate the currency if not in euro.

TENDERER:

Option 1 : Delivery at least two times a year

ACTIONS/PHASES	Financial proposal in euro (excl. VAT) (*) Per year
Lot 1 / Phase 1 (initial contract)	
Lot 1 / Phase 2 (1 st renewal)	
Lot 1 / Phase 3 (2 nd renewal)	
Lot 1 / Phase 4 (3 rd renewal)	
Total	
Total	
TOTAL AMOUNT FOR THE LOT (Excl. VAT) For all phases€

(*) All costs associated with the completion of the work, including overheads such as infrastructure, administration, management costs and travel should be included in the financial proposal.

**COMPULSORY REPLY FORM FOR THE FINANCIAL PROPOSAL
CALL FOR TENDERS**

ECFIN/A2/2006/001

LOT 1 MERGERS AND ACQUISITIONS DATA

TENDERER:

Option 2 : Delivery at least four times a year

ACTIONS/PHASES	Financial proposal in euro (excl. VAT) (*) Per year
Lot 1 / Phase 1 (initial contract)	
Lot 1 / Phase 2 (1 st renewal)	
Lot 1 / Phase 3 (2 nd renewal)	
Lot 1 / Phase 4 (3 rd renewal)	
Total	
Total	
TOTAL AMOUNT FOR THE LOT (Excl. VAT) For all phases€

(*) All costs associated with the completion of the work, including overheads such as infrastructure, administration, management costs and travel should be included in the financial proposal.

**COMPULSORY REPLY FORM FOR THE FINANCIAL PROPOSAL
CALL FOR TENDERS**

ECFIN/A2/2006/001

LOT 2 ANNUAL ACCOUNTS

NB:

1) Value added TAX.

Tenderers are required to indicate prices exclusive of VAT. Tenderers subject to VAT in Portugal and the Netherlands, which operate a system of VAT reimbursement to the Commission, are required to indicate the VAT rate applicable to the fixed costs quoted: Applicable VAT RATE.....%

2) Tenderers are reminded to provide sufficient information to enable their offer to be assessed on the basis of the award criteria. Please indicate the currency if not in euro.

TENDERER:

Option 1: Price for usage on just one PC

ACTIONS/PHASES	Financial proposal in euro (excl. VAT) (*)
Lot 2 / Phase 1 (initial contract)	
Lot 2 / Phase 2 (1 st renewal)	
Lot 2 / Phase 3 (2 nd renewal)	
Lot 2 / Phase 4 (3 rd renewal)	
Total	
Total	
TOTAL AMOUNT FOR THE LOT (Excl. VAT) For all phases€

(*) *All costs associated with the completion of the work, including overheads such as infrastructure, administration, management costs and travel should be included in the financial proposal.*

**COMPULSORY REPLY FORM FOR THE FINANCIAL PROPOSAL
CALL FOR TENDERS**

ECFIN/A2/2006/001

LOT 2 ANNUAL ACCOUNTS

TENDERER:

Option 2: Price per PC for usage on two or three PCs (for the renewal periods)

ACTIONS/PHASES	Financial proposal in euro (excl. VAT) (*)
Lot 2 / Phase 2 (1 st renewal)	
Lot 2 / Phase 3 (2 nd renewal)	
Lot 2 / Phase 4 (3 rd renewal)	
Total	
Total	
TOTAL AMOUNT FOR THE LOT (Excl. VAT) For all phases€

(*) *All costs associated with the completion of the work, including overheads such as infrastructure, administration, management costs and travel should be included in the financial proposal.*

DRAFT SERVICE CONTRACT
No. ECFIN-.....-2006/SI2.....
Lot ...

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 Frank Schönborn, Head of Unit, Economic Databases and Statistical Coordination, Directorate General Economic and Financial Affairs, B-1049 Brussels

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/A2/2006/001)

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 the delivery of financial data services.

I.1.2. The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications and with his Tender, which are annexed to the Contract (Annex I and Annex II, respectively).

ARTICLE I.2 - DURATION

I.2.1. The Contract shall enter into force not later than 15th December 2006 or 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 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 date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express agreement of the parties before such period elapses.

I.2.4. The contract may be renewed up to three times, each time for a period of execution of tasks of 12 months, only before payment of the balance and with the express written agreement of the parties, indicating the date on which execution of the tasks shall start. Renewal does not imply any modification of deferment of existing obligations.

ARTICLE I.3 – CONTRACT PRICE

I.3.1. 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 and expenses incurred.

I.3.2. The annual price referred to in Article I.3.1 is a fixed one and is not subject to revision during the term of this Contract.

I.3.3. Article II.7 of the general conditions is not applicable.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

I.4.1. Payments under the Contract shall be made in accordance with the modalities of Article II.4 of the Contract. The request for payment shall be admissible 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. The payment shall be made within 30 days of the date of receipt by the Commission of the invoice.

I.4.2. Invoices can be submitted on a -, semi-annual and annual basis. The invoicing of the services specified under point I.1.of the present Contract can only be done upon activation

and proper functioning of the services, on the basis of known prices and services supplied. The invoice must include the following information:

- Contract reference number
-

Invoices and/or payment requests will be addressed to:

European Commission
Directorate General for Economic and Financial Affairs
Head of Unit R-2
Contract n°: **ECFIN-...-2006/SI2.....**
B-1049 Brussels

For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA” or an equivalent statement in the Dutch or German language.

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:
IBAN code: [complete]
BIC 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

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 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

ARTICLE I.9 – 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.

ARTICLE I.10– OTHER SPECIAL CONDITIONS

I.10.1. The Contractor authorises the Commission to use the services strictly in accordance with terms of usage set out in the Contractor's tender (Annex II) and subject to the restrictions thereof.

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

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

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.3. Payment of the balance:

- Within sixty days of completion of the tasks referred to in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions;
- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

- II.5.1.** Payments shall be deemed to have been made on the date on which the Commission's account is debited.
- II.5.2.** The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.
The Commission shall notify the Contractor accordingly 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 judgment 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 months⁴ of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;

⁴ This period can be modified in the Special Conditions depending on the nature of the contract.

- (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,

Signature:

Done at Brussels, [date]

In duplicate in English.

For the Commission,

Frank Schönborn,
Head of Unit, Economic Databases and
Statistical Coordination,
Directorate General Economic and
Financial Affairs
Signature:

Done at Brussels, [date]