

SPECIFICATIONS

To Invitation to Tender ECFIN/E/2006/001

Study on the efficiency of public spending in support of research and development activities

**These specifications follow the publication of
- the contract notice in OJEU S/123-130482 dated 01/07/06**

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

Part I: TECHNICAL DESCRIPTION

1. Background

The main role of the Directorate General for Economic and Financial Affairs (DG ECFIN) is to foster the success of Economic and Monetary Union both inside and outside the European Union. This includes the provision of economic analysis and evaluation in support of Community policies and priorities in general. Among other tasks, DG ECFIN participates in the Member States' economic policy coordination, including the monitoring of their budgetary policies, public finances and the development of economic framework conditions, conducive to growth and job creation.

Raising growth potential requires enhanced productivity growth. The EU's productivity growth, however, has slowed down markedly since the mid-1990s. Reversing this trend is the major competitiveness challenge for the EU. Research and development (R&D) and innovation have been identified as key drivers of productivity growth. Accordingly, the **priority to promote R&D and innovation policies** was incorporated into the EU's Lisbon strategy launched in the year 2000, aiming to increase the EU's competitiveness. The revised Lisbon strategy¹ of 2005 confirmed the importance of R&D investment and maintained the Barcelona objective to raise overall R&D investment to 3% of GDP by 2010 (to be preferably achieved by a two-third against one-third investment share of the private and public sector). Integrated Guidelines 7 and 8 adopted by the European Council in June 2005² specify respective recommendations to the Member States: Guideline 7 recommends 'increasing and improving investment in R&D' and asks Member States to set their own targets for R&D investment, while Guideline 8 emphasises the need 'to facilitate all forms of innovation'. Accordingly, Member States have incorporated **national targets for R&D** into their National Reform Programmes of autumn 2005. In addition, efforts to **improve framework conditions** get increased attention.

The public sector has two main options to influence the economies' overall share of R&D investment: by the use of public funds targeted at boosting private R&D investment and by the improvement of framework conditions with the view to creating better market conditions for private R&D investment. Apart from carrying out basic research via the funding of government R&D laboratories or universities, **public funds** can be used directly by the provision of direct subsidies and grants or indirectly via different tax incentives for the private sector. The **improvement of the framework conditions** requires the public sector to improve (i) market access conditions; (ii) access to external sources of financing (venture capital, loans, risk-sharing instruments); (iii) integration of the financial markets; (iv) use of public procurement as leverage to promote innovative private sector solutions; (v) research mobility conditions; (vi) industrial and intellectual property rights regime; (vii) technology standards; and (viii) competition policy to enhance interoperability and stimulate innovation.

The use of public funds for boosting private R&D investment and innovation activities has, however, to be seen against the fact that public funds are scarce. In addition, the Member States' public finances are subject of the rules of the Stability and Growth Pact.

¹ http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/84335.pdf

² http://europa.eu.int/growthandjobs/pdf/integrated_guidelines_en.pdf

Therefore, it is all the more important for the Member States to use public funds in the most efficient way.

The **analysis of public sector efficiency** creates a number of measurement problems. The financing of public R&D activities or direct subsidies and grants to the private sector require additional tax revenues or the decision to cut other expenditure, while granting tax incentives results in revenue loss. Additional tax revenues can be obtained only at progressively higher marginal costs³. The revenue sources often impose dead weight, administrative and compliance costs. In addition, measuring the costs of public spending decisions should take into account the opportunity cost of the activities and the government's fixed costs for the share of activity. Finally, the efficiency of the public policies in support of R&D depends on the wider framework conditions of the given economy that are shaped by the market as well as by other policies and institutions not directly associated with R&D and innovation such as competition policy or labour market institutions.

2. Objectives of the invitation to tender

The objective of this tender is to create a tool to help to assess the progress with the implementation of the Member States' National Reform Programmes in the area of public R&D and innovation expenditure. This would require the analysis and measurement of the efficiency of Member State's public spending in support of R&D, i.e. their direct public policies (direct subsidies and tax incentives) against the background of the given framework conditions.

In particular, the contractor(s) will (1) develop a tool to establish a comparison of the EU-25 Member States according to their efficiency levels, (2) explain the differences between them in relation to the exogenous factors such as nature of competition, quality of business environment, IPR regime etc. On the basis of the results obtained, the author(s) will (3) discuss appropriate measures to increase efficiency of public spending for the Member States in the context of their R&D expenditure goals.

The report can be divided into four parts:

- (1) The objective of the **first part** is (a) to define the **concept of efficiency** of direct and indirect public spending in support of R&D, and (b) to propose an appropriate **methodology to measure and analyse the efficiency** of policy instruments and subsequent innovation performance in the EU-25 Member States. As not all R&D and innovation activities result in patents, the author(s) should discuss the alternative output measures of R&D policies. In terms of the methodology, the contractor(s) should consider both parametric (stochastic) and non-parametric methods⁴. The authors should clearly distinguish between efficiency and

³ See:

(1) Alfonso A., Schuknecht L. and V. Tanzi, (2003), „Public Sector Efficiency: An International Comparison“, ECB Working Paper No. 242, <https://www.ecb.int/pub/pdf/scpwps/ecbwp242.pdf>

(2) Alfonso A., Schuknecht L., and V. Tanzi, (2006), “Public Sector Efficiency, Evidence for New EU Member States and Emerging Markets, ECB Working Paper No. 581 <https://www.ecb.int/pub/pdf/scpwps/ecbwp581.pdf>

⁴ Parametric approaches such as SFA (Stochastic Frontier Analysis), TFA (Thick Frontier Analysis) and DFA (Distribution Free Approach) and non-parametric approaches of DEA (Data Envelopment Analysis) and FDH (Free Disposable Hull) as used in the ECB studies (see the reference above).

effectiveness of public spending. This part should also (c) define a model suitable to explain the differences in the public R&D spending efficiency.

- (2) By means of appropriate estimation techniques and relevant control variables, the **second part** of the report will **analyse the efficiency** of public spending in support of R&D and will look at the effects of public spending on the private R&D expenditure, i.e. examine the additionality of public spending and innovation performance in all EU-25 Member States as well as in the US and possibly in Japan and China. The authors should investigate the **impact of direct and indirect support measures** (i.e. subsidies and tax incentives) on business sector R&D and innovation: Which government policies in support of R&D induce most private R&D investment and innovation? Do these different policy instruments interact with each other? We would be particularly interested in results regarding the efficiency of tax incentives. Taking the initial economic situation of the countries into consideration, the authors should compare all the Member States according to their level of efficiency of public spending in support of R&D and innovation.
- (3) The objective of the **third part** is to explain by means of suitable quantitative and qualitative methods the differences in efficiency levels among the countries. This part should discuss the **importance of factors** such as distance to the technological frontier of countries granting public R&D support, their level of financial development, openness of the economy (FDI and trade) and **innovation framework conditions** such as the nature of competition, quality of business environment, IPR regime, amount of administrative burden, access to venture capital, supply and quality of the available highly skilled labour force, access to technology, sectoral specialisation across all individual countries under consideration
- (4) Furthermore, in the **fourth part** the author(s) should consider appropriate **measures to increase efficiency of public spending** in the context of the **R&D expenditure goals** set by Member States in their National Reform Programmes (NRP).

3. Scope

The study will be based mainly on readily available data sources. The consultant(s) should in all cases verify the suitability of the information and data for modelling purposes. The consultant(s) should realise that the construction of variables based on qualitative or quantitative information is an essential part of the exercise. For that purpose the contractor(s) can collect additional information.

The study will cover all the EU-25 Member States, the US and possibly Japan and China. We are particularly interested in including the new Member States, with a view to discussing the possible effects of factors like distance to the technological frontier or levels of financial development.

The study should take into account, when available, both EU (e.g. framework programmes) and national public support in the EU-25 Member States and investigate the degree of potential synergies between them.

The study should as far as possible differentiate the impact on performances across countries and across sectors at NACE2 level.

4. Indicative methodology

In all stages the contractor(s) should apply the following general guidelines. The analysis should:

- focus on analysing the efficiency of the public spending in support of R&D against the background of the given framework conditions, using adequate econometric techniques and/or other economic modelling techniques;
- test the significance of the models;
- provide quantitative estimates of the effects of the policy changes;
- discuss the sensitivity of the results vis-a-vis the chosen data;
- discuss the robustness of the established ranking;
- focus on effects at the country level.

5. Reports and deliverables

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

The 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 report should contain clear objectives and means deployed to reach those objectives. The report 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 would not meet those standards

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

EUROPEAN COMMISSION

Directorate-General for Economic and Financial Affairs

DG ECFIN-E Economic Evaluation Service

To the attention of Jan Schmidt, Director.

BU1 2/211

B-1049 BRUSSELS

The following reports in English must be provided by the Contractor:

1. An introductory report will present an outline of the study for discussion with the European Commission and a critical review of the relevant literature. The introductory report must be submitted to the European Commission no later than one month after the signature of the contract by the last contracting party. The Commission will comment in writing on the introductory report within one month and possibly meet the contractor.
2. The first interim report (Part 1) will delineate the methodological approach the contractor intends to follow in Parts 2 and 3. A draft of this first interim report must be submitted to the Commission no later than 4 months after the signature of the contract by the last contracting party. The Commission will then either inform in writing the Contractor that it accepts the draft or send him its comments within one month.
3. The second interim report will in addition describe in detail the methodology and the model used to assess the impact of public policies in support of R&D on R&D expenditure and innovation (Part 2). It will also present the preliminary results from the application of such methodology supported, whenever possible, by empirical findings. A draft of this second interim report must be submitted to the Commission no later than 9 months after the signature of the contract by the last contracting party. The contractor will present its results to the European Commission in a presentation in the premises of the European Commission. The Commission will then either inform in writing the Contractor that it accepts the draft or send him its comments within one month.
4. The final report will present in full the results of the study (including Parts 1, 2 and 3), relevant policy recommendations and issues for further investigation. It will also include an account of all the work carried out. A draft of the final report must be submitted to the Commission no later than 12 months after the signature of the contract by the last contracting party. The draft final report will be presented by the Contractor in the premises of the European Commission. The Commission will then either inform in writing the Contractor that it accepts the draft or send him its comments within one month. Within a month of receiving any such comments from the Commission, the Contractor will send the Commission the final report, which will take account of the comments. The final report should be sent by the Contractor in 6 paper copies and 1 copy in electronic form (Word compatible).

6. STARTING DATE OF THE CONTRACT, DURATION OF THE TASKS

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

The duration of the tasks shall be 14 months.

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.

7. 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 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 will not be subject to revision.

For your guidance, the maximum budget allocation to this study is fixed at €80.000,00. Offers above this amount will not be considered.

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:⁵

- (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;

⁵ 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 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 the following:

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

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 economic analysis in one or more of the following fields (analysis of the economic effects of European integration, econometric models). The team leader should have professional experience in managing project of similar scale as this call for tender.
- 2) The candidate's technical and professional capacity of producing high quality reports on economic issues in English ;
- 3) Any tender exceeding the budget envisaged for this project will not be accepted.

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. initial description of major concepts of public sector efficiency (20 points);
3. quality of data the authors intend to exploit in order to investigate the questions raised (20 points);
4. quality of the methodology used to carry out the study, with regards to its objectives as described in part I.2. (30 points).

B. the Price

Having examined the tenders from a technical point of view, the evaluation committee will proceed considering which is the economically most advantageous offer taking into account **only those tenders that have obtained at least a technical score of 60 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 15/09/2006 at 15h00 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 Mrs. F. Ilzkovitz in advance, by electronic mail, fax or letter. Her address is:

Directorate General Economic and Financial Affairs

BU-1 02/174

B-1049 Brussels

Belgium

e-mail: fabienne.ilzkovitz@cec.eu.int

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 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/2006/001)

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 objective of the study is to create a tool to help to assess the progress with the implementation of the Member States' National Reform Programmes in the area of public R&D and innovation expenditure. This includes the analysis and measurement of the efficiency of Member State's public spending in support of R&D against the background of the given framework conditions.
- 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 period and all other periods specified in the contract are calculated in calendar days. Execution of the tasks shall start from the date on which the contract is signed by the last contracting party. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

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

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

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

I.4.1. First interim payment:

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

- 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 30% of the total amount referred to in Article I.3 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
- 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 20% of the total amount referred to in Article I.3 shall be made.

I.4.3. Payment of the balance:

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

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

provided the report has been approved by the Commission.

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 50% of the total amount referred to in Article I.3 shall be made.

ARTICLE I.5 – BANK ACCOUNT

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

Name of bank: [complete]

Address of branch in full: [complete]

Exact designation of account holder: [complete]

Full account number including codes: [complete]

[*IBAN code*: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

Commission:

European Commission

Directorate Economic & Financial Affairs

Head of Unit R-2

Contract n°: ECFIN-....-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 CONTRACTING PARTIES

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

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the

execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9.** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

- II.2.1.** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2.** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3.** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4.** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.
- II.2.5.** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

II.3.3. The Contractor declares:

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

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

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

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

➤ The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. Interim payment:

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

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

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

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

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

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

II.4.3. Payment of the balance:

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

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

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

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

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

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

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

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

II.5.2. The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

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

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

ARTICLE II.6 – RECOVERY

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

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

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

ARTICLE II.7 - REIMBURSEMENTS

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

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

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

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

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

- a)** for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b)** daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c)** daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d)** daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

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

ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

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

ARTICLE II.9– CONFIDENTIALITY

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

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

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

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

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

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

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

ARTICLE II.11 – TAXATION

- II.11.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.11.2.** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

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

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

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

ARTICLE II.14 – ASSIGNMENT

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

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

ARTICLE II.15 – TERMINATION BY THE COMMISSION

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

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgement which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;

- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

II.15.4. Consequences of termination:

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

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

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

ARTICLE II.16 – LIQUIDATED DAMAGES

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

ARTICLE II.17 – CHECKS AND AUDITS

- II.17.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.
- II.17.2.** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

For the Contractor,

For the Commission,

Jan Schmidt,

Director of the Economic Evaluation
Service,

Directorate General Economic and
Financial Affairs

Signature:

Signature:

Done at Brussels, [date]

Done at Brussels, [date]

In duplicate in English.

Declaration of the candidate's eligibility

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

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations;
- (g) they are faced with a conflict of interest;
- (h) they have been guilty of misrepresentation in supplying the information required or have failed to supply this information.

..... (Nom)

..... (Signature)

..... (Date)

¹¹ In compliance with articles 93 and 94 of the Financial Regulation applicable to the general budget of the European Communities.