



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

DIRECTORATE D - Nuclear Energy
Radiation Protection

Luxembourg,
ENER/D4/KP/D2010/

INVITATION TO TENDER No. ENER/D4/250-1-2010

(open procedure)

Dear Sir/Madam,

1. The European Commission invites tenders for a supply contract regarding the following project:

" Monitor for radioactive contamination measurements of large objects "

This invitation to tender follows the publication of:

- the contract notice in OJEU 2010/S 236-359198 of 04/12/2010

2. If you are interested in this contract, you must submit a tender in **triplicate**, in one of the official languages of the European Union.

Tenders must be:

- (a) **either sent by registered mail or by private courier**

The tender must be sent by registered mail or by private courier, dispatched not later than **25/02/2011** (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

European Commission
Directorate-General for Energy
For the attention of Mrs Kersti Peedo - Office EUFO 4456
Jean Monnet Building
Plateau de Kirchberg,
L-2920 Luxembourg

- (b) **or delivered by hand**

Tenders must be delivered by hand at the **Central Mail of the European Commission** by **25/02/2011 not later than 4 p.m.** (Brussels time), at the following address:

European Commission
Directorate-General for Energy

For the attention of Mrs Kersti Peedo - Office EUFO 4456
Jean Monnet Building – main entrance
Rue Albert Wehrer,
Plateau de Kirchberg,
L-2920 Luxembourg

In this case, a receipt must be obtained as proof of submission, signed and dated by the official in the Commission's central mail department who took delivery. The department is open from 08.00 to 16.00 Monday to Friday. It is closed on Saturdays, Sundays and Commission holidays.

3. Tenders must be placed inside two sealed envelopes, one inside the other. **The inner envelope should be marked:**

Call for tenders No. ENER/D4/250-1-2010

not to be opened by the internal mail department

**European Commission
Directorate-General for Energy
Unit D4 Radiation Protection
Euroforum Building – Room 4456
L-2920 Luxembourg**

If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

The non-compliance with these formal conditions will entail the rejection of the bids at the opening session.

4. Tenders will be opened at 10.30 a.m. on 10/03/2011 in the offices of the Directorate- General for Energy

EUROFORUM Building
Office 4198
1 rue Henry Schnadt
Zone d'activités Cloche d'Or
L-2530 Luxembourg

This opening session will be public. Each tenderer may be represented by not more than one person. At the end of the opening session, the Chairman of the opening committee will indicate the name of the tenderers and the decision concerning the admissibility of each offer received. The prices mentioned in the bids will not be communicated.

5. The specification, listing all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity and the draft contract are attached.
6. Tenders must be signed by the tenderer or his duly authorised representative and perfectly legible so that there can be no doubt as to words and figures.

7. Validity period of the tender: six months as from the final date for submission of tenders mentioned under point 2 above.
8. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification, in the draft contract and, where applicable, waiver of the tenderer's own general or specific terms and conditions. The terms and conditions are binding on the tenderer to whom the contract is awarded during the performance of the contract.
9. Contacts between the awarding authority and tenderers are prohibited throughout the procedure except in exceptional circumstances and under the following conditions only:

Before the closing date for submission of tenders

- At the request of the tenderer, the awarding authority may provide additional information solely for the purpose of clarifying the nature of the contract.

Any requests for additional information must be sent in writing to the following address:

Mrs. Kersti Peedo
European Commission,
DG ENER D4-Health Protection Sector
EUFO Building 4456
L-2530 Luxembourg
Tel: +352 4301 32812
Fax: +352.4301.34646
e-mail:Kersti.Peedo@ec.europa.eu

Requests for additional information received less than five working days before the closing date for submission of tenders will not be processed.

- The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other material shortcoming in the text of the tender documents.

Further information will be sent simultaneously to all tenderers who have requested the specification in writing, where this is appropriate. Tenderers who have downloaded the documents from the Directorate-General for Energy website DG ENER are invited to consult this site regularly until the deadline for submission.

After the opening of tenders

If a tender requires clarification, or if there is a need to correct material errors which have occurred in the drafting of the tender, the Commission may take the initiative and contact the tenderer(s). Such contact shall not lead to the conditions of the tender being altered in any way.

10. This invitation to tender is in no way binding on the Commission. A commitment will come about only when a contract with the successful tenderer has been signed.

Until a contract is signed, the awarding authority may decide not to award a contract or to cancel the tendering procedure, without the candidates or tenderers being entitled to claim any compensation. Where appropriate, the decision will be substantiated and brought to the attention of the tenderers.

11. Tenderers will be informed of whether their tenders have been accepted or rejected.
12. The follow-up of your response to the invitation to tender will require the recording and further processing of personal data (i.e. name, address, CV, etc.). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. Unless if otherwise stated, replies to questions and personal data requested are necessary for the purpose of assessing your tender (according to the specifications of the invitation to tender) and will only be processed within DG ENER as data controller, for this purpose. You may, upon request, have your personal data sent to you and rectify any inaccurate or incomplete particulars. Should you have any queries concerning the processing of your personal data, please address them to the entity acting as data controller within DG ENER. As regards the processing of your personal data, you have the right to bring the matter before the European Data Protection Supervisor at any time.
13. You are informed that for the purposes of safeguarding the financial interest of the Union, your personal data may be transferred to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF).

Data of economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation may be included in a central database and communicated to the designated persons of the Commission, other institutions, agencies, authorities and bodies mentioned in Article 95(1) and (2) of the Financial Regulation. This refers as well to the persons with powers of representation, decision making or control over the said economic operators. Any party entered into the database has the right to be informed of the data concerning it, up on request to the accounting officer of the Commission.

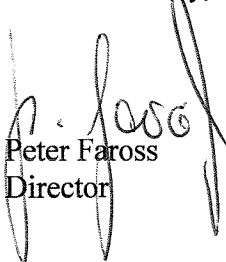
Candidates or tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p. 125), or

- the Commission Regulation of 17.12.2008 on the Central Exclusion Database – CED (OJ L 344, 20.12.2008, p. 12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract or a grant agreement or decision.

Yours faithfully,



Peter Faross
Director

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

Invitation to tender No. ENER/D4 /250-1 -2010 concerning

" Monitor for radioactive contamination measurements of large objects "

TABLE OF CONTENTS

I	SPECIFICATIONS
I.1	INTRODUCTION
I.2	PURPOSE OF THE CONTRACT
I.3	WORK PROGRAM
I.3.1	<i>SETTING UP OF THE CONTAMINATION MONITOR</i>
I.3.2	<i>SERVICE MAINTENANCE AND REPAIR</i>
I.3.3	<i>DELIVERY</i>
I.3.4	<i>DEMONSTRATION</i>
I.4	PLACE OF PERFORMANCE
I.5	ESTIMATE OF THE AMOUT OF WORK INVOLVED
II	TERMS OF CONTRACT
II.1	TERMS OF PAYMENT
II.2	FINANCIAL GUARANTEES
II.3	SUBCONTRACTING
II.4	LEGAL FORM TO BE TAKEN BY THE GROUPING OF SERVICE PROVIDERS TO WHOM THE CONTRACT IS AWARDED (IF APPLICABLE)
III	FORM AND CONTENT OF THE TENDER
III.1	GENERAL
III.2	STRUCTURE OF THE TENDER
III.2.1	<i>FIRST SECTION: ADMINISTRATIVE PROPOSAL</i>
III.2.2	<i>SECOND SECTION: TECHNICAL PROPOSAL</i>
III.2.3	<i>THIRD SECTION: FINANCIAL PROPOSAL</i>
IV	ASSESSMENT AND AWARD OF THE CONTRACT
IV.1	EXCLUSION CRITERIA - EXCLUSION OF TENDERERS
IV.1.1	<i>EXCLUSION CRITERIA (ART. 93 OF FINANCIAL REGULATION)</i>
IV.1.2	<i>OTHER CASES OF EXCLUSION</i>
IV.1.3	<i>EVIDENCE TO BE PROVIDED BY THE TENDERERS</i>
IV.1.4	<i>ADMINISTRATIVE AND FINANCIAL PENALTIES</i>
IV.2	SELECTION CRITERIA – SELECTION OF TENDERERS
IV.2.1	<i>ECONOMICAL AND FINANCIAL CAPACITY – REFERENCES REQUIRED</i>
IV.2.2	<i>TECHNICAL AND PROFESSIONAL CAPACITY – REFERENCES REQUIRED</i>
IV.3	EVALUATION OF TENDERS - AWARD CRITERIA
IV.4	INFORMATION FOR TENDERERS
V	ANNEXES

I. SPECIFICATIONS

I.1. Introduction

The Directorate-General for Energy (*DG ENER*) in Luxembourg operates a radiological protection laboratory for ensuring that the equipment of nuclear safeguards inspectors has no radioactive contamination upon return from nuclear facilities. The radioactive contamination measurements require highly sensitive monitoring devices. These measurements shall be performed in a reasonable time. In view of the above the Health Protection Sector (*HPS*) needs a monitor for radioactive contamination measurements of large objects with repeatable and traceable measurement performances.

I.2. Purpose of the contract

The European Commission *DG ENER* would like to purchase a gamma radioactivity contamination monitor, which is foreseen to measure surface contamination of the equipment brought back to Luxembourg from miscellaneous facilities of the nuclear fuel cycle. Additionally the monitor will be used to measure contamination of laboratory consumables (e.g. gloves, protective equipment or tools) to decide the categorisation into waste.

Utilisation of this monitor shall increase the performance of contamination checks, which includes possibility to perform measurements on several small items or on a large item at the same time and that at once from all directions.

Less time consuming contamination measurements may also contribute to a reduction of radiation exposure to the staff.

In view of the ISO 17025 certification there is a requirement that the contamination measurements of items should be repeatable and traceable afterwards.

The radioactivity contamination monitor has to have the following features and technical parameters:

- Electrical supply on normal electrical network.
- The detector(s) of this instrument will be able to measure low energy gamma, and beta contamination and can be made of solid detecting media (e.g. plastic scintillators). Preference will be given to those detectors presenting the highest detection efficiency for radioactive isotopes such as fission products from nuclear fuel cycle.
- The contamination results are expressed in *cpm*, *Bq*.
- Capability of measuring many objects at once and that from every side (4π measurement), e.g. by means of a system with detectors from six sides.
- Mass of the objects to be measured is of maximum *100 kg*.
- The monitoring chamber shall have a capacity to measure items up to the size of a big air-travel suitcase (e.g. *PCs*, monitors, surveillance cameras etc.).
- Minimum dimensions of the measurement chamber:
Inside: *55 cm* width, *55 cm* height, *75cm* depth.
- Total size of the measurement system shall not exceed:
Outside: *95 cm* width, *130 cm* depth, *160 cm* height.
- Alarm of contamination must be given as an audio signal as well as visual notice on the display screen.
- One integrated display screen together with keyboard to enable changing the setting of the measurement system and with a possibility of connecting the secondary screen.
- Possibility to track measured items, e.g. by means of bar code reader.

- Software for measurement manipulations has to come together with the monitor and possibly include database for collection of measurement results.
- Possibility to export the measurement results using the USB port.

I.3. Work programme:

Delivery, setting-up and acceptance tests of the contamination monitor begins after the date on which the contract enters into force.

The foreseen contract will cover an 10 calendar month period starting following the signature of the contract by Contractor.

The Commission shall have the possibility to verify the final product at the manufacturer's premises in order to approve or reject the contamination monitor. The *HPS* should be informed when the product is ready for initial demonstration.

I.3.1. Setting up of the contamination monitor:

The Contractor shall inform the Commission *DG ENER* Health Protection Sector, at the latest one week before the foreseen setting up of the measurement system inside the *EUFO* building. The names of the persons in charge with setting up of the system have to be submitted together with this information.

I.3.2. Service maintenance and repair:

Annual maintenance and calibration shall be performed during the warranty period of three years from the date of acceptance of the product. The price shall be included in the offer.

Tenders shall provide information about organisation and management of routine service, maintenance service and repair service. Delay time for urgent repair of the contamination monitor has to be specified.

I.3.3. Delivery

The delivery of contamination monitor shall take place not later than 9 months after the tenderer has received a purchase contract. The installation and calibration of the monitor as well as technical acceptance tests have to be executed by contractor.

I.3.4. Demonstration

The contractor shall submit a technical user's manual together with the contamination monitor to the Commission.

After installation, the tenderer shall give a briefing about the utilisation of the monitor to the personnel of the *HPS*.

I.4. Place of performance

The tasks will be performed on the Contractor's premises and the contamination monitor will be installed inside the Commission's EUROFORUM building in Luxembourg.

I.5. Estimate of the amount of work involved

The total budget amounting to 80,000 Euro shall include all expenses for travelling, installation, calibration of the system and for organising meetings in Luxemburg.

II. TERMS OF CONTRACT

In drawing up his offer, the tenderer should bear in mind the provisions of the draft contract attached to this invitation to tender (Annex 5). Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

The Commission may, before the contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

II.1. Terms of payment

Payments shall be made in accordance with the provisions specified in Annex 5, the draft supply contract

II.2. Financial guarantees

Guarantee on pre-financing

Pre-financing is not foreseen.

II.3. Subcontracting

If the tenderer intends to subcontract part of the service, he shall indicate in his offer which part will be subcontracted and to what extent (% of the total contract value).

Tenderers must ensure that Article II.17 of the contract (Annex 5) can be applied to subcontractors. Once the contract has been signed, Article II.13 of the above-mentioned contract shall govern the subcontracting.

II.4. Legal form to be taken by the grouping of service providers to whom the contract is awarded (if applicable)

Groupings, irrespective of their legal form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortium) must specify the company or person heading the project and must also submit a copy of the document authorising this company or person to submit a bid. If awarded, the contract will be signed by the company or the person heading the project, who will be, vis à vis the Commission, the only contracting party responsible for the performance of this contract. Tenders from a consortium of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member of the consortium or group. Each member must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria, selection criteria (in their entirety) and award criteria.

III. FORM AND CONTENT OF THE TENDER

III.1. General

Tenders must be written in **one of the official languages** of the European Union.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc...). Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications.

III.2. Structure of the tender

All tenders must include three sections i.e. an administrative, a technical and a financial proposal.

III.2.1. Section One: administrative proposal

This section must provide the following information, set out in the standard identification forms attached to these tender specifications (Annexes 1, 2 and 3):

- Tenderers' identification (Annex 1)
 - All tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or provide a declaration or certificate.
 - If the tenderer is a natural person, he/she must provide a copy of the identity card/passport or driving licence and proof that he/she is covered by a social security scheme as a self-employed person.

Each tenderer (including subcontractor(s) or any member of a consortium or grouping) must complete and sign the identification forms in Annex 1 and also provide above-mentioned documents. However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the contract.

- Financial identification (Annex 2)

The **bank identification form** must be filled in and signed by an authorised representative of the tenderer and his/her banker. A standard form is attached in Annex 2 and a specific form for each Member State is available at the following Internet address:

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

In the case of a grouping, this form must only be provided by the person heading the project.

- Legal entities (Annex 3)

The legal entity form in Annex 3 must be filled in and should be accompanied by a number of supporting documents, available on the Web site:

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

In the case of a grouping, this form must only be provided by the person heading the project.

The Commission reserves the right, however, to request additional evidence in relation to the bid submitted for evaluation or verification purposes within a time-limit stipulated in its request.

III.2.2. Section Two: 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.

Some guidelines are given below, but attention is also drawn to the award criteria, which define those parts of the technical proposal to which the tenderers should pay particular attention. The technical proposal should address all matters laid down in the specifications and should include models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender. Tenderers must present in their bids a proposal on the methodology and the organisation of the work to carry out in the framework of the study.

The technical proposal must provide all the information needed for the purpose of awarding the contract.

III.2.3. Section Three: Financial proposal

All tenders must contain a financial proposal. The tenderer's attention is drawn to the following points:

- Prices must be quoted in **euros**, including the countries which are not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.
- Prices must be fixed amounts [and include all expenses, such as travel expenses and daily allowances].
- **Estimated travel and daily subsistence allowance expenses must be indicated separately.** This estimate should be based on Articles I.3 and II.7 of the draft contract (Annex 5). This estimate will comprise all foreseen travel and will constitute the maximum amount of travel and daily subsistence allowance expenses to be paid for all tasks.
- **Prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT,** as the European Union is exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965 (OJ 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 doubt

about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Union is exempt from VAT;

- **Prices shall be** fixed and not subject to revision during the performance of the contract;
- For each category of staff involved in the project, the tenderer must specify:
 - the total labour costs;
 - **the daily rates** and **total number of days** (man/days) each member of staff will contribute to the project;
 - other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity.

Bids involving more than one service provider (consortium) must specify the amounts indicated above for each provider.

IV. ASSESSMENT AND AWARD OF THE 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.

The aim of each of these stages is:

- 1) to check on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- 2) to check on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;
- 3) to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages.

IV.1. Exclusion criteria (exclusion of tenderers)

IV.1.1. Exclusion criteria (Article 93 Financial Regulation¹)

1. To be eligible for participating in this contract award procedure, tenderers must not be 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 judgement 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 judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
 - (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation² for being guilty of misrepresentation in supplying the

¹ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16.9.2002)

information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Union budget.

2. The cases referred to in point IV.1.1. e) above shall be the following:
 - a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995 (OJ/C 316 of 27.11.1995, p. 48);
 - b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997 (OJ/C 195 of 25.6.1997, p. 1);
 - c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ/L 315 of 29.12.1998, p. 1);
 - d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ/L 166 of 28.6.1991, p.77).

IV.1.2. Other cases of exclusion (Article 94 Financial Regulation)

Contracts will not be awarded to tenderers who, during the procurement procedure:

- a) **are subject to a conflict of interest;**

Tenderers must declare:

- that they do not have any conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- that they will inform the contracting authority, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;
- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract.

The Commission reserves the right to check the above information.

- b) **are guilty of misrepresentation** in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information.
- c) find themselves in one of the **situations of exclusion**, referred to in paragraph IV.1.1. above for this procurement procedure.

² Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

IV.1.3. Evidence to be provided by the tenderers

1. When submitting their bids, each tenderer (including subcontractor(s) or any member of a consortium or grouping) shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations mentioned above (cf. IV.1.1 and VI.1.2). For that purpose, they must complete and sign the form attached in Annex 4. Where the tenderer is a legal entity, they shall, whenever requested by the Commission, provide information on the ownership or on the management, control and power of representation of the legal entity.
2. The tenderer to whom the contract is to be awarded shall provide, within 15 calendar days after notification of the results of the procurement procedure and in any case before the signature of the contract, the following evidence, confirming the declaration referred to above:

The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point IV.1.1 (a), (b) or (e) above, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point IV.1.1 (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraph 1 and 2 above shall relate to legal and/or natural persons including, if applicable with regard to points b) and e), company directors or any person with powers of representation, decision-making or control in relation to the tenderer.
4. When the subcontracted part is above 20% of the contract value, the subcontractor(s) must also provide the above-mentioned declaration on honour. In case of doubt on this declaration on the honour, the contracting authority may also request the evidence referred to in paragraphs 2 and 3 above.
5. The Commission reserves the right to request any other document relating to the proposed tender for evaluation and verification purpose, within a delay determined in its request.

Remark:

The tenderers will be waived of the obligation to submit the documentary evidence above mentioned if such evidence has already been submitted for the purposes of another procurement procedure launched by the Directorates General in charge of Energy or Transport and provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement

procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

IV.1.4. Administrative and financial penalties

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been found guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or have failed to supply this information or have been declared to be in serious breach of their obligations under contracts covered by the Union budget may be subject to administrative or financial penalties, in accordance with Article 96 of the Financial Regulation and Articles 134b and 133a of the Implementing Rules.³

IV.2. SELECTION CRITERIA (SELECTION OF TENDERERS)

To be eligible, the tenderers must have the economic and financial capacity as well as the technical and professional capacity to perform the tasks required in this call for tender.

IV.2.1. Economic and financial capacity – Criteria and references required

Tenderers shall provide evidence of their economic and financial capacity by proving an annual overall turnover of minimum 300.000 EUR, for the past three years.

Tenderers shall provide proof of their financial and economic capacity by means of the following documents: the balance sheets or extracts from balance sheets for the last three financial years, and a statement of overall turnover and turnover relating to the relevant services for the last three financial years.

This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to submit a tender. However, if the tender includes subcontractors whose tasks represent less than 20% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity.

IV.2.2. Technical and professional capacity – References required

Tenderers should demonstrate their administrative, technical and professional capacities for the realisation of the envisaged project by submitting the following documents:

1. A proof that the tenderer has an ISO 9001 accredited quality management system for manufacturing equipment for radiation detection and monitoring
2. Evidences proving at least 5 years experience in the manufacturing including servicing of radiation detection monitors.

If several service providers/subcontractors 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.

³ Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 357 of 31 December 2002, p. 1, last amended by Commission Regulation (EC, Euratom) n° 478/2007 of 23 April 2007, OJ L 111 of 28 April 2007, p.1.

IV.3. EVALUATION OF TENDERS – AWARD CRITERIA

The contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

The contract will be awarded to the tender who offers the best ratio quality/price.

a) Evaluation of quality

Technical evaluation criteria in their order of importance as weighted by percentage are given in the table bellow:

Nº	Award Criteria	Weighting
1	Efficiency: This criterion relates to minimum detection levels and measurement times;	50
2	Design and operationability of contamination monitor: The offer will be assessed according to weather the proposed contamination monitor fulfils all required technical and mechanical parameters laid down in this call for tender.	30
3	Serviceability: Assessment how the manufacturer organises the routine service and maintenance and how he intends to manage unforeseeable repair work.	20
Total number of points		100

b) Evaluation of total price

The coefficient Quality/Price will be calculated for each bid to identify the economically most advantageous tender.

IV.4. 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.

Upon written request, the Commission will inform the rejected tenderers of the reasons for their rejection and the tenderers having submitted an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

V. ANNEXES

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria)
5. Draft Contract

ANNEX 1

IDENTIFICATION OF THE TENDERER

(Each service provider, including subcontractor(s) or any member of a consortium or grouping, must complete and sign this identification form)

Call for tender ENER/D4/250-1-2010

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) ⁴	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number: Fax number: E-mail address:	

⁴ For natural persons

Legal Representatives	
Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign contracts with third parties	
Declaration by an authorised representative of the organisation⁵ I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

⁵ This person must be included in the list of legal representatives; otherwise the signature on the tender will be
invalidated.

ANNEX 2

(to be completed by the tenderer and his or her financial institution)

A specific form for each Member State is available at the following Internet address:

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



FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

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

ACCOUNT NAME	
ACCOUNT NAME ⁽¹⁾	<input type="text"/>
	<input type="text"/>
ADDRESS	<input type="text"/>
	<input type="text"/>
TOWN/CITY	<input type="text"/>
	POSTCODE <input type="text"/>
COUNTRY	<input type="text"/>

CONTACT	<input type="text"/>	
TELEPHONE	<input type="text"/>	FAX <input type="text"/>
E - MAIL	<input type="text"/>	

BANK	
BANK NAME	<input type="text"/>
	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
	<input type="text"/>
TOWN/CITY	<input type="text"/>
	POSTCODE <input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN ⁽²⁾	<input type="text"/>

REMARKS:

BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE (Both Obligatory) ⁽³⁾
<input type="text"/>

DATE + SIGNATURE ACCOUNT HOLDER : (Obligatory)
<input type="text"/>
DATE <input type="text"/>

⁽¹⁾ The name or title under which the account has been opened and not the name of the authorized agent
⁽²⁾ If the IBAN Code (International Bank account number) is applied in the country where your bank is situated
⁽³⁾ It is preferable to attach a copy of recent bank statement, in which event the stamp of the bank and the signature of the bank's representative are not required. The signature of the account-holder is obligatory in all cases.

ANNEX 3

Legal entity form

Complete the legal entity form, which should be accompanied by a number of supporting documents, available on the Web site:

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

Please note that we can only accept either original documents or certified copies, which must be less than 6 months old.

In the case of a grouping, this form must only be provided by the person heading the project.

ANNEX 4

DECLARATION BY THE TENDERER

Each service provider, including subcontractor(s) or any member of a consortium or grouping, must sign this declaration

1. In accordance with Article 93 of the Financial Regulation⁶, I declare on my honour that I am not in any of the following situations which would exclude me from participating in this procurement procedure:
 - a) I am not bankrupt, being wound up or having my affairs administered by the courts, I have not entered into an arrangement with creditors, I have not suspended business activities, I am not the subject of proceedings concerning any such matters, and I am not in any similar situation arising from a similar procedure provided for in legislation or regulations;
 - b) I have not been convicted of an offence concerning my professional conduct by a judgment which has the force of res judicata;
 - c) I have not been found guilty of grave professional misconduct proven by any means which the contracting authority can justify;
 - d) I have not failed to fulfil 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 I am established or with those of the country or the contracting authority or those of the country where the contract is to be performed;
 - e) I have not 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 Union's financial interests;
 - f) I am currently not subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Union budget.
2. In addition, the undersigned declares on his or her honour:
 - a) that on the date of submission of the tender, the company or organisation I do represent and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; I undertake to inform the Commission without delay of any change to this situation after the date of submission of the tender.
 - b) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

Done at on.....

Name

Title

Signature:

⁶ Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY
DIRECTORATE D - Nuclear Energy
Radiation Protection

ANNEX 5 DRAFT CONTRACT SUPPLY CONTRACT

CONTRACT NUMBER – [complete]

The European Atomic Energy Community (hereinafter referred to as "the Community") represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr Peter Faross, Director in the Directorate-General for Energy, Directorate D

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 - Technical Specifications ENER/D4/250-1-2010 of XX:XX:XX [and monitoring]

Annex II – "Delivery Acceptance Form"

Annex III - 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.

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

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is the manufacture, delivery and installation of the monitor for radioactive contamination measurements of large objects.
- I.1.2.** The Contractor shall supply and assemble the goods and shall provide the services related to them in accordance with the Technical Specifications with price list 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.** Performance of the Contract may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** Delivery of goods and provision of related services to them shall be completed within **10 months** from date of entry into force of the Contract. Such period may be extended only with the express written agreement of the parties.

ARTICLE I.3 - AMOUNT

- I.3.1** The maximum total amount to be paid by the Commission under this Contract shall be EUR .
- I.3.2** Prices shall be fixed and not subject to revision for the duration of the Contract.

ARTICLE I.4 – PAYMENTS

Payments under the Contract shall be made in accordance with Article II.5.

I.4.1 Payment

Invoices shall be issued and payments made in accordance with Article II.5.

The Commission shall have 45 days to approve or reject the goods by signature of the Delivery Acceptance Form (Annex II).

The request for payment of the balance shall be valid if accompanied by the relevant invoices, indicating the reference number of the Contract, provided the Delivery Acceptance Form (Annex II) has been duly signed by the Commission.

Within 30 days of the date of receipt by the Commission of the relevant invoice accompanied by the duly signed Delivery Acceptance Form (Annex II), payment of the balance corresponding to the relevant invoices shall be made.

For Contractors established in Belgium, the provisions of the Contract constitute request for VAT exemption no 450, provided that the Contractor indicates in his invoice(s) as follows:

“Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA.” or equivalent indication in Dutch or German language.

I.4.2 The goods shall be delivered at :

European Commission
Directorate-General for Energy
Health Protection Sector
Euroforum Building
L-2920 Luxembourg

To the attention of: Mr. Klaus Schnuer

The Contractor shall notify the Commission of the exact date of delivery at least 10 days in advance. All deliveries shall be made between 09:00 hours and 16:30 hours at the agreed place of delivery.

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: [complete]
Exact designation of the account holder: [complete]
Full account number including codes: [complete]
[IBAN code: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

All communication relating to the Contract shall be made in writing and shall bear the Contract number. It shall be sent to the following addresses:

Commission:

European Commission
Directorate-General for Energy
Financial and Contractual Cell
Mr Alain Cluzeau – EUFO 4475
L-2920 Luxembourg

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 law of the Community and of the European Union complemented, where necessary, by the national substantive law of Luxembourg.
- 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 Luxembourg.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller within DG ENER without prejudice to possible transmission to internal audit services, to the Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community and of the European Union. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the entity acting as data controller within DG ENER. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.9 – OTHER SPECIAL CONDITIONS

By derogation to art. II.1.2.b), the period of guarantee and related maintenance shall be 3 years from date of acceptance.

II – GENERAL CONDITIONS

ARTICLE II.1 - PROCEDURES FOR PERFORMING THE CONTRACT

II.1.1 Phases of execution of the Contract

Delivery

- a) Time allowed for delivery

The time allowed for delivery shall be mentioned in Annex I.

- b) Date and time of delivery

The Commission shall be notified in writing of the exact date of delivery within the period indicated in the Special Conditions. All deliveries shall be made at the agreed place of delivery during the hours indicated in the Special Conditions. The supplier shall bear all the risks concerning the goods until provisional acceptance at the place of delivery.

- c) Consignment note

All consignments shall be accompanied by a consignment note in duplicate, duly signed and dated, giving the Contract number and particulars of the goods delivered. One copy of the consignment note shall be countersigned by the Commission and returned to the Contractor.

Acceptance of the goods after verification

Signing of the consignment note by the Commission, as provided for in subparagraph c) above, is simply an acknowledgement of the fact that the goods have been delivered and in no way implies acceptance.

Acceptance of the goods shall be confirmed by the signing of a certificate to this effect by the Commission contained in Annex II to this contract.

Acceptance shall take place no later than one month after the date of delivery, unless provision is made for a different period in the Special Conditions or in Annex I.

Acceptance shall be declared only where the conditions laid down in the Contract are satisfied and the goods conform to the Technical Specifications, which are an integral part of this Contract (Annex I).

Where a performance guarantee is required under Article I.4, the above-mentioned acceptance shall be considered provisional until release of the guarantee.

Non-acceptance of the goods after verification

Where, for reasons attributable to the Contractor, the Commission is unable to declare acceptance of the goods within thirty days of the date of delivery, the Contractor shall be notified in writing within a period of three Commission working days from the deadline for acceptance. The penalties provided for in Article II.4.1 may apply to the proportion of the total price corresponding to the goods which are unacceptable.

Assembly

If required by the Special Conditions, the Contractor shall assemble the goods delivered within a period of one month of being asked to do so by the Commission.

Training

If required by the Special Conditions, the Contractor shall provide a training at the premises of the Commission service where the goods will be installed according to the modalities determined in Annex I.

II.1.2 General provisions concerning goods

a) Packaging

The goods shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, shall not weigh more than 500 kg.

Pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- European Commission and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Contract;
- EC code number of article.

b) Guarantee

The goods shall be guaranteed against all defects in manufacture or materials for two years from the date of acceptance. The Contractor shall guarantee that any permits and licences required for manufacturing and selling the goods have been obtained.

The Contractor shall replace at his own expense, within a reasonable time-limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

II.1.3 Performance of the Contract

- a) 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.
- b) 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 goods are to be delivered.
- c) The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for execution of the Contract.
- d) 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 Contract resulting from the replacement of staff in accordance with this Article.

- e) Should any unforeseen event, action or omission directly or indirectly hamper execution of the Contract, either partially or totally, the Contractor shall immediately and at 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. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- f) Should the Contractor fail to perform his obligations under the Contract, 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 sanctions, as provided for in Article II.4.

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 misconduct or 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.10. 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 it 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 to this end may be borne by the Commission.
- II.2.5.** The Contractor shall take out the insurance required by the relevant applicable legislation against risks and damage relating to performance of the Contract. He shall take out supplementary insurance if he deems it necessary and appropriate in order to perform the Contract. A copy of all 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 in order to prevent or end 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.

The Commission reserves the right to verify that such measures are adequate and may require that additional measures be taken if necessary. The Contractor shall ensure that his

staff, board and directors are not placed in a situation, which could give rise to conflict of interest. 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, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the performance of the Contract.

ARTICLE II.4 - LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time specified in Article I.2, 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 of the Contract 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 sanctions 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.5 – INVOICING AND PAYMENTS

a) Pre-financing:

The payment of the pre-financing foreseen in Article I.4.1 will be made within 30 days from registration of the invoice, drawn up in triplicate and bearing the Contract number.

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 an authorised bank or financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract.

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent delivery of goods or execution of related services 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 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 delivery of goods or execution of related services. The guarantee shall be retained until the pre-financing has been deducted from payment of the balance. It shall be discharged the following month. The cost of providing such guarantee shall be borne by the Contractor.

b) Payment of the balance:

Within sixty days of receipt by the Contractor of the certificate of acceptance of the goods by the Commission, he shall submit the relevant invoice, drawn up in triplicate and bearing the Contract number, to the Commission for approval.

Where required in either the Special Conditions or Annex I, it shall be accompanied by a final technical report in accordance with the instructions laid down in Annex I and provided for in the Special Conditions.

On receipt of the documents the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve them, with or without comments, reservations or requests for additional information; or
- to request new documents.

If the Commission does not react within this period, the documents shall be deemed to have been approved. Approval of the documents accompanying the request for payment does not imply recognition either of their regularity, or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests new documents, these shall be submitted within the period of time indicated in the Special Conditions. The new documents shall likewise be subject to the above provisions.

ARTICLE II.6 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.6.1 Payments shall be deemed to have been made on the date on which the Commission's account is debited.

II.6.2 The 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 documents have not been produced.

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.

II.6.3 In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“*the reference rate*”) plus seven percentage points (“*the margin*”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European

Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

II.6.4. The Financial Regulation applicable to the general budget of the European Communities imposes a final date for implementation of legal commitments towards third parties extending over more than one financial year by which all the phases of execution have to be completed and the payments made.

This final date shall be determined by adding to the date on which the goods and related services have to be delivered :

- the maximum periods laid down in article I.4,
- where applicable, the maximum period laid down for release of the performance guarantee.

In the event of amendment of the contract duration or of the periods indicated above, the final date for implementation shall automatically be modified accordingly.

ARTICLE II.7. –RECOVERY

II.7.1. 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.7.2. 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.6.3. 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.7.3. The Commission may, after informing the Contractor, recover amounts established as receivable by offsetting, in cases where the Contractor also has a claim on the Community or the European Union that is certain, of a fixed amount and due. The Commission may also claim against the guarantee. The agreement of the Contractor is not required.

II.7.4. The Contractor is aware that the Commission may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 164 of the Treaty establishing the European Atomic Energy Community .

ARTICLE II.8. –TAXATION

II.8.1 The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoice invalid.

II.8.2 The Contractor recognises that the Commission is, as a rule, exempt from all taxes and dues, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

II.8.3 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 dues, including VAT.

II.8.4 Invoices presented by the Contractor shall specify separately his VAT taxation place, the amounts not including VAT and the amounts including VAT.

ARTICLE II.9.– FORCE MAJEURE AFFECTING THE CONTRACT

II.9.1 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.9.2 If either of the contracting parties 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.9.3 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 for the goods actually delivered and related services provided.

II.9.4 The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.10 – SUBCONTRACTING

II.10.1. 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.10.2. Even where the Commission authorises the Contractor to subcontract to third parties, he shall nonetheless remain bound by his obligations to the Commission under the Contract.

II.10.3. 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.13.

ARTICLE II.11 – ASSIGNMENT

II.11.1. 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.11.2. 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.12 – TERMINATION BY THE COMMISSION

II.12.1 The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (j) 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.12.2 In case of force majeure, notified in accordance with Article II.9, either contracting party may terminate the Contract, where performance thereof cannot be ensured.

II.12.3 Prior to termination under point c), d), e), h) or j), the Contractor shall be given the opportunity to submit his observations.

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

II.12.4 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 goods supplied and related services rendered 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 supply the goods and execute the related services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making good and completing execution, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.12a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

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

ARTICLE II.13 – CHECKS AND AUDITS

- II.13.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors is empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance.
- II.13.2** The Commission or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.13.3** 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.14 - 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.15 – CONFIDENTIALITY

II.15.1 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 execution of the Contract.

II.15.2 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 execution of the Contract.

ARTICLE II.16 – 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 performance of the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume performance of the Contract. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,

[*Company name/forename/surname/function*]

For the Commission,

Peter Faross, Director

signature[s]: _____

Signature: _____

Done at, date

Done at Luxembourg, date

In duplicate in English

ANNEX I

Technical Specifications with price list and Monitoring

(Invitation to Tender N° ENER/D4/250-1-2010)

ANNEX II – Form of " Record of "Technical Acceptance"

RECORD OF TECHNICAL ACCEPTANCE

Contract reference:

Contract subject:

The technical approval related to the above mentioned contract has taken place at DG ENER Luxembourg HQ on xx/xx/xxxxx

This technical approval was :

- a complete technical approval, based on devilery note no xxxxx dated on xx/xx/xxxxx
- a partial technical approval as described below :

and was concluded:

- without any remarks
- with the following remarks:

Nr.	Remark	Date for final approval

	For the Contractor (if present)	For European Commission (technical responsible)
Date		
Name		
Signature		

Copies (to be sent by the technical responsible):

ANNEX III - Tender of the Contractor no. (Complete) of (Complete)

