



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

DIRECTORATE E - Nuclear Safeguards
The Director

Luxembourg,
DG ENER E.1/PDB/hs E.1.2 Ares(2011)

INVITATION TO TENDER No. ENER/E1/38-1/2011

(open procedure)

Dear Sir/Madam,

1. The European Commission invites tenders for a framework service contract regarding the following project: Framework service contract for maintenance of measurement equipment for spent nuclear fuel (Fork Detectors) and similar equipment

This invitation to tender follows the publication of:

- the contract notice in OJEU 2011/S 148-245278 of 04/08/2011
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 **16/09/2011** (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

European Commission
Directorate General - Energy
Directorate E – Nuclear Safeguards
For the attention of Mr Stamatopol / Mr Boella EUFO 3485
1, rue Henry M. Schnadt
Zone d'activités Cloche d'Or
L-2530 Luxembourg

(b) or delivered by hand

Tenders must be delivered by hand at the **Central Mail of the European Commission** by **16/09/2011 not later than 4 p.m.** (Brussels time), at the following address:

European Commission
Directorate General - Energy
Directorate E – Nuclear Safeguards
For the attention of Mr Stamatopol / Mr Boella EUFO 3485
1, rue Henry M. Schnadt
Zone d'activités Cloche d'Or
L-2530 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/E1/38-1/2011
not to be opened by the internal mail department
EUFO – Archives

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 on 21/09/2011 at 15:00 EUFO II 3265 at 1, rue Henry M. Schnadt, Zone d'activités Cloche d'Or, L-2530 Luxembourg (Directorate- General for Energy).

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 accompanied by a cover letter signed by the tenderer or his duly authorised representative. All tender documents shall be 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:

Mr Stamatopol / Mr Boella EUFO 3484
European Commission
1, rue Henry M. Schnadt
Zone d'activités Cloche d'Or
L-2530 Luxembourg

Fax (+ 352) 430136059
e-mail: ENER-E1-CFT@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.

All additional information will be made available via the website of DG Energy. Tenderers 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.

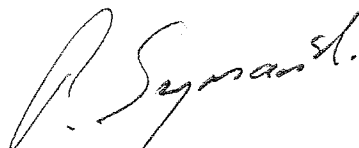
10. This invitation to tender is in no way binding on the Commission. A commitment will come about only when a contract with the successful tenderer has been signed.

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. If your offer includes subcontracting, it is recommended that contractual arrangements with subcontractors include mediation as a method of dispute resolution.

13. If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will 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. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the Director of the Shared Resource Directorate MOVE/ENER, acting as data controller. Details concerning the processing of your personal data are available on the privacy statement at: http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf.
14. Your personal data (name, given name if natural person, address, legal form, registration number and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the Early Warning System (EWS) only or both in the EWS and Central Exclusion Database (CED) by the Accounting Officer of the Commission, should you be in one of the situations mentioned in:
- the Commission Decision 2008/969 of 16.12.2008 on the Early Warning System (for more information see the Privacy Statement on http://ec.europa.eu/budget/info_contract/legal_entities_en.htm), or
 - the Commission Regulation 2008/1302 of 17.12.2008 on the Central Exclusion Database (for more information see the Privacy Statement on http://ec.europa.eu/budget/library/explained/management/protecting/privacy_statement_ced_en.pdf)

Yours faithfully,



Mr Piotr SZYMANSKI
Director

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

**Invitation to tender No. ENER /E1/38-1/2011 concerning
framework service contract for**

**MAINTENANCE OF MEASUREMENT EQUIPMENT FOR SPENT NUCLEAR
FUEL (FORK DETECTOR)
AND SIMILAR EQUIPMENT**

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I. SPECIFICATIONS

I.1. Introduction

To discharge of its responsibilities under Chapter VII of the EURATOM Treaty, the European Commission uses measurement equipment to verify nuclear fuel under water as part of its inspection activities. Specific instruments devised for that purpose are the so called Fork detectors (for spent fuel) and similar Under Water Coincidence Counter (UWCC) detectors (for fresh MOX fuel). The Commission Inspectors use Fork and UWCC detector systems in nuclear installations across the European Union. In order to implement and assure the continued reliable operation of the instruments, it is intended to establish a framework service contract for the maintenance of these detectors.

I.2. Purpose of the contract

The European Commission owns a total of 21 units of the Fork detector system and 5 UWCC units that were purchased from two suppliers:

Studiencentrum voor Kernenergie – Centre D'Etude de L'Energie Nucleaire (SCK-CEN), Mol, Belgium and

A.N. Technology Ltd, Wallingford-Oxfordshire, UK (ANTECH).

The tenderer will be required to carry out the following of work:

I.2.1. Functional detector tests

- a) A simple functional test of a Fork detector:

This test shall be performed to guarantee that all connections and electronics (counter signals and bias voltages) work properly. The simple functional test shall be performed after the decontamination of the Fork detector system (upon return after an in-field use).

The test shall be performed by placing two radioactive sources (a gamma source and a neutron source, supplied by and licensed to the tenderer) close to the detector. This test is to check the integrity of fission chambers and ionisation counters, preamplifiers, cables and electronics by observing the recorded signals as generated by the sources.

- b) An in-depth test of a Fork detector:

In order to confirm the functionality of the Fork system, the detector head has to be placed in a known flux (a known and reproducible geometry) of neutron and/or gamma radiation – using well characterized ^{137}Cs gamma sources (at least 200 mGy/h at the ionisation chamber) and ^{252}Cf spontaneous fission neutron sources (about 1000 neutron/cm²/s at the fission chamber). The recordings of those tests shall document the detector response with time to detect also possible aging effects. The tenderer should also suggest a test scheme for neutron/gamma counters and electronic parts (charge sensitive preamplifier and high voltage RC coupling networks) of the detector.

- c) Functional test of a UWCC detector:

This test shall be performed to guarantee that all connections and electronics (counter signals and bias voltages) work properly. The simple functional test shall be performed after the decontamination of the detector system (upon return after an in-field use).

The test shall be performed by placing a neutron source (supplied by and licensed to the tenderer) close to the detector.

The tenderer has to detail whether they can perform the tests under a)-c) on their own premises or if they intend to use external facilities and, if so, how they are accessible to them.

I.2.2. Storage of complete Fork and/or UWCC detector systems

The service to be provided includes storage of equipment; an exclusive storage capacity environment will be required for the full duration of the contract. A fixed price offer covering the safe storage of up to 26 complete detector systems per year is to be submitted.

Each Fork detector unit contains about 550 mg of ^{235}U as part of internal fission chambers. A suitable room or delimited part of it (with controlled access) with an adapted infrastructure is to be proposed. The quote shall also cover the storage of similarly packed Under Water Coincidence Counter (UWCC) detectors (containing no nuclear material). The tenderer shall have enough space available to store at the same time all 21 Fork detector systems and 5 UWCCs. For reference: a typical Fork system is packed in 4 transport cases: approximate dimensions are $80 \times 50 \times 60 \text{ cm}^3$ (25 kg) + $60 \times 40 \times 50 \text{ cm}^3$ (25 kg) + $60 \times 40 \times 25 \text{ cm}^3$ (5 kg) + $225 \times 35 \times 40 \text{ cm}^3$ (50 kg). The dimensions of the case for the Fork electronics unit are approximately $70 \times 50 \times 50 \text{ cm}^3$. The same holds approximately for UWCCs.

I.2.3. Decontamination of a Fork and/or UWCC detector system

Following the use in an installation (typically in the wet storage pond of a nuclear reactor) a Fork detector (or an UWCC) may be radioactively contaminated. Prior to storage or redeployment, each detector system has to be decontaminated. To perform this task the tenderer shall have all necessary equipment such as decontamination agents, ultra-sound cleaning baths, etc. The quote for the decontamination of a Fork detector or of a UWCC detector should also include the tenderer's own administrative costs (like the cost for preparation of the documents for a receipt or shipment of nuclear material and the cost for disposal of the resulting radioactive waste). Should decontamination costs be different for the two detector types, separate prices are to be provided for Fork and UWCC.

I.2.4. Ad-hoc maintenance services

A mechanism for ad-hoc maintenance shall be established for unexpected troubleshooting diagnostics, repair and replacement of missing/damaged parts or other maintenance projects that might be necessary. Breakdown maintenance shall be carried out as swiftly as possible.

For the ad-hoc tasks, the tenderer's quote shall include hourly rates for:

- a) Engineer;
- b) Technician;
- c) Workshop use. In most cases, workshop activities will be mechanical work, but electronics testing/repair activities may be required too

I.2.5. Materials and tooling used for service

- a) The tenderer has to have the ability to provide suitable materials for carrying out the work specified in the above points as well as the materials required for operation and maintenance of the equipment supplied.
- b) The tenderer will have to supply, at short notice, small items of material and tooling to facilitate the maintenance of Fork and UWCC equipment such as that associated with Section I.2.4. above.
- c) Replacement of defective or missing parts: In cases where parts of a detector must be replaced in order to carry out a work order, the tenderer will contact the Commission. The procedure described under I.3. will be followed.

I.3. Quotations to produce

Based on a written request for the work (Annex II of the draft contract) the tenderer will provide a quotation accompanied by a sufficiently detailed technical description. The quotation will be based on the price list mentioned in the tender and quote additional prices for materials where required (e.g. under I.2.4 and I.2.5). Furthermore a date of execution should be proposed.

The contractor will submit a draft quotation to the Commission at the latest 21 calendar days after receipt of the written request for the services.

The written quotations will have to be sent to an appointed member of the Commission staff.

- a) The contractor may be required to send an appointed person to the Commission to discuss the technical details and to estimate the cost of particular projects prior to the start of work. All related transport and other costs for this will be borne by the tendering company. From previous experience this can be expected to be not more than two times per year.
- b) The quotations will be required to show the total cost to carry out the work, as appropriate:
 - Activity and fixed price from the pricelist (e.g. I.2.1 etc);
 - The number of hours / quantity of each category to be used (e.g. I.2.4);
 - The cost of materials (e.g. I.2.5).
- c) The Commission shall approve or reject these quotations. These quotations will be evaluated on an individual basis and a written acceptance (Purchase Order) will be send to the contractor (Annex III of the draft service contract).

I.4. Execution of the work order

The time limit for completion of the ordered services will be 30 working days from the date of receiving the purchase order unless agreed otherwise. Longer completion times can be agreed (e.g. if particular materials are required).

I.5. The cost of delivery

Place of delivery for work is normally the tenderer's premises, including storage. The delivery of the instrument before and after use in a nuclear facility will be organised and paid by the Commission. Each delivery will be duly documented by the tenderer.

I.6. Acceptance of performed services

The Commission shall have 45 calendar days to approve or reject the ordered work by signature of the Record of Technical Acceptance (Annex IV of the draft contract). Based on a proof of execution of ordered work or service (Technical Report) Technical Acceptance can be done. In specific cases the Commission can decide to send an expert for acceptance of executed work. After the technical acceptance the contractor can send his invoice and will be paid as described in Article I.5. of the draft contract.

I.7. Duration of the tasks

This Contract is concluded for a period of 12 months with effect from the date on which it enters into force. This period is calculated in calendar days.

The Contract shall be renewed automatically up to three times under the same conditions, unless written notification to the contrary is sent by one of the contracting parties.

I.8. Place of performance

The tasks (Section I.2.) will be performed on the Contractor's premises. However, meetings between the contractor and the Commission may be held on Commission premises in Luxembourg. The contractor will bear his own travelling costs. A maximum of two missions per year is anticipated.

I.9. Estimate of the amount of work involved

The total indicative value of the contract has been estimated at maximum 400.000 EUR (up to maximum 4 years). The exact amount paid will depend on the orders placed and the work performed.

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 service contract.

II.2. Financial guarantees

Guarantee on pre-financing

Pre-financing is not applicable.

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/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

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/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

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.

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 Articles I.2.1, I.2.2, I.2.3 and I.2.4.

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 must be quoted for each category of services
 - Functional tests:
 - a) Simple functional test Fork (euro/detector)
 - b) In-depth test (euro/detector)
 - c) Simple functional test UWCC (euro/detector)
 - Storage - fixed price offer covering the safe storage of up to 26 complete detector systems per year
 - Decontamination of Fork/UWCC detector (see point I.2.3) (euro/detector). Should decontamination costs be different for the two detector types, separate prices are to be provided for Fork and UWCC.
 - Ad-hoc maintenance service hourly rates:
 - a) Engineer (euro/hour)
 - b) Technician (euro/hour)
 - c) Workshop use (euro/hour)
- Price of material and tooling cannot be known at the time of the tender but will have to be provided for each quotation for specific work.

- **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;

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;

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)

- (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 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 unjustified 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,

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.

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.

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.

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 must 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 business for the last three financial years, which is not lower than 300.000 EUR per year.

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 – Criteria and references required

The tenderer shall demonstrate that:

- 1) They have at least 2 staff members with at least 3 years of expertise in the area of maintenance of measurement instrumentation used in the field of nuclear inspections – the CVs of these staff must be provided in the offer;
- 2) They have at least 3 staff members available to assure the completion of relevant maintenance tasks in a timely manner

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, as amended.

- 3) They have the required licences to store and handle nuclear material as contained in the Fork detectors as well as contaminated material. Copies of the licences should be provided with the tender.
- 4) It has at least 3 years of experience in the relevant field - a list of the main services and tasks delivered during the last three years in this field must be provided in the offer;

The tenderer shall provide a statement which clearly indicates whether parts of the contract are intended to be subcontracted. The statement should clearly indicate which of the services would be concerned.

If several service providers/subcontractors are involved in the bid, each of them must prove that they have the professional and technical capacity to perform the tasks assigned to them.

Tenderer shall, as part of the proof, provide with their offer detailed a curriculum vitae of staff members responsible for carrying out the work, including his or her educational background, degrees, diplomas and professional experience.

The CV's shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.

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.

a) Technical evaluation criteria in their order of importance as weighted by percentage

Nº	Award Criteria	Weighting
1	Quality of the infrastructure to perform functional tests described in I.2.1 . Accuracy of documentation (details, etc.) of tests to be performed.	25%
2	Quality of the support infrastructure/controlled area with respect to the storage requirement of this tender task I.2.2 .	25%
3	Quality of the support infrastructure with respect to the decontamination requirements of this tender including tasks I.2.3 .	25%
4	Quality of the support infrastructure with respect to the ad-hoc maintenance requirements of the task I.2.4 .	25%
Total number of points (Q)		100

The evaluation will be judged on the technical documentation supplied with the tender.

b) Total price (P)

For evaluation purposes only, a price coefficient (P) will be calculated for the tender:

$(P = (5xP1A + 5xP1B+2xP1C) + P2 + (8xP3A+2xP3B) + 100xP4)$, where:

P1A = The price for the simple function test of a Fork detector

P1B = The price for the simple in-depth functional test of a Fork detector

P1C = The price for the functional test of a UWCC detector

P2 = Fixed price offer covering the safe storage of up to 26 complete detector systems per year

P3A= The price for decontamination of a Fork detector

P3B = The price for decontamination of a UWCC detector

P4 = Average hourly rate for ad-hoc maintenance (counted as an average of hourly rates of engineer, technician and workshop use)

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

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 /E1/38-1/2011

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

Financial identification form

(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/contracts_grants/info_contracts/financial_id/financial_id_en.cfm

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/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

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

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.

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.

Done at on.....

Name

Title

Signature:

ANNEX 5



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

DIRECTORATE E - Nuclear Safeguards
The Director

DRAFT FRAMEWORK SERVICE CONTRACT

CONTRACT NUMBER – []

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 Piotr Szmanski, Director in the Directorate-General for Energy , Directorate E-Nuclear Safeguards

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 (Invitation to Tender No ENER/E1/38-1/2011] of []

Annex II - Example of the typical "written request"

Annex III - Form of "Purchase Order"

Annex IV –"Delivery Acceptance Form"

Annex V - Tender of the Contractor

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 Contract shall take precedence over those in the Orders.

The terms set out in the Tender Specifications (Annex 1) shall take precedence over those in the Tender.

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.8 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

I.1.1. The subject of the Contract is maintenance of measurement equipment for spent nuclear fuel (Fork Detectors) and Under Water Coincidence Counter (UWCC) detectors (for fresh MOX fuel)

The contractor will be required to carry out the following type of work:

- a) Functional tests of Fork/UWCC detectors;
- b) Storage of complete Fork/UWCC detector systems;
- c) Decontamination of a Fork/UWCC detector;
- d) Ad-hoc maintenance service;
- e) Supply of materials and tooling used for the services.

I.1.2. Signature of the Contract imposes no obligation on the Commission to purchase. Only implementation of the Contract through orders is binding on the Commission.

I.1.3. Once implementation of the Contract has been asked or has commenced, the Contractor shall reply and execute the tasks in accordance with all terms and conditions of the Contract.

I.1.4. The Contract does not confer on the Contractor any exclusive right to provide the services described in Annex I to the Commission.

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. Under no circumstances may implementation commence before the date on which the Contract enters into force. Execution of the tasks may under no circumstances begin before the date on which the order or specific contract enters into force.

I.2.3. The Contract is concluded for a period of 12 months with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

I.2.4. The orders pursuant to the Contract shall be placed by the Commission and the Order Forms returned signed by the Contractor before the Contract expires.

The Contract shall continue to apply to such orders executed after the Contract expires. Such orders shall be executed no later than 6 months after the contract expires.

I.2.5. The Contract shall be renewed automatically up to three times under the same conditions, unless written notification to the contrary is sent by one of the contracting parties and received by the other before expiry of the period indicated in Article I.2.3. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 – PRICES

I.3.1. Prices of the services shall be as listed in Annex 5.

The maximum total amount to be paid by the Commission for the maximum period of 4 years will not exceed 400.000 EUR.

I.3.2. Price shall be expressed in EUR.

I.3.3 Prices shall be fixed and not subject to revision during the lifetime of the Contract.

I.3.4. Reimbursement of the travel, subsistence and shipment expenses is not applicable.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

I.4.1. Under the contract, the Commission will place specific orders following the procedure described below.

The Commission will send a request for specific services (see Annex II of the draft contract). The contractor will respond with a quotation within 21 calendar days and provide a delivery time. The quotation will be based on the price list mentioned in the tender and include sufficient technical description.

The quotations will have to be sent in writing to an appointed member of Commission staff.

The quotations will provide the complete expenses.

The quotations will be required to show:

- the cost of other materials (e.g. materials required for repairs);
- the number of hours/days of each work category to be used;
- the total cost.

If the Commission accepts the quotation, it will send an order in accordance with Article 1.2.4.

I.4.2. Within 15 working days of a specific order being sent by the Commission to the Contractor, the Commission shall receive it back, duly signed and dated.

I.4.3. When an Order is issued, the Contractor shall execute the individual work assigned to them in accordance with the request for services and the Tender Specifications annexed to the Contract (Annex 1).

ARTICLE I.5 – PAYMENT PERIODS

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 orders or specific contracts have not been executed as a result of default or negligence on the part of the Contractor.

1.5.1 Pre-financing:

Pre-financing is not applicable.

1.5.2 Payments

The requests for payment of the Contractor will be admissible if:

- accompanied by the technical report in accordance with the instructions laid down in

Annex I

- the purchase order (Annex III) has been duly signed, dated and sent back to the Commission
- accompanied by the relevant invoices, indicating the reference number of the Contract and of the order to which they refer, provided the report has been approved by the Commission.

The Commission shall have 45 calendar days from receipt to approve or reject the Technical Report (a proof of execution of the ordered work) by signature of the Record of Technical Acceptance (Annex IV).

Within 30 days of the date, after the Technical Acceptance is approved by the Commission, payment corresponding to the relevant invoice(s) shall be made.

ARTICLE I.6 – 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.7 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to implementation shall be made in writing and shall bear the Contract and Order 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 General for Energy

Financial and Contractual Cell of Directorates D and E

1, rue Henry M. Schnadt

L-2530 Luxembourg

Contractor:

Mr/Mrs/Ms [complete]

[Function]

[Company name]

[Official address in full]

ARTICLE I.8– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.8.1. The Contract shall be governed by the law of the Community and of the European Union, complemented, where necessary, by the national substantive law Luxembourg.

I.8.2. 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.9 – 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. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Director of the Shared Resource Directorate MOVE/ENER acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Community and European Union law.

ARTICLE I.10 - OTHER SPECIAL CONDITIONS

I.10.1 Execution of the contract

The time allowed for execution shall be mentioned in each purchase order (Annex 3).

I.10.2 Acceptance of services

Acceptance of the service shall be performed according to procedure described in Annex 1.

Acceptance shall be declared only where the conditions laid down in the Contract are satisfied and the delivered work conforms to the requirements, as defined in Annex III.

Where, for reasons attributable to the Contractor, the Commission is unable to declare acceptance of the service within 45 calendar days of the date of execution, 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.1.9 and II.16 may apply to the proportion of the total price corresponding to the service which are unacceptable.

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 – INVOICING AND PAYMENTS

II.4.1 Pre-financing:

Where required by Article I.5.1, 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 by equivalent work on his part.

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

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

II.4.2 Interim payment:

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

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order or specific 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 each order or specific contract, the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract and of the order or specific 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.5 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 and set out the reasons for the suspension by registered letter with acknowledgment 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.5 shall begin to run again once the suspension has been lifted.

II.5.3 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.

ARTICLE II. 6 – RECOVERY

II.6.1 If total payments made exceed the amount actually due 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 In the event of failure to pay by the deadline specified in the request for reimbursement, 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 Community or the European Union 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 that 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.

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 Union, 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.9 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 Union. 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 Union.
- 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 acknowledgment 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, a pending order or a specific 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 Community's or European 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 execution of the tasks under a pending order or a specific contract has not actually commenced within fifteen days⁷ 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 c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

⁷ This period can be modified in the Special Conditions depending on the nature of the contract.

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.15.4 Consequences of termination:

In the event of the Commission terminating the Contract or a pending order or specific 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 execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees enforceable under the Contract.

ARTICLE II.15a – 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. 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%⁸ of the amount of the relevant purchase 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.

⁸ The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.

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 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 Union from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.17.2** 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 of the last implementation.
- 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 (Euratom) No 1074/1999 from signature of the Contract up to five years after payment of the balance of the last implementation.

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. An order or a specific contract may not be deemed to constitute an amendment to the Contract.

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 Contract, pending orders or specific contracts 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 the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, of the orders or specific contracts, or of part thereof.

ARTICLE II.20 – DATA PROTECTION

II.20.1 The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.

II.20.2 The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.20.3 Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

II.20.4 The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

II.20.5 The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - aa) unauthorised reading, copying, alteration or removal of storage media;
 - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - ac) unauthorised using of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

SIGNATURES

For the Contractor,

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

For the Commission,

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

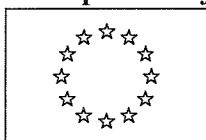
In duplicate in English.

ANNEX I

Tender Specifications and Monitoring (Invitation to tender Nr. ENER /E1/38-1/2011)

ANNEX II

Example of a typical written request



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

DIRECTORATE E - Nuclear Safeguards
E.1 - Design, planning & evaluation of inspections; logistical support

FAX

To:		Telephone:	
		Fax:	
From:	Mr xxxxx DG ENER E.1 1, rue Henri Schnadt L-2920 Luxembourg	Telephone:	(352) 4301-xxxxx
		Fax:	(352) 4301-xxxxx

Number of pages:

Subject:

Dear Sir/Madam,

Please submit to us your best offer by fax, within XX calendar days from the date of sending of this fax, for technical specification:

xxxx

xxxx

xxxx

Offer should be drawn up on the following basis:

- The quotations will be required to show the number of hours of each category to be used, the cost of materials, the total cost to carry out the work.
- be expressed in Euro (€), excluding VAT,
- be calculated on a delivery free-to-our-address basis,
- payment delay of **30 days**,
- it should be calculated with regard to the fact that, under the provisions of the Protocol and Privileges and Immunities in annex to the Treaty of 8 April 1965 establishing a single Council and a single Commission of the European Communities, the Commission is exempt from all duties and taxes.

The offer should have a validity of **180 days** and also indicate the VAT number.

More information can be collected from M. xxxxx (phone n°: +352 4301 xxxxx).

Yours faithfully,

ANNEX IV



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

DIRECTORATE E - Nuclear Safeguards
E.1 - Design, planning & evaluation of inspections; logistical support

Luxembourg,

RECORD OF TECHNICAL ACCEPTANCE

Contract reference:

Contract subject: The technical approval related to the above mentioned contract has taken place at.

This technical approval was:

- a complete technical approval:
- 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 V

Contractor's Tender (No [complete] of [complete])

