

EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Directorate C - Renewables, Research and Innovation, Energy Efficiency  
The Director

Brussels, 25 May 2012

**INVITATION TO TENDER No. ENER/C1/426-2012**

(open procedure)

Dear Sir/Madam,

1. The European Commission invites tenders for a framework service contract regarding the following project: *Framework contract for "Assessment of voluntary schemes and agreements used for sustainability claims related to Directive 2009/28/EC"*

This invitation to tender follows the publication of:

- the contract notice in OJEU 2012/S 99-163951 of 25/05/2012

2. If you are interested in this contract, you must submit **four** copies of your tender, in one of the official languages of the European Union, one of which must contain a signed original of the cover letter and annexes attached to the tender specifications (scans or photocopies are not accepted as original documents). A copy of the offer on a CD/DVD has also to be submitted.

Tenderers may choose to submit tenders:

**a) either by post or by courier** not later than 06/07/2012, in which case the evidence of the date of dispatch shall be constituted by the postmark or the date of the deposit slip, to the following address:

European Commission  
Directorate-General for Energy, Unit C1, Office DM24 4/132  
For the attention of ENER C1 Tenders  
B – 1049 Brussels

**b) or delivered by hand to the following address:**

European Commission  
Directorate-General for Energy, Unit C1, Office DM24 4/132  
For the attention of ENER C1 Tenders  
Avenue du Bourget 1  
B-1140 Brussels (Evere)  
Belgium

not later than 16.00 on 06/07/2012. 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 17.00 Monday to Thursday, and from 8.00 to 16.00 on Fridays. 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/C1/426-2012**  
**not to be opened by the internal mail department**  
DM24 4/132

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 may entail the rejection of the bids at the opening session.**

**To be admissible, the confidentiality of the bids must have been ensured and the deadline for the submission of the bids met.**

4. Tenders will be opened at 10.a.m. on 13/07 /2012, at Rue De Mot 24 (Directorate-General for Energy, DM 24, 1040-Brussels).

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. 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:

ENER C1 Tenders  
European Commission  
DM 24-4/132  
B-1049 Brussels  
Belgium

e-mail: [ENER-C1-tenders@ec.europa.eu](mailto:ENER-C1-tenders@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 Directorate-General for Energy website ([http://ec.europa.eu/dgs/energy/tenders/index\\_en.htm](http://ec.europa.eu/dgs/energy/tenders/index_en.htm)). 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

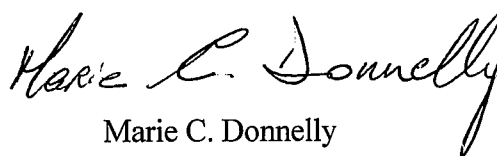
your personal data are available on the privacy statement at:  
[http://ec.europa.eu/dataprotectionofficer/privacystatement\\_publicprocurement\\_en.pdf](http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf).

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](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](http://ec.europa.eu/budget/library/explained/management/protecting/privacy_statement_ced_en.pdf))

Yours faithfully,

  
Marie C. Donnelly

**TENDER SPECIFICATIONS**  
**ATTACHED TO THE INVITATION TO TENDER**

**Invitation to tender No. ENER/C1/426-2012 concerning a  
*Framework contract for "Assessment of voluntary schemes and agreements used for  
sustainability claims related to Directive 2009/28/EC"***

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## I. SPECIFICATIONS

### I.1. Introduction

The European Union is promoting the use of renewable energy in transport to reach the objective of 10% renewable energy in transport by 2020. The use of biofuels is one way of meeting these targets. In the EU, consignments of consumed biofuels and bioliquids must comply with the sustainability requirements in order to be allowed to be used for the below mentioned purposes, as set put in Art.17(1) of Directive 2009/28/EC<sup>1</sup>:

- (a) measuring compliance with the requirements of this Directive concerning national targets;
- (b) measuring compliance with renewable energy obligations;
- (c) eligibility for financial support for the consumption of biofuels and bioliquids.

Member States will in the above mentioned cases need to ensure that economic operators provide evidence that the consignments of biofuels comply with the requirements of the sustainability scheme of Directive 2009/28/EC.

These requirements are laid down in both Article 17(2) to 17(5) and Article 18(1) of Directive 2009/28/EC as well as in Article 7b(2) to 7b(5) and Article 7c(1) of Directive 98/70/EC as amended by Directive 2009/30/EC<sup>2</sup>.

Economic operators may choose to use a "voluntary scheme" that the Commission has recognised for the purpose of proving compliance with these requirements (Article 18 (4) 2<sup>nd</sup> paragraph of Directive 2009/28/EC). A voluntary scheme can show partial or full compliance with the sustainability criteria. The Commission assesses voluntary schemes before proposing to recognise them through a Comitology process leading to a Commission Decision.

A number of voluntary schemes have already been recognised by the Commission; further schemes have been submitted to the Commisison for recognition. Voluntary schemes that are recognised by the Commission may undergo changes, which have to be notified to the Commission. The Commission will assess the notified changes with a view to establish whether the scheme is still adequately covering the sustainability criteria for which it is recognised.

The Commission may further decide that a voluntary scheme also provides accurate data for the purposes of information on other sustainability issues, being:

- measures taken for the conservation of areas that provide, in critical situations, basic ecosystem services;
- measures taken for soil protection;

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<sup>1</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the Promotion of the use of energy from renewable sources amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ L 140, 5.6.2009, pages 16-62.

<sup>2</sup> Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 as regards the specifications of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC, OJ L 140, 5.6.2009, pages 88-113.

- measures taken for water protection;
- measures taken for air protection;
- measures taken for the restoration of degraded land;
- measures taken for the avoidance of excessive water consumption in areas where water is scarce;
- social sustainability;
- the availability of foodstuffs at affordable prices; and
- respect of land-use rights.

For bioliquids, the Commission cannot explicitly recognise a voluntary scheme as a source of accurate data for the land related sustainability criteria.<sup>3</sup> However, the Commission encourages Member States to accept voluntary schemes that are recognised for biofuels equally for bioliquids. The Commission may in future propose to amend the Directive in order that voluntary schemes can also be recognised for showing that bioliquids comply with the sustainability criteria. The Commission may also propose sustainability requirements for the use of solid and gaseous biomass sources in electricity, heating and cooling.

Economic operators may also choose to use "bilateral or multilateral agreements with (a) third countr[y/ies]" that the Commission has recognised for the purpose of proving compliance with this the sustainability criteria (Article 18 (4) 1<sup>st</sup> paragraph of Directive 2009/28/EC). The EU will endeavour to conclude bilateral or multilateral agreements with third countries containing provisions on sustainability criteria that correspond to those of the Directive. When such agreements are concluded, due consideration has to be given to measures taken on the other sustainability issues listed above as well as to indirect land use changes.

Within the framework of the sustainability scheme established by Directive 2009/28/EC, the Commission can recognise areas for the protection of rare, threatened or endangered ecosystems or species recognised by international agreements or included in lists drawn up by intergovernmental organisations or the International Union for the Conservation of Nature (Art. 18 (4) second subparagraph, third sentence). The purpose of this recognition is to ensure that these areas are not used to resource raw material used for the production of sustainable biofuels and bioliquids, as specified in Article 17 (3)(b)(ii).

Reference is given to the following documents:

- Directive 2009/28/EC of the European Parliament and the Council on the promotion of the use of energy from renewable sources amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC
- Communication from the Commission on the practical implementation of the biofuels and bioliquids sustainability scheme and on counting rules for biofuels<sup>4</sup>
- Communication from the Commission on voluntary schemes and default values in the EU biofuels and bioliquids sustainability scheme<sup>5</sup>
- Commission Implementing Decisions recognising voluntary schemes; recognised voluntary schemes; assessment reports for recognised voluntary schemes<sup>6</sup>

<sup>3</sup> Cf. Article 18(4) of Directive 2009/28/EC and the mention of Article 17(3)-17(5) therein.

<sup>4</sup> OJ C160 of 19.6.2010, page 8

<sup>5</sup> OJ C160 of 19.6.2010, page 1.



- Further documents relevant to the implementation of the sustainability criteria<sup>7</sup>

## **I.2. Purpose of the contract**

The purpose of this framework contract is to help the Commission in assessing voluntary schemes and agreements covering sustainability criteria set out by Directive 2009/28/EC. This framework contract will be signed with one contractor selected from the tenders submitted.

The Commission will ask the contractor:

1. To assess voluntary schemes' compliance with the mandatory sustainability requirements of Directive 2009/28/EC for biofuels as well as to assess notified changes to recognised voluntary schemes. (Task 1)
2. To assess if voluntary schemes provide relevant data in relation to sustainability as referred to in Art. 18(4) 2<sup>nd</sup> sub-paragraph, 2<sup>nd</sup> sentence of Directive 2009/28/EC. (Task 2)
3. To assist in the assessment of exploratory work for the conclusion of bilateral or multilateral agreements containing provisions relating to matters covered by the sustainability criteria. (Task 3)
4. To assess voluntary schemes' compliance with the mandatory sustainability requirements of Directive 2009/28/EC for bioliquids and/or EU sustainability requirements for the use of solid and gaseous biomass sources in electricity, heating and cooling – if and when such requirements are in place and the Commission can recognise such voluntary schemes. (Task 4)
5. To assess lists of areas drawn up by intergovernmental organisations or the International Union for the Conservation of Nature for the purpose of protecting rare, endangered or threatened ecosystems or species with a view to the purposes of Art. 17(3)(b)(ii) of Directive 2009/28/EC with a view to their recognition by the Commission, as referred to in Art. 18(4) 2<sup>nd</sup> sub-paragraph, 3<sup>rd</sup> sentence of Directive 2009/28/EC and in order to do so to develop a methodology for the assessment of such lists. (Task 5)

The services provided will at least include the following assignments:

### **TASK 1 - ASSESSMENT OF VOLUNTARY SCHEMES**

In view of the tasks referred to in the introduction, the Commission will ask the contractor to assess voluntary schemes that have been submitted to the Commission. This assessment will be for the purpose of establishing their compliance with the sustainability criteria set out in Articles 17, 18 and 19 of Directive 2009/28/EC. The assessment will need to focus on the land use criteria, the greenhouse gas (GHG) savings, the chain of custody and the verification methods including an adequate standard of independent auditing.

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<sup>6</sup> All available at [http://ec.europa.eu/energy/renewables/biofuels/sustainability\\_schemes\\_en.htm](http://ec.europa.eu/energy/renewables/biofuels/sustainability_schemes_en.htm)

<sup>7</sup> Available at [http://ec.europa.eu/energy/renewables/biofuels/sustainability\\_criteria\\_en.htm](http://ec.europa.eu/energy/renewables/biofuels/sustainability_criteria_en.htm)

The practical rules for complying with the recognition requirements laid down by *the Communication from the Commission on voluntary schemes and default values in the EU biofuels and bioliquids sustainability scheme* (available at this website [http://ec.europa.eu/energy/renewables/biofuels/sustainability\\_criteria\\_en.htm](http://ec.europa.eu/energy/renewables/biofuels/sustainability_criteria_en.htm)) should be used as a guideline for the assessment.

The Commission should be provided with an assessment report for each voluntary scheme assessed, containing at least:

- the information indicating what part of the mandatory sustainability criteria is covered by the respective scheme;
- the assessment of the land use criteria against the Directive's requirements;
- the assessment of the GHG methodology against the Directive's requirements;
- the assessment on the mass balance system against the Directive's requirements;
- the assessment of the adequate standard of independent auditing;

The assessment reports should use the same template as of those assessment reports published for already recognised voluntary schemes (available at this website [http://ec.europa.eu/energy/renewables/biofuels/sustainability\\_schemes\\_en.htm](http://ec.europa.eu/energy/renewables/biofuels/sustainability_schemes_en.htm)).

Voluntary schemes that are recognised by the Commission may undergo changes, which have to be notified to the Commission. The Commission will ask the contractor to assess the notified changes with a view to establish whether the scheme is still adequately covering the sustainability criteria for which it is recognised. The above referred to recognition requirements will apply also for this element. The contractor will be asked to provide a simplified assessment report for the assessment of updates.

## **TASK 2 - ASSESSMENT OF SCHEMES ON NON-MANDATORY SUSTAINABILITY ISSUES**

Art. 18 (4) 2nd sub-paragraph, 2nd sentence of Directive 2009/28/EC allows the Commission to decide that voluntary schemes contain accurate data on the measures taken for the conservation of areas that provide, in critical situations, basic ecosystem services (such as watershed protection and erosion control), for soil, water and air protection, the restoration of degraded land, the avoidance of excessive water consumption in areas where water is scarce and on the issues referred to in the second subparagraph of Article 17(7). The Commission intends to make use of this possibility.

Therefore, the contractor will be asked to evaluate if voluntary schemes provide accurate data for the purposes of information on other sustainability issues, being:

- measures taken for the conservation of areas that provide, in critical situations, basic ecosystem services;
- measures taken for soil protection;
- measures taken for water protection;
- measures taken for air protection;
- measures taken for the restoration of degraded land;
- measures taken for the avoidance of excessive water consumption in areas where water is scarce;
- social sustainability;
- the availability of foodstuffs at affordable prices; and
- respect of land-use rights.

The contractor shall apply the methodology that will be provided by the Commission. This methodology will be made available to the contractor upon the start of work under this task. It will be based on a proposal for methodology under preparation in the context of the framework contract "Assessment of voluntary schemes used for sustainability claims of biofuels under Directive 2009/28/EC" (specifications can be consulted on: [http://ec.europa.eu/dgs/energy/tenders/doc/2010/s148\\_227852\\_specifications.pdf](http://ec.europa.eu/dgs/energy/tenders/doc/2010/s148_227852_specifications.pdf)).

Without defining criteria this methodology will aim to encourage schemes to copy best practises that are not mandatory. The methodology would be based on specifying crucial aspects that need to be covered for the Commission to mention the sustainability issues in the Commission Decision.

The contractor will be asked to provide for each voluntary scheme an assessment report on the coverage of sustainability issues listed above and recommendations indicating whether the sustainability requirements are appropriately covered.

### **TASK 3 – ASSIST ASSESSING COMPLIANCE WITH SUSTAINABILITY CRITERIA IN THE CONTEXT OF BILATERAL AGREEMENTS**

The EU endeavours to conclude bilateral or multilateral agreements with third countries containing provisions on sustainability criteria that correspond to those of this Directive. The Commission may receive requests from third countries in relation to this. Before a proposal for opening of negotiation would be made, an exploratory assessment would be needed to determine the potential for successful negotiation of an agreement. Such assessment may include assessing laws, certification regimes and other documented requirements. The assessment needs to verify that these requirements cover and satisfy the relevant criteria exactly and ensure an adequate standard of reliability, transparency and independent auditing. The assessment needs to consider scope of the potential agreement in terms of materials and EU sustainability criteria. Further, a number of other sustainability issues and measures taken in relation to them have to be considered in the conclusion of a bilateral agreement. This comprises the issues listed in task 2 as well as indirect land use changes. In an agreement such issues would have to be taken into consideration.

The Commission will ask the contractor to assess specific laws, certification regimes and other documented requirements provided by the Commission. The Commission may ask the contractor to verify information in such documentation, in particular information related to enforcement or verification, with information from other sources. The contractor should draw up an assessment report answering to the specific questions the Commission will put forward in its request.

It should be noted that no mission expenses incurred for the performance of this task can be reimbursed.

### **TASK 4 – ASSESS VOLUNTARY SCHEMES FOR BIOLIQUIDS AND/OR SOLID AND GASEOUS BIOMASS FOR ENERGY**

If and when the Commission can recognise voluntary schemes for showing compliance with the mandatory sustainability requirements of Directive 2009/28/EC for bioliquids and/or with EU sustainability requirements for the use of solid and gaseous biomass sources in electricity, heating and cooling, the the Commission will ask the contractor to assess voluntary schemes that have been submitted for such purposes to the Commission.

For bioliquids, this assessment will be for the purpose of establishing their compliance with the sustainability criteria set out in Articles 17, 18 and 19 of Directive 2009/28/EC. The assessment will

need to focus on the land use criteria, the greenhouse gas (GHG) savings, the chain of custody and the verification methods including an adequate standard of independent auditing. For solid and gaseous biomass sources in electricity, heating and cooling the assessment will need to follow any EU legal requirements that would apply to this.<sup>8</sup>

The Commission shall for each assessed voluntary scheme be provided with an assessment report similar to such reports under task 1.

**TASK 5 - ASSESS PROPOSED AREAS FOR PROTECTION OF RARE, THREATENED OR ENDANGERED ECOSYSTEMS OR SPECIES RECOGNISED BY INTERNATIONAL AGREEMENTS OR INCLUDED IN LISTS DRAWN UP BY INTERGOVERNMENTAL ORGANISATIONS OR THE INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE AND DEVELOP METHODOLOGY FOR SUCH ASSESSMENT**

Within the framework of the sustainability scheme laid down by Directive 2009/28/EC, Article 18(4) allows the Commission to recognise areas for the protection of rare, threatened or endangered ecosystems or species recognised by international agreements or included in lists drawn up by intergovernmental organisations or the International Union for the Conservation of Nature. The Commission intends to make use of this possibility if such lists of areas are submitted to the Commission.

The contractor shall assess whether proposed lists of such areas match with the objectives in article 17 (3)(b)(ii). The Commission should be provided with a report for each list assessed, containing at least the recommendations indicating whether the lists are in line with the purposes of Art. 17(3)(b)(ii).

When such a list is received by the Commission for the first time, the contractor should develop a methodology for assessing lists of areas for protection of rare, threatened or endangered ecosystems or species. This should be done with a view to the purposes of Article 17(3)(b)(ii). It should be noted that no mission expenses incurred for the performance of this task can be reimbursed.

### **I.3. Place of performance**

The tasks will be performed on the Contractor's premises. However, meetings between the contractor and the Commission may be held on Commission premises in Brussels.

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<sup>8</sup> No such requirements exist at present. The state of play is presented in the 'Report from the Commission to the Council and the European Parliament on sustainability requirements for the use of solid and gaseous biomass sources in electricity, heating and cooling' COM(2010)11, available at: [http://ec.europa.eu/energy/renewables/bioenergy/sustainability\\_criteria\\_en.htm](http://ec.europa.eu/energy/renewables/bioenergy/sustainability_criteria_en.htm)

## **II. TERMS OF THE FRAMEWORK 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 6). 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. Estimate of the amount of work involved**

The indicative maximum amount for this framework service contract is EUR 500 000. Specific contracts will not be signed once the budget has been exhausted.

### **II.2. Duration of the framework contract**

This framework service contract will be concluded for a period of 1 year (12 months) from when it is first signed and it may be renewed for further two one-year periods, by tacit agreement. The total duration of the framework contract will not exceed 3 years (36 months) from when it is first signed.

### **II.3. Terms of payment**

Payments shall be made in accordance with the provisions specified in Annex 6, the draft framework service contract

### **II.4. 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.20 of the contract (Annex 6) can be applied to subcontractors. Once the contract has been signed, Article II.6 of the above-mentioned contract shall govern the subcontracting.

### **II.5. Joint tenders**

In case of a joint tender submitted by a group of tenderers, these latter will be regarded as partners. If awarded the contract, they will have an equal standing towards the contracting authority in the execution of the contract.

The tenderers should indicate in their offer whether the partnership takes the form of:

a) a new or existing legal entity which will sign the contract with the Commission in case of award

or

b) a group of partners not constituting a new legal entity, who via a power of attorney, signed by an authorised representative of each partner (except the lead partner), designate one of the

partners as lead partner, and mandate him as lead contractor to sign the contract with the Commission in case of award.

If the contractor is a grouping or consortium of two or more persons, all such persons shall be jointly and severally liable to the Commission for the fulfilment of the terms and conditions of the contract. Such persons shall designate one of them to act as leader with full authority to bind the grouping or the consortium and each of its members. It shall be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration and for coordination. The composition and constitution of the grouping or consortium, and the allocation of the scope of tasks amongst the members, shall not be altered without the prior written consent of the Commission which can be withheld at discretion.

## **II.6. Specific contracts under this framework contract**

Once the Framework Contract has been signed, when the need arises, the Commission will send a Request for Services to the contractor to submit an offer for carrying out the assignments in Chapter I.2.

Within 5 Commission working days of a Request for Services being sent by the Commission to the Contractor, the Contractor shall express in writing, by post or e-mail, his availability to carry out the services required.

Within 10 Commission working days of a Request for Services being sent by the Commission to the Contractor, the Contractor shall provide the Commission with a written offer for the tasks required. This offer shall detail the methodology, the deliverables, the composition of the team, the duration of the work and the total price on the basis of the person-day price as agreed in the Framework Contract. A Specific Contract will then be signed with the Contractor.

For each Specific Contract, the Contractor and, if applicable, the members of the group or the association carrying out the task under the specific contract, will have to sign a conflict of interest declaration stating that he/she has no direct link with the work subject of the task.

The Contractor shall take all the necessary measures to prevent any situation that could compromise the impartial and objective performance of the contract (see Annex 6, Article II.3.1. of the draft Framework Contract). He/she must indicate in the offer if he/she is/was involved in developing voluntary sustainability schemes covering the production of biofuels for third parties at the time of the contract or previously. If so, he/she shall explain why there is no potential conflict of interests or propose an adequate solution to deal with this conflict of interests when that scheme would apply for recognition under Directive 2009/28/EC.

During the validity period of this Framework Contract, the Contractor must declare any changes in their situation regarding the contractual relations referred to in this paragraph.

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 the performance of the assignments and they shall continue to be bound by this undertaking after the completion of these tasks (see Annex 6: Article II.4.1).

The attention of the tenderers is drawn to Article II.14 of the draft Framework Contract: "Termination of the contract by the Commission" (see Annex 6): in particular in case of failure by the contractor to fulfil his/her obligations the Commission may terminate the contract at any time by registered letter without formal notice or payment of any compensation.

The award of the specific contract will be conditioned by the availability of sufficient funds.

#### *II.6.1. Reports and documents to be submitted*

For the Specific Contracts under this Framework Contract the contractor is requested to deliver:

- 1) an assessment report for each of the voluntary schemes assessed under task 1, task 2 and task 4; at least for task 1, the assessment report has to be based on the template referred to in the description of task 1 in section I.2 of these specifications.
- 2) a simplified assessment report for each of the updates to voluntary schemes assessed in task 1.
- 3) an assessment report for each request under task 3
- 4) the methodology for assessing the lists of areas for protection of rare, threatened or endangered ecosystems or species submitted to the Commission
- 5) a report for each list assessed on the basis of the methodology at point 4), containing at least the recommendations indicating whether the lists are in line with the purposes of Art. 17(3)(b)(ii) of Directive 2009/28/EC.

For all five points above, each methodology/assessment report shall be delivered in an electronic version (CD-ROM, DVD or sent by e-mail), in MS Word or in HTML format (if figures). All assessment reports and methodologies shall be written in English. They have to be drafted in a proper literate manner and must be fully comprehensible in terms of grammatical structure (complete sentences, punctuation, explanation of abbreviations, etc.).

The Commission may publish the results of the methodology above under point 4. For this purpose, the tenderer must ensure that the methodologies are not subject to any restrictions deriving from intellectual property rights of third parties. Should he intend to use data in the methodologies, which cannot be published, this must be explicitly mentioned in the offer.

#### Schedule for feedback concerning the deliverables of the Specific Contracts

- 1) the assessment report for each voluntary scheme assessed shall be submitted to the Commission at the latest six weeks after the signing of the respective Specific Contract. This term may be extended up to three times by the Commission in case the contractor during the assessment indicates to the Commission that the scheme does not seem to comply with the Directive's requirements.

The Commission shall have forty-five days from receipt to approve or reject the assessment report for each voluntary scheme. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or another assessment report.

- 2) the simplified assessment report for each update of a voluntary scheme assessed shall be submitted to the Commission at the latest four weeks after the signing of the respective Specific Contract.

The Commission shall have forty-five days from receipt to approve or reject the assessment report for each voluntary scheme. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or another assessment report.

3) an assessment report for each request to assess documentation in the context of exploratory assessment for a bilateral or multilateral agreement shall be submitted to the Commission at the latest six weeks after the signing of the respective Specific Contract. This term may be extended up to three times by the Commission in case the contractor during the assessment indicates to the Commission that the documentation concerned does not seem to comply with the Directive's requirements.

The Commission shall have forty-five days from receipt to approve or reject the assessment report for each voluntary scheme. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or another assessment report.

4) the methodology for assessing the lists of areas for protection of rare, threatened or endangered ecosystems or species submitted to the Commission, with a view to the purposes of Article 17(3)(b)(ii) of Directive 2009/28/EC shall be submitted to the Commission at the latest 4 months after the date of signature of the respective Specific Contract. This duration may be adjusted in accordance with the conditions in the Request for Services at the time of sending the request.

The Commission shall have forty-five days from receipt to approve or reject the methodology. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or improved methodology.

5) the report for each list assessed on the basis of the methodology at point 4), containing at least the recommendations indicating whether the lists are in line with the purposes of Art. 17(3)(b)(ii) of Directive 2009/28/EC, shall be submitted to the Commission at the latest eight weeks after the signing of the respective Specific Contract.

The Commission shall have forty-five days from receipt to approve or reject the methodology. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or or another assessment report.



### III. FORM AND CONTENT OF THE TENDER

#### III.1. General

Tenders must be written in **one of the official languages** of the European Union and submitted in **quadruplicate** (one clearly marked "original" and three copies) as well as a copy of the offer on a CD/DVD. The attention of the tenderers is drawn to the fact that the majority of the deliverables requested under Specific Contracts will have to be submitted in English.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled).

The original signature of the single tenderer's or lead partner's authorised representative) (preferably in blue ink) on the administrative identification form (Annex 1) shall be considered as the signature of the tender, binding the single tenderer or the group of partners to the terms included in the tender.

#### 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, 3, 4 and 5 as well other evidence required):

- 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 original 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 are estimated to represent less than 20% of the maximum indicative value of the contract.*

- Financial identification (Annex 2)

The original **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](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 only.

If the corresponding bank account of economic operators is already registered in the Commission's files they are not obliged to provide a new form on the condition that they confirm that no change in the information already provided as occurred. In case of doubt, we recommend submitting a new form.

- Legal entities (Annex 3)

The original 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](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)

In the case of a grouping, this form must be provided by all partners.

Economic operators already registered as a legal entity in the Commission's files (i.e. they are or have been contractors of the Commission) are not obliged to provide a new form on the condition that they confirm that no change in the information already provided as occurred, In case of doubt, we recommend submitting a new form.

- Declaration of honour with respect to the Exclusion criteria and absence of conflict of interest (Annex 4)

An original should be filled and signed by (an) authorised representative(s) of all partners. Only sub-contractors with a part of the contract above 20% should the sign the form.

- Power of attorney (Annex 5) – in case of grouping only

An original should be filled and signed by (an) authorised representative(s) of each partner.

- All the supporting documentation for the purpose of checking the selection criteria (IV.2) should also be submitted under this section

The Commission reserves the right, however, to request clarification or 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 award criteria as set out in chapter IV.3 define those parts of the technical proposal to which the tenderers should pay particular attention as they will be the ground for the evaluation of the quality of the proposal.

The technical proposal should address all matters laid down in the specifications and should include models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender.

Tenderers must present in their bids a proposal on the methodology and the organisation of the work to carry out in the framework of the study.

### ***III.2.3. Section Three: Financial proposal***

All tenders must contain a financial proposal. The tenderers should submit their financial proposals as **one single price per person-day** for the all the services combined to be delivered under the tasks of this Framework Contract. 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.
- **Estimated travel and daily subsistence allowance expenses must be indicated separately.** This estimate should be based on Articles I.3 and II.18 of the draft framework contract (Annex 6). This estimate will comprise all foreseen travel and will constitute the maximum amount of travel and daily subsistence allowance expenses to be paid for all tasks.
- **Prices must 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 annexed to the Treaty on the Functioning of the European Union. 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;
- Tenderers shall specify **one single price per person-day** for the all the services to be delivered under the tasks of this Framework Contract. The price per person-day shall be valid for the services delivered under a Specific Contract. This price must be a flat rate and include all administrative costs, with the exception of travel expenses which will be reimbursed, where appropriate, in accordance with the provisions of Article II.18 of the Framework Contract.
- **Prices per person-day** shall be **fixed** and not subject to revision during the whole duration of the Framework Contract and any extension.

## IV. ASSESSMENT AND AWARD OF THE FRAMEWORK CONTRACT

Participation in tendering procedures is open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement, under the conditions laid down in that agreement.

Where the Multilateral Agreement on Public Contracts concluded within the framework of the WTO applies, the contracts are also open to nationals of states which have ratified this Agreement, under the conditions provided for therein.

The procedure for the award of the contract, which will concern only admissible bids (see requirements in the invitation to tender, in particular, regarding the deadline for submission and the presentation of the offers and packaging), 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.

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.

### IV.1. Exclusion criteria (exclusion of tenderers)

#### *IV.1.1. Exclusion criteria (Article 93 Financial Regulation<sup>9</sup>)*

1. To be eligible for participating in this contract award procedure, tenderers must not be in any of the following situations:
  - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
  - (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
  - (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
  - (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the

<sup>9</sup> 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)

- 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 Regulation<sup>10</sup> 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***

**1. In accordance with 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 indicate if they are/were involved in developing voluntary sustainability schemes covering the production of biofuels for third parties at the time of the contract. If so, they shall propose an adequate solution to deal with this conflict of interests when that scheme would apply for recognition under Directive 2009/28/EC;
- 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;

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<sup>10</sup> 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.

- 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, 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.

2. As mentioned under section III.2.1., the 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.

#### ***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.<sup>11</sup>

**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***

The tenderers must have an average annual turnover for the last three years exceeding 1.000.000 EUR. In case of a consortium, this requirement applies collectively to all members of the group and/or sub-contractors.

Evidence of this capacity shall be furnished on the basis of the following documents:

- statement of overall turnover for the last three financial years

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<sup>11</sup> 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.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators may rely on the capacities of members of the consortium or of other entities.

#### ***IV.2.2. Technical and professional capacity – Criteria and references required***

The tenderers must have extensive, concrete experience in the fields of energy and/or environment: at least 50% of the team members should have at least 3 years of experience in at least one of these fields.

Evidence of this capacity shall be furnished on the basis of the following documents:

- Detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills

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

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 FOR THE FRAMEWORK CONTRACT**

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 quality score of a minimum of 70% and a minimum quality score of 60 % for each award criterion will be taken into consideration for awarding the contract.

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

<b>N°</b>	<b>Award Criteria</b>	<b>Weighting</b>
1	<b>Understanding of the objective of the tender.</b> Understanding of the needs, the objectives and the scope of the tender	30
2	<b>Methodology of work</b> Approach and methodology for the overall work, quality and relevance of the outlines, respectively templates, submitted for the	40



	methodologies, respectively the reports to be delivered.	
3	Management Management of the work, quality and sustainability of the work-plan and schedule	20
4	Completeness, clarity and presentation of the offer	10
<b>Total number of points</b>		<b>100</b>

b) Price

The contract will be awarded to the tender which offers the best overall score. The overall score is determined as follows:

Score for tender  $x$  =

$$\frac{\text{price per personday of lowest priced tender}}{\text{price per personday of tender } x} \text{ multiplied by } 0.3$$

+

$$\frac{\text{total quality score for award criteria for tender } x}{100} \text{ multiplied by } 0.7$$

#### 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.

#### IV.5. AWARD OF THE SPECIFIC CONTRACTS

Once the Framework Contract has been signed, when the need arises, the Commission will send, under the conditions laid down in Chapter II.6, a Request for Services to the contractor to submit an offer for carrying out assignments in Chapter I.2.

Offers must contain:

- a) a technical part, detailing the methodology, the composition and skills of the team and the responsible team leader for the specific assignments;

b) a financial part, detailing the number of person-days to be multiplied by the person-day price as defined in the Framework Contract, and the maximum budget for reimbursable expenses, which will be reimbursed, where appropriate, on the basis of the provisions defined in Annex 6 (Article II.18 of the Framework Contract).

The Commission may conclude a Specific Contract with the Contractor for the respective assignments on the basis of the offer it has submitted.

## V. ANNEXES

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria and absence of conflict of interest)
5. Power of Attorney (mandate in case of joint tender)
6. Draft Framework 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/C1/426-2012

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) <sup>12</sup>	
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:	

<sup>12</sup> 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 organisation<sup>13</sup>**

I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.

Surname:  
First name:

Signature:

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<sup>13</sup> 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](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.

## **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](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.

## ANNEX 4

### Declaration of honour with respect to the Exclusion Criteria and absence of conflict of interest

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

The undersigned [*name of the signatory of this form, to be completed*]:

- in his/her own name (*if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator<sup>14</sup>*)
- or
- representing (*if the economic operator is a legal person*)

official name in full (*only for legal person*):

official legal form (*only for legal person*):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents / he/she:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;

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<sup>14</sup> To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

- e) has not 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) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

- g) they have no 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;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract;
- k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete;
- l) that in case of award of contract, they shall provide upon request the evidence that they are not in any of the situations described in points a, b, d, e above.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not 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.]

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature



**ANNEX 5**  
**POWER OF ATTORNEY**

**mandating one of the partners in a joint tender as lead partner and lead contractor** <sup>15</sup>

The undersigned:

Signatory (Name, Function, Company, Registered address, VAT Number)

having the legal capacity required to act on behalf of his/her company,

HEREBY AGREES TO THE FOLLOWING:

- 1) To submit a tender as a partner in the group of partners constituted by Company 1, Company 2, Company N, and led by Company X, in accordance with the conditions specified in the tender specifications and the terms specified in the tender to which this power of attorney is attached.
- 2) If the European Commission awards the Contract to the group of partners constituted by Company 1, Company 2, Company N, and led by Company X on the basis of the joint tender to which this power of attorney is attached, all the partners shall be co-signatories of the Contract in accordance with the following conditions:
  - (a) All partners shall be jointly and severally liable towards the European Commission for the performance of the Contract.
  - (b) All partners shall comply with the terms and conditions of the Contract and ensure the proper delivery of their respective share of the services and/or supplies subject to the Contract.
- 1) Payments by the European Commission related to the services and/or supplies subject to the Contract shall be made through the lead partner's bank account: Provide details on bank address, account number.
- 2) The partners grant to the lead partner all the necessary powers to act on their behalf in the submission of the tender and conclusion of the Contract, including:
  - (a) The lead partner shall submit the tender on behalf of the group of partners.
  - (b) The lead partner shall sign any contractual documents — including the Contract, and Amendments thereto — and issue any invoices related to the Services on behalf of the group of partners.
  - (c) The lead partner shall act as a single contact point with the European Commission in the delivery of the services and/or supplies subject to the Contract. It shall co-ordinate the delivery of the services and/or supplies by the group of partners to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present power of attorney shall be subject to the European Commission's express approval. This power of attorney shall expire when all the contractual obligations of the group of partners towards the European Commission for the delivery of the services and/or supplies subject to the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in ..... on dd/mm/yyyy

Place and date:

Name (in capital letters), function, company and signature:

<sup>15</sup> To be filled in and signed by each of the partners in a joint tender, except the lead partner;

**ANNEX 6**  
**DRAFT CONTRACT**



**EUROPEAN COMMISSION**  
**DIRECTORATE-GENERAL FOR ENERGY**

Directorate C - Renewables, Research and Innovation, Energy Efficiency  
Unit C.1 - Renewables and CCS policy

**DRAFT FRAMEWORK SERVICE CONTRACT**

CONTRACT NUMBER – ENER/C1/426-2012 – SIx.xxxxxx

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Ms Marie Donnelly, Director in the Directorate-General for Energy, Directorate C - Renewables, Research and Innovation, Energy Efficiency

of the one part,

and

**official name in full**

**official legal form** [(Delete if contractor is a natural person or a body governed by public law.)]

**statutory registration number** [(Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.)]

**official address in full**

**VAT registration number**

(hereinafter referred to as "the Contractor"), [represented for the purposes of the signature of this contract by **forename, surname and function**]

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract.]  
of the other part,

HAVE AGREED

the **Special Conditions** and the following Annexes and Specific Contract:

**Annex I – (A) General Conditions**

**(B) Model Specific Contract**

**Annex II – Tender Specifications (Invitation to Tender No ENER/C1/426-2012 of [insert date])**

**Annex III – Contractor's Tender (No [complete] of [insert date])**

**Annex IV - Daily allowances**

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 model order form and model specific contract (Annex I)
- The terms set out in the model order form and model specific contract (Annex I) shall take precedence over those in the other Annexes.
- The terms set out in the Tender Specifications (Annex II) shall take precedence over those in the Tender (Annex III).
- The terms set out in the Contract shall take precedence over those in the order forms and specific contracts.
- The terms set out in the specific contracts shall take precedence over those in the Requests for Services.
- The terms set out in the Requests for Services shall take precedence over those in the specific tenders.

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 to assist the Commission in assessing voluntary schemes and international agreements covering EU sustainability criteria as well as lists of areas drawn up by intergovernmental organisations or the International Union for the Conservation of Nature for the purpose of protecting rare, endangered or threatened ecosystems or species.
- I.1.2** Signature of the Contract imposes no obligation on the Commission to purchase. Only implementation of the Contract through order forms and specific contracts is binding on the Commission.
- I.1.3** Once implementation of the Contract has commenced, the Contractor shall provide the services in accordance with all terms and conditions of the Contract;

### **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 form 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 order forms or specific contracts shall be returned signed before the Contract to which they refer expires.  
  
The Contract shall continue to apply to such order forms and specific contracts after its expiry. They shall be executed no later than 3 months after the respective expiry date.
- I.2.5** The Contract shall be renewed automatically up to 2 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 –CONTRACT PRICES**

#### **I.3.1**

The price of services, whatever its nature, shall be calculated on the basis of a maximum fee rate of EUR xxx per person-day. The price indicated in the specific contract or order form covers any fees payable to the Contractor in relation to the vesting of rights in the Union and where applicable the transfer of rights to the Union and any use of the results by the Commission.

The maximum amount of the Contract shall be EUR xxx.xxx (*xxx thousand euros*).

**I.3.2** Prices shall be expressed in EUR.

**I.3.3** Not applicable

**I.3.4.** In addition to the total price specified in each specific contract, travel, subsistence and shipment expenses shall be reimbursed in accordance with Article II.18, as shall other expenses provided for by the Tender Specifications up to a maximum amount of EUR 25.000 (*twenty five thousand euros*) throughout implementation of the Contract and up to a maximum amount of EUR 7.000 (*seven thousand euros*) for each specific contract. The daily subsistence allowance referred to in Article II.18.4 (d) shall be the sum of the daily allowances' rate and the reimbursable accommodation expenses determined in accordance with Annex IV.

## **ARTICLE I.4 – PAYMENTS AND IMPLEMENTATION OF THE CONTRACT**

### **I.4.1 Single framework contract**

Within 10 working days of a request for services being sent by the Commission to the Contractor, the Commission shall receive a specific tender back, duly signed and dated.

Within 10 working days of a specific contract being sent by the Commission to the Contractor, the Commission shall receive it back, duly signed and dated.

The period allowed for the execution of the tasks shall start to run on the date indicated in the specific contract.

### **I.4.2 Interim payment**

The Contractor shall submit an admissible invoice, indicating the reference number of the Contract and of the order form or specific contract to which it refers, for an interim payment equal to 50 % of the total price referred to in the relevant specific contract.

Invoices for interim payment shall be admissible if accompanied by a progress report in accordance with the instructions laid down in the relevant specific contract.

The Commission shall have forty-five days from receipt to approve or reject the progress report, and the Contractor shall have twenty days in which to submit additional information or a new progress report.

Provided the progress report has been approved, the Commission shall have thirty days from receipt of the invoice to pay the interim payment.

### **I.4.3 Payment of the balance**

Within sixty days of completion of the tasks referred to in each order form or specific contract, the Contractor shall submit an admissible invoice, indicating the reference number of the Contract and of the order form or specific contract to which it refers, for payment of the balance.

The invoice shall be admissible if accompanied by the final methodology or assessment report(s) in accordance with the instructions laid down in the relevant specific contract and statements of reimbursable expenses in accordance with Article II.18.

The Commission shall have forty-five days from receipt to approve or reject the final methodology or assessment report(s), and the Contractor shall have 20 days in which to submit additional information or a new final methodology or assessment report(s).

Provided the final methodology or assessment report(s) has been approved, the Commission shall have thirty days from the date of receipt of the relevant invoice to pay the balance.

## **ARTICLE I.5 – BANK ACCOUNT**

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

Name of bank: xxxxxxxxxxxxxxxxxxxxxxxxxxxx  
Address of branch in full: xxxxxxxxxxxxxxxxxxxx  
Exact designation of account holder: xxxxxxxxxxxxxxxxxxxx  
Full account number including codes: xxxxxxxxxxxxxxxxxxxx  
IBAN code: xxxxxxxxxxxxxxxxxxxxxxxxxxxx

## **ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS**

Any communication relating to the Contract or to its implementation shall be made in writing in paper or electronic format and shall bear the Contract and order or specific contract numbers. 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.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

### Commission:

European Commission  
Directorate-General for Energy  
Directorate C - Renewables, Research and Innovation, Energy Efficiency  
Unit C1 Renewables and CCS policy  
1049 Brussels

### Contractor:

Mr/Mrs/Ms [*complete*]  
[*Function*]  
[*Company name*]  
[*Official address in full*]

## **ARTICLE I.7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- I.7.1** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Belgium
- I.7.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Belgium

## **ARTICLE I.8 – DATA PROTECTION**

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

## **ARTICLE I.9 - USE OF THE RESULTS**

### **I.9.1 Modes of exploitation**

All studies/analysis/elaborations/thesis/materials/reports, scientific work, computations, documented data, database format and data produced within this Contract and for which the rights vest in the Union and thereby the Union has acquired the ownership in accordance with Article II.10 may be used in the following way:

- i) distribution:
  - publishing in paper copies
  - publishing in electronic form as downloadable/non-downloadable file
  - making available on internet
  - public presentation or display
  - communication through a press information services,
  - inclusion in widely accessible databases or indexes
  - in any form and by any method existing at this date and in the future
  - giving access on individual requests without right to reproduce or exploit, as provided for by Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents
- ii) storage:
  - in paper format
  - in electronic format
- iii) archiving in line with the applicable document management rules
- iv) modifications made by the Commission or by a third party:
  - shortening
  - making a summary
  - modification of the content
  - technical changes to the content:
    - necessary correction of technical errors
  - addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.,
  - preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
  - extracting a part or dividing into parts
  - use of a concept or preparation of a derivate work
  - digitisation or converting the format for storage or usage purposes
  - translate
- v) language versions:
  - working languages of EC
  - official languages of EU

- languages used within EU
  - languages of candidate countries
- vi) use for own purposes:
- making available to the staff of the Commission
  - making available to the persons and entities working for the Commission or cooperating with it, including: contractors, subcontractors whether legal or natural persons, EU-institutions, agencies and bodies, Member States institutions
  - installing, uploading, processing
  - arranging, compiling, combining, retrieving
  - making a copy, reproducing
- vii) allow use of results by third parties:
- for commercial or non commercial purposes,
  - against payment, without payment or against fulfilment of other conditions
  - assignment in full or in part
  - giving a licence
  - for a particular period or unlimited in time

Where the Commission becomes aware that scope of modifications exceeds the scope envisaged in the Contract the creator shall be consulted. The creator will be obliged to provide his response within two weeks. He shall provide his agreement including any suggestions of modifications free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

### **I.9.2 Pre-existing rights, intermediaries, creators' rights**

Where industrial and intellectual property rights, including rights of ownership and use of the Contractor and third parties, exist prior to the Contract being entered into, ("pre-existing rights") the Contractor shall establish a list which shall specify all pre-existing rights and disclose it to the Commission at the latest when delivering a final result.

All pre-existing rights to delivered results shall vest in the Union and thereby under the terms of the Contract be effectively transferred to the Union, as provided for in Article I.9.1.

The Contractor shall present relevant and exhaustive proofs of acquiring all necessary rights together with presentation of relevant result. The latter should be fulfilled by presentation of the contractors', all subcontractors' intermediating in the transfer of rights and creators' statements prepared in accordance with annex A1 and the following information and documents:

- Name and version number of the software product
- Title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify origin easily
- Full identity of the author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer
- Copy of the licence to use the product or reference to it
- Agreement transferring the right to the product to the Contractor

In case parts of the results were created by employees of the Contractor, documentary evidence shall be provided as to how the creators' or authors' rights were transferred to the Contractor, i.e. a copy of the relevant agreement or extract from the employment contract should be provided.

### **I.9.3 Partial vesting of rights (pre-existing or not pre-existing)**

In case the partial vesting of particular rights to the results was envisaged in the tender specification and the offer, the Contractor shall list precisely at the moment of delivery of the final report at the



latest all materials, information, IT tools, methodology and any other results or parts of the result to which third persons have rights, even if originally owned by the Contractor, or for which the right is not to be unconditionally given to the Union. For every listed item the Contractor shall describe precisely the scope of pre-existing rights and not pre-existing rights and the scope and the way, direct or indirect, of the partial vesting and thereby the effective transfer of rights to the Union.

The information obligation refers also to the intention of using any listed item referred to in the first paragraph for which the rights are already entirely or partially owned by the Union. This obligation is in addition to the duty to disclose pre-existing rights referred in Article I.9.2.

#### **ARTICLE I.10 – TERMINATION BY EITHER CONTRACTING PARTY**

Not applicable

#### **ARTICLE I.11 – CONTRACT CONCLUDED DURING STANDSTILL PERIOD**

In case this Contract was signed by both the Commission and the Contractor before the expiry of 14 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

This article is not applicable for contracts not covered by Directive 2004/18/EC and in cases indicated in Article 158a(2) of the rules for the implementation of the Financial regulation (Regulation No2342/2002).

#### **ARTICLE I.12 – INTER-INSTITUTIONAL CONTRACT**

Not applicable

#### **SIGNATURES**

For the Contractor,

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

For the Commission,

Marie C. Donnelly, Director

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done at [Brussels], [date]

Done at Brussels, [date]

In duplicate in English.

## ANNEX I(A)

### **II – GENERAL CONDITIONS FOR SERVICE FRAMEWORK CONTRACTS**

#### **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 has 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 executes 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 hampers 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 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.12.

## **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.6 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees; the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- 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 – CONFIDENTIALITY**

**II.4.1.** 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.4.2.** 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.5 - DATA PROTECTION**

**II.5.1** 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.5.2** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**II.5.3** 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.5.4** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

**II.5.5** 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 use 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.

## **ARTICLE II. 6 – SUBCONTRACTING**

**II.6.1** 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.6.2** 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.6.3** 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.20.

## **ARTICLE II. 7 – AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties. An order form or a specific contract may not be deemed to constitute an amendment to the Contract.

## **ARTICLE II. 8 – ASSIGNMENT**

**II.8.1** 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.8.2** In the absence of such authorisation, 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.9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT**

- II.9.1** 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 the Contract, in particular the identity of the Contractor, the subject matter, the duration and the amount paid. Where personal data is concerned, Article I.8 and II.5 shall apply.
- II.9.2** 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 distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.
- II.9.3** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by the Contractor shall require prior written authorisation from the Commission and, if so requested, shall mention that it was produced within a contract with the Commission. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.
- II.9.4** 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. 10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY**

- II.10.1** A result shall be any outcome of the implementation of the Contract and provided as such by the Contractor.

A creator shall be any person who contributed to production of the result.

Pre-existing intellectual property rights, sometimes referred to as background technology, are any industrial and intellectual property rights which exist prior to the contract being entered into and include rights of ownership and use of the Contractor, the Commission and any third parties ("pre-existing rights").

It shall be a material term of the Contract and of the essence of the Contract that Contractors shall be under a duty to provide a list of pre-existing rights at the date of delivery of the final result the latest.

- II.10.2** The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the Contract, shall be irrevocably and fully vested to the Union, which may use them as described in the Contract. All the rights shall be vested on the Union from the moment the results were delivered and accepted by the Commission.

For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the Contractor to the Union.

The payment of the fee under Article I.3 is deemed to include all forms of use by the Union of the results as set out in Article I.9.

The above vesting of rights in the Union under this Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.

- II.10.3** Any intermediary sub-result, raw data, intermediary analysis made available to the Commission by the Contractor cannot be used by the Union without written consent of the Contractor, unless the tender specification explicitly provides for it to be treated as self-contained result.
- II.10.4** The Contractor retains all right, title and interest in pre-existing rights not fully vested into the Union in line with Article I.9.2, and hereby grants the Union for the requested period a licence to use the pre-existing rights to the extent necessary to use the delivered results.
- II.10.5** The Contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the Commission. This does not concern the moral rights of natural persons and rights referred to in Article II.10.4.
- II.10.6** The Contractor shall clearly point out all quotations of existing textual works made by the Contractor. The complete reference should include as appropriate: name of the author, title of the work, date of publishing, date of creation, place of publication, address of publication on internet, number, volume and other information allowing to identify the origin easily.
- II.10.7** The Contractor shall clearly indicate all parts to which there are pre-existing rights and all parts of the result originating from external sources: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form).
- For non-textual results or results provided in electronic form only, the description, instruction or information document shall list all parts coming from external sources: IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.
- II.10.8** If the Commission so requires, the Contractor shall provide proof of ownership or rights to use all necessary rights to the materials referred to in Article II.10.7.
- II.10.9.** By delivering the results the Contractor confirms that the creators undertake not to oppose their names being recalled when the results are presented to the public and confirms that the results can be divulged.
- The Contractor shall possess all relevant agreements of the creator and provide proof by way of documentary evidence.
- II.10.10.** By delivering the results the Contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that he possesses the relevant rights or powers to execute the transfer. He also warrants that he has paid or has verified payment of all fees including fees to collecting societies, related to the final results.
- II.10.11.** The Contractor shall indemnify and hold the Union harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the Union's use of the works and in relation to which the Contractor has granted the Union user rights.

## **ARTICLE II. 11 – FORCE MAJEURE**

- II.11.1** 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.11.2** Without prejudice to 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.11.3** 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.11.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **ARTICLE II. 12 – 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 per calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

*V* is the price of the relevant purchase;

*d* is the duration specified in the relevant order form or specific contract expressed in days

The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

## **ARTICLE II. 13 – SUSPENSION OF THE CONTRACT**

Without prejudice to the Commission's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud the Commission may suspend execution of the Contract, pending order forms 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 shall as soon as possible give notice to the Contractor to resume the service suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, of the order forms or specific contracts, or of part thereof.



## **ARTICLE II. 14 – TERMINATION BY THE COMMISSION**

**II.14.1** The Commission may terminate the Contract, a pending order form 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 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 form or a specific contract has not actually commenced within fifteen days<sup>16</sup> 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;
- (l) when due to the termination of the contract with one or more of the contractors there is no minimum required competition within the multiple framework contract with reopening of competition.

**II.14.2** In case of force majeure, notified in accordance with Article II.11, 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.

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<sup>16</sup> This period can be modified in the Special Conditions depending on the nature of the contract.

**II.14.3** Prior to termination under point c), d), e), h) or k), the Contractor shall be given the opportunity to submit his observations.

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

#### **II.14.4 Consequences of termination**

In the event of the Commission terminating the Contract or a pending order form 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 service. 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 it has under the Contract.

### **ARTICLE II.14a – 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. 15 – INVOICING AND PAYMENTS**

#### **II.15.1 Pre-financing guarantee**

Where required by Article I.4 or if the pre-financing is over €150 000, 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) 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 service rendered 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 guarantee shall be retained until the pre-financing has been cleared against interim payments or payment of the balance to the Contractor. It shall be released the following month or, in the absence of such clearing, four months after the issuance of a corresponding debit note. The cost of providing such guarantee shall be borne by the Contractor.

### **II.15.2 Interim payments and payment of the balance**

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

At the end of each of the periods indicated in Annex II the Contractor shall submit to the Commission an invoice accompanied by the documents provided for in the Special Conditions.

If providing a progress 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 progress report.

Approval of the progress report shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information it contains.

Where the Commission requests a new progress 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 progress report shall likewise be subject to the above provisions.

### **II.15.3. Payment currency and costs**

Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the Commission are borne by the Commission,
- cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

## **ARTICLE II. 16 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.16.1** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

**II.16.2** The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Commission may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

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.4 shall begin to run again once the suspension has been lifted.

**II.16.3** 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. 17 – TAXATION**

- II.17.1** 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.17.2** 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.17.3** 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.17.4** 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. 18 - REIMBURSEMENTS**

- II.18.1** Where provided by the Special Conditions or by Annex II, 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.18.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.
- II.18.3** 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 Union territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.
- II.18.4** 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.18.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

**II.18.6.** Conversion between the euro and another currency shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union* of the day on which the expense was made or, failing that, at the monthly accounting rate established by the Commission and published on its website.

## **ARTICLE II. 19 – RECOVERY**

- II.19.1** 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.19.2** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article II.16.3. 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.19.3** The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Union or the European Atomic Energy Community that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

## **ARTICLE II. 20 – CHECKS AND AUDITS**

- II.20.1** 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 Union from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.20.2** 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.20.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance of the last implementation.

## ANNEX I(B)

### SPECIFIC CONTRACT No [complete] implementing Framework Contract No ...

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), represented for the purposes of the signature of this contract by [*forename, surname, function, department*]<sup>17</sup>,

of the one part,

and

[*official name in full*]  
[*official legal form*]<sup>18</sup>  
[*statutory registration number*]<sup>19</sup>  
[*official address in full*]  
[*VAT registration number*]

(hereinafter referred to as "the Contractor"), [represented for the purposes of the signature of this contract by [*forename, surname and function,*]]

[The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract.]

of the other part,

HAVE AGREED

#### **ARTICLE III.1: SUBJECT**

**III.1.1** This specific contract implements Framework Contract No [complete] signed by the Commission and the Contractor on [complete date] [and renewed on [complete date].

**III.1.2** The subject of this specific contract is [short description of subject]. [This specific contract relates to lot [complete] of the Framework Contract.]

**III.1.3** The Contractor undertakes, on the terms set out in the Framework Contract and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the following tasks [:] [specified in Annex [complete].]

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<sup>17</sup> The Commission official must be an authorising officer (by delegation or subdelegation) designated in accordance with Note No 60008 of 22 February 2001 "Mise en place de la Charte des ordonnateurs".

<sup>18</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>19</sup> Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

## **ARTICLE III.2: DURATION**

**III.2.1** This specific contract shall enter into force [on the date on which it is signed by the last contracting party] [on *[insert date]* if it has already been signed by both contracting parties].

**III.2.2** The duration of the execution of the tasks shall not exceed *[complete]* [days/months]. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from [the date of entry into force of this specific contract] *[insert date]*. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

## **ARTICLE III.3: PRICE**

**III.3.1** The total price to be paid by the Commission under this specific contract shall be EUR *[amount in figures and in words]* covering all tasks executed.

This price also covers any fees payable to the Contractor in relation to the vesting of rights in the Union and where applicable the transfer of rights to the Union and any use of the results by the Commission.

**III.3.2** In addition to the price [no reimbursable expenses are foreseen.] [expenses up to the amount of EUR *[amount in figures and in words]* will be reimbursed according to the provisions of the Framework contract].

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[For Contractors established in Belgium, the provisions of this specific contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)” or an equivalent statement in the Dutch or German language.]

## **ARTICLE III.4: PERFORMANCE GUARANTEE**

Not applicable

## **ARTICLE III.5: USE OF RESULTS**

Not applicable

**ANNEXES**

**Annex A1** - Statement of Contractor concerning right to delivered result

**Annex A2** – not applicable

**Annex B** – Request for service

**Annex C** - Contractor's Specific Tender of [*insert date*]

**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 A1**

### **Statement of Contractor concerning right to delivered result**

I, *[insert name of the authorised representative of the Contractor]* representing *[insert name of the Contractor]*, party to the Contract *[insert title and/or number of the contract]* warrants that the Contractor holds full right to the delivered *[insert title and/or description of result]* which is free of any claims, including claim of the creators who transferred all their rights and were fully paid.

Date, place, signature

## ANNEX II

Tender specifications (Invitations to Tender No ENER/C1/426-2012 of [*insert date*])

## ANNEX III

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

## ANNEX IV

### Daily allowances for the Member States of the European Union:

DESTINATION		Indemnité Journalière en EUR	Plafond des frais d'hébergement (hôtel) en EUR
FR	EN	Daily allowance in EUR	Maximum hotel price in EUR
Allemagne	Germany	93	115
Autriche	Austria	95	130
Belgique	Belgium	92	140
Bulgarie	Bulgaria	58	169
Chypre	Cyprus	93	145
Danemark	Denmark	120	150
Espagne	Spain	87	125
Estonie	Estonia	71	110
Finlande	Finland	104	140
France	France	95	150
Grèce	Greece	82	140
Hongrie	Hungary	72	150
Irlande	Ireland	104	150
Italie	Italy	95	135
Lettonie	Latvia	66	145
Lituanie	Lithuania	68	115
Luxembourg	Luxembourg	92	145
Malte	Malta	90	115
Pays-Bas	Netherlands	93	170
Pologne	Poland	72	145
Portugal	Portugal	84	120
République tchèque	Czech Republic	75	155
Roumanie	Romania	52	170
Royaume-Uni	United Kingdom	101	175
Slovaquie	Slovakia	80	125
Slovénie	Slovenia	70	110
Suède	Sweden	97	160

**Daily subsistence allowances for countries outside the European Union (in Euro)**

DESTINATION		Indemnité Journalière	Plafond Hôtel
FR	EN	Daily allowance €	Maximum hotel price €
Afghanistan	Afghanistan	50	75
Afrique du Sud	South Africa	50	145
Albanie	Albania	50	160
Algérie	Algeria	85	85
Andorre*	Andorra*	68,89	126,57
Angola	Angola	105	175
Anguilla	Anguilla	75	140
Antigua et Barbuda	Antigua and Barbuda	85	140
Antilles néerlandaises	Netherlands Antilles	90	185
Arabie Saoudite	Saudi Arabia	85	195
Argentine	Argentina	75	210
Arménie	Armenia	70	210
Aruba	Aruba	80	185
Australie	Australia	75	135
Azerbaïdjan	Azerbaijan	70	200
Bahamas	Bahamas	75	115
Bahreïn	Bahrain	80	195
Bangladesh	Bangladesh	50	140
Barbade	Barbados	75	140
Belarus	Belarus	90	135
Belize	Belize	50	135
Bénin	Benin	50	100
Bermudes	Bermuda	70	140
Bhoutan	Bhutan	50	130
Bolivie	Bolivia	50	100
Bonaire	Bonaire	90	185
Bosnie Herzégovine	Bosnia and Herzegovina	65	135
Botswana	Botswana	50	135
Brésil	Brazil	65	180
Brunei	Brunei	60	165
Burkina Faso	Burkina Faso	55	90
Burundi	Burundi	50	115

Caïmans, îles	Cayman Islands	60	135
Cambodge	Cambodia	50	115
Cameroun	Cameroon	55	105
Canada	Canada	65	165
Cap-Vert	Cape Verde	50	75
Centrafricaine, Rép	Central African Republic	60	80
Chili	Chile	70	175
Chine	China	55	155
Chypre	Cyprus	50	110
Cisjordanie et Bande de Gaza	West Bank and Gaza Strip	60	110
Colombie	Colombia	50	120
Comores	Comoros	50	85
Congo (Rép. Dém. du)	Congo, Dem. Rep.	105	140
Congo (Rép. du)	Congo	70	115
Cook, îles	Cook Islands	50	135
Corée (Nord), R.P.D.	D.P.R of Korea	50	180
Corée (Sud), Rép. de	Republic of Korea	100	200
Costa Rica	Costa Rica	50	140
Côte d'Ivoire	Côte d'Ivoire	60	130
Croatie	Croatia	60	120
Cuba	Cuba	75	150
Djibouti	Djibouti	65	170
Dominicaine, Rép.	Dominican Republic	60	170
Dominique	Dominica	75	140
Egypte	Egypt	65	140
El Salvador	El Salvador	55	125
Emirats arabes Unis	United Arab Emirates	70	195
Equateur	Ecuador	50	140
Erythrée	Eritrea	50	80
Estonie	Estonia	70	120
Etats-Unis d'Amérique (Autres)	USA (others)	80	200
Etats-Unis d'Amérique (New York)	USA (New York)	100	275
Ethiopie	Ethiopia	50	145
Fidji	Fiji	50	120

Gabon	Gabon	75	115
Gambie	Gambia	50	120
Géorgie	Georgia	80	215
Ghana	Ghana	70	140
Grenade	Grenada	75	140
Guadeloupe	Guadeloupe	65	115
Guam	Guam	60	135
Guatemala	Guatemala	50	125
Guinée équatoriale	Equatorial Guinea	60	85
Guinée, Rép. de	Guinea	50	135
Guinée-Bissau	Guinea-Bissau	50	90
Guyane	Guyana	50	160
Guyane Française	French Guiana	55	140
Haïti	Haiti	65	125
Honduras	Honduras	50	125
Hong Kong	Hong Kong	60	205
Inde	India	50	195
Indonésie	Indonesia	50	145
Indonésie - Timor oriental	Indonesia - East Timor	50	110
Iran, Rép islam	Iran	55	145
Iraq	Iraq	60	85
Islande	Iceland	85	160
Israël	Israel	105	210
Jamaïque	Jamaica	60	170
Japon	Japan	130	275
Jordanie	Jordan	60	135
Kazakhstan	Kazakhstan	70	175
Kenya	Kenya	60	165
Kirghizistan	Kyrgyzstan	75	180
Kiribati	Kiribati	60	145
Koweït	Kuwait	85	195
Laos	Lao, People's Dem. Rep.	50	145
Lesotho	Lesotho	50	100
Liban	Lebanon	70	190
Liberia	Liberia	85	150
Libye, Jamahiriya ar.	Libyan Arab Jamahiriya	50	175
Liechtenstein	Liechtenstein	80	95
Macao	Macao	55	95
Macédoine (ARY)	TFYR of Macedonia	50	160

Madagascar	Madagascar	50	105
Malaisie	Malaysia	50	200
Malawi	Malawi	50	165
Maldives	Maldives	50	135
Mali	Mali	60	95
Mariannes du Nord, îles	Northern Mariana Islands	70	135
Maroc	Morocco	75	130
Marshall, îles	Marshall Islands	50	135
Martinique	Martinique	70	110
Maurice, Rép.	Mauritius	60	140
Mauritanie	Mauritania	50	75
Mayotte	Mayotte	50	110
Mexique	Mexico	70	185
Micronésie	Micronesia	55	135
Moldova	Republic of Moldova	80	170
Monaco*	Monaco*	72,58	97,27
Mongolie	Mongolia	70	90
Montserrat	Montserrat	55	140
Mozambique	Mozambique	60	140
Myanmar	Myanmar	50	75
Namibie	Namibia	50	85
Nauru	Nauru	50	135
Népal	Nepal	50	135
Nicaragua	Nicaragua	50	135
Niger	Niger	50	75
Nigeria	Nigeria	50	185
Niue	Niue	50	135
Norvège	Norway	80	140
Nouvelle-Calédonie	New Caledonia	55	135
Nouvelle-Zélande	New Zealand	60	125
Oman	Oman	70	135
Ouganda	Uganda	55	180
Ouzbékistan	Uzbekistan	75	155
Pakistan	Pakistan	50	130
Palau	Palau, Republic of	50	135
Panama	Panama	50	160
Papouasie Nouvelle Guinée	Papua New Guinea	55	135
Paraguay	Paraguay	50	140
Pérou	Peru	75	135



Philippines	Philippines	60	150
Polynésie française	French Polynesia	60	135
Puerto Rico	Puerto Rico	65	140
Qatar	Qatar	65	135
Réunion	Reunion	60	90
Russie	Russian Federation	90	275
Rwanda	Rwanda	65	160
Saint Kitts et Nevis	Saint Kitts and Nevis	85	185
Sainte-Lucie	Saint Lucia	75	140
Saint Marin*	San Marino*	60,34	114,33
Saint-Vincent et les Grenadines	St. Vincent and the Grena.	75	190
Salomon, îles	Solomon Islands	50	120
Samoa	Samoa	50	135
Samoa Américaines	American Samoa	70	135
São Tome et Principe	Sao Tome & Principe	60	95
Sénégal	Senegal	65	135
Seychelles	Seychelles	85	140
Sierra Leone	Sierra Leone	55	135
Singapour	Singapore	75	150
Somalie	Somalia	50	125
Soudan	Sudan	55	215
Sri Lanka	Sri Lanka	50	105
St Marteen	St Marteen	90	185
Suisse	Switzerland	80	140
Suriname	Suriname	55	125
Swaziland	Swaziland	50	90
Syrie	Syrian Arab Republic	80	145
Tadjikistan	Tajikistan	75	110
Taiwan, Prov de Chine	Taiwan	55	200
Tanzanie	Tanzania, United Rep. of	50	200
Tchad	Chad	65	145
Thaïlande	Thailand	60	145
Timor oriental	East Timor	50	110
Togo	Togo	60	95
Tokelau, îles	Tokelau Islands	50	135
Tonga	Tonga	50	105

Trinité et Tobago	Trinidad and Tobago	60	115
Tunisie	Tunisia	60	85
Turkménistan	Turkmenistan	80	150
Turks et Caicos, îles	Turks and Caicos Island	55	135
Turquie	Turkey	55	165
Tuvalu	Tuvalu	50	135
Ukraine	Ukraine	80	190
Uruguay	Uruguay	55	160
Vanuatu	Vanuatu	60	110
Vatican*	Vatican*	60,34	114,33
Venezuela	Venezuela	85	125
Vierges, îles (Etats-Unis)	Virgin Islands (USA)	55	140
Vierges, îles (Grande-Bretagne)	Virgin Islands (UK)	75	140
Viêt-Nam	Viet Nam	50	205
Wallis et Futuna îles	Wallis & Futuna Islands	50	135
Yémen	Republic of Yemen	60	165
Yougoslavie, Rép. Féd. (Serbie et Monténégro)	Yugoslavia	80	140
Zambie	Zambia	50	135
Zimbabwe	Zimbabwe	50	115
<b>Autres pays</b>	<b>Other country</b>	60	145

\* rallié géographiquement aux pays correspondants :  
geographically linked to the following countries:

- Andorre/Andorra : Espagne/Spain
- Monaco : France
- Saint Marin/San Marino : Italie/Italy
- Vatican : Italie/Italy

### Calcul

Le calcul des **Indemnités journalières (I J)** se fait selon les règles suivantes:

Durée du déplacement:

- inférieure ou égale à 6 heures: frais réels (sur présentation des pièces justificatives).
- plus de 6 heures à 12 heures inclus: 0,5 I J.
- plus de 12 heures à 24 heures inclus: 1 I J.
- plus de 24 heures à 36 heures inclus: 1,5 I J.
- plus de 36 heures à 48 heures inclus: 2 I J.
- plus de 48 heures à 60 heures inclus: 2,5 I J, etc....

## **Calculation**

Daily subsistence allowances are to be calculated as follows:

Length of mission:

- six hours or less: reimbursement of actual expenses (on production of supporting documents);
- more than six hours but not more than twelve hours: half the daily allowance;
- more than twelve hours, but not more than twenty-four hours: the daily allowance;
- more than twenty-four hours but not more than thirty-six hours: one and a half times the daily allowance;
- more than thirty-six hours but not more than forty-eight hours: twice the daily allowance;
- more than forty-eight hours but not more than sixty hours: two and a half times the daily allowance, and so on.