

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

DIRECTORATE E - Nuclear Safeguards

The Director

Luxembourg, **29 AVR. 2013**
 DG ENER.E1/SP-mf/2013/ARES

Subject: Invitation to tender ENER/E1/2013-42-4 for a framework supply contract regarding the design and delivery of long-life UPS battery replacement kits mechanically and electrically compatible with the original ones manufactured by APC

Dear Sir/Madam

1. The European Commission is planning to award the public contract referred to above. Please find enclosed the related tender specification listing all the documents that must be produced in order to submit a tender, and the draft contract.
2. If you are interested in this contract, you should submit a tender in one original and two copies in one of the official languages of the European Union. A copy of the offer on a CD/DVD/USB stick has also to be submitted.
3. Tenderers shall submit tenders by letter:
 - a) either by post or by courier not later than 10/06/2013, 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 address indicated below.
 - b) or delivered by hand not later than 16.00 on 10/06/2013 to the address indicated below. 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 08.30 to 17.30 Monday to Thursday, and from 08.30 to 16.30 on Fridays. It is closed on Saturdays, Sundays and Commission holidays.

By post:

CALL FOR TENDERS
 ENER/E1/2013-42-4
 European Commission
 Directorate-Energy
 Direction E – Nuclear Safeguards
 Complexe Euroforum
 For the attention of Mr Boella/Mr Stamatopol
 EUFO 3485
 1, rue Henry M. Schnadt
 Zone d'activités Cloche d'Or
 L-2530 Luxembourg

By courier or by hand:

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 L-2530 Luxembourg

Tenders must be placed inside two sealed envelopes. **The inner envelope, addressed as indicated above, should be marked as follows: "CALL FOR TENDERS – NOT TO BE OPENED BY THE INTERNAL MAIL DEPARTMENT "**. If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

The inner envelope must also contain two sealed envelopes, one containing the technical tender and the other the financial tender. Each of these envelopes must clearly indicate the content ("Technical" and "Financial").

For your bid to be found admissible the confidentiality thereof must have been ensured and the deadline for the submission of the bids met.

4. Tenders will be opened at 14:00 on 17/06/2013 at Complexe Euroforum, 1 rue Henry M. Schnadt, Zone d'activités Cloche d'Or, L-2530, Luxembourg (Directorate- General for Energy).
Tenderers may attend the meeting but 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. Tenders must be:
 - signed by a duly authorised representative of the tenderer. The original signature of the single tenderer's or lead partner's authorised representative (preferably in blue ink) on the identification form (Annex 1 of the technical specifications) 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;
 - perfectly legible so that there can be no doubt as to words and figures;
6. The period of validity of the tender, during which tenderers may not modify the terms of their tenders in any respect, is six months from the final date for submission.
7. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the tender specification and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. Submission of a tender is binding on the tenderer to whom the contract is awarded for the duration of the contract.
8. All costs incurred during the preparation and submission of tenders are to be borne by the tenderers and will not be reimbursed.
9. Contacts between the contracting authority and tenderers are prohibited throughout the procedure save in exceptional circumstances and under the following conditions only:
 - Before the final date for submission of tenders:
 - * At the request of the tenderer, the contracting authority may provide additional information solely for the purpose of clarifying the nature of the contract.

Any requests for additional information must be made in writing only to sorin.pirvulet@ec.europa.eu and ENER-E1-CFT@ec.europa.eu.

Requests for additional information received less than five working days before the final 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 clerical error in the text of the call for tenders.
- * Any additional information including that referred to above will be posted on http://ec.europa.eu/dgs/energy/tenders/index_en.htm and sent simultaneously to all candidates invited to tender. The website will be updated regularly and it is the tenderers' responsibility to check for updates and modifications during the tendering period

- After the opening of tenders

- * If clarification is required or if obvious clerical errors in the tender need to be corrected, the contracting authority may contact the tenderer provided the terms of the tender are not modified as a result.
 - * The contracting authority may negotiate with tenderers the tenders they have submitted, in order to adapt them to the requirements set out in the contract notice, tender specifications or any additional document and in order to find the tender offering best value for money. During negotiations equal treatment of all tenderers will be ensured.
10. This invitation to tender is in no way binding on the Commission. The Commission's contractual obligation commences only upon signature of the contract with the successful tenderer.
 11. Up to the point of signature, the contracting authority may either abandon the procurement or cancel the award procedure, without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated and the candidates or tenderers notified.
 12. Once the Commission has opened the tender, the document shall become the property of the Commission and it shall be treated confidentially.
 13. You will be informed of the outcome of this procurement procedure.
 14. 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 SRD in ENER/MOVE. Details concerning the processing of your personal data are available on the privacy statement at: http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf.

15. Your personal data 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/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm),
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/explained/management/protecting/protect_en.cfm#BDCE)



P. Szymanski
Director



**EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY**

DIRECTORATE E - Nuclear Safeguards

The Director

CALL FOR TENDERS

ENER/E1/2013-42-4

Framework supply contract regarding the design and delivery of long-life UPS battery replacement kits mechanically and electrically compatible with the original ones manufactured by APC

TENDER SPECIFICATIONS

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1. INFORMATION ON TENDERING

1.1. Participation

The invitation was sent to 3 candidates but participation in this tender procedure 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 on the conditions laid down in that agreement. Where the Multilateral Agreement on Government Procurement¹ concluded within the WTO applies, the participation to the call for tender is also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down.

1.2. Contractual conditions

The tenderer should bear in mind the contract provisions which specify the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

1.3. Subcontracting

Subcontracting is permitted in the tender but the contractor will retain full liability towards the Contracting Authority for performance of the contract as a whole.

Tenderers must give an indication of the part of the services and proportion of the contract that they intend to subcontract.

Tenderers are required to identify subcontractors whose share of the contract is above 20%.

During contract execution, the change of any subcontractor identified in the tender will be subject to prior written approval of the Contracting Authority.

1.4. Content of the tender

The tenders must be presented as follows:

Part A: Identification of the tenderer (see section 1.5)

Part B: Evidence for exclusion criteria (see section 2.2)

Part C: Evidence for selection criteria (see section 2.3)

Part D: Technical offer (see section 2.5)

Part E: Financial offer (see section 2.6)

¹ See http://www.wto.org/english/tratop E/gproc e/gp_gpa e.htm

Part F: Power of attorney (for consortia only)

1.5. Identification of the tenderer: legal capacity and status

- The tenderer identification form in **Annex 1** shall be filled in and signed by:
 - The tenderer
 - subcontractor(s) whose share of the work represent more than 20% of the contract.
- In order to prove their legal capacity and their status, all tenderers must provide a signed **Legal Entity Form with its supporting evidence**. The form is available on:
http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

Tenderers that are already registered in the Contracting Authority's accounting system (i.e. they have already been direct contractors) must provide the form but are not obliged to provide the supporting evidence.

- If it has not been included with the Legal Entity Form, tenderers must provide the following information
 - For legal persons, a legible copy of the notice of appointment of the **persons authorised to represent the tenderer** in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.
 - For natural persons, where applicable, a proof of registration on a professional or trade register or any other official document showing the registration number.
- The tenderer must provide a **Financial Identification Form and supporting documents**. The form is available on:
http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm

2. EVALUATION AND AWARD

2.1. Evaluation steps

The evaluation is based on the information provided in the submitted tender. It takes place in three steps:

- (1) Verification of non-exclusion of tenderers on the basis of the exclusion criteria
- (2) Selection of tenderers on the basis of selection criteria

(3) Evaluation of tenders on the basis of the award criteria (technical and financial evaluation)

Only tenders meeting the requirements of one step will pass on to the next step.

2.2. Exclusion criteria

All tenderers shall provide a declaration on their honour (see Annex 2), duly signed and dated by an authorised representative, stating that they are not in one of the situations of exclusion listed in the Annex 2.

The declaration on honour is also required for identified subcontractors whose intended share of the contract is above 20%.

The successful tenderer shall provide the documents mentioned as supporting evidence in Annex 2 before signature of the contract and within a deadline given by the contracting authority.

2.3. Selection criteria

Tenderers must prove their economic, financial, technical and professional capacity to carry out the work subject to this call for tender.

The tenderer may 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.

2.3.1. Economic and financial capacity criteria and evidence

In order to prove their economic and financial capacity, the tenderer (i.e. in case of joint tender, the combined capacity of all members of the consortium) must comply with the following criteria:

- Annual turnover of the last two financial years above € 120000 Euro

The following evidence should be provided:

- Copy of the profit & loss account for the last two years for which accounts have been closed.

If, for some exceptional reason which the Contracting Authority considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Contracting Authority considers appropriate. In any case, the Contracting Authority must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

2.3.2. Technical and professional capacity criteria and evidence

a. Criteria relating to tenderers

Tenderers (in case of a joint tender the combined capacity of all tenderers) must comply with the following criteria:

- The tenderer must prove experience in the field of electrical energy sources with at least 1 project delivered in this field in the last three years.

b. Evidence:

The tenderer confirms it meets the selection criteria specified above by signing the declaration on honour attached to this invitation to tender (Annex 2).

2.4. Award criteria

The tender will be awarded according to the best-value-for -money procedure. The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points.

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

	Criterion	Weighting
1	Design life time Minimum requirement: 10 years = 15 points. 5 points added for every additional year, up to a maximum of 35 points	35
2	Charging/Discharging cycles Minimum requirement: ≤ 150 cycles of 100% discharge = 15 points. 5 points added for every additional 50 cycles, up to a maximum of 35 points	35
3	Rated working temperature Minimum requirement: ≤ 40 °C = 3 points. 3 points added for every additional 5 °C, up to a maximum of 15 points	15
4	Maximum battery discharge current Minimum requirement: 100A= 4 points. 2 points added for every additional 10A, up to a maximum of 10 points	10
5	Weight Minimum requirement: 2,6kg = 2 points. 1 point added for every 100 grams less), up to a maximum of 5 points	5
Total number of points (quality Q)		100

After evaluation of the quality of the tender, the tenders are ranked using the formula below to determine the tender offering best value for money.

$$\text{Score for tender X} = \frac{\text{quality score tender X}}{\text{price of tender X}}$$

Solely for the purpose of the evaluation, to provide an equal basis for the comparison of competing tenders, a fictitious price P will be calculated. For this it will be assumed that various orders are placed and 5, 10 or 20 units are ordered at a time. The price scheme provided by the candidate will serve as the basis for the calculations.

This price P will be calculated as follows:

$$P = (\text{price for 5 units batch} + \text{price for 10 units batch} + \text{price for 20 units batch})/35.$$

2.5. Technical offer

The technical offer must cover all aspects and tasks required in the technical specification and clearly provide all the information needed to apply the award criteria. Offers deviating from the minimum requirements or not covering all requirements will be excluded on the basis of non-conformity with the tender specifications and will not be evaluated.

2.6. Financial offer

The price for the tender must be quoted in euro. Tenderers from countries outside the euro zone have to quote their prices in euro. The price quoted may not be revised in line with exchange rate movements. It is for the tenderer to assume the risks or the benefits deriving from any variation.

Prices must be quoted free of all duties, taxes and other charges, including VAT, as the European Union is exempt from such charges under Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union. The amount of VAT may be shown separately.

The quoted price must be a fixed amount which includes all charges (including travel and subsistence). Travel and subsistence expenses are not refundable separately.

The tenderer has to provide a price offer per batches of 5, 10 and 20 full kits (including shipment).

The total indicative maximum price of the supplies and services to be acquired under the framework contract is below 60000 Euro.

3. TECHNICAL SPECIFICATIONS

a) OBJECTIVE

The objective of the contract is to design and deliver a maximum of 70 long-life UPS battery replacement full kits mechanically and electrically compatible with the original ones manufactured by APC in batches of 5, 10 or 20 full kits.

Each kit must consist of:

4 individual batteries (see Annex 4, picture 1) ready for use in Smart-UPS XL 1400VA RM 3U 230V (SU1400RMXLIB3U)

and:

8 individual batteries, grouped in 2 assemblies (see Annex 4, pictures 2 and 4) ready for use in Smart-UPS RM 2U XL 24V Battery Pack (SU24R2XLBP)

NOTE: A full kit contains 1 controller kit and 2 battery pack kits (with holders)

REFERENCE INFORMATION

- 1) Original (APC) individual battery unit characteristics: initial current 2.16A max, capacity 7.2Ah, weight 2.58kg (see also Annex 4 picture 2)
- 2) Equivalent battery type: 12V, VRLA, 7.2AH LC-R127R2PG (picture 2)

A) ELECTRICAL REQUIREMENTS

- 1) The wiring must observe the IEE code of colors and the wire path must be secured (glued or other technical solution). The color of the cables and the type of the connectors should be similar to the original ones (see Annex 4 pictures).
- 2) The output connector must be similar to the one used in the original APC battery kit (see Annex 4, pictures 1, 3 and 4).
- 3) The individual battery units must have a rated lifetime of at least **10** years (certified by the manufacturer)
- 4) The kit output voltage must be 24 VDC and the wiring must be performed accordingly (series/parallel combined).
- 5) On the UPS Controller kit each 2 individual batteries in series must be connected to each other via an appropriate fuse similar in capacity to the original one provided by APC (see Annex 4, picture 1)
- 6) It is not compulsory that the batteries are lead-acid type if the alternative type has equal or superior electrical and feasibility characteristics to the original ones.
- 7) The minimum requirement for battery discharge current is 100A
- 8) The minimum number of charging/discharging cycles must be ≤ 150 cycles of 100% discharge

B) MECHANICAL REQUIREMENTS

- 1) The individual battery unit must have the following dimensions: H= 93-95mm, L= 150-152mm, D= 65mm.
- 2) In the Controller kit the individual battery units must be glued (or other technical solution) on the longitudinal side as shown in Annex 4, picture 1.
- 3) In the Battery Pack kit the individual battery units must be mounted (as in picture 4) on a special holder made of light metal which must be sturdy and all surfaces machined to avoid sharp edges (pictures 3&4). Please note that the battery pack contains 2 assemblies with 4 batteries each, therefore 2 holders should be provided.
- 4) The holder mentioned above must observe the dimensions and the design features of the original APC holder (if required by the Contractors will be handed over by Euratom). The weight and maneuverability must be similar or close to the original APC holder. Light metal holders are preferred for their improved performance in heat dissipation. An optimized profile for this purpose would be desirable.
- 5) Each output connector must be equipped with a pull-out rope to enable the quick and safe disconnection of the kit during a replacement procedure.
- 6) A written documentation for the Commission reference should be provided as well as a quality certificate from the manufacturer of the batteries.
- 7) The Commission will provide a used kit for reference if requested.
- 8) The batteries must be designed to withstand during operation a minimum temperature of +40°C.
- 9) The weight of the batteries cannot exceed 2.6kg

LOGISTIC REQUIREMENTS

- 1) The Contractor will deliver the battery kits at
European Commission
Directorate-Energy, Direction E – Nuclear Safeguards
Complexe Euroforum
for the attention of Mr L. Artese/ Mr S. Pirvulet
1, rue Henri M. Schnadt
Zone d'activités Cloche d'Or
L-2530 Luxembourg
- 2) The Commission forecasts the delivery in small batches (5, 10, or 20 full kits). The contractor will deliver the batteries maximum 60 calendar days following the Commission request. A schedule of the delivery may be agreed during the contract but it is not compulsory.

3) The contractor should be responsible for the recycling of the old batteries. If Euratom cannot provide immediately the old batteries in the same quantity as the delivered ones due to various reasons, the Contractor must be ready to accept them at a later date. Euratom may choose that not all the old batteries be recycled by the Contractor.

The duration of the tasks shall not exceed 48 months. This period is calculated in calendar days.

Execution of the tasks begins after the date on which the Contract enters into force.

In principle, the deadlines set out below cannot be extended. The Contractor is deemed solely responsible for delays occasioned by subcontractors or other third parties (except for rare cases of *force majeure*). Adequate resources and appropriate organisation of the work including management of potential delays should be put in place in order to observe the timetable above.

4. ANNEXES

1. Tenderer 's Identification Form
2. Declaration related to the exclusion and selection criteria and absence of conflict of interest
3. Draft Contract or purchase order
4. Technical pictures

ANNEX 1

IDENTIFICATION OF THE TENDERER

(Each service provider , including any member of a consortium or grouping and subcontractor(s) whose share of the work is more than 20% of the contract must complete and sign this identification form)

Call for tender ENER/E1/2013-42-4

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) ²	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	

² For natural persons

Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number: Fax number: E-mail address:	
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 organisation³ I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

³ This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

ANNEX 2

Declaration of honour on exclusion criteria and absence of conflict of interest

(Complete or delete the parts in grey italics in parentheses)
[Choose options for parts in grey between square brackets]

The undersigned (*insert name of the signatory of this form*):

in [his][her] own name (*for a natural person*)

or

representing the following legal person: (*only if the economic operator is a legal person*)

full official name:

official legal form:

full official address:

VAT registration number:

➤ declares that [the above-mentioned legal person][he][she] is not in one of the following situations:

- a) is bankrupt or being wound up, is having its 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) has been convicted of an offence concerning professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- c) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify including by decisions of the European Investment Bank and international organisations;
- d) is not in compliance with 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 performed;
- e) has been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such activity is detrimental to the Union's financial interests;

- f) is a subject of an administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a procurement procedure or failing to supply this information, or having been declared to be in serious breach of its obligations under contracts covered by the Union's budget.
- *(Only for legal persons other than Member States and local authorities, otherwise delete)* declares that the natural persons with power of representation, decision-making or control⁴ over the above-mentioned legal entity are not in the situations referred to in b) and e) above;
 - declares that ~~[the above-mentioned legal person][he][she]~~:
- g) has 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 affinity, family, emotional life or any other shared interest;
- h) 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) 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 award of the contract;
- j) provided accurate, sincere and complete information to the contracting authority within the context of this procurement procedure ;
- acknowledges that ~~[the above-mentioned legal person][he][she]~~ may be subject to administrative and financial penalties⁵ if any of the declarations or information provided prove to be false.

In case of award of contract, the following evidence shall be provided upon request and within the time limit set by the contracting authority:

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

⁴ This covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares.

⁵ As provided for in Article 109 of the Financial Regulation (EU, Euratom) 966/2012 and Article 145 of the Rules of Application of the Financial Regulation

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.

If the tenderer is a legal person, information on the natural persons with power of representation, decision making or control over the legal person shall be provided only upon request by the contracting authority.

k) meet the selection criteria as mentioned in the technical specifications

Full name

Date

Signature

ANNEX 3



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

DIRECTORATE E - Nuclear Safeguards

The Director

FRAMEWORK SUPPLY CONTRACT

FRAMEWORK CONTRACT NUMBER – [complete]

The European Atomic Energy Community (hereinafter referred to as "the Community"), represented by the European Commission (hereinafter referred to as "the contracting authority"), represented for the purposes of the signature of this framework contract by Mr. P. Szymanski, Director in the Directorate-General for Energy, Directorate Nuclear Safeguards,

on the one part, and

[full official name]

[official legal form]⁶

[statutory registration number]⁷

[full official address]

[VAT registration number]

(hereinafter referred to as 'the contractor'), represented for the purposes of the signature of this framework 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 contracting authority for the performance of this framework contract.]

on the other part

⁶ Delete if contractor is a natural person or a body governed by public law.

⁷ 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.

HAVE AGREED

to the **special conditions**, the **general conditions for supply framework contracts**, , the model order form and the following annexes:

Annex I Tender specifications (reference No ENER/E1/2013-42-4 of [insert date])

Annex II Contractor's tender (reference No [complete] of [insert date])

which form an integral part of this framework contract (hereinafter referred to as “the FWC”).

Annex III Record of Technical Acceptance

- The terms set out in the special conditions shall take precedence over those in the other parts of the FWC.
- The terms set out in the general conditions shall take precedence over those in the model order form
- The terms set out in the model order form shall take precedence over those in the other annexes.
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).
- The terms set out in the FWC shall take precedence over those in the order forms.

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

- I.1.1** The subject matter of the FWC is to design and deliver maximum 70 long-life UPS battery replacement kits mechanically and electrically compatible with the original ones manufactured by APC.
- I.1.2** Signature of the FWC imposes no obligation on the contracting authority to purchase. Only performance of the FWC through order forms is binding on the contracting authority.

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

- I.2.1** The FWC shall enter into force on the date on which it is signed by the last party.
- I.2.2** Under no circumstances may performance commence before the date on which the FWC enters into force. Delivery of supplies may under no circumstances begin before the date on which the order form enters into force.
- I.2.3** The FWC is concluded for a period of 48 months with effect from the date on which it enters into force. Unless otherwise specified, all periods specified in the FWC are calculated in calendar days.
- I.2.4** The order forms shall be returned signed by both parties before the FWC expires.

The FWC shall continue to apply to such order forms after its expiry. They shall be executed no later than six months after its expiry.

ARTICLE I.3 - PRICES

- I.3.1** The maximum amount of the FWC shall be EUR [*amount in figures and in word*]. However, this must in no way be construed as a commitment on the contracting authority to purchase for the maximum amount.

The maximum prices of the supplies shall be [:] [as listed in Annex II].

ARTICLE I.4 – PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT

I.4.1 Single framework contract

Within 21 working days of an order form being sent by the contracting authority to the contractor, the contracting authority shall receive the completed order form back, duly signed and dated.

The period allowed for the delivery of supplies shall start to run on the date the contractor signs the order form, unless a different date is indicated on the form.

I.4.2 Delivery

The supplies shall be delivered at
European Commission - Directorate-General for Energy
Direction E– Nuclear Safeguards
For the attention of Mr Leonardo Artese / Mr Sorin Pirvulet
1, rue Henry M. Schnadt
Zone d'activités Cloche d'Or
L-2530 Luxembourg

The contractor shall notify the contracting authority of the exact date of delivery at least 10 days in advance. All deliveries shall be made between 10:00 hours and 16:00 hours at the agreed place of delivery. Deliveries may be made on any working day during normal working hours, at the agreed place of delivery.

I.4.3 Payment of the balance

The contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by the record of technical acceptance document (Annex III) in accordance with the relevant order form. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 21 days in which to submit additional information or correction or other documents if it is required by the contracting authority.

ARTICLE I.5 – BANK ACCOUNT

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

Name of bank:
Full address of branch:
Exact designation of account holder:
Full account number including [bank] codes:
[IBAN⁸ code:]

ARTICLE I.6 – COMMUNICATION DETAILS AND DATA CONTROLLER

For the purpose of Article II.6, the data controller shall be the Director of the Shared Resources Directorate MOVE-ENER.

Communications shall be sent to the following addresses:

Contracting authority:
European Commission
Directorate-General [complete]

⁸ BIC or SWIFT code for countries with no IBAN code.

[Directorate [complete]]

[Unit [complete]]

[Postcode and city]

Email: [insert functional mailbox]

Contractor:

[Ms/ Mr/Mrs]

[Function]

[Company name]

[Full official address]

Email: [complete]

ARTICLE I.7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1 The FWC shall be governed by Community and Union law, complemented, where necessary, by the law of *Luxembourg*.

I.7.2 Any dispute between the parties in relation to the interpretation, application or validity of the FWC which cannot be settled amicably shall be brought before the courts of *Luxembourg*.

ARTICLE I.8 – TERMINATION BY EITHER PARTY

Either party may, unilaterally and without being required to pay compensation, terminate either the FWC or the FWC and order forms by formally notifying the other party and by giving one month's notice. Should the contracting authority terminate the FWC or order forms, the contractor shall only be entitled to payment corresponding to the supplies ordered and delivered before the termination date. The first paragraph of Article II.13.3 shall apply.

ARTICLE I.9 – INTER-INSTITUTIONAL CONTRACT

Not applicable

SIGNATURES

For the contractor,

For the contracting authority,

[Company name/forename/surname/function]

[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at Luxembourg, [date]

In duplicate in English.

II – GENERAL CONDITIONS FOR SUPPLY FRAMEWORK CONTRACTS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

Whenever the contracting authority wishes products to be supplied, it shall send an order form to the contractor, in duplicate, specifying the terms of supply of the products, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the conditions laid down in the FWC.

Within the period indicated in Article I.4, the contractor shall return one original of the order form, duly signed and dated, thereby acknowledging receipt of the order form and acceptance of the terms.

II.1.1 Delivery

(a) Time allowed for delivery

The time allowed for delivery shall be calculated in accordance with Article I.4.

(b) Date, time and place of delivery

The Commission shall be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries shall be made at the agreed place of delivery during the hours indicated in Article I.4.

The contractor shall bear all costs and risks involved in delivering the supplies to the place of delivery.

(c) Consignment note

Each delivery shall be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or his carrier, giving the order form number and particulars of the supplies delivered. One copy of the consignment note shall be countersigned by the contracting authority and returned to the contractor or to his carrier.

II.1.2 Certificate of conformity

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.1.1 is simply an acknowledgment of the fact that that the delivery took place and in no way implies conformity of the supplies with the order form.

Conformity of the supplies delivered shall be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications (Annex I).

Conformity shall be declared only where the conditions laid down in the FWC and in the order form are satisfied and the supplies conform to the tender specifications (Annex I).

Where, for reasons attributable to the contractor, the contracting authority is unable to accept the supplies, the contractor shall be notified in writing at the latest by the deadline for conformity.

II.1.3 Conformity of the supplies delivered with the FWC

(a) The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with the FWC and the relevant order form.

(b) The supplies delivered must:

- (i) correspond to the description given in the tender specifications (Annex I) and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
- (ii) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this FWC and accepted by the contractor;
- (iii) be fit for the purposes for which supplies of the same type are normally used;
- (iv) demonstrate the quality and performance which are normal in supplies of the same type and which the contracting authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling;
- (v) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

II.1.4 Remedy

- (a) The contractor shall be liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.
- (b) In case of lack of conformity, without prejudice to Article II.11 regarding liquidated damages applicable to the total price of the supplies concerned, the contracting authority shall be entitled:
 - (i) either to have the supplies brought into conformity, free of charge, by repair or replacement;
 - (ii) or to have an appropriate reduction made in the price.
- (c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.
- (d) The term 'free of charge' in paragraph (b) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

II.1.5 Assembly

If required by the tender specifications (Annex I), the contractor shall assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies delivered shall be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the FWC and the supplies were installed by the contractor or under his responsibility. This shall apply equally if the product was to be installed by the contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

II.1.6 Services provided to supplies

If required by the tender specifications (Annex I), services to supplies shall be provided accordingly.

II.1.7 General provisions concerning supplies

(a) Packaging

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

Unless otherwise specified in the special conditions or in the tender specifications (Annex I), pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- (i) Name of contracting authority and address for delivery;
- (ii) name of contractor;
- (iii) description of contents;
- (iv) date of delivery;
- (v) number and date of order form;
- (vi) EC code number of article.

(b) Guarantee

The supplies shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specifications (Annex I).

The contractor shall guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

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

The contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the contractor must replace or modify all identical parts incorporated in the other supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

II.1.8 General provisions on performance of the FWC

- (a) The contractor shall perform the FWC to the highest professional standards.
- (b) The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the order forms are to be executed.
- (c) Any reference made to the contractor's personnel in the contract shall relate exclusively to individuals involved in the performance of the FWC.
- (d) The contractor must ensure that any personnel performing the FWC possesses the professional qualifications and experience required for execution of the order forms assigned to it.
- (e) The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.

- (f) The contractor shall be solely responsible for the personnel who executes the tasks assigned to the contractor.
The contractor shall stipulate the following employment or service relationships with its personnel:
- (i) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
 - (ii) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (i) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- (g) In the event of disruption resulting from the action of a one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of a member of the contractor's personnel fails to correspond to the profile required by the FWC, the contractor shall replace him without delay. The contracting authority shall have the right to make a reasoned request for the replacement of such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the FWC under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the order forms resulting from the replacement of personnel.
- (h) Should the execution of the FWC be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and at its own initiative record it and report it to the contracting authority. 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 its obligations under this FWC. In such an event the contractor shall give priority to solving the problem rather than determining liability.
- (i) Should the contractor fail to perform its obligations under the FWC, the contracting authority may - without prejudice to its right to terminate the FWC - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.11.

ARTICLE II.2 – MEANS OF COMMUNICATION

II.2.1 Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this contract.

II.2.2 Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

II.2.3 Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6.

Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

ARTICLE II.3 - LIABILITY

II.3.1 The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

II.3.2 The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the FWC, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

II.3.3 The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the FWC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the relevant order form. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.

II.3.4 The contractor shall indemnify and hold the Community harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the FWC. In the event of any action brought by a third party against the contracting authority in connection with the performance of the FWC, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

II.3.5 The contractor shall take out an insurance policy against risks and damage relating to the performance of the FWC, if required by the relevant applicable legislation. It 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 contracting authority should it so request.

ARTICLE II.4 - CONFLICT OF INTERESTS

II.4.1 The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the FWC is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.

II.4.2 Any situation constituting or likely to lead to a conflict of interest during the performance of the FWC shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the

steps taken are appropriate and may require that additional steps be taken within a specified deadline.

II.4.3 The contractor declares that it 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, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the FWC.

II.4.4 The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the FWC including subcontractors.

ARTICLE II.5 – CONFIDENTIALITY

II.5.1. The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the FWC and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC or order form without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

II.5.2 The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the FWC and for five years starting from the date of the payment of the balance unless:

- (a) the disclosing party agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

II.5.3 The contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the FWC or order form an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

ARTICLE II.6 – PROCESSING OF PERSONAL DATA

- II.6.1** Any personal data included in the contract shall be processed pursuant to Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 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 by the data controller solely for the purposes of the performance, management and monitoring of this FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Community and Union law.
- II.6.2** The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.
- II.6.3** The contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- II.6.4** Where the FWC 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 rights.
- II.6.5** The contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.
- II.6.6** 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 gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) 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 authority;
 - (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.7 – SUBCONTRACTING

- II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the FWC to be de facto performed by third parties.
- II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this FWC.
- II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this FWC, notably by Article II.16.

ARTICLE II.8 - AMENDMENTS

- II.8.1** Any amendment to the FWC or order form shall be made in writing before fulfilment of all contractual obligations. An order form may not be deemed to constitute an amendment to the FWC.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the FWC or to order forms which might call into question the decision awarding the FWC or order form or result in unequal treatment of tenderers or contractors.

ARTICLE II.9 – ASSIGNMENT

- II.9.1** The contractor shall not assign the rights, including claims for payments, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the contracting authority.
- II.9.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

ARTICLE II.10– FORCE MAJEURE

- II.10.1** 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the FWC, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.
- II.10.2** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- II.10.3** The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

II.10.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II.11 – LIQUIDATED DAMAGES

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time limits set by the FWC or the relevant order form, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the FWC or the relevant order form, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

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

V is the amount of the relevant purchase;

d is the duration specified in the relevant order form or, failing that, the period between the date specified in Article I.4.1 and the date of delivery or performance specified in the relevant order form, expressed in days.

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties 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 incurred due to failure to fulfil obligations which may be reasonably anticipated.

ARTICLE II.12 – SUSPENSION OF THE PERFORMANCE OF THE FWC

II.12.1 Suspension by the contractor

The contractor may suspend the performance of the FWC or order form or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the FWC or order form.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the FWC or order form.

II.12.2 Suspension by the contracting authority

The contracting authority may suspend the performance of the FWC or order form or any part thereof:

(a) if the FWC or order form award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud;

(b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the contractor receives formal notification, or at a later date where the notification so provides. The contracting authority shall as soon as possible give notice to the contractor to resume the service suspended or inform the contractor that it is proceeding with termination of the FWC or order form. The contractor shall not be entitled to claim compensation on account of suspension of the FWC or order form or of part thereof.

ARTICLE II.13 – TERMINATION OF THE FWC

II.13.1 Grounds for termination

The contracting authority may terminate the FWC or an order form respectively in the following circumstances:

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the FWC or order form substantially or call into question the decision to award the FWC;
- (b) if execution of the tasks under a pending order form has not actually commenced within 15 days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account article II.8.2;
- (c) if the contractor does not perform the FWC or an order form as established in the tender specifications or fails to fulfil another substantial contractual obligation; termination of three or more order forms on this ground shall constitute ground for termination of the FWC;
- (d) in the event of force majeure notified in accordance with article II.10 or if the performance of the FWC or order form has been suspended by the contractor as a result of force majeure, notified in accordance with article II.12, where either resuming performance is impossible or the modifications to the FWC or order form might call into question the decision awarding the FWC or order form, or result in unequal treatment of tenderers or contractors;
- (e) if the contractor is declared bankrupt, is being wound up, is having its 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;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;

- (g) if the contractor is not in compliance with its 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 it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;
- (h) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Community's or Union's financial interests;
- (i) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the FWC or order form;
- (k) if the needs of the contracting authority change and it no longer requires new supplies under the FWC.

II.13.2 Procedure for termination

When the contracting authority intends to terminate the FWC or order form it shall formally notify the contractor of its intention specifying the grounds thereof. The contracting authority shall invite the contractor to make any observations and, in the case of point (c) of Article II.13.1, to inform the contracting authority about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its decision to terminate the FWC or order form. In the cases referred to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article II.13.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.13.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

II.13.3 Effects of termination

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 60 days from the date of termination to draw up the documents required by the special conditions or order forms for the tasks already executed on the date of termination

and produce an invoice if necessary. The contracting authority may recover any amounts paid under the FWC.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to deliver the supplies or provide or complete the related services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the FWC.

ARTICLE II.14 – REPORTING AND PAYMENTS

II.14.1 Date of payment

Payments shall be deemed to be effected on the date when they are debited to the contracting authority's account.

II.14.2 Currency

The FWC shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article I.5.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

II.14.3 Costs of transfer

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

II.14.4 Invoices and Value Added Tax

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the FWC reference and reference to the order form.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.

II.14.5 Pre-financing and performance guarantees

Pre-financing guarantees shall remain in force until the pre-financing is cleared against payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the contractor. The contracting authority shall release the guarantee within the following month.

Performance guarantees shall cover delivery of supplies and performance of the related services in accordance with the terms set out in the tender specifications until their final acceptance by the contracting authority. The amount of the performance guarantee shall not exceed the total price of the order form. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the contractor and agreement by the contracting authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The cost of providing such guarantee shall be borne by the contractor.

II.14.6 Payment of the balance

The contractor shall submit an invoice within 60 days following receipt of the certificate of conformity of the supplies signed by the contracting authority, accompanied by a final progress report or any other documents provided for in the FWC or order form.

Upon receipt, the contracting authority shall pay the amount due as final payment, within the period specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.14.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.14.7 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the contracting authority reserves the right to terminate the order form in accordance with Article II.13.1(c).

II.14.8 Interest on late payment

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.14.7, the contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with Article II.14.7 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.14.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the contractor only upon request submitted within two months of receiving late payment.

ARTICLE II. 15 – RECOVERY

II.15.1 If an amount is to be recovered under the terms of the FWC, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

II.15.2 If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.14.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the contracting authority receives the full amount owed.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

II.15.3 If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for in Article I.4 or in the order form.

ARTICLE II. 16 – CHECKS AND AUDITS

II.16.1 The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the FWC. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the FWC and during a period of five years which starts running from the date of expiry of the FWC.

The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

II.16.2 The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of expiry of the FWC.


II.16.3 The contractor shall allow the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

II.16.4 On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made and may take any other measures which it considers necessary.

II.16.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Community and Union law for the protection of the financial interests of the Union and Community against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

II.16.6 The Court of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.

	EUROPEAN COMMISSION	FRAMEWORK CONTRACT ORDER FORM			
		Order number: _____	(Name and address of contractor)		
DG and administrative unit: Tel.: _____ E-mail: _____	Currency of payment: EUR				
	Date and reference of the offer: _____				
This order is governed by the provisions of Framework Contract No _____ in force from _____ to _____					
LISTING OF THE GOODS / SERVICES and code		UNIT	QUANTITY	PRICE in €	
				UNIT PRICE	TOTAL
Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Commission is exempt from all taxes and dues, including value added tax, on payments due in respect of this Contract. For intra-community purchases, the mention "VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC" should be added on the invoice.		Packaging Insurance Transport Assembly VAT			
		TOTAL :			
		Contractor's signature			
Place of delivery or implementation and/or Incoterm: _____		Name: Position: Date:			
Final date of delivery or implementation: _____					
Terms of payment: _____					
Guarantee: _____					
Date of issue: _____ Signature [name and position]: _____					

ANNEX III

RECORD OF TECHNICAL ACCEPTANCE

Contract reference: **ENER/xx/NUCL/SIxxxxx**

Contract subject: **Framework supply contract regarding the design and delivery of long-life UPS battery replacement kits mechanically and electrically compatible with the original ones manufactured by APC**

The technical approval related to the above mentioned contract has taken place at **DG ENER Luxembourg HQ on xxxx**

This technical approval was:

- a complete technical approval
- a partial technical approval as described below:

and was concluded:

- without any remarks
- with the following remarks:

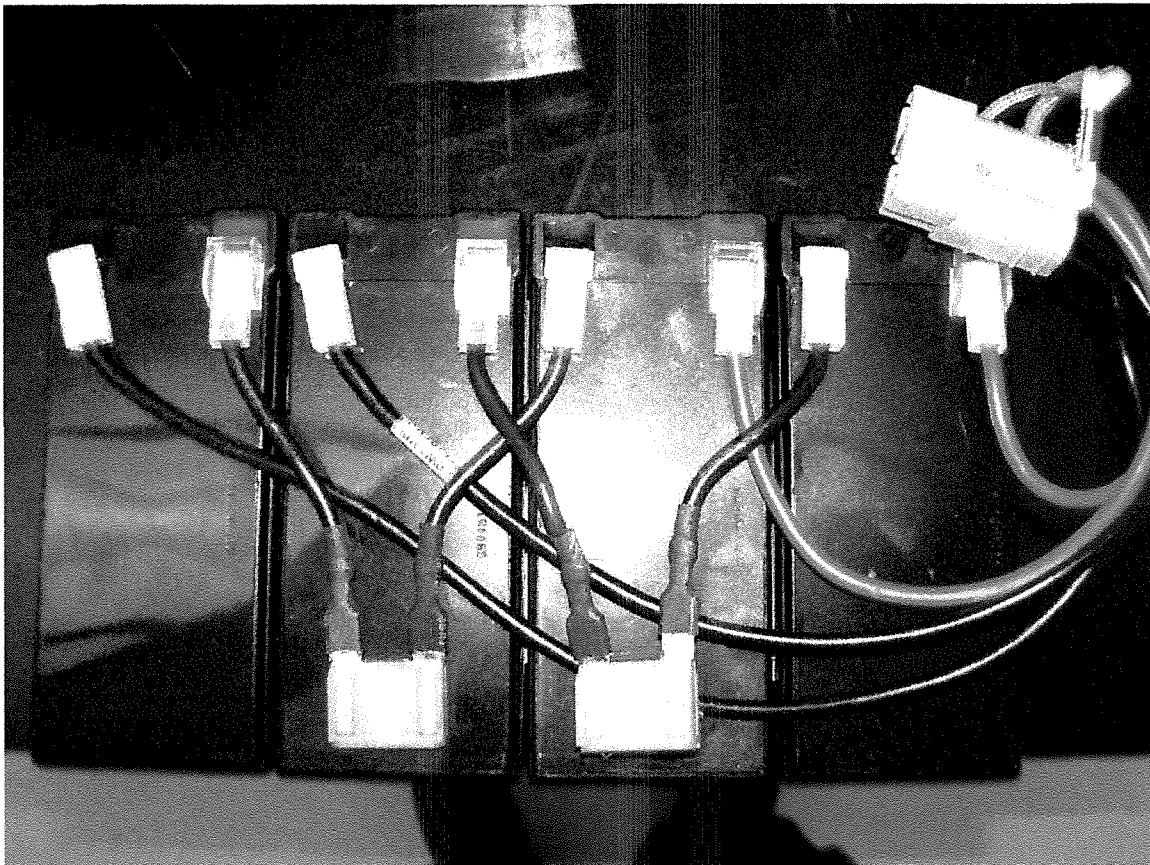
Nr.	Remark	Date for final approval
		xxx

- If partial technical approval, please confirm if the total delivery is thus technically accepted:
Yes or No

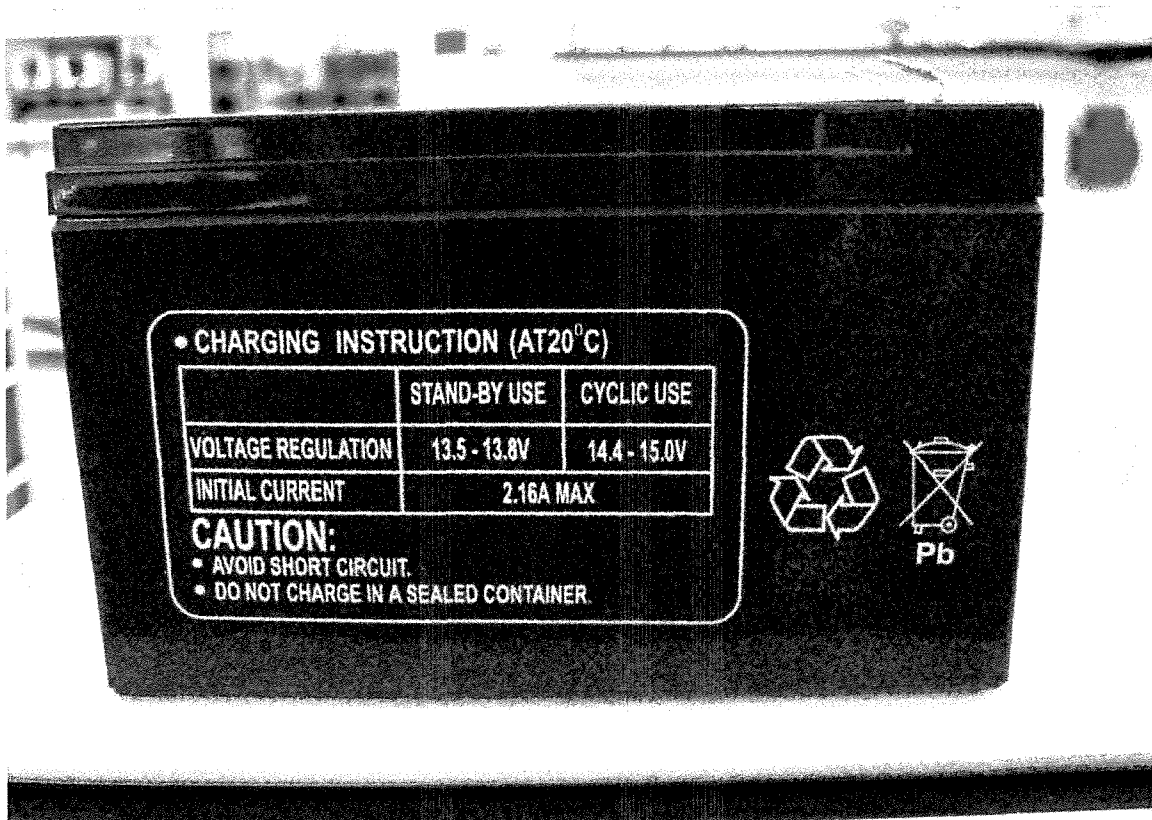
	For the Contractor (if present)	For European Commission (technical responsible)
Date		xxxx
Name		Sorin Pirvulet
Signature		

Copies (to be sent by the technical responsible): *Mr xxx, xxx,*

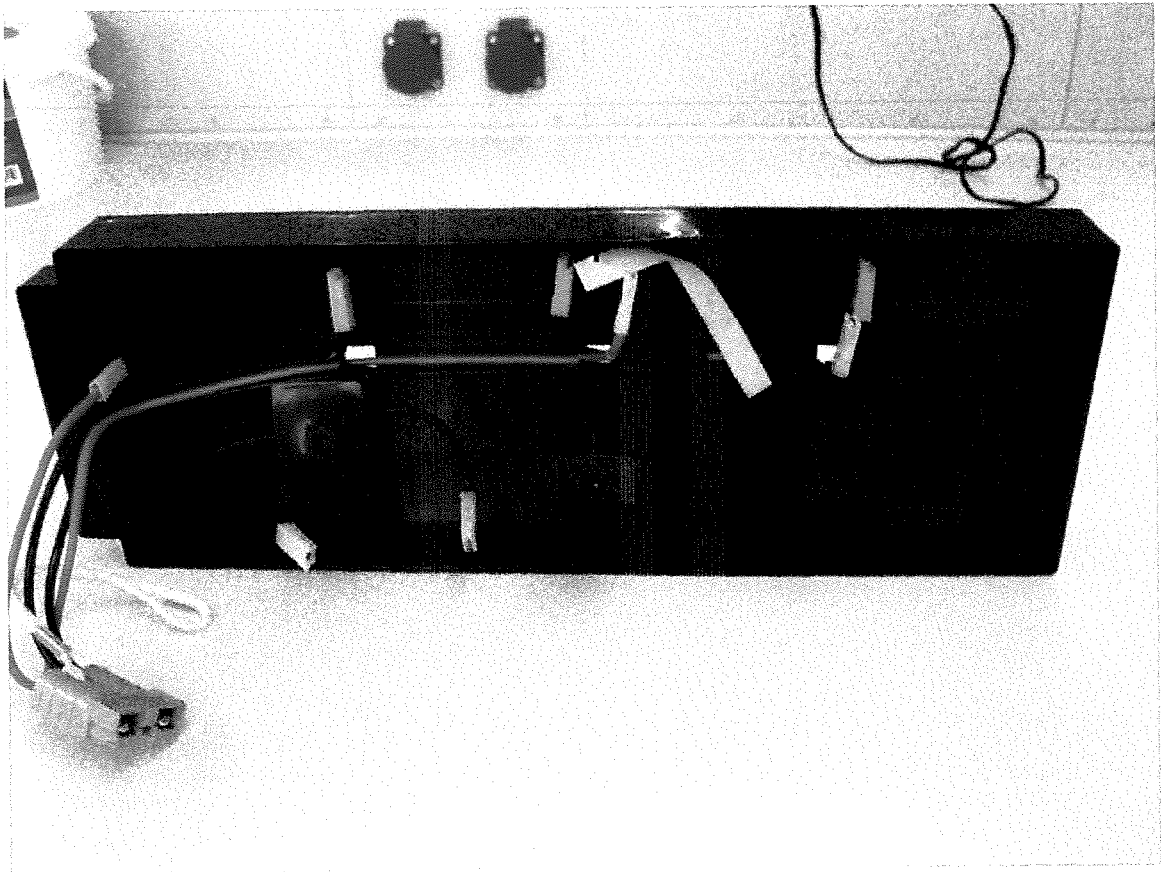
ANNEX 4
TECHNICAL PICTURES



Picture 1 (controller kit)



Picture 2 (battery unit)



Picture 3 (battery pack holder)



Picture 4 (battery pack kit ready for mounting)