

**EUROPEAN COMMISSION**  
**DIRECTORATE-GENERAL FOR ENERGY**  
**DIRECTORATE E - Nuclear Safeguards**  
**The Director**

Dear Sir/Madam,

**Subject: Invitation to tender ENER/E1/2013-42-9 for a framework supply contract subdivided into 2 lots regarding the supply of multi-channel analyser modules - Contract notice in OJEU 2013/S 123-210037 of 27/06/2013**

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 can submit a bid for one or both lots, but a separate bid should be submitted for each lot, specifying the number of the lot, 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.

Tenderers can submit a bid for one or both lots, but a separate bid should be submitted for each lot, specifying the number of the lot.

3. Tenderers shall submit tenders by letter:
  - a) either by post or by courier not later than 02/09/2013, 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 02/09/2013 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.

<p><u>By post:</u></p> <p>CALL FOR TENDERS                  ENER/E1/2013-42-9                  European Commission                  Directorate-Energy                  Direction E – Nuclear Safeguards                  Complexe Euroforum                  For the attention of Mr Boella/ Mr</p>	<p><u>By courier or by hand:</u></p> <p>CALL FOR TENDERS                  ENER/E1/2013-42-9                  European Commission                  Directorate-Energy                  Direction E – Nuclear Safeguards                  Complexe Euroforum                  For the attention of Mr Boella/ Mr</p>
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Stamatopol EUFO 3485 1, rue Henry M. Schnadt Zone d'activités Cloche d'Or L-2530 Luxembourg	Stamatopol EUFO 3485 1, rue Henry M. Schnadt Zone d'activités Cloche d'Or L-2530 Luxembourg
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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") and specify the number of the lot ("Lot 1" or "Lot 2").

**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 10/09/2013, 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 to peter.schwalbach@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](http://ec.europa.eu/dgs/energy/tenders/index_en.htm). 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.

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](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](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](http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm#BDCE) )

Date and signature  
P. Szymanski  
Director

A handwritten signature in black ink, appearing to read 'P. Szymanski', written in a cursive style.



**EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY**

**DIRECTORATE E - Nuclear Safeguards  
The Director**

## **CALL FOR TENDERS**

**ENER/E1/2013-42-9 for a framework supply contract subdivided into 2 lots  
regarding the supply of multi-channel analyser modules**

# **TENDER SPECIFICATIONS**

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## **1. INFORMATION ON TENDERING**

### **1.1. Participation**

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 Procurement<sup>1</sup> 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 provisions of the draft contract which specifies the rights and obligations of the contractor, particularly those on payments, performance of the contract, confidentiality, and checks and audits.

### **1.3. Joint tenders**

A joint tender is a situation where a tender is submitted by a group of economic operators (consortium). Joint tenders may include subcontractors in addition to the joint tenderers.

In case of joint tender, all economic operators in a joint tender assume joint and several liability towards the Contracting Authority for the performance of the contract as a whole.

These economic operators 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.

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.

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<sup>1</sup> See [http://www.wto.org/english/tratop\\_E/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_E/gproc_e/gp_gpa_e.htm)

#### 1.4. 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.

#### 1.5. Content of the tender

The tenders must be presented as follows:

Part A: Identification of the tenderer (see section 1.6)

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)

Part F: Power of attorney (for consortia only)

#### 1.6. Identification of the tenderer: legal capacity and status

- The tenderer identification form in **Annex 1** shall be filled in and signed by:
  - The tenderer (including any member of a consortium or grouping)
  - subcontractor(s) whose share of the work is expected to represent more than 20% for some specific contracts.
- In order to prove their legal capacity and their status, all tenderers (including any member of a consortium or grouping) 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](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 (only the leader in case of joint tender) 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](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. This requirement applies to all members of the consortium in case of joint tender. In case of doubt on this declaration on honour, the contracting authority may also request the evidence for subcontractors whose intended share of the contract is above 20%.

### **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:

An average annual turnover relating to the relevant supplies and services of minimum 500.000 EUR over a period of the past three years is required.

The following evidence should be provided:

The balance sheets or extracts from balance sheets for the last three financial years, and a statement of overall average turnover and turnover relating to the relevant supplies for the last three financial years.

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 gamma spectrometry with at least 1 project delivered in this field in the last three years.
- The tenderer must offer instruments which are commercially available on the date of publication of the invitation to tender (instruments which are still under development at that moment will not be accepted.).

#### **b. Criteria relating to the team delivering the service:**

The team delivering the service should include, as a minimum, the following profiles:

- as employee of the tenderer at least one engineer or physicist or equivalent with at least 3 years professional experience in nuclear measurements techniques;
- as employees of the tenderer at least 2 specialists, other than the above mentioned engineer or physicist or equivalent with at least 3 years of professional experience in gamma spectrometry and a good command of English, French or German.

**c. Evidence:**

The following evidence should be provided to fulfil the above criteria:

- a list of activities for the previous two years involving gamma spectrometry
- the CV's of at least one engineer or physicist or equivalent and two other specialists in employment with the tenderer
- a list of references relating to the offered instrument (recent commercial customers, companies or institutes involved in the development and/or testing)
- documentation showing that the offered instruments are commercially available.

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.

In order to reassure itself that the selection criteria are fulfilled the Commission reserves the right to request at short notice the delivery of a demonstration instrument.

**2.4. Award criteria**

The tender will be awarded according to the best-value-for -money procedure.

a) Technical evaluation criteria

The maximum total quality score is 100 points. Only bids that have reached a minimum of 70% for the total score (Q1 for lot1, Q2 for lot2) and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

The quality of the tender will be evaluated based on the following criteria:

FOR LOT 1

<b>No.</b>	<b>Award Criteria</b>	<b>Weighting for Lot 1 (Q1) maximum no. of points</b>
1	Quality of amplifier, ADC If any one of the minimum requirements is not met, the total number of points will be below 60%.	20

2	<p>Functionality &amp; spectrometric performance</p> <p>If any one of the minimum requirements is not met, the total number of points will be below 60%.</p>	25
3	<p>Performance and specifications of preamplifier power and bias HV supply</p> <p>If any one of the minimum requirements is not met, the total number of points will be below 60%.</p>	10
4	<p>Performance of power supply and battery autonomy</p> <p>If any one of the minimum requirements is not met, the total number of points will be below 60%.</p>	15
5	<p>Suitability of firmware &amp; software for data transfer and third party software development; fitness for use in an industrial environment</p>	5
6	<p>Delivery time</p> <p>The tenderer receives 3 points for meeting the maximum delivery time of 6 months. For each month less than 6, 0.5 points will be attributed up to a maximum of 5 points.</p>	5
7	<p>Service and warranty</p>	10
8	<p>Mechanical design</p> <p>60% of the maximum no of points will be awarded for offered units with a weight of 1000g and a size of 1000 mm<sup>3</sup>. 10% difference in weight or volume will result in 5% difference in points (lighter and smaller units are favoured)</p>	10
<b>Total number of points ('quality')</b>		<b>100</b>

For LOT 2

No.	Award Criteria	Weighting for Lot 1 (Q1) maximum no. of points
1	Quality of amplifier, ADC  If any one of the minimum requirements is not met, the total number of points will be below 60%.	25
2	Functionality & spectrometric performance  If any one of the minimum requirements is not met, the total number of points will be below 60%.	25
3	Performance and specifications of preamplifier power and bias HV supply  If any one of the minimum requirements is not met, the total number of points will be below 60%.	10
4	Performance of power supply and battery autonomy  If any one of the minimum requirements is not met, the total number of points will be below 60%.	5
5	Suitability of firmware & software for data transfer and third party software development	15
6	Delivery time  The tenderer receives 3 points for meeting the maximum delivery time of 6 months. For each month less than 6, 0.5 points will be attributed up to a maximum of 5 points.	5
7	Service and warranty	10
8	Mechanical design	5
<b>Total number of points ('quality')</b>		<b>100</b>

b) Total price

Solely for the purpose of the evaluation, to provide an equal basis for the comparison of competing tenders, a fictitious weighted price Pwf1 (for lot1), Pwf2 (for lot2) will

be calculated. The rebate price scheme provided by the tenderer will serve as the basis for the calculations.

This weighted fictitious price  $P_{wf}$  will be calculated as follows: ( $P_x$  denotes the unit price given in the tender if  $x$  units are ordered)

For Lot 1:

$$P_{wf1} = 0.05 * P_1 + 0.05 * P_5 + 0.1 * P_{10} + 0.2 * P_{20} + 0.3 * P_{50} + 0.2 * P_{100} + 0.1 * P_{200}$$

For Lot 2:

$$P_{wf2} = 0.1 * P_1 + 0.1 * P_5 + 0.4 * P_{10} + 0.3 * P_{20} + 0.1 * P_{30}$$

The contract will be awarded to the tender who offers the best price-quality ratio ( $R_1$  for lot1,  $R_2$  for lot 2) which will be calculated as follows:

$$(R_1) = 0.3 * (P_{wf1 \{lowest\ priced\ tender\}} / P_{wf1}) + 0.7 * (Q_1 / 100)$$

$$(R_2) = 0.3 * (P_{wf2 \{lowest\ priced\ tender\}} / P_{wf2}) + 0.7 * (Q_2 / 100)$$

## **2.5. Technical offer**

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

Tenderers will submit detailed documentation of the offered instruments (this includes a commercial flyer, test reports, pictures with indication of the dimensions, a user manual and a software manual)

## **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 shall consider that the Commission will place a number of individual orders and shall provide rebate schemes for the two lots. The tenderer shall provide a **rebate scheme** for orders of

**Lot 1:** 1, 5, 10, 20, 50, 100, and 200 units

**Lot 2:** 1, 5, 10, 20, and 30 units

A maximum total of up to 200 instruments for lot 1 and up to 30 instruments for lot 2 will be delivered over a period of maximum four years.

The indicative maximum amount is EUR 1.2 Mio for lot 1 and EUR 500000 for lot 2 over a period of maximum four years. Specific Contracts will no longer be signed once these amounts are reached.

### **3. TECHNICAL SPECIFICATIONS**

#### **3.1.1. Introduction**

The Nuclear Safeguards Directorate (DG ENER-E) of the European Commission has a constant need for measurement systems to be used in nuclear installations across the European Union for in-field verification purposes during inspection activities under Chapter VII of the Euratom Treaty. One of the measurement techniques frequently used in nuclear safeguards is non-destructive assay by means of gamma spectrometry. The multi-channel analyser (MCA) module is one of the important components of a full gamma spectrometry measurement chain.

The MCAs need to run with various detector types (mainly semiconductors, scintillators and proportional counters) and must be computer controlled. The units will often be used in attended mode but should also be suitable for continuous operation as part of unattended automatic data acquisition systems. The units should contain the complete electronic chain after the preamplifier output of the detector and provide the bias high voltage and preamplifier power. They should be mechanically robust, easy to decontaminate and have a long battery life. It should also be possible to use the modules in multi scaling mode.

At present a number of commercially available spectroscopic systems incorporate digital signal processing in place of the traditional analogue approach. These digital systems have demonstrated significant advantages over analogue systems: improved resolution stability at high count rates, higher throughput, better energy linearity, peak position and temperature stability. In order to benefit from these technical improvements and keep track with state-of-the-art developments in the field of gamma spectrometry it is foreseen to replace existing analogue systems by systems which incorporate digital signal processing.

The contract is divided into two lots:

Lot 1: MCA modules for use with portable measurement systems

Lot 2: MCA modules for use with measurement systems permanently installed in nuclear installations

Tenderers can submit a bid for one or both lots, but a separate bid should be submitted for each lot, specifying the number of the lot.

For the two lots the communication language between the Commission and the awarded contractors is English.

### **3.1.2. Purpose of the contract**

In order to replace obsolete equipment and cover new needs for measurement equipment, new multi-channel analyser modules must be purchased. The tendering company will be required to supply up to 200 instruments under lot n°1 and up to 30 instruments under lot n°2.

The instruments offered by the tenderer must be commercially available on the date of publication of the invitation to tender. Instruments which are still under development at that moment cannot be accepted.

The instruments shall be conforming to the following technical specifications:

#### **3.1.2.1 Common specifications for lots n°1 & 2**

##### **Amplifier, ADC & Digital Signal Processing**

All of the settings for the electronics shall be computer controlled. A main power switch and an optical indication whether the unit is on or off is required. When the unit is switched on all output voltages should have a default value of zero. Voltages can only be applied upon confirmation of the user or control software.

Amplifier:

- Trapezoidal signal shaping filter with flat top adjustable at least in the range 0 - 5 $\mu$ s.
- Electronics for pile-up rejector and base line restorer should be integrated
- The processing of both negative and positive preamplifier input pulses must be possible.
- The differential and integral non-linearity should be less than 1%, resp. 0.1% for the full output range.
- The shaping time should be adjustable at least in the range 0.1-20 $\mu$ s.
- An automatic pole-zero cancellation function is required.
- A peak stabilization function should be available, ( can be switched on/off).
- Lower and upper level discriminator function should be available.
- The input from the preamplifier should be via a BNC connector.
- A direct input from an external amplifier should be possible via a BNC-connector.
- The input resistance should be  $\geq 1k\Omega$ .

##### **Functionality & spectrometric performance**

- It shall be possible to operate the MCA at least in the following modes:
- Pulse height analysis (spectrum) mode



- Multi-scaling mode
- Sample or oscilloscope mode for the unprocessed preamplifier input signal
- Spectrometric performance:
  - usable spectrum energy range: at least up to 3 MeV.
  - For a typical high purity planar Ge detector at low count rates ( $< 10000$  cps input rate) the performance should be comparable to standard NIM units (reference isotope Co57, full width at half maximum (FWHM) at 122 keV  $< 600$  eV at  $1\mu\text{s}$  shaping time).
  - For a typical high purity planar Ge detector at higher count rates ( $\geq \sim 50000$  cps input rate) the throughput should be  $> 35000$  cps with minimal deterioration of spectroscopic parameters (line shift  $< 0.5\%$ , FWHM increase  $< 5\%$ ) at  $1\mu\text{s}$  shaping time.

### **Bias HV & preamplifier power supply**

- The bias high voltage (HV) supply should provide positive and negative polarities ranging from 0 to at least 3500 V via a SHV connector. It is acceptable if different high voltage polarities are provided by separate HV modules which can be exchanged according to the detector requirements. When turning on and off the high voltage, a voltage ramp should be implemented in order to avoid abrupt voltage changes. The "noise and ripple" value should not exceed 70mV peak-to-peak for any dc output, as observed on a 50-MHz oscilloscope.
- An automatic shutdown of the high voltage in case of insufficient cooling of the crystal (Ge detectors only) is required. As DG-ENER owns a large number of detectors manufactured by Ametek/Ortec, Canberra and BSI, compatibility of the different HV inhibit functions with Ge detectors of these manufacturers must be assured.
- The power supply for the pre-amplifier should be compatible with standard commercial portable Germanium, NaI and CZT-detector/preamplifier combinations and supplied via a 9-pin sub-D-connector. Output voltage values should be  $\pm 12\text{V}$  and  $\pm 24\text{V}$  with corresponding current values up to at least 40mA each.

### **Power supply & battery autonomy**

- Continuous operation via mains power (110V or 230V, 50Hz) shall be possible. The instrument as well as its battery charger/power supply should be protected against spiking of the mains voltage supply.

### **Firm- and software, datatransfer**

- Software has to be provided which allows the user to communicate with the MCA unit via a computer running Microsoft Windows 7.

The communication link with a computer should be via USB and optionally via RS-232. Preferably, connectors should be lockable.

DG ENER has its own software packages for attended and unattended data acquisition. A new data acquisition module will need to be developed by DG ENER to integrate the new instrument into these packages. It is thus required that the MCA's software interface and commands library are described in detail. The information needs to be sufficiently clear and detailed to allow DG-ENER to develop its own software to control the MCA and communicate with it.

### **Other requirements**

The delivery time should be provided, counted from placement of an order, and may not exceed 6 months..

At least 2 years warranty covering the deliverables shall be offered.

A detailed maintenance and service plan shall be outlined in the offer, including a spare parts list.

Maintenance, repair and delivery of spare parts shall be available at least 10 years after delivery.

Complete documentation in English concerning firmware, software and hardware is to be provided upon delivery. This includes a technical reference manual and a general user manual. The technical reference should describe in detail the MCA unit, its software interface and contain guidelines for maintenance and troubleshooting.

### **3.I.2.2 Individual specifications for lot n°1 only**

#### **Mechanical design**

The MCA unit plus charger/power supply shall be as compact and light as possible to allow easy carrying and handling

The module must be fit for use in an industrial environment and in a temperature range from -10°C to +40°C

The housing should be robust to withstand frequent handling and transport. The housing should be easy to decontaminate and splash-water proof.

A transport case with internal shock protection should be provided with each instrument. The case should be big enough to include also cables, a battery charger, a portable computer and a detector with outer dimensions up to 8cm x 8cm x 20cm.

#### **Amplifier, ADC & Digital Signal Processing**

ADC with at least 16000 channels. Appropriate channel conversion ranges shall be selectable for NaI, CZT and Ge detectors.

#### **Power supply & battery autonomy**

The MCA-unit should be powered by rechargeable batteries. These batteries should be deep discharge protected and have a minimum lifetime of 30 hours if no detector is

connected. When connected to a detector the battery lifetime shall at least equal the following indicative values:

<b>Detector type</b>	<b>Battery</b>
NaI, Scionix / 3M-E2-X	25 hours
CZT, Ritec / SDP310	20 hours
Ge detector, Canberra GL0210R+preamp 2002CP	10 hours

### **3.I.2.3 Individual specifications for lot n°2 only**

#### **Mechanical design**

- The unit shall be rack mountable in industrial 19" racks, for example of types compliant with IEC 297.
- The module must be fit for use in an industrial environment
- The module must be fit for use in an industrial environment and in a temperature range from -10°C to +40°C
- The housing should be easy to decontaminate.
- A transport case with internal shock protection should be provided with each instrument. The case should be big enough to include also cables and the power supply.

#### **Amplifier, ADC & Digital Signal Processing**

- ADC with at least 32000 channels. Appropriate channel conversion ranges shall be selectable for NaI, CZT and Ge detectors.

#### **Firmware and software, datatransfer**

- Remote control of the unit via a web interface must be possible.

### **3.I.3. Reports and documents to produce - Timetable to observe**

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 delivery time. All transport and other costs will be borne by the contractor.

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

The Commission will send an order (see the "General Conditions" of the draft framework contract) in accordance with Article I.2.4 of the draft framework contract.

The Commission shall have 60 calendar days after receipt of the delivery to approve or reject the goods by signature of the record of Technical Acceptance (Annex III of the draft framework contract). After the technical acceptance the contractor can send his invoice and will be paid as described in Article I.4.3 of the draft framework contract.

#### **3.I.4. Duration of the contract**

The duration of the contract shall not exceed 24 months from the day of signature, renewable under Article I.2.5 of the contract up to a maximum duration of 48 months. All individual orders (specific contracts) will have to be placed before the end of the contract and have to be completed no later than 6 months after the end of the contract. This period is calculated in calendar days.

#### **3.I.5. Place of performance**

The tenderer will deliver the goods to Luxembourg to the following address:

European Commission - Directorate-General for Energy

Direction E– Nuclear Safeguards

For the attention of Ms Isabelle Puttaert EUFO 2462

1, rue Henry M. Schnadt

Zone d'activités Cloche d'Or

L-2530 Luxembourg.

Meetings between the contractor and the Commission may be held on Commission premises in Luxembourg.

### **4. CONTENT, STRUCTURE AND GRAPHIC REQUIREMENTS OF THE FINAL DELIVERABLES**

Not applicable.

## **5. ANNEXES**

1. Tenderer 's Identification Form
2. Declaration related to the exclusion criteria and absence of conflict of interest
3. Power of Attorney (mandate in case of joint tender)
4. Draft Contract

# 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/E1/2013-42-9

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>2</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):	

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<sup>2</sup> For natural persons

Telephone number: Fax number: E-mail address:	
<b>Legal Representatives</b>	
<b>Names and function of legal representatives</b> and of other representatives of the tenderer who are authorised to sign contracts with third parties	
<b>Declaration by an authorised representative of the organisation<sup>3</sup></b>	
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>3</sup> 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 control<sup>4</sup> 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 penalties<sup>5</sup> 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 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.

Full name	Date	Signature
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<sup>4</sup> This covers the company directors, members of the management or supervisory bodies, and cases where one natural person holds a majority of shares.

<sup>5</sup> 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

# ANNEX 3

## POWER OF ATTORNEY

### mandating one of the partners in a joint tender as lead partner and lead contractor <sup>6</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]

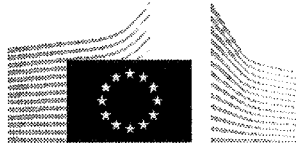
Place and date:

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

<sup>6</sup> To be filled in and signed by each of the partners in a joint tender, except the lead partner;

ANNEX 4  
**DRAFT CONTRACT**

*<Relevant draft contract (i.e. direct/framework service/supply contract or purchase order [see Manuel partie III section 5.2.2.16 for more info] should be inserted hereunder in the invitation to tender – Templates can be found in the Library or the Models section>*



**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]

[statutory registration number]

[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

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/E1/2013-42-9 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 supply multi-channel analyser modules.
- 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 24 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.

#### **I.2.5 FWC renewal**

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

### **ARTICLE I.3 - PRICES**

- I.3.1** 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 / Ms Isabelle Puttaert

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:

[IBAN 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 for Energy

Financial and Contractual Cell of Directorates D and E

Complexe Euroforum

1, rue Henry M. Schnadt

Zone d'activités Cloche d'Or

Luxembourg

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 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.

 <b>EUROPEAN COMMISSION</b>	<h2 style="margin: 0;">FRAMEWORK CONTRACT ORDER FORM</h2>		
DG and unit:  Tel.:  E-mail:	Order number: <hr/> Currency of payment: EUR <hr/> Offer (date and reference):	(Name and address of contractor)	
This order is governed by the provisions of Framework Contract No. _____ in force from _____ to _____			
<b>LISTING OF THE SUPPLIES / SERVICES</b>  and code	UNIT	QUANTITY	PRICE in € <hr/> 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. [In Belgium, use of this contract constitutes a request for VAT exemption No. 450, VAT exemption Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes: "Commande destinée à l'usage officiel de l'Union Européenne, Exonération de la TVA; art. 42 § 3.3 du code TVA (circulaire n° 2/1978)".]		Packaging Insurance Transport Assembly VAT <hr/> <b>TOTAL :</b>	
Place of delivery or performance and/or Incoterm:  Final date of delivery or performance:  Terms of payment:  Guarantee:		<b>Contractor's signature</b>  Name: Position: Date:	
Date of issue: Signature [name and position] [and for Belgium, Commission stamp]: [For Belgium, numéro de dossier auprès du Protocole du SPF Affaires Etrangères] The invoice shall be paid only if the contractor has returned the signed order form.			

### ANNEX III

## RECORD OF TECHNICAL ACCEPTANCE

Contract reference: ENER/xx/NUCL/SIxxxxx

Contract subject: xxxxxxxx

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		xxxx
Signature		

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