

**ANNEX 4
DRAFT CONTRACT**



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate-General for Research and Innovation, Energy Efficiency
Director

SERVICE CONTRACT

CONTRACT NUMBER – ENER/C3/2013-427/SI2.XXX

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

of the one part,

and

[official name in full]

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

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

[official address in full]

[VAT registration number]

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

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

of the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for service contracts** and the following annexes:

Annex I – Tender specifications (reference No ENER/C3/2013-427 of [*insert date*], OJEU n°)

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

[*Other annexes*]

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

I.1.1 The subject matter of the contract is Support in the preparatory work for ecodesign and energy labelling measures from:

Lot 1: Consumers: stakeholder representation

Lot 2: Environmental NGOs: stakeholder representation.

I.1.2 The contractor shall execute the tasks assigned to it in accordance with the tender specifications annexed to the contract (Annex I).

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

I.2.1 The contract 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 contract enters into force.

I.2.3 The duration of the execution of the tasks shall not exceed 36 months. Unless otherwise specified, all periods specified in the contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the contract.

The period of execution of the task may be extended only in exceptional and duly justified cases and with express written agreement of the parties. If the request for extension is made by the contractor, he must send it to the contracting authority in good time before it is due to take effect and at all events one month before the period of the execution of the tasks elapses, except in cases duly substantiated by the contractor and accepted by the contracting authority.

I.2.4 N/A

ARTICLE I.3 –PRICE

I.3.1 The maximum total amount to be paid by the contracting authority under the contract shall be EUR [*amount in figures and in words*] covering all tasks executed.

I.3.2 N/A

I.3.3 NA

ARTICLE I.4 – PAYMENT ARRANGEMENTS

I.4.1 Pre-financing

Following signature of the contract by the last party and its receipt by the contracting authority, a pre-financing payment of EUR [*amount in figures and in words*] equal to 20% of the total amount referred to in Article I.3.1 shall be made within 30 days of the receipt of an invoice [and the receipt by the contracting authority of a duly constituted financial guarantee equal to at least EUR [*amount in figures and in words*]]. The contracting authority may refuse to make payments where the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud attributable to the contractor.]

I.4.2 First Interim payment

The contractor shall submit an invoice for a 1st interim payment of EUR [*amount in figures and in words*] equal to 25 % of the total amount referred to in Article I.3.1.

The Invoice for the 1st interim payment shall be accompanied by the first progress report in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections or a new progress report or documents if required by the contracting authority.

I.4.3 Second Interim payment

The contractor shall submit an invoice for a 2nd interim payment of EUR [*amount in figures and in words*] equal to 25 % of the total amount referred to in Article I.3.1.

The Invoice for the 2nd interim payment shall be accompanied by the second progress report in accordance with the tender specifications. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections or a new progress report or documents if required by the contracting authority.

I.4.4 Payment of the balance

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

The invoice shall be accompanied by a final progress report. The contracting authority shall make the payment within 60 days from receipt of the invoice. The contractor shall have 20 days in which to submit additional information or corrections, a new final progress report or other documents if it is required by the contracting authority.

[Where VAT is due in Belgium, the provisions of the contract constitute a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the contractor includes the following statement in the invoice(s): "Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)" or an equivalent statement in the Dutch or German language.]

[Where VAT is due in Luxembourg, the contractor shall include the following statement in the invoices: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA Article 43 § 1 k 2ième tiret de la loi modifiée du 12.02.79." In case of intra-Community purchases, the statement to be included in the invoices is: "For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC."]

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the contractor's bank account denominated in [euro][*insert local currency where the receiving country does not allow transactions in EUR*], identified as follows:

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number including [bank] codes:

[IBAN¹ code:]

¹ BIC or SWIFT code for countries with no 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. Communications shall be sent to the following addresses:

Contracting authority:

European Commission
Directorate-General for Energy
Directorate C- Unit C3
Mr Juan Moreno Acedo
DM 24 4/45
B-1049 Brussels
Email: juan.moreno-acedo@ec.europa.eu

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 contract shall be governed by Union law, complemented, where necessary, by the law of Belgium
- I.7.2.** Any dispute between the parties in relation to the interpretation, application or validity of the contract which cannot be settled amicably shall be brought before the courts of Brussels

ARTICLE I.8 - EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.8.1 Modes of exploitation

In accordance with Article II.10.2 whereby the Union acquires ownership of the results as defined in the tender specifications (Annex I), these results may be used for any of the following purposes:

- (a) use for its own purposes:
- (i) making available to the staff of the contracting authority
 - (ii) making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions
 - (iii) installing, uploading, processing
 - (iv) arranging, compiling, combining, retrieving
 - (v) copying, reproducing in whole or in part and in unlimited number of copies
- (b) distribution to the public:
- (i) publishing in hard copies
 - (ii) publishing in electronic or digital format
 - (iii) publishing on the internet as a downloadable/non-downloadable file
 - (iv) broadcasting by any kind of technique of transmission
 - (v) public presentation or display
 - (vi) communication through press information services
 - (vii) inclusion in widely accessible databases or indexes

- (viii) otherwise in any form and by any method
- (c) modifications by the contracting authority or by a third party in the name of the contracting authority:
 - (i) shortening
 - (ii) summarizing
 - (iii) modifying of the content
 - (iv) making technical changes to the content:
 - necessary correction of technical errors
 - adding new parts or functionalities
 - changing functionalities
 - providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications
 - (v) addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
 - (vi) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
 - (vii) extracting a part or dividing into parts
 - (viii) use of a concept or preparation of a derivate work
 - (ix) digitisation or converting the format for storage or usage purposes
 - (x) modifying dimensions
 - (xi) translating, inserting subtitles, dubbing in different language versions:
 - English, French, German
 - all official languages of EU
 - languages used within EU
 - languages of candidate countries
- (d) the modes of exploitation listed in article II.10.4

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in the contract the contracting authority shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to the contracting authority within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

I.8.2 Pre-existing rights and transmission of rights

All pre-existing rights shall be licensed to the Union in accordance with Article II.10.3.

The contractor shall provide to the contracting authority a list of pre-existing rights and third parties' rights including its personnel, creators or other right holders as provided for in Article II.10.5.

ARTICLE I.9 – TERMINATION BY EITHER PARTY

Either party may, unilaterally and without being required to pay compensation, terminate the contract by formally notifying the other party by giving two months notice. Should the contracting authority terminate the contract, the contractor shall only be entitled to payment corresponding to part-performance of the contract before the termination date. The first paragraph of Article II.14.3 shall apply.

SIGNATURES

For the contractor,

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

For the contracting authority,

Marie Donnelly, Director

signature[s]: _____

signatures: _____

Done at [Brussels], [date]

Done at Brussels, [date]

In duplicate in English.