



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL ENERGY AND TRANSPORT

Luxembourg,  
TREN I/1 ABS/ms I/1 (2007) D/ 315835

## **INVITATION TO TENDER No. TREN/I/112-2007**

(open procedure)

Dear Sir/Madam,

1. The European Commission invites tenders for a service contract regarding the following project:  
*Purchase of industrial computers*

This invitation to tender follows the publication of:

- the contract notice in OJEU S 2007/S 146-180700

2. If you are interested in this contract, you must submit a tender in **triplicate**, in one of the official languages of the European Union.

Tenders must be:

- (a) **either sent by registered mail or by private courier**

The tender must be sent by registered mail or by private courier, dispatched not later than **02/10/2007** (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

European Commission  
Directorate-Energy and Transport  
Direction I – Nuclear Safeguards  
Complexe Euroforum  
For the attention of Ms A Adams-Webel/Mr Boella EUFO 3358  
1, rue Henry M. Schnadt  
Zone d'activités Cloche d'Or  
L-2530 Luxembourg

- (b) **or delivered by hand**

Tenders must be delivered by hand at the **Central Mail of the European Commission** by **02/10/2007 not later than 4 p.m. (Brussels time)**, at the following address:

European Commission  
Directorate-Energy and Transport  
Direction I – Nuclear Safeguards  
Complexe Euroforum II- main entrance  
For the attention of Ms A Adams-Webel/Mr Boella EUFO 3358  
1, rue Henry M. Schnadt  
Zone d'activités Cloche d'Or  
L-2530 Luxembourg

In this case, a receipt must be obtained as proof of submission, signed and dated by the official in the Commission's central mail department who took delivery. The department is open from 08.00 to 16.00 Monday to Friday. It is closed on Saturdays, Sundays and Commission holidays.

3. Tenders must be placed inside two sealed envelopes, one inside the other. **The inner envelope should be marked:**

<p><b>Call for tenders No. TREN/I1/112-2007</b> <b><u>not to be opened by the internal mail department</u></b> <b>EUFO – Archives</b></p>
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If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

**The non-compliance with these formal conditions will entail the rejection of the bids at the opening session.**

4. Tenders will be opened on 11/10/2007 at 10:00 EUFO II 3358  
1, rue Henry M. Schnadt  
Zone d'activités Cloche d'Or  
L-2530 Luxembourg

This opening session will be public. Each tenderer may be represented by not more than one person. At the end of the opening session, the Chairman of the opening committee will indicate the name of the tenderers and the decision concerning the admissibility of each offer received. The prices mentioned in the bids will not be communicated.

5. The specification, listing all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity and the draft contract are attached.
6. Tenders must be signed by the tenderer or his duly authorised representative and perfectly legible so that there can be no doubt as to words and figures.
7. Validity period of the tender: six months as from the final date for submission of tenders mentioned under point 2 above.

8. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification, in the draft contract and, where applicable, waiver of the tenderer's own general or specific terms and conditions. The terms and conditions are binding on the tenderer to whom the contract is awarded during the performance of the contract.
9. Contacts between the awarding authority and tenderers are prohibited throughout the procedure except in exceptional circumstances and under the following conditions only:

Before the closing date for submission of tenders

- At the request of the tenderer, the awarding authority may provide additional information solely for the purpose of clarifying the nature of the contract.

Requests for additional information must be sent in writing not later than six calendar days before the closing date for submission of tenders to the following address:

Ms A Adams-Webel/Mr Boella EUFO 3358  
1, rue Henry M. Schnadt  
Zone d'activités Cloche d'Or  
L-2530 Luxembourg  
Tel (+ 352) 430132034  
Fax (+ 352) 430136059  
e-mail: anette.adams-webel@ec.europa.eu

- The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other material shortcoming in the text of the tender documents.

Further information will be sent simultaneously to all tenderers who have requested the specification in writing, where this is appropriate. Tenderers who have downloaded the documents from the Directorate-General Energy and transport website (DG TREN) are invited to consult this site regularly until the deadline for submission.

After the opening of tenders

If a tender requires clarification, or if there is a need to correct material errors which have occurred in the drafting of the tender, the Commission may take the initiative and contact the tenderer(s). Such contact shall not lead to the conditions of the tender being altered in any way.

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

Until a contract is signed, the awarding authority may decide not to award a contract or to cancel the tendering procedure, without the candidates or tenderers being entitled to claim any compensation. Where appropriate, the decision will be substantiated and brought to the attention of the tenderers.

11. Tenderers will be informed of whether their tenders have been accepted or rejected.
12. The follow-up of your response to the invitation to tender will require the recording and further processing of personal data (i.e. name, address, CV, etc.). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of

individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. Unless if otherwise stated, replies to questions and personal data requested are necessary for the purpose of assessing your tender (according to the specifications of the invitation to tender) and will only be processed within DG TREN as data controller, for this purpose. You may, upon request, have your personal data sent to you and rectify any inaccurate or incomplete particulars. Should you have any queries concerning the processing of your personal data, please address them to the entity acting as data controller within DG TREN. As regards the processing of your personal data, you have the right to bring the matter before the European Data Protection Supervisor at any time.

13. You are informed that for the purposes of safeguarding the financial interest of the Communities, your personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF).

Data of economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation may be included in a central database and communicated to the designated persons of the Commission, other institutions, agencies, authorities and bodies mentioned in Article 95(1) and (2) of the Financial Regulation. This refers as well to the persons with powers of representation, decision making or control over the said economic operators. Any party entered into the database has the right to be informed of the data concerning it, up on request to the accounting officer of the Commission.

Yours faithfully,

Christian Cleutinx  
Director

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

**Invitation to tender No. TREN /I1/112-2007 concerning  
Purchase of industrial computers**

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## I. SPECIFICATIONS

### I.1.1. Reference Rackmount Industrial Computer Configuration

The tenderer shall propose a Reference Industrial Computer Configuration which meets the following minimum requirements:

<b>Rackmount Industrial PC</b>	
Form Factor	4U height 19" Rackmount chassis (L <= 500 mm)
CPU	X86, Dual Core or Core 2 Duo
RAM	2GB
Graphics	SVGA
HDD	40GB 7200RPM IDE/Sata
DVD-ROM	DVD 16/48x
Keyboard	Standard UK
Pointing device	Optical Wheel Mouse
Audio System	Standard soundcard
Network	10/100/1000 WOL capable LAN Network Interface with RJ45
USB Ports	USB 2.0 : 4 rear , 2 front
Serial Ports	2 rear
Extension Slot s	6 PCI - 1 ISA
Graphics Port	Direct VGA And/or DVI-D or DVI-I
Security	Temperature probe with management/logging software
Power Supply	Auto Sensing 100-240 VAC adapter for worldwide usage Power cable conform to the French and English standards
Manuals	Documents in English must be supplied electronically for the main components
Software	All necessary software and drivers must be available. Windows XP (Service Pack 2) and Windows XP embedded should be available as an option
Operating System	Capability to run Windows XP professional corporate
Accessories	Full Rack mount kit and cables
Mean time between failures	50000 hours
Specific Operating Condition	Maximum temperature could reach 50° C
Availability	18 months
Warranty	24 months

**I.1.2. Associated Standard Flat Panel Integrated Keyboard and Monitor**

The Tenderer will propose a Standard Flat Panel Integrated Keyboard and Monitor which can be used with the *Reference Rackmount Industrial Computer Configuration* and the *Specific-purpose Rackmount Industrial Computer Configurations*.

The proposed Standard Flat Panel Integrated Keyboard and Monitor will meet the following minimum requirements:

<b>Standard Flat Panel Integrated Keyboard and Monitor</b>	
Type	1U integrated keyboard and monitor
Visible Diagonal	15" (minimum)
Display	SVGA TFT LCD
Horizontal Resolution	1024 pixels
Vertical Resolution	768 pixels
Viewing Angle Vertical	120°
Viewing Angle Horizontal	100°
Brightness	300 cd/m <sup>2</sup>
Contrast	600:1
Backlight Live	50000 hours
Graphics Signal Input Ports	Direct VGA And/or DVI-D or DVI-I VGA and DVI connection cables
Power Supply	Auto Sensing 100-240 VAC adapter for worldwide usage Power cable conform to the French and English standards
Manuals	Documents in English must be supplied electronically for the main components
Software	All necessary software and drivers, including those for the associated equipment. Windows XP SP2 / Windows server 2003 / Windows Xp embedded should be available as an option
Availability	18 months
Warranty	24 months

**I.1.3. Associated Equipment and services**

The list of equipment and services associated with the Reference Rackmount Industrial Computer Configuration will include options and extensions which are closely related (mainly internal to the Configuration), including but not limited to the following categories:

- Higher capacity main memory
- Higher capacity hard disks
- More powerful Processors
- Controllers (i.e. SATA Raid or iLink - Firewire)
- Optical Disk reader/writer
- USB Floppy disk drive



- External bootable Flash disk reader
- 8 GB or larger bootable Flash disk
- Technical maintenance piece to piece in Luxembourg
- 10 days of technical assistance in Luxembourg

Each option should be offered with a fixed price, including installation when applicable.

**When hardware options or extensions will be ordered at the same time the equipment will be factory installed at no additional cost.**

The equipment associated with the Reference Rackmount Industrial Computer Configuration will remain available during at least 18 months after the date of the offer.

## **I.2. Introduction**

To discharge of its responsibilities under Chapter VII of the EURATOM Treaty, the European Commission maintains unattended measurement systems in nuclear installations across the European Union. For these systems, computers are required that perform reliably in the harsh conditions of an industrial environment (humidity, temperature, dust, noise, vibrations, etc.)

## **I.3. Purpose of the contract**

To purchase specific computers as components of data acquisition systems which are designed to withstand continuous use in industrial environment (humidity, temperature, dust, noise).

## **I.4. Duration of the tasks**

Delivery of the units shall not exceed six months after entry into force of the contract.

## **I.5. Place of performance and delivery**

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

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

European Commission  
 Directorate-Energy and Transport  
 Direction I – Nuclear Safeguards  
 Complexe Euroforum II  
 For the attention of Ms A Adams-Webel/Mr Boella EUFO 3358  
 1, rue Henry M. Schnadt  
 Zone d'activités Cloche d'Or  
 L-2530 Luxembourg

## **I.6. Estimate of the amount of work involved**

*It is estimated that a maximum of 30 units will be purchased*

## II. TERMS OF CONTRACT

In drawing up his offer, the tenderer should bear in mind the provisions of the draft contract attached to this invitation to tender (Annex 5). Any limitation, amendment or denial of the terms of contract will lead to automatic exclusion from the procurement procedure.

The Commission may, before the contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

### II.1. Terms of payment

Payments shall be made in accordance with the provisions specified in Annex 5, the draft service contract

### II.2. Subcontracting

If the tenderer intends to subcontract part of the service, he shall indicate in his offer which part will be subcontracted and to what extent (% of the total contract value).

Tenderers must inform the subcontractor(s) that Article II.17 of the contract (Annex 5) will be applied to them. Once the contract has been signed, Article II.13 of the above-mentioned contract shall govern the subcontracting.

### II.3. Legal form to be taken by the grouping of service providers to whom the contract is awarded (if applicable)

Groupings, irrespective of their legal form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortium) must specify the company or person heading the project and must also submit a copy of the document authorising this company or person to submit a bid. If awarded, the contract will be signed by the company or the person heading the project, who will be, vis à vis the Commission, the only contracting party responsible for the performance of this contract. Tenders from a consortium of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member of the consortium or group. Each member must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria, selection criteria (all of them) and award criteria.

## III. FORM AND CONTENT OF THE TENDER

### III.1. General

Tenders must be written in **one of the official languages** of the European Union.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc...). Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications.

## III.2. Structure of the tender

All tenders must include three sections i.e. an administrative, a technical and a financial proposal.

### III.2.1. Section One: administrative proposal

This section must provide the following information, set out in the standard identification forms attached to these tender specifications (Annexes 1, 2 and 3):

- Tenderers' identification (Annex 1)
  - All tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or provide a declaration or certificate.
  - If the tenderer is a natural person, he/she must provide a copy of the identity card/passport or driving licence and proof that he/she is covered by a social security scheme as a self-employed person.

*Each tenderer (including subcontractor(s) or any member of a consortium or grouping) must complete and sign the identification forms in Annex 1 and also provide above-mentioned documents. However, the subcontractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the contract.*

- Financial identification (Annex 2)

The **bank identification form** must be filled in and signed by an authorised representative of the tenderer and his/her banker. A standard form is attached in Annex 2 and a specific form for each Member State is available at the following Internet address:

[http://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.htm)

In the case of a grouping, this form must only be provided by the person heading the project.

- Legal entities (Annex 3)

The legal entity form in Annex 3 must be filled in and should be accompanied by a number of supporting documents, available on the Web site:

[http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)

In the case of a grouping, this form must only be provided by the person heading the project.

The Commission reserves the right, however, to request additional evidence in relation to the bid submitted for evaluation or verification purposes within a time-limit stipulated in its request.

### ***III.2.2. Section Two: Technical proposal***

This section is of great importance in the assessment of the bids, the award of the contract and the future execution of any resulting contract.

The technical proposal must provide all the information needed for the purpose of awarding the contract.

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

All tenders must contain a financial proposal. The tenderer's attention is drawn to the following points:

- Prices must be quoted in **euros**, including the countries which are not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.
- Prices must be fixed amounts and include all expenses, such as travel expenses and daily allowances.
- **Prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption. For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Community is exempt from VAT;
- **Prices shall be fixed** and not subject to revision during the performance of the contract;

**Bids involving more than one service provider (consortium) must specify the amounts indicated above for each provider.**

## **IV. ASSESSMENT AND AWARD OF THE CONTRACT**

The assessment will be based on each tenderer's bid.

All the information will be assessed in the light of the criteria set out in these specifications. The procedure for the award of the contract, which will concern only admissible bids, will be carried out in three successive stages.

The aim of each of these stages is:

- 1) to check on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- 2) to check on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;

3) to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages.

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

##### ***IV.1.1. Exclusion criteria (Article 93 Financial Regulation<sup>1</sup>)***

1. To be eligible for participating in this contract award procedure, tenderers must not be in any of the following exclusion grounds:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation<sup>2</sup> for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Community budget.

2. The cases referred to in point IV.1.1. e) above shall be the following:

- a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995 (OJ/C 316 of 27.11.1995, p. 48);
- b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997 (OJ/C 195 of 25.6.1997, p. 1);

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<sup>1</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16.9.2002)

<sup>2</sup> Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

- c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ/L 315 of 29.12.1998, p. 1);
- d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ/L 166 of 28.6.1991, p.77).

#### ***IV.1.2. Other cases of exclusion (Article 94 Financial Regulation)***

**Contracts will not be awarded** to tenderers who, during the procurement procedure:

- a) **are subject to a conflict of interest;**

Tenderers must declare:

- that they do not have any conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- that they will inform the contracting authority, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;
- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the contract.

The Commission reserves the right to check the above information.

- b) **are guilty of misrepresentation** in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.
- c) find themselves in one of the **situations of exclusion**, referred to in paragraph IV.1.1. above for this procurement procedure.

#### ***IV.1.3. Evidence to be provided by the tenderers***

1. When submitting their bids, each tenderer (including subcontractor(s) or any member of a consortium or grouping) shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations mentioned above (cf. IV.1.1 and VI.1.2). For that purpose, they must complete and sign the form attached in Annex 4. Where the tenderer is a legal entity, they shall, whenever requested by the Commission, provide information on the ownership or on the management, control and power of representation of the legal entity.
2. The tenderer to whom the contract is to be awarded shall provide, within 15 calendar days after notification of the results of the procurement procedure and in any case before the signature of the contract, the following evidence, confirming the declaration referred to above:

The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point IV.1.1 (a), (b) or (e) above, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point IV.1.1 (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraph 1 and 2 above shall relate to legal and/or natural persons including, if applicable with regard to points b) and e), company directors or any person with powers of representation, decision-making or control in relation to the tenderer.
4. When the subcontracted part is above 20% of the contract value, the subcontractor(s) must also provide the above-mentioned declaration on honour. In case of doubt on this declaration on the honour, the contracting authority may also request the evidence referred to in paragraphs 2 and 3 above..
5. The Commission reserves the right to request any other document relating to the proposed tender for evaluation and verification purpose, within a delay determined in its request.

**Remark:**

The tenderers will be waived of the obligation to submit the documentary evidence above mentioned if such evidence has already been submitted for the purposes of another procurement procedure launched by Directorate General for Energy and Transport and provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

***IV.1.4. Administrative and financial penalties***

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been found guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or have failed to supply this information or have been declared to be in serious breach of their obligations under contracts covered by the Community budget may be subject to administrative or financial penalties, in accordance with Article 96 of the Financial Regulation and Articles 134b and 133a of the Implementing Rules.<sup>3</sup>

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<sup>3</sup> Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the

## IV.2. SELECTION CRITERIA (SELECTION OF TENDERERS)

To be eligible, the tenderers must have the economic and financial capacity as well as the technical and professional capacity to perform the tasks required in this call for tender.

### IV.2.1. *Economic and financial capacity – References required*

Tenderers must provide proof of their financial and economic capacity by means of the following documents: the balance sheets or extracts from balance sheets for the last three financial years, and a statement of overall turnover and turnover relating to the relevant services for the last three financial years.

This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to submit a tender. However, if the tender includes subcontractors whose tasks represent less than 20% of the contract, those subcontractors are not obliged to provide evidence of their economic and financial capacity.

### IV.2.2. *Technical and professional capacity – References required*

Tenderer should submit proof to show that they have experience in the manufacturing and/or marketing of computers for use in an industrial environment.

## IV.3. EVALUATION OF TENDERS – AWARD CRITERIA

The contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the contract.

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

N°	Award Criteria	Weighting
1	Performance of the computer and quality of the components (processor, memory, hard disk capacity, number and types of interfaces, etc.)	35%
2	Robustness to difficult operating conditions (fluctuating temperatures, shocks and vibrations, humidity, MTBF, etc.)	35%
3	Quality of warranty offered (length and scope)	15%
4	Quality and detail of the tender dossier	15%
<b>Total number of points</b>		<b>100</b>



b) Total price

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

#### **IV.4. INFORMATION FOR TENDERERS**

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, the Commission will inform all rejected tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

#### **V. ANNEXES**

1. Identification of the Tenderer
2. Financial Identification
3. Legal Entity Form
4. Declaration by the Tenderer (relating to the exclusion criteria)
5. Draft Service Contract

# ANNEX 1

## IDENTIFICATION OF THE TENDERER

(Each service provider , including subcontractor(s) or any member of a consortium or grouping, must complete and sign this identification form)

Call for tender TREN xx/xx/xxxx

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>4</sup>	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number: Fax number: E-mail address:	

---

<sup>4</sup> For natural persons

<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>5</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:

---

<sup>5</sup> This person must be included in the list of legal representatives; otherwise the signature on the tender will be  
invalidated.

## **ANNEX 2**

(to be completed by the tenderer and his or her financial institution)

The tenderer's attention is drawn to the fact that this document is a model and that a specific form for each Member State is available at the following Internet address:

[http://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.htm)

**FINANCIAL IDENTIFICATION**

<u>ACCOUNT HOLDER</u>	
NAME	<input type="text"/>
ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/> POSTCODE <input type="text"/>
COUNTRY	<input type="text"/> VAT NUMBER <input type="text"/>
CONTACT PERSON	<input type="text"/>
TELEPHONE	<input type="text"/> FAX <input type="text"/>
E - MAIL	<input type="text"/>

<u>BANK</u>	
BANK NAME	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/> POSTCODE <input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN (optional)	<input type="text"/>

REMARKS :

<b>BANK STAMP + SIGNATURE of BANK REPRESENTATIVE</b> (Both Obligatory)
---

<b>DATE + SIGNATURE of ACCOUNT HOLDER :</b> (Obligatory)
---

## **ANNEX 3**

### **Legal entity form**

Complete the legal entity form, which should be accompanied by a number of supporting documents, available on the Web site:

[http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)

Please note that we can only accept either original documents or certified copies, which must be less than 6 months old.

In the case of a grouping, this form must only be provided by the person heading the project.

## ANNEX 4

### DECLARATION BY THE TENDERER

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

1. In accordance with Article 93 of the Financial Regulation of the European Communities (Council Regulation 1605/2002 of 25.6.2002) published in Official Journal L 248 of 16 September 2002, I declare on my honour that I am not in any of the following situations which would exclude me from participating in this procurement procedure:
  - a) I am not bankrupt, being wound up or having my affairs administered by the courts, I have not entered into an arrangement with creditors, I have not suspended business activities, I am not the subject of proceedings concerning any such matters, and I am not in any similar situation arising from a similar procedure provided for in legislation or regulations;
  - b) I have not been convicted of an offence concerning my professional judgement by a judgment which has the force of res judicata;
  - c) I have not been found guilty of grave professional misconduct proven by any means which the contracting authority can justify;
  - d) I have not failed to fulfil obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which I am established or with those of the country or the contracting authority or those of the country where the contract is to be performed;
  - e) I have not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
  - f) I am currently not subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation<sup>6</sup> for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Community budget.
2. In addition, the undersigned declares on his or her honour:
  - a) that on the date of submission of the tender, the company or organisation I do represent and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; I undertake to inform the Commission without delay of any change to this situation after the date of submission of the tender.
  - b) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

Done at ..... on.....

Name .....

Title .....

Signature:

---

<sup>6</sup> Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.





## ANNEX 5



EUROPEAN COMMISSION  
Directorate General Energy and Transport  
  
Directorate I – Nuclear Safeguards  
**The Director**

### DRAFT SUPPLY CONTRACT

CONTRACT NUMBER – *[complete]*

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr Christian Cleutinx, Director in the Directorate-General for Energy and Transport , Directorate I – Nuclear Safeguards

of the one part,

and

*[official name in full]*

*[official legal form]*

*[statutory registration number]*

*[official address in full]*

*[VAT registration number]*

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

of the other part

HAVE AGREED

the Special Conditions and the General Conditions below and the following Annexes:

**Annex I** - Technical Specifications *[and monitoring]*

**Annex II** – "Delivery Acceptance Form"

**Annex III** - Tender of the Contractor no. (Complete) of (Complete)

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.

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

**I.1.1.** The subject of the Contract is the purchase of thirty specific computers as components of data acquisition systems which are designed to withstand continuous use in industrial environment (humidity, temperature, dust, noise).

**I.1.2.** The Contractor shall supply the goods in accordance with the Technical Specifications with price list annexed to the Contract (Annex I).

### **ARTICLE I.2 - DURATION**

**I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.

**I.2.2.** Performance of the Contract may under no circumstances begin before the date on which the Contract enters into force.

**I.2.3.** Delivery of goods and provision of related services to them shall not take place after **6 months** and shall start from date of entry into force of the Contract. Such period may be extended only with the express written agreement of the parties.

### **ARTICLE I.3 - AMOUNT**

**I.3.1** The maximum total amount to be paid by the Commission under this Contract shall be EUR *[amount in figures and in words]*.

### **ARTICLE I.4 – PAYMENTS**

Payments under the Contract shall be made in accordance with Article II.5.

#### **I.4.1 Payment**

Invoices shall be issued and payments made in accordance with Article II.5.

The Commission shall have 20 days to approve or reject the goods by signature of the Delivery Acceptance Form (Annex II).

The request for payment of the balance shall be valid if accompanied by the relevant invoices, indicating the reference number of the Contract, provided the Delivery Acceptance Form (Annex II) has been duly signed by the Commission.

Within 30 days of the date of receipt by the Commission of the relevant invoice accompanied by the duly signed Delivery Acceptance Form (Annex II), payment of the balance corresponding to the relevant invoices shall be made.

*[For Contractors established in Belgium, the provisions of the Contract constitute request for VAT exemption no 450, provided that the Contractor indicates in his invoice(s) as follows:*

*“Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA.” or equivalent indication in Dutch or German language.]*

**I.4.2** The goods shall be delivered at:

To the attention of: *[complete]*

The Contractor shall notify the Commission of the exact date of delivery at least *[complete]* days in advance. All deliveries shall be made between *[complete]* hours and *[complete]* hours at the agreed place of delivery.

#### **ARTICLE I.5 – BANK ACCOUNT**

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

Name of bank: *[complete]*  
Address of branch: *[complete]*  
Exact designation of the account holder: *[complete]*  
Full account number including codes: *[complete]*  
IBAN code: *[complete]*

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

All communication relating to the Contract shall be made in writing and shall bear the Contract number. It shall be sent to the following addresses:

Commission:

European Commission  
Directorate-General for Energy and Transport  
Directorate I – Nuclear Safeguards  
Unit II – Logistical support  
L-2920 LUXEMBOURG

Contractor:

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

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

**I.7.1.** The Contract shall be governed by Community law complemented, where necessary, by the national substantive law of Luxembourg.

**I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Luxembourg.

## **II – GENERAL CONDITIONS**

### **ARTICLE II.1 - PROCEDURES FOR PERFORMING THE CONTRACT**

#### **II.1.1 Phases of execution of the Contract**

##### **Delivery**

a) Time allowed for delivery

The time allowed for delivery shall be mentioned in Annex I.

b) Date and time of delivery

The Commission shall be notified in writing of the exact date of delivery within the period indicated in the Special Conditions. All deliveries shall be made at the agreed place of delivery during the hours indicated in the Special Conditions. The supplier shall bear all the risks concerning the goods until provisional acceptance at the place of delivery.

c) Consignment note

All consignments shall be accompanied by a consignment note in duplicate, duly signed and dated, giving the Contract number and particulars of the goods delivered. One copy of the consignment note shall be countersigned by the Commission and returned to the Contractor.

##### **Acceptance of the goods after verification**

Signing of the consignment note by the Commission, as provided for in subparagraph c) above, is simply an acknowledgement of the fact that the goods have been delivered and in no way implies acceptance.

Acceptance of the goods shall be confirmed by the signing of a certificate to this effect by the Commission contained in Annex II to this contract.

Acceptance shall take place no later than one month after the date of delivery, unless provision is made for a different period in the Special Conditions or in Annex I.

Acceptance shall be declared only where the conditions laid down in the Contract are satisfied and the goods conform to the Technical Specifications, which are an integral part of this Contract (Annex I).

Where a performance guarantee is required under Article I.4, the above- mentioned acceptance shall be considered provisional until release of the guarantee.

##### **Non-acceptance of the goods after verification**

Where, for reasons attributable to the Contractor, the Commission is unable to declare acceptance of the goods within thirty days of the date of delivery, the Contractor shall be notified in writing within a period of three Commission working days from the deadline for acceptance. The penalties provided for in Article II.4.1 may apply to the proportion of the total price corresponding to the goods which are unacceptable.

##### **Assembly**

If required by the Special Conditions, the Contractor shall assemble the goods delivered within a period of one month of being asked to do so by the Commission.

## **Training**

If required by the Special Conditions, the Contractor shall provide a training at the premises of the Commission service where the goods will be installed according to the modalities determined in Annex I.

### **II.1.2 General provisions concerning goods**

#### **a) Packaging**

The goods 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.

Pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- Commission of the European Communities and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- number and date of Contract;
- EC code number of article.

#### **b) Guarantee**

The goods shall be guaranteed against all defects in manufacture or materials for one year from the date of acceptance, unless provision is made for a different period in the Special Conditions or in Annex I. The Contractor shall guarantee that any permits and licences required for manufacturing and selling the goods 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.

### **II.1.3 Performance of the Contract**

- a) The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- b) The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the goods are to be delivered.
- c) The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for execution of the Contract.
- d) In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff

must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the Contract resulting from the replacement of staff in accordance with this Article.

- e) Should any unforeseen event, action or omission directly or indirectly hamper execution of the Contract, either partially or totally, the Contractor shall immediately and at his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- f) Should the Contractor fail to perform his obligations under the Contract, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose sanctions, as provided for in Article II.4.

## **ARTICLE II.2 - LIABILITY**

- II.2.1.** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of misconduct or negligence on the part of the Commission.
- II.2.2.** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.10. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3.** The Contractor shall indemnify the Commission in full and undertakes to provide compensation in the event of any action, claim or proceeding brought against it by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4.** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred to this end may be borne by the Contractor if circumstances so justify.
- II.2.5.** In the event of any action brought by a third party against the Contractor in connection with performance of the Contract, the Commission may assist the Contractor if a written request is made by the Contractor to this effect. Expenditure incurred by the Commission to this end shall be borne by the Contractor.
- II.2.6.** The Contractor shall take out the insurance required by the relevant applicable legislation against risks and damage relating to performance of the Contract. He shall take out supplementary insurance if he deems it necessary and appropriate in order to perform the Contract. A copy of all insurance contracts shall be sent to the Commission should it so request.

## **ARTICLE II.3 - CONFLICT OF INTERESTS**

- II.3.1.** The Contractor shall take all necessary measures in order to prevent or end any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national

affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay.

The Commission reserves the right to verify that such measures are adequate and may require that additional measures be taken if necessary. The Contractor shall ensure that his staff, board and directors are not placed in a situation, which could give rise to conflict of interest. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

**II.3.2.** The Contractor shall abstain from any contact likely to compromise his independence.

**II.3.3.** The Contractor declares:

- that he has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the performance of the Contract.

#### **ARTICLE II.4 - PENALTIES AND LIQUIDATED DAMAGES**

**II.4.1.** Under the Financial Regulation applicable to the general budget of the European Communities, all contractors who have been found to have seriously failed to meet their contractual obligations are subject to financial penalties representing 2% to 10% of the total value of the contract in question. This rate may be increased to 4% to 20% in the event of a repeat offence within five years of the first infringement.

**II.4.2** Should the Contractor fail to perform his obligations under the Contract within the time specified in Article I.2, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount of the Contract per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing sanctions shall become enforceable.

#### **ARTICLE II.5 – INVOICING AND PAYMENTS**

a) Pre-financing:

The payment of the pre-financing foreseen in Article I.4.1 will be made within 30 days from registration of the invoice, drawn up in triplicate and bearing the Contract number.

Where required by Article I.4.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by an authorised bank or financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract.

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent delivery of goods or execution of related services on his part.

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

The guarantee shall specify that it enters into force on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent delivery of goods or execution of related services. The guarantee shall be retained until the pre-financing has been deducted from payment of the balance. It shall be discharged the following month. The cost of providing such guarantee shall be borne by the Contractor.

b) Payment of the balance:

Within sixty days of receipt by the Contractor of the certificate of acceptance of the goods by the Commission, he shall submit the relevant invoice, drawn up in triplicate and bearing the Contract number, to the Commission for approval.

Where required in either the Special Conditions or Annex I, it shall be accompanied by a final technical report in accordance with the instructions laid down in Annex I and provided for in the Special Conditions.

On receipt of the documents the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve them, with or without comments, reservations or requests for additional information; or
- to request new documents.

If the Commission does not react within this period, the documents shall be deemed to have been approved. Approval of the documents accompanying the request for payment does not imply recognition either of their regularity, or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests new documents, these shall be submitted within the period of time indicated in the Special Conditions. The new documents shall likewise be subject to the above provisions.

## **ARTICLE II.6 – GENERAL PROVISIONS CONCERNING PAYMENTS**

**II.6.1** Payments shall be deemed to have been made on the date on which the Commission's account is debited.

**II.6.2** The periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary documents have not been produced.

The Commission shall notify the Contractor accordingly by registered letter with acknowledgement of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter.



**II.6.3** In the event of late payment the Contractor shall be entitled to may claim interest, provided the calculated interest exceeds EUR 200. However, in the event of payment due before 1<sup>st</sup> January 2008, the Contractor may claim interest only within two months of receiving the payment. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“*the reference rate*”) plus seven percentage points (“*the margin*”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

**II.6.4.** The Financial Regulation applicable to the general budget of the European Communities imposes a final date for implementation of legal commitments towards third parties extending over more than one financial year by which all the phases of execution have to be completed and the payments made.

This final date shall be determined by adding to the date on which the goods and related services have to be delivered :

- the maximum periods laid down in article I.4,
- where applicable, the maximum period laid down for release of the performance guarantee.

In the event of amendment of the contract duration or of the periods indicated above, the final date for implementation shall automatically be modified accordingly.

## **ARTICLE II.7. –RECOVERY**

**II.7.1.** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

**II.7.2.** In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.6.3. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

**II.7.3.** The Commission may, after informing the Contractor, recover amounts established as receivable by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee. The agreement of the Contractor is not required.

**II.7.4.** The Contractor is aware that the Commission may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 256 of the EC Treaty.

## **ARTICLE II.8. –TAXATION**

- II.8.1** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoice invalid.
- II.8.2** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and dues, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- II.8.3** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and dues, including VAT.
- II.8.4** Invoices presented by the Contractor shall specify separately his VAT taxation place, the amounts not including VAT and the amounts including VAT.

#### **ARTICLE II.9.– FORCE MAJEURE AFFECTING THE CONTRACT**

- II.9.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.9.2** If either of the contracting parties is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.9.3** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration for the goods actually delivered and related services provided.
- II.9.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE II.10 – SUBCONTRACTING**

- II.10.1.** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.10.2.** Even where the Commission authorises the Contractor to subcontract to third parties, he shall nonetheless remain bound by his obligations to the Commission under the Contract.
- II.10.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.13.

#### **ARTICLE II.11 – ASSIGNMENT**

**II.11.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

**II.11.2.** In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

## **ARTICLE II.12 - TERMINATION**

**II.12.1.** The Commission may terminate the Contract in the following circumstances:

- a) where a change in the Contractor's legal, financial, technical or organisational situation could have a significant effect on the Contract;
- b) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- c) where the Contractor has failed to perform the Contract;
- d) where the Contractor has been found guilty by the competent bodies of serious professional misconduct;
- e) where the Contractor is declared bankrupt, is wound up, has ceased trading, has been wound up by court order or is in composition with his creditors entailing suspension of business, is in receivership or is in any other comparable situation provided for by the laws or regulations of his country;
- f) where the Contractor has made false, incomplete or incorrect statements or has failed to provide information in an attempt to obtain the Contract or any benefit resulting therefrom, or where this was the effect of his action;
- g) where the Contractor has intentionally or by negligence, committed an irregularity in performance of the Contract or in relation to other contracts concluded with an institution, organ or agency of the European Communities and, more generally, in the event of fraud, corruption or any other illegal activity detrimental to the Communities' financial interests on the part of the Contractor.

**II.12.2.** In case of force majeure, notified in accordance with Article II.9, either contracting party may terminate the Contract.

**II.12.3.** Registered letter with acknowledgement of receipt or equivalent initiates the termination procedure. Where prior notice is not required (points b), d), e), f) and g)), termination shall take effect from the day after the day on which the letter terminating the Contract is received.

Where prior notice is required (points a) and c)), termination shall take effect after a period of three months, which shall start to run on the date on which the letter terminating the Contract is received. The Contractor may submit arguments against the termination within thirty days. In the absence of reaction on his part or of written withdrawal of the termination notice by the Commission within thirty days of the receipt of such arguments, the termination procedure is maintained.

**II.12.4.** Consequences of termination:

In the event of the Commission terminating the Contract in accordance with the provisions of this Article, the Contractor shall waive any claim for consequential damages, including

any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the goods delivered and related services provided up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Contractor shall be entitled to remuneration in accordance with Annex I and accepted by the Commission. The Contractor shall accept as the aggregate liability of the Commission payment of the contract price corresponding to the goods delivered and to the related services provided in accordance with the Contract as at the effective date of termination. However, in the event of termination on the grounds set out in points (b), (c), (d), (f) or (g) of Article II.12.1, the Commission may recover any sums paid to the Contractor under the Contract.

### **ARTICLE II.13 – CHECKS AND AUDITS**

**II.13.1.** The Contractor shall provide free of charge all the detailed information requested by the Commission or by an outside body of the Commission's choice with a view to checking that the Contract is being properly managed and performed.

**II.13.2.** The Contractor shall keep at the Commission's disposal the original or, in exceptional cases, duly authenticated copies, of all documents relating to the Contract for a period of five years from payment of the last delivery.

**II.13.3.** The Commission may, at any time within the period specified in the paragraph above, arrange for an audit to be carried out either by an outside body of its choice, or by the Commission departments themselves. The object of such an audit shall be limited to checking that the Contractor has complied with the Contract. The cost shall be borne by the Commission.

**II.13.4.** In order to carry out these audits, the Commission departments and the outside bodies concerned shall have total on-the-spot access, notably to the Contractor's offices, at all times and to all the information needed to check that the Contractor has complied with the Contract, including information in electronic format.

**II.13.5.** The European Court of Auditors and the European Anti-Fraud Office shall have the same rights as the Commission, notably right of access, for the purpose of checks and audits.

### **ARTICLE II.14 - AMENDMENTS**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

### **SIGNATURES**

For the Contractor,

For the Commission,

[*Company name/forename/surname/function*] Mr. Christian CLEUTINX, Director

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

signature: \_\_\_\_\_

Done at ....., date

Done at Luxembourg, [date]

In duplicate in English

## **ANNEX I**

### **Tender Specifications and Monitoring**

*The purpose of this Annex is to enable the Commission to conduct, throughout the duration of the Contract, an accurate appraisal of whether the Contractor is executing the tasks assigned to him in accordance with the provisions of the Contract.*

*So that the Commission can regularly identify the progress made in execution of the tasks in accordance with the Tender Specifications, appropriate monitoring, assessment, and supervisory procedures shall be set up. For these purposes, this Annex shall include all necessary details, in particular, where relevant, the following:*

- (i) schedule of interim and final reports – terms for approval, structure and content (where provision is made for such reports and a specific annex is not necessary);*
- (ii) schedule of audits to be carried out in accordance with Article II.17 of the Contract.*

*All details on Monitoring and Reporting are to be indicated and included in the Tender Specifications.*

## ANNEX II



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

Luxembourg,

### RECORD OF TECHNICAL ACCEPTANCE

Contract reference:

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

This technical approval was:

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

and was concluded:

- without any remarks
- with the following remarks:

Nr.	Remark	Date for final approval

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

Copies (to be sent by the technical responsible):