



Luxembourg, 19 May 2007

INVITATION TO TENDER No. TREN/H4/68-2007

(open procedure)

Dear Sir/Madam,

1. The European Commission invites tenders for a service contract regarding the following project:

“Management of liquid radioactive effluents arising from medical establishments in EU Member States and Candidate Countries – MEDIWASTE”

The main objective of the study is to review current management practices for liquid radioactive effluents in medical establishments in each of the EU Member States and Candidate Countries. It should be borne in mind that the overall goal of the good management of this effluent is to minimise its potential as a hazard for personnel, patients, the general public and the environment. To this end the study should have the effect of assisting local safety authorities and managers of medical establishments in the States to identify areas where safety improvements are required. In the longer-term, it should help the Commission's services that are engaged in radioactive waste management and radiation protection to propose new legislative actions, where required, in the area.

The study should endeavour to highlight those management practises that require improvement in terms of safety (Euratom Directive 96/29 and, in particular, the provisions of Articles 5 and 44 to 47), and thereby create a technical background for possible future EU legislation in this area. The study should also take into consideration any related actions undertaken by the DG Enlargement.

This invitation to tender follows the publication of:

- the contract notice in OJEU **2007/S 95-116035**

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 06/07/2007 (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

European Commission
Directorate-General for Energy and Transport
For the attention of Mr V. Tanner – EUFO 4152A
Jean-Monnet Building
Plateau de Kirchberg
L-2920 Luxembourg

(b) or delivered by hand

Tenders must be delivered by hand at the **Central Mail of the European Commission** by 06/07/2007 **not later than 4 p.m.** (Brussels time), at the following address:

European Commission
Directorate-General for Energy and Transport
For the attention of Mr V. Tanner – EUFO 4152A
Jean-Monnet Building – main entrance
Rue Albert Wehrer
Plateau de Kirchberg
L-2920 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>Call for tenders No. TREN/H4/68-2007 <u>not to be opened by the internal mail department</u> European Commission Directorate-General Energy and Transport Unit H4 Radiation Protection EUROFORUM Building – Room 4152A L-2920 Luxembourg</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.

Non-respect of these instructions may lead to the exclusion of the tenderer.

4. Tenders will be opened at 10.30 a.m on 23/07/2007 in the offices of the Directorate-General for Energy and Transport

EUROFORUM Building
Office 4157
1 rue Henry 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:

Mr Vesa TANNER
European Commission / TREN H4
EUFO 4152A
L-2920 Luxembourg
Luxembourg
Tel (+ 352) 4301-32297
Fax (+ 352) 4301-34646
e-mail: Vesa.Tanner@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.

Yours faithfully,

C. WAETERLOOS

Director

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

Invitation to tender No. TREN/H4/68-2007 concerning

MEDIWASTE

Management of liquid radioactive effluents arising from medical establishments in EU Member States and Candidate Countries

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1. SPECIFICATIONS

1.1. Introduction

The use of unsealed radioactive sources is common practice in modern medicine. Such sources are employed in nuclear medicine and radiotherapy departments for medical diagnostics and for treating cancers and other diseases through metabolic irradiation. They are also used in clinical biology and medical research laboratories. These practices result in the generation of significant volumes of radioactive waste. Typically only a small part of this waste is transferred to specialist radioactive waste processing centres with the major part being stored on site. When the activity of the waste has decreased to a sufficiently low level for treatment as ordinary hospital waste, it is released to the environment.

While there are guidelines for the Member States of the EU for the regulation of the disposal of hospital waste, incidents resulting in undesirable environmental contamination have occurred. While such incidents have not had any significance for public health, they have given cause for concern from a regulatory point of view. Such concern has also been reflected in the media where radioactive waste management practices in medical establishments have been called into question. The EC is not alone in being concerned about this issue. The International Atomic Energy Agency (IAEA), for example, has reflected the importance of dealing with this issue in its deliberations.

In 1999 the European Commission organised a technical workshop in Brussels in order to better understand how such radioactive waste is currently managed in medical establishments in the Member States of the European Union. The proceedings of the workshop were published in 2000 and are available from the following web site address:

<http://ec.europa.eu/energy/nuclear/publications/doc/eur19254.pdf>

The workshop highlighted the similarities between Member States both in terms of the range of applications of radionuclides in medicine and also the range of radionuclides used. However, it also highlighted the considerable diversity of regulations, structures and administrative agencies that exist within the Member States dealing with the issue.

The European Commission has now decided to launch a study to review actions that are being undertaken by the EU Member States and Candidate Countries to implement the provisions of Euratom Directives in the area of hospital waste management. It should be noted in this context that Euratom Directive 96/29 and, in particular, the provisions of Articles 5 and 44 to 47 constitute a step towards the harmonisation of waste management practices for medical establishments.

The study should endeavour to highlight those management practices that require improvement in terms of safety, and thereby create a technical background for possible future EU legislation in this area.

1.2. Purpose of this procurement contract

The main objective of the proposed study is to review current management practices for liquid radioactive effluents in medical establishments in each of the EU Member States and Candidate Countries (Turkey, Croatia and the Former Yugoslav Republic of Macedonia). It should be borne in mind that the overall goal of the good management of this effluent is to minimise its potential as a hazard for personnel, patients, the general public and the environment. To this end

the study should have the effect of assisting local safety authorities and managers of medical establishments in the Member States to identify areas where safety improvements are required. In the longer-term, it should help the Commission's services that are engaged in radioactive waste management and radiation protection to propose new legislative actions, where required, in the area.

The study should provide an analysis of the current situation in each State with respect to:

- The national regulatory framework for ionising radiation focusing particularly on the use of unsealed sources in medical establishments (section 1.3.2);
- The legal provisions for ensuring regulatory compliance in medical establishments including details of discharge authorisations (section 1.3.2);
- The range of radionuclides used in medical establishments together with the range of practices and procedures carried out using radionuclides, the safety factors involved as well as an assessment of their relative importance in terms of environmental impact (section 1.3.3);
- The classification of the medical establishments including consideration, where appropriate, of liaisons with research establishments for the purposes of using radionuclides (section 1.3.4);
- The nuclide specific annual inventory of liquid radioactive waste generated and discharged on a national basis and more specifically for selected medical establishments. This analysis should include an inventory of the radionuclides administered: estimates of liquid radioactive waste handled by the establishment's sewage system and estimates of the discharges to the environment including off site excretion. An indication of the eventual fate of radionuclides in the environment should also be provided (section 1.3.5);
- The operational management scheme applied in selected representative medical establishments for dealing with liquid radioactive effluent with a view to developing a national perspective (section 1.3.6);
- The possible benefits of further harmonisation of the regulatory framework between the EU Member States (section 1.3.7).

The implementation of the project will require close collaboration with the regulatory authorities in each EU Member State and Candidate Country as well as liaison with those medical establishments specifically selected for the study.

1.3. Description of the tasks

1.3.1. General

When carrying out the detailed tasks of the project's work programme, particular attention should be paid to the outcome of the technical workshop organised by the European Commission in 1999¹ and any additional initiatives that may be taken, as well as developments within the OSPAR process with regard to discharges from medical establishments to the marine environment.

¹ <http://ec.europa.eu/energy/nuclear/publications/doc/eur19254.pdf>

1.3.2. National regulatory framework and compliance

The contractor should provide a description of the legislation that applies to the management of radioactivity and in particular radioactive waste in medical establishments in each State. Particular attention should be paid to the definition and categorisation of radioactive waste, the licensing system in force, the inspection procedures applied, the discharge limits for radionuclides and the arrangements established with national organisations in charge of managing radioactive waste in regional or central facilities.

The contractor should provide a description of the legal provisions that are in force in each State for ensuring regulatory compliance in medical establishments for all activities involving the use of radionuclides. The range of information that the medical establishments are obliged to provide to inspectors (e.g. licenses, internal procedures, instructions, inventories, records, etc) together with provisions for access to facilities by inspectors should be detailed. Penalties for non-compliance with regulations and, where appropriate, examples of application of those penalties should also be provided.

In addition, all anomalies, incidents and cases of mismanagement of radioactive waste recorded in medical establishments of each State of concern should be detailed.

1.3.3. Range of radionuclides used in medical establishments

The applications of radionuclides relate to in-vivo therapy, in-vitro diagnostic analysis, in-vivo diagnosis, and in-vitro biological analysis and research that are carried out in separate departments, specific to each of these disciplines. These various departments are typically integrated into hospital, university or clinical biology laboratories.

The range of the radionuclides and labelled molecules used in the “in vivo” techniques varies greatly. However, for this study, the following list of radionuclides together with the associated application should be considered as a first approach:

- Iodine-131 for treating cancers and benign pathologies of the thyroid;
- Strontium-89 used for palliative treatment (pain-killer) of bone metastases;
- Yttrium-90 and rhenium-186 for anti-inflammatory treatments;
- Iridium-192 in interstitial therapy;
- Molybdenum-99/technetium-99m and iodine-123 used in the field of medical diagnostics;
- Thallium-201, gallium-67, iodine-131, chromium-51, cobalt-58, phosphorus-32 for various purposes;
- Cobalt-57, iodine-125 and tritium for biological analysis;
- Radioactive impurities (e.g. thallium-202);
- Positron emission tomography (e.g. F-18 FDG)

The list should not be considered exhaustive and the contractor should identify other nuclides and uses of importance.

The annual quantities of each of these radionuclides supplied to medical establishments in EU Member States and Candidate Countries should be detailed.

The safety factors involved with each radionuclide as well as a general assessment of the relative environmental impact of the use of these radionuclides and procedures should be outlined.

An analysis of the future evolution of the application of radionuclides in medical establishments should be provided. This should be based on recent trends and anticipated developments over the next ten years.

1.3.4. *Classification of the medical establishments*

A review of the management practices for radioactive waste in each individual medical establishment in each State is not required. However, the most representative medical establishments in each EU Member State and Candidate Country should be selected. Such a selection could be based on at least two criteria: range of application of radionuclides and activity throughput of the establishment.

A method for selecting the most representative medical establishments should be developed and explained. For instance the establishments for which the ratio $\sum A_i/A$ is maximised for the sum of the 8-10 major radionuclides could be considered (A_i = amount of radionuclide i used by the establishment, and A the total quantity of the same radionuclide used in the country selected) but other approaches could be used as well.

This section should result in the identification of a set of representative medical establishments in each State for which management practices for radioactive waste should be scrutinised within the terms of the project. Consideration should also be given to assessing any differences in approach that may exist between the public and private medical sectors.

1.3.5. *Annual inventory of liquid radioactive waste generated*

The study should quantify the volumes of liquid radioactive effluents annually generated in each of the selected medical establishments. Radionuclide specific data including information about chemical and physical speciation should be given on:

- The quantities going into the internal sewage system of the facility;
- The quantities discharged outside the facility including off site excretion;
- Details of design including capacity and operating procedures for delay storage facilities where they exist;
- Quantities that reach disposal facilities and details of those facilities.

National regulations concerning waste classification should be documented.

1.3.6. *Operational management scheme used in selected medical establishments*

Local perspective

A waste management scheme for each of the selected medical establishments in each State should be constructed on the basis of the current practice as found in the study. This scheme should include information on:

- Physical arrangements within the medical establishment;
- Staff structure and training;

- Range of procedures carried out;
- Range of radionuclides used;
- Local categorisation of waste;
- Local waste management scheme including details of storage, release rules and discharge limits;
- Documentation, reporting requirements and accreditation practises;
- Patient hospitalisation and discharge rules;
- Details of local environmental impact assessments.

Particular attention should be paid to the assessment of the radiological consequences of the discharges of radionuclides to the environment (e.g. concentrations in the environment as well as estimates of the exposure of sewerage personnel and the public).

National perspective

Generalised management schemes that prevail within each State for dealing with liquid radioactive effluents should be derived taking into account major issues that may be different from one State to another such as:

- Regulatory framework and compliance controls;
- Concept and definition of radioactive waste;
- National radioactive waste management strategies;
- The role of statutory or professional advisory bodies.

1.3.7. *Possible benefits of further harmonisation of the regulatory framework*

This section is aimed at helping the Commission services that are engaged in radiation protection and radioactive waste management to draft possible future legislation related to the safe management of radionuclides in medical establishments. In this context, the Contractor should prepare recommendations that could be used for such a drafting exercise.

Potential issues for harmonisation should address amongst others:

- Regulatory framework;
- Discharge limits;
- Definition of radioactive waste;
- Management strategy: decay storage or dilution prior to discharge into the environment;
- Specifications for decay storage facilities;
- National and regional management and on-site management;
- Control procedures including patient hospitalisation rules;
- Enforcement and penalties.

The potential advantages in terms of safety that would result from further harmonisation should be highlighted.

1.4. Reports and documents to be submitted

The contractor will provide the results of his assessment with recommendations in well-written, easily understandable documents at each stage of reporting.

The Commission intends to publish the final report in the "Radiation Protection" series. After the Radiation Protection Unit has approved the work done, the final manuscript should be submitted in such a form that a printer's proof can be prepared from it directly. As regards tables and graphs, these must be designed so that they can be printed in black on white without any loss of information. For publication, the tenderer must ensure that the study is not subject to any restrictions deriving from intellectual property rights of third parties. Should he intend to use data in the study, which cannot be published, this must be explicitly mentioned in the offer.

The text layout must correspond to the specifications laid down by the Office for Official Publications available on http://publications.eu.int/index_en.html.

The Commission also intends to make the document available for downloading in Pdf-file format at the Radiation Protection website.

The overall design of the document, including pictures, tables and graphs, will be agreed upon with the Radiation Protection Unit before the final document is presented.

The document may be written in any of the official languages of the European Union, but the printer's proof must be in English.

Three copies of the reports shall be supplied on paper form (A4 format) and two electronic versions (Word and Pdf file format).

Interim report

An intermediate report is required which will include a synopsis of the work already undertaken, preliminary conclusions and a strategy for completion of the project. This will be accompanied by preliminary reports for each State containing, to the fullest extent possible, the information and assessments required by the project for each State.

These shall be submitted to the EC **not later than 12 months** from the date of the signature of the contract. The draft will be the subject of discussion between the Commission services and the Contractor.

The Commission shall have 45 days from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

Final report

No later than 22 months after the signature of the contract the ***draft final report*** (electronic version), in English, is to be submitted to the Commission.

This report should contain an overall assessment and conclusions as well as recommendations for harmonising measures for possible inclusion in future legislation. This should be accompanied by the completed reports for each State.

The Commission shall have 45 days from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

1.5. Other deliverables

After submitting the draft final report, the Contractor shall organise a one day technical seminar in a Commission facility in Brussels in order to present the project results to an audience of Commission staff and invited experts from the EU Member States and Candidate Countries. Date and agenda of the seminar shall be agreed with the Commission at least four months in advance. Seminar language will be English.

One expert should be invited from each Member State and Candidate Country and the project contractor should cover the costs of their travel and subsistence according to Commission rules of reimbursement (economy class ticket, current daily allowance is 92 Euros and maximum hotel price 140 Euros per night). Also other costs of the seminar (catering, documentation, invitations etc.) should be born by the Contractor. The Commission will provide the seminar room free of charge in one of its facilities in Brussels.

1.6. Duration of the tasks

This is a 24-month contract and the work shall start from the date of its signature.

Shortly after the signature of the contract a kick-off meeting will be held in Luxembourg in order to settle the details of the project to be undertaken.

The technical seminar should be organised within 2 months after submission of the draft final report.

1.7. Place of performance

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

1.8. Estimate of the amount of work involved

The amount of work involved to carry out this contract is estimated to correspond to a total amount of EUR 200.000. This includes the travel costs and organisation costs of the project final seminar.

2. TERMS OF CONTRACT

2.1. General

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.

2.2. Terms of payment

Payments shall be made in accordance with the provisions specified in the draft service contract.

2.3. Financial guarantees

Guarantee on pre-financing

For any pre-financing higher than 100,000 EUR, a financial guarantee equivalent to the amount of the pre-financing will be requested.

Depending on the financial situation of the tenderer, the Commission may ask for the financial guarantee for amounts lower than 100,000 EUR.

2.4. Subcontracting

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

Tenderers must 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.

2.5. 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 of 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.

3. FORM AND CONTENT OF THE TENDER

3.1. 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.

3.2. Structure of the tender

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

3.2.1. 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 service provider (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_fr.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

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.

3.2.2. 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.

Some guidelines are given below, but attention is also drawn to the award criteria, which define those parts of the technical proposal to which the tenderers should pay particular attention. The technical proposal should address all matters laid down in the specifications and should include models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender. Tenderers must present in their bids a proposal on the methodology and the organisation of the work to carry out in the framework of the study.

The section should be broken down under the following headings and shall contain all information which is needed to meet the award criteria:

Understanding

This criterion serves to assess whether the tenderers have fully understood all the aspects of what is required for the contract, as presented under point 1, as well as of the content of the final products, including the final technical seminar.

Methodology

The offers shall provide the necessary methodology for achievement of objectives, contents and conclusions as required by the call for tenders and are in conformity with the needs of DG Energy and Transport.

Project management and resources

This criterion relates to the quality of project planning and organisation of the team to cope with and fulfil the obligations of the contract in the timing required for the completion of the project.

3.2.3. 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;
- For each category of staff involved in the project, the tenderer must specify:
 - the total labour costs;
 - **the daily rates** and **total number of days** (man/days) each member of staff will contribute to the project;
 - other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity.

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

4. ASSESSMENT AND AWARD OF THE CONTRACT

4.1. General

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 (see 4.2), 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.

4.2. Exclusion criteria (Exclusion of tenderers)

4.2.1. Exclusion criteria (Article 93 Financial Regulation²)

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) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

4.2.2. Other cases of exclusion (Article 94 Financial Regulation)

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

² 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)

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.

4.2.3. Evidence to be provided by the tenderers

When submitting their bids, each tenderer (including subcontractor(s) or any member of a consortium or grouping) shall provide a declaration on their honor, duly signed and dated, stating that they are not in one of the situations mentioned above (cf. 4.2.1 and 4.2.2). For that purpose, they must complete and sign the form attached in Annex 4.

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:

1. The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point 4.2.1 (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.
2. The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point 4.2.1 (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such 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.

The documents referred to in paragraph 1 and 2 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.

When the subcontracted part is above 20% of the contract value, the subcontractor(s) must also provide the above-mentioned evidence.

The Commission reserves the right, however, to request any other document relating to the proposed tender for evaluation and verification purpose, within a delay fixed 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 will specify in its offer the reference of the call for tender for which the documents have been provided.

4.2.4. Administrative and financial penalties

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procedure will be excluded from all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

That period may be extended to three years in the event of a repeat offence within five years of the first infringement.

Tenderers or candidates who have been guilty of making false declarations will also incur financial penalties representing 2% to 10% of the total value of the grant being awarded.

Contractors who have been found to have seriously failed to meet their contractual obligations will incur financial penalties representing 2% to 10% of the value of the grant 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.

2. In the cases referred to in points 4.2.1, a), c), d), the candidates or tenderers will be excluded from all contracts and grants for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

In the cases referred to in points 4.2.1, b) and e), the candidates or tenderers will be excluded from all contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgment. Those periods may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

3. The cases referred to in point 4.2.1, e) cover:
 - a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995 (OJ/C 316 of 27.11.1995, p. 48);
 - b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997 (OJ/C 195 of 25.6.1997, p. 1);

- c) cases of participation 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).

4.3. 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.

4.3.1. *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.

4.3.2. *Technical and professional capacity – References required*

- 1) Educational qualifications in radioactive waste management or radiation protection
- 2) Working experience in radioactive waste management or radiation protection (minimum three years)

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

Tenderers should provide with their offer detailed curriculum vitae (CV) of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills.

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.

4.4. Award criteria (Evaluation of tenders)

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

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

N°	Award Criteria	Weighting
1	<p>Understanding</p> <p>This criterion serves to assess whether the tenderers have fully understood all the aspects of what is required for the contract, as presented under point 1, as well as of the content of the final products.</p>	40
2	<p>Methodology</p> <p>The offers shall provide the necessary methodology for achievement of objectives, contents and conclusions as required by the call for tenders, in conformity with the needs of DG Energy and Transport.</p>	30
3	<p>Project management and resources</p> <p>This criterion relates to the quality of project planning and organisation of the team to cope with and fulfil the obligations of the contract in the timing required for the completion of the project.</p>	30
Total number of points		100

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.

b) Total price

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

4.5. 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.

5. ANNEXES

1. Tenderer identification form
2. Financial identification form
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 H4/68-2007

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) ³	
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:	

³ For natural persons

Legal Representatives	
<p>Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign contracts with third parties</p>	
<p>Declaration by an authorised representative of the organisation⁴</p> <p>I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.</p>	
<p>Surname: First name:</p>	<p>Signature:</p>

⁴ 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_fr.htm

FINANCIAL IDENTIFICATION

ACCOUNT HOLDER

NAME

ADDRESS

TOWN/CITY POSTCODE

COUNTRY VAT NUMBER

CONTACT PERSON

TELEPHONE FAX

E - MAIL

BANK

BANK NAME

BRANCH ADDRESS

TOWN/CITY POSTCODE

COUNTRY

ACCOUNT NUMBER

IBAN (optional)

REMARKS :

BANK STAMP + SIGNATURE of BANK REPRESENTATIVE

(Both Obligatory)

DATE + SIGNATURE of ACCOUNT HOLDER :

(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

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 identification form

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) as a consequence of another procurement or grant procedure financed by the Community budget, I have not been declared to be in serious breach of contract for failure to comply with my contractual obligations,

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:

ANNEX 5



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY AND TRANSPORT
DIRECTORATE H - Nuclear Energy
Radiation Protection

DRAFT SERVICE CONTRACT

CONTRACT NUMBER – []

The European Atomic Energy 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 Waeterloos, Director in the Directorate-General for Energy and Transport, Directorate H

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 [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 – Tender Specifications (Invitation to Tender No [] of []) and Monitoring

Annex II – Contractor's Tender (No [] of [])

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).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

I.1.1. The subject of the Contract is a Study on Management of liquid radioactive effluents arising from medical establishments in EU Member States and Candidate Countries (MEDIWASTE).

I.1.2. The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications 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. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.

I.2.3. The duration of the tasks shall be 24 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from [*date of entry into force of the Contract*] or [*indicate the date*]. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

I.3.1. The maximum total amount to be paid by the Commission under the Contract shall be EUR [] covering all tasks executed.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

I.4.1. Pre-financing:

Following signature of the Contract by the last contracting party, within 30 days of:

- the receipt by the Commission of a request for pre-financing with a relevant invoice

a pre-financing payment of EUR [] equal to 20 % of the total amount referred to in Article I.3.1. shall be made.

I.4.2 Interim payment:

Request for an interim payment by the Contractor shall be admissible if accompanied by:

- an interim technical report in accordance with the instructions laid down in Annex I.

- the relevant invoice(s)

provided the report has been approved by the Commission.

The Commission shall have 45 days from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, an interim payment corresponding to [] equal to 40 % of the total amount referred to in Article I.3.1 shall be made.

I.4.3. Payment of the balance:

The request for payment of the balance of the Contractor shall be admissible if accompanied by

- the final technical report in accordance with the instructions laid down in Annex I
- the relevant invoices

provided the report has been approved by the Commission.

The Commission shall have 45 from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, payment of the balance corresponding to EUR [] equal to 40 % of the total amount referred to in Article I.3.1 shall be made.

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

[For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell’8/8/1996”.]

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 in full: [complete]

Exact designation of account holder: [complete]

Full account number including codes: [complete]

[IBAN code: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Commission:

European Commission
Directorate-General for Energy and Transport
[Directorate [complete]]
[Unit [complete]]
B-1049 Bruxelles

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 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.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller within DG TREN without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the entity acting as data controller within DG TREN. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 2 months formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by

the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

II.1.1. The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

II.1.2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

II.1.3. Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

II.1.4. The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.

II.1.5. The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.

II.1.6. The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
- the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.

II.1.7. In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

II.1.8. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In

such event the Contractor shall give priority to solving the problem rather than determining liability.

II.1.9. Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

II.2.1. The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.

II.2.2. The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. 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 provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.

II.2.5. The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

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

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

II.3.3. The Contractor declares:

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

II.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing:

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 a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee may be replaced by a joint and several guarantee by a third party.

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.

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

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. Interim payment:

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.3. Payment of the balance:

Within sixty days of completion of the tasks referred to in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;
- statements of reimbursable expenses in accordance with Article II.7.

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.5.1. Payments shall be deemed to have been made on the date on which the Commission's account is debited.

II.5.2. The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

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

dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.5.3. In the event of late payment the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (*“the reference rate”*) plus seven percentage points (*“the margin”*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

ARTICLE II.6 – RECOVERY

II.6.1. 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.6.2. 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.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

II.6.3. The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

ARTICLE II.7 - REIMBURSEMENTS

II.7.1. Where provided by the Special Conditions or by Annex I, the Commission shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

II.7.2. Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary.

II.7.3. Travel expenses shall be reimbursed as follows:

- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
- d) travel outside Community territory shall be reimbursed under the general conditions stated above provided the Commission has given its prior written agreement.

II.7.4. Subsistence expenses shall be reimbursed on the basis of a daily allowance as follows:

- a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

II.7.5. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Commission has given prior written authorisation.

ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Community, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.9 – CONFIDENTIALITY

II.9.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.10.1. The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

II.10.2. Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

II.10.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

II.10.4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

II.11.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.11.2. The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

II.11.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

II.11.4. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

II.12.1. 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.12.2. Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

II.12.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

II.12.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

II.13.1. 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.13.2. Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

II.13.3. 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.17.

ARTICLE II.14 – ASSIGNMENT

II.14.1. 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.14.2. 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.15 – TERMINATION BY THE COMMISSION

II.15.1. The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;

- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.15.2. In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.15.3. Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations.

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

II.15.4. Consequences of termination:

In the event of the Commission terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted 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 tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Commission may engage any other contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making well and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.16 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 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 the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.17 – CHECKS AND AUDITS

II.17.1. Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.

II.17.2. The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.

II.17.3. In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – 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.

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

Without prejudice to the Commission's right to terminate the Contract, the Commission may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,
[*Company*
name/forename/surname/function]

signature[s]:

Done at [Brussels], [date]

In duplicate in English.

For the Commission,
[forename/surname/function]

signature[s]: _____

Done at [Brussels], [date]

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.

To enable the Commission to 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.