

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

**Invitation to tender No. TREN/E2/297/2008 concerning
Study on Separation of accounts of railway undertakings and rail infrastructure
managers**

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I. SPECIFICATIONS

I.1. Introduction

The European Commission needs an overview and an analysis of the financial situation of the railway undertakings in the European Union in order to assess to which extent railway undertakings comply with the requirements on account separation that follow from Directive 91/440 as amended by Directive 2001/12/EC. The latter has been adopted in 2001 and is one of the three directives of the railway infrastructure package (or First railway package, or infrastructure package, which also includes directives 2001/13/EC and 2001/14/EC¹).

The results of this analysis shall be an important input for the Commission's assessment of the implementation of the infrastructure package in the Member States. It shall furthermore enable the Commission to evaluate the conditions for competition on the railway markets in the enlarged European Union.

I.2. Purpose of the contract

Since 1970 rail has seen a steady decline in the *freight* transport market share, from 20% in 1970 (EU-15) till 8% in 2003 (EU-15) and 10% for the whole EU in 2005 (based on ton-kilometres). In the last decade, the negative trend continued, although at a slower pace, accounting for a 2% decrease of the rail market share between 1995 and 2005. Also in case of *passenger* transport, a decline has been observed over the last three decades, though less dramatic as for the freight sector. The share of rail in the passenger transport market decreased from 10.2% in 1970 till 6.3% in 2003 for EU-15 (in terms of passenger-kilometers).²

One of the main objectives of the Common Transport Policy as set out in the 2001 White Paper on European Transport Policy for 2010³ is to reverse the trend of decline and to revitalise the railway sector. The reasons for this decline include the organisation of rail transport along national lines, the absence of intra-modal competition, the large debts of the railway undertakings as a result of low operational efficiency, bad operational and financial management, inadequate compensation for public service obligations and investment in infrastructure, the lack of transparent market conditions and last, but not least, the severe deficiencies in the interoperability of the national railway networks, which seriously hamper international freight transport by rail.

This decline has led the European Union to adopt several legislative measures in order to determine and improve the framework conditions for transport by rail that should result into more competitive market conditions. The Directives of the rail infrastructure package constitute a

¹ Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways, *Official Journal L 075*, 15/03/2001 P. 0001 – 0025; Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings, *Official Journal L 075*, 15/03/2001 P. 0026 – 0028; Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, *Official Journal L 075*, 15/03/2001 P. 0029 - 0046

² Communication from the Commission to the Council and the European Parliament on monitoring development of the rail market, 18.10.2007, COM(2007) 609 final

³ COM (2001) 370 of 12 September 2001.

coherent set of EU legislation fundamentally reforming the market access rules in the wider sense in view of integrating the European rail service market. The provisions in these Directives have a far-reaching impact on the regulatory framework for doing rail business in the EU. They define access rights for international freight services and certain safeguards with respect to the management of integrated incumbent railway undertakings to ensure non-discriminatory access of competitors to the network. The Directives determine common conditions for obtaining a railway licence and a safety certificate as well as common principles and procedures for the allocation of infrastructure capacity and the setting of infrastructure charges. Within the Member States, rail regulatory bodies have to be set up to ensure non-discriminatory access and to monitor competition on the rail markets.

According to the Mid Term Review of the White Paper of 2006⁴, market share and employment have stabilised in most countries. Rail operators can now restore their long-term viability by internationalising their activities and focussing on the needs of the economy and society. According to the Commission's communication on monitoring development of the rail market⁵, analysis of trends in rail transport performance over the last six years highlights that the countries with the highest scores on market opening are performing significantly better than those where the markets are fully dominated by incumbent railway undertakings. Although the conventional modal split data still indicate a slight decrease in rail's share of the freight market, initial estimates of the contribution by railways to goods transport over medium and long distances show high potential for the rail sector in this market segment. The process of reform is also creating new job opportunities with the potential of counteracting the steady contraction of the workforce of railway undertakings. Last but not least, the high demand for rolling stock forecast in eastern European countries over the next decade is creating favourable conditions for development of the rail supply industry.

Article 10b of the amended Directive 91/440 required the Commission to set up a Rail Market Monitoring Scheme (RMMS) in order to monitor technical and economic conditions and market developments of European rail transport. The objectives of the scheme are to monitor and assess the use of the networks and the evolution of the framework conditions in the rail sector. Market actors and the Commission are contributing to the functioning of the RMMS by providing analyses and indicators on the market development. Projects such as ERAIL on the institutional and legal framework of the rail sector in the EU⁶, the NERA study on financing and public budget contributions in rail⁷ have generated a wealth of information and analyses on the subject. Data collected by the Commission (in particular Eurostat and DG TREN) provide an important input to the scheme as well.

Information on market developments has become available and has been published on the Commission's Rail Transport and Interoperability website⁸, and include, among others, the following topics:

⁴ Communication from the Commission to the Council and the European Parliament: Keep Europe moving -Sustainable mobility for our continent. Mid-term review of the European Commission's 2001 Transport White Paper, COM(2006) 314 final

⁵ Communication from the Commission to the Council and the European Parliament on monitoring development of the rail market, COM/2007/0609 final

⁶ NEA et al., European Railways Administrations Institutions and Legislation (ERAIL), report submitted to the European Commission , DG Energy and Transport, Rijswijk (NL), June 2004

⁷ NERA, Study on the financing of and public contributions to the railways, final report submitted to the European Commission , DG Energy and Transport, London, December 2003

⁸ See: http://europa.eu.int/comm/transport/rail/index_en.html

- EU funding for rail transport/rail infrastructure;
- Public funding contributions to the rail sector (own data/estimations, NERA and ECORYS⁹ study);
- Financial performance of the railway undertakings (NERA study and ECORYS study);
- Operational performance indicators (NERA study);
- European Railways institutional set-up (ERAIL study);

For the purpose of this contract, Article 6(1) and Art 9(4) of Directive 91/440, as amended by Directive 2001/12, are particularly relevant.

Article 6(1) of the before mentioned directive stipulates that

Member States shall take the measures necessary to ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of transport services by railway undertakings and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas may not be transferred to the other. The accounts for the two areas of activity shall be kept in a way that reflects this prohibition.

Article 9(4) of the same directive reads

In the case of railway undertakings profit and loss accounts and either balance sheets or annual statement of assets and liabilities shall be kept and published for business relating to the provision of rail freight-transport services. Funds paid for activities relating to the provision of passenger-transport services as public-service remits must be shown separately in the relevant accounts and may not be transferred to activities relating to the provision of other transport services or any other business.

It can be concluded from these provisions that Directive 91/440 prohibits the transfer of public funds between the provision of services and the infrastructure business, and the cross subsidisation of passenger services through the track access charges to the detriment of rail freight. It is obvious that without separation of accounts between these business lines, these rules are impossible to verify and competition between railway undertakings can easily be distorted.

As it was said in Annex 4 of the Communication of the Commission of 3 May 2006 on the implementation of the First Railway Package¹⁰, the proper implementation of the principle of accounts separation has been of great importance in the process of restructuring of the railway sector. It aims to enhance the transparency of the financial management of railway undertakings. It concerns not only the separate accounting of different rail businesses but also the public funding provided for these businesses. In particular, the separation of funding for public service contracts and ensuing obligations (PSO funding) from all other forms of funding, as well as the prohibition of cross-subsidy between different rail businesses have major significance. The separation of accounts requires railway undertakings to have a clear and precise system to illustrate revenues and costs of railway undertakings and infrastructure managers. Moreover, it helps ensure that railway undertakings provide efficient and appropriate services at the lowest possible cost for the quality of service required in the railway market as required by Article 5 of Directive 91/440.

Annex 4 of the above mentioned Communication also mentions the results of previous studies commissioned by the Commission, in particular the FARU study. This study evaluated the financial

⁹ Analysis of the Financial Situation of Railway Undertakings in the European Union, ECORYS Nederland BV, February 2006

¹⁰ COM(2006) 189 final

accounts of both railway undertakings and infrastructure managers of 2003/2004 having a yearly turnover of more than 50 million Euro and included undertakings from the EU-25 as well as Norway and Switzerland. The main findings of this study were the following:

On separation of accounts, the study comes to the conclusion that, in most Member States, Directive 91/440/EEC as amended by Directive 2001/12/EC, had been implemented by the end of 2005. Member States have initiated a reform process in order to restructure the railway sector, thus allowing them to comply with the requirements of the railway directives and to allow the sector to develop rail transport as a competitive mode of transport. As in this study the most recent figures available were from 2004 and in some cases 2003, the situation in 2005 could not be studied in full detail. The study showed that 51 out of 95 railway undertakings and infrastructure managers studied had separate accounts in place for passenger and freight transport and/or infrastructure management.

Annex 4 also noted that that most of the annual accounts, as analysed in the ECORYS study, did not make any statements regarding **cross subsidies**. Such cross subsidies occur when the yield from profitable activities is used to fund loss making activities, e.g. using yields from profitable freight transport to fund unprofitable passenger services as for example occurs in the new Member States. According to Annex 4 of the Commission Communication, in most cases it is not likely that cross subsidies will be reported in a transparent way, so that an in-depth audit of the books will be required to track these cross subsidies. Cross-subsidies are not illegal as such, however the directive prescribes separation of accounts for the different sectors of activity, which means that it must be transparent in the accounts if one sector has been cross-subsidised from another sector.

Annex 4 to the Communication further explains that only 33 out of 95 railway undertakings studied in the ECORYS report provided detailed information on amounts of **public support** received and the nature of this support. For a large number of railway undertakings either the amount of public support has been specified but the nature of the support was not explained, or the nature of the support was summarised but no amounts have been published. According to the yearly survey carried out by the Commission on public support to the railway sector, most of this support is used to fund infrastructure investments, though a significant part is used for public service contracts or obligations in the passenger transport sector and as state aid to allow the restructuring of loss making freight transport undertakings. In some cases, public support is provided to railway undertakings to allow the railway undertaking to comply with commitments in relation to social security schemes or retirement schemes, and that they act, as such as social security executive agencies.

Annex 4 concludes that the ECORYS report only was a first snapshot which could not lead to firm conclusions. It just shows the need to perform an in-depth examination of the situation on the basis of the more recent accounts.

The objective of this contract is to verify whether the Member States have appropriately implemented the provisions of Directive 91/440 as amended by Directive 2001/12 on the separation of accounts and to collect financial data from railway undertakings and infrastructure managers to assess to what extent both comply with the account separation requirements.

Existing studies and analyses, as mentioned above, shall be taken account of and shall not be duplicated. These studies include the NERA study on financing and public budget contributions in rail¹¹, the report of ECORYS on the Financial Situation of Railway Undertakings¹² and the Railimplement report¹³:

¹¹ NERA, Study on the financing of and public contributions to the railways, final report submitted to the European Commission, DG Energy and Transport, London, December 2003

Tasks to be carried out

- Identification of the railway undertakings and infrastructure managers with an annual turnover of more than €50 million¹⁴ in relation to rail activities in each of the Community Member States having a railway network, plus Norway and Switzerland and collection of financial data as published in their yearly reports or other sources. The list of railway undertakings and infrastructure managers selected by the contractor shall be submitted to the Commission for validation. The financial data to be collected shall at least consist of profit and loss accounts; the balance sheets or annual statement of assets and liabilities, and shall allow a comprehensive analysis of the financial situation of the railway undertaking. All these data have to be analysed in detail to allow for valid conclusions to be drawn.
- The study shall verify the separation of accounts between freight activities, passenger transport activities as public service remits and other passenger services on the one hand, and on the other hand between rail service provision and infrastructure management, as required by Directive 91/440, both from the legal provisions existing in the Member States, as from the practical implementation by the Railway Undertakings. The study shall be carried out on the basis of reports for 2005, 2006 and, where available, 2007. This concerns above all companies that are active in different business lines. Any encountered cross-subsidisation of one above mentioned segment of railway activity by another or by segments of activities which are not mentioned in the directive shall be documented as well.
- The study shall identify each company's accounts and quantify the amount of public support from national, regional or local authorities for the provision of passenger transport services as public service, for the maintenance and development of railway infrastructure, for the financial restructuring of railway undertakings and/or rail infrastructure managers, for the reimbursement of existing debts as well as any other identifiable public financial support to the railway sector.
- The financial analysis to be carried out on the data of the above mentioned companies shall at least indicate the types of financial performance indicators generated in the NERA report mentioned above for every year after 2003 (2004, 2005, 2006, and, where available, 2007) such as (non-exhaustive list):
 - *Asset intensity (liabilities/operating costs);*
 - *Total debt of the company;*
 - *Debt as a proportion of total liabilities;*
 - *Debt: equity ratio;*
 - *Debt service (ratio of interest payments to operating costs)*
 - *Cost per staff member*
 - *Staff costs as a proportion of operating costs;*
 - *Unit operating costs;*

¹² ECORYS, Analysis of the Financial Situation of Railway Undertakings in the European Union, final report submitted to the European Commission in February 2006

¹³ Railimplement: The implementation of the EU Directives 2001/12, 2001/13 and 2001/14 in the Member States, final report presented to the Commission in March 2006 by Steer Davies & Gleave

¹⁴ This threshold was also used in the ECORYS study and is therefore chosen to allow a comparison with the results of that study

- *Viability ratio (total revenue/operating costs);*
 - *Total commercial traffic revenue per traffic unit and broken down by passenger and freight traffic units;*
 - *Return on equity;*
- The study shall propose, based on the comparison between the different Member States' implementation, a best practice guide on how separation of accounts should be implemented and which systems have to be introduced to control such implementation. It shall also propose a best practice guide on ways to detect cross-subsidisation between different transport activities.
 - The study shall indicate which data have not been made available by Railway Undertakings or Infrastructure Managers and assist the Commission in formulating the relevant questions to Member States in order to receive the necessary information for the compliance assessment.
 - The study shall, in particular, take account of the irregularities concerning separation of accounts and transfer of public funds to railway undertakings which were highlighted by the ECORYS report mentioned above, based on accounts of 2004, and analyse whether these irregularities are still existing in the reports from 2005, 2006 and, where available, 2007. In those cases in which the ECORYS report did not reach conclusions or in which conclusions were left open for lack of information, the study shall pursue the issues further and reach a conclusion on the compliance of the relevant national system with the accounting separation provisions of the railway directives.

The above mentioned data on financial indicators (asset indicators etc.) should also be shown in a table which allows comparisons between the companies (similarly to the way that this was done in the ECORYS study). The format of the data ('the codebook') shall be well documented.

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

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

Shortly after the signature of the contract a kick-off meeting will be held in Brussels in order to settle all the details of the study, report, etc to be undertaken.

I.3.1. Interim report

The **interim report** showing progress of the work shall be submitted to the Commission at the latest four months after the date of signature of the contract.

It shall contain the findings of the work at that stage, the preliminary conclusions of the consultants and spell out clearly which issues/questions still have to be clarified before the finalisation of the report. At a meeting with the Commission the consultant will be asked to present the draft interim report and discuss the comments of the Commission. The deliverables mentioned above may also be rediscussed at that meeting. The Commission shall have twenty days from that meeting to approve or reject the report.

I.3.2. Final report

The contractor will submit a draft final report to the Commission at the latest 7 months after the signature of the contract.

Within 20 days after the submission of this draft final report the Commission will provide the contractor with its comments on the draft final report and the date of a third **meeting** in Brussel will be agreed in order to discuss the Commission's observations.

After this meeting, the Contractor shall have 20 days in which to submit additional information or a new final report.

The contractor shall be prepared to present the findings publicly at a meeting in Brussels.

I.3.3. Report format and publication

5 copies of the reports shall be supplied in paper form and one copy in electronic form, either in MS Word or in HTML format.

The Commission may publish the results of the study. For this purpose, 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

I.4. Duration of the tasks

The duration of the tasks shall not exceed 8 months.

I.5. Place of performance

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

I.6. Estimate of the amount of work involved

The amount of work involved to carry out this contract is assessed at 200 man-days.

II. TERMS OF CONTRACT

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

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

II.1. Terms of payment

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

II.2. 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.

II.3. 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 ensure that Article II.17 of the contract (Annex 5) can be applied to subcontractors. Once the contract has been signed, Article II.13 of the above-mentioned contract shall govern the subcontracting.

II.4. Legal form to be taken by the grouping of service providers to whom the contract is awarded (if applicable)

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

III. FORM AND CONTENT OF THE TENDER

III.1. General

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

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

III.2. Structure of the tender

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

III.2.1. Section One: administrative proposal

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

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

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

- Financial identification (Annex 2)

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

http://ec.europa.eu/budget/execution/ftiers_en.htm

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.

III.2.2. Section Two: Technical proposal

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

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

III.2.3. Section Three: Financial proposal

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

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

IV. ASSESSMENT AND AWARD OF THE CONTRACT

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

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

The aim of each of these stages is:

- 1) to check on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- 2) to check on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;
- 3) to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages.

IV.1. Exclusion criteria (exclusion of tenderers)

IV.1.1. Exclusion criteria (Article 93 Financial Regulation¹⁵)

1. To be eligible for participating in this contract award procedure, tenderers must not be in any of the following situations:
 - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
 - (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
 - (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
 - (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation¹⁶ for being guilty of misrepresentation in supplying the

¹⁵ 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)

information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Community budget.

2. The cases referred to in point IV.1.1. e) above shall be the following:
- a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995 (OJ/C 316 of 27.11.1995, p. 48);
 - b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997 (OJ/C 195 of 25.6.1997, p. 1);
 - c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ/L 315 of 29.12.1998, p. 1);
 - d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ/L 166 of 28.6.1991, p.77).

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

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

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

Tenderers must declare:

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

The Commission reserves the right to check the above information.

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

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

IV.1.3. Evidence to be provided by the tenderers

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

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

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

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

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

Remark:

The tenderers will be waived of the obligation to submit the documentary evidence above mentioned if such evidence has already been submitted for the purposes of another procurement procedure launched by Directorate General for Energy and Transport and provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure,

specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

IV.1.4. Administrative and financial penalties

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been found guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or have failed to supply this information or have been declared to be in serious breach of their obligations under contracts covered by the Community budget may be subject to administrative or financial penalties, in accordance with Article 96 of the Financial Regulation and Articles 134b and 133a of the Implementing Rules.¹⁷

IV.2. SELECTION CRITERIA (SELECTION OF TENDERERS)

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

IV.2.1. Economic and financial capacity – References required

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

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

IV.2.2. Technical and professional capacity – References required

- Proven skills and at least 2 years of experience in carrying out studies and/or surveys covering several European countries.
- Proven skills, knowledge and at least 2 years of experience in transport economics, international transport law, European and national railway legislation and its implementation, in particular concerning the areas relevant for the study.
- Proven skills, knowledge and university education in accounting.

Tenderers should provide with their offer a detailed curriculum vitae 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.

¹⁷ Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 357 of 31 December 2002, p. 1, last amended by Commission Regulation (EC, Euratom) n° 478/2007 of 23 April 2007, OJ L 111 of 28 April 2007, p.1.

They should also provide a list of the main services and tasks delivered during the last five years as well as related amounts, dates and beneficiaries with mention of the sector they belong to (private/public). They should indicate the part of the contract which they intend to subcontract.

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.

IV.3. EVALUATION OF TENDERS – AWARD CRITERIA

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

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

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

N°	Award Criteria	Weighting
1	Understanding of the Commission's requirements	30
2	Methodology to be used and clarity of the proposed output	30
3	General organisational approach, work programme, project team	40
Total number of points		100

b) Total price

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

IV.4. INFORMATION FOR TENDERERS

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

Upon written request, the Commission will inform the rejected tenderers of the reasons for their rejection and the tenderers having submitted an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

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

V. ANNEXES

1. Identification of the Tenderer
2. Financial Identification

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

ANNEX 1

IDENTIFICATION OF THE TENDERER

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

Call for tender TREN xx/xx/xxxx

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) ¹⁸	
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:	

¹⁸ For natural persons

Legal Representatives

Names and function of legal representatives
and of other representatives of the tenderer who
are authorised to sign contracts with third
parties

Declaration by an authorised representative of the organisation¹⁹

I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.

Surname:
First name:

Signature:

¹⁹ This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

ANNEX 2

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

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

http://ec.europa.eu/budget/execution/ftiers_en.htm

FINANCIAL IDENTIFICATION

ACCOUNT HOLDER

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

BANK

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

REMARKS :

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 declaration

1. In accordance with Article 93 of the Financial Regulation²⁰, 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 conduct by a judgment which has the force of res judicata;
 - c) I have not been found guilty of grave professional misconduct proven by any means which the contracting authority can justify;
 - d) I have not failed to fulfil obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which I am established or with those of the country or the contracting authority or those of the country where the contract is to be performed;
 - e) I have not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - f) I am currently not subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under contracts or grants covered by the Community budget.
2. In addition, the undersigned declares on his or her honour:
 - a) that on the date of submission of the tender, the company or organisation I do represent and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; I undertake to inform the Commission without delay of any change to this situation after the date of submission of the tender.
 - b) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

²⁰ Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

Done at on.....

Name

Title

Signature: