



EUROPEAN COMMISSION

DG Enterprise and Industry

Directorate I: New Approach Industries, Tourism and CSR

Unit I5: Construction, Pressure Equipment, Metrology

SERVICE CONTRACT

CONTRACT NUMBER – **SI2.ACPROCExxx** – **NB. one contract per lot**

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr Heinz Zourek, Director General, Enterprise and Industry Directorate General ,

of the one part,

and

[official name in full]

[*official legal form*]

[*statutory registration number*]

[official address in full]

[*VAT registration number*]

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

of the other part,

HAVE AGREED

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

Annex I – Tender Specifications (Invitation to Tender No ENTR/08/011 of [*complete*]) and Monitoring

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

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

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. 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

Lot 1

- I.1.1.** The subject of the Contract is to provide the services of the Technical Secretariat for the notified bodies under Directive 87/404/EEC relating to simple pressure vessels and Directive 97/23/EC relating to pressure equipment .

Lot 2

- I.1.1** The subject of the Contract is to provide the services of the Technical Secretariat for the notified bodies under Directive 90/396/EEC relating to appliances burning gaseous fuels.
- 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 not exceed 12 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 . The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.
- I.2.4.** The Contract may be renewed up to three times, each time for a period of execution of tasks of 12 months, only before payment of the balance and with the express written agreement of the parties, indicating the date on which execution of the tasks shall start . Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The maximum total amount to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] 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.4.2 Interim payment:

Requests for 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 invoices

provided the report has been approved by the Commission.

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

Within thirty days of the date on which the report is approved by the Commission, an interim payment corresponding to the relevant invoices [EUR complete amount in figures and in words] 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 twenty days from receipt to approve or reject the report, and the Contractor shall have twenty days in which to submit additional information or a new report.

Within thirty days of the date on which the report is approved by the Commission, payment of the balance corresponding to the relevant invoices 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.

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:

Mr Vicente Leoz Argüelles, Head of Unit
European Commission
Directorate-General Enterprise and Industry
Directorate I/Unit I5
Office B100 02/07
B-1049 BRUSSELS

Contractor:

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

ARTICLE I.7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

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 Brussels.

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 Unit I5

DG Enterprise and Industry – ‘Construction, Pressure Equipment, Metrology’ without prejudice to possible transmission to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community. 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 Unit I5 DG Enterprise and Industry – ‘Construction, Pressure Equipment, Metrology’. 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 [complete] 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 have 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 execute 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 :

- Ø an interim technical report in accordance with the instructions laid down in Annex I;
- Ø the relevant invoices indicating the reference number of the Contract to which they refer;
- Ø 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:

- Ø to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- Ø 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 :

- Ø a final technical report in accordance with the instructions laid down in Annex I;
- Ø the relevant invoices indicating the reference number of the Contract to which they refer;
- Ø 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 :

- Ø to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- Ø 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 and set out the reasons for the suspension 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 shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (*"the reference rate"*) plus seven percentage points (*"the margin"*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

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 debt 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 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;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (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 months¹ 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

¹ This period can be modified in the Special Conditions depending on the nature of the contract.

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 c), d), 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 good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.15a – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Commission may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

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%² of the amount specified in Article I.3.1 per calendar

² The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.

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]

For the Commission,
Mr Heinz Zourek, Director General
DG Enterprise and Industry

signature[s]: _____

signature:_____

Done at _____, date _____

Done at Brussels, date _____

In duplicate in English .

ANNEX I

Tender Specifications and Monitoring

1.1. DESCRIPTION OF TASKS FOR LOT 1: TECHNICAL SECRETARIAT OF THE NOTIFIED BODIES RELATED TO THE SIMPLE PRESSURE VESSELS (87/404/EEC) AND THE PRESSURE EQUIPMENT DIRECTIVE (97/23/EC)

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1.1.1. Introduction

The experience in implementing the PED / SPVD has shown the need to assist the Chairman of the group of conformity assessment bodies by a stable Technical Secretariat.

This call for tenders is intended to designate the Technical Secretariat of the group of conformity assessment bodies related to the Directive 97/23/EC on pressure equipment hereafter PED and 87/404/EEC on simple pressure vessels hereafter SPVD.³ The group is entitled the Pressure Equipment Directive / Simple Pressure Vessels Directive – Conformity Assessment Bodies Forum, hereafter PED/SPVD – CABF.

The contract consists of the assumption of responsibility, in accordance with these specifications, of the Technical Secretariat of the group of the organisations which were notified under the PED / SPVD.

The following information is considered of interest as regards potential bidders:

- The memorandum of understanding of the CABF forum is available on the PED website on the following link:
http://ec.europa.eu/enterprise/pressure_equipment/conf_assessm_bodies/nbf_doc_n05_012_rev1en1.pdf
- Although more than 200 conformity assessment bodies are currently notified under the PED only a limited number of them (typically less than 50) are regularly attending the meetings of the PED/SPVD CABF. The full list of conformity assessment bodies notified according to directives 97/23/EC and 87/404/EEC can be found in the NANDO database on the following link:
<http://ec.europa.eu/enterprise/newapproach/nando/index.cfm?fuseaction=directive.main>.

The Technical Secretariat will be assisted by the Administrative Secretariat (designated separately) is responsible for logistical support for the meetings of the coordination groups of the conformity assessment bodies. The tasks of the Administrative Secretariat include the management of any aspect referring to the preparation, the organisation and the monitoring of the meetings or conferences from a logistical point of view. The tasks of the Administrative Secretariat do not include the drafting of documents in general or of technical documents.

³ Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment, Council Directive 87/404/EEC of 25 June 1987 on the harmonization of the laws of the Member States relating to simple pressure vessels.

The Administrative Secretariat is responsible for the distribution of information on the work of the group via the CIRCA ⁴ internet based document sharing system. It is also responsible for the tasks of the "leader" of the specific CIRCA group dedicated to PED / SPVD CABF e.g. by granting access to the users, uploading documents prepared by the Technical Secretariat and answering the users' requests with the necessary explanations on the operating mode of the site. The Technical Secretariat may if the need arises also distribute information or documents directly by the CIRCA system in consultation with the Administrative Secretariat and the Commission's responsible desk officer.

1.1.2. Technical tasks and missions of the Technical Secretariat

The tasks of the Technical Secretariat shall be the following:

- a) The Technical Secretariat assists the Chairman of the co-ordination group of conformity assessment bodies (PED / SPVD CABF) in his functions. In this context, the Contractor has as mission in the fields covered by the group, of:
 - taking the initiative to ensure, in collaboration with the Chairman of the co-ordination group of conformity assessment bodies, that productive meetings of the conformity assessment bodies can be held;
 - taking part in the meetings of the sector group of conformity assessment bodies (PED / SPVD CABF meetings) in Brussels;
 - collecting and drawing up the documents for the meetings and preparing the agenda in collaboration with the Chairman of the co-ordination of conformity assessment bodies;
 - drafting the technical working papers, the reports (including minutes) of these meetings and their recommendations. The draft minutes shall be submitted to the Commission's responsible desk officer for comments prior to distribution;
 - keeping informed and reporting to the group on:
 - 1. work of the intersectoral groups of conformity assessment bodies when they meet;
 - 2. progress with implementation of the Community legislation in the related area, according to the possible information provided by the Commission services;
 - 3. work in the field of European standardisation;
 - to ensure the continuity of the work of the Technical Secretariat throughout the contract;
 - to collect all useful technical information and, at the request of the Commission services, to format them to allow conformity assessment bodies to carry out and co-ordinate their activity in the most effective way;

⁴ For details on CIRCA (<http://circa.europa.eu>), please see the CIRCA Quick reference guide on http://circa.europa.eu/docs/circa_quick_guide_32.pdf

- to propose answers or solutions to the technical problems raised by the conformity assessment bodies between and at the meetings of conformity assessment bodies group (PED / SPVD CABF) - see also point d) below;
to take part, at the request of the Commission services, in the sector related meetings related to the conformity assessment bodies (e.g. the Working Group Pressure, organised by the Commission services and discussing implementation and interpretation issues of the PED / SPVD; this group is composed of representatives of Member States, European federations, the conformity assessment bodies and CEN and chaired by a representative of the Commission services);
 - to ensure in co-operation with the Administrative Secretariat that electronic tools (e.g. a specific CIRCA Interest Group dedicated to PED / SPVD CABF) are operated properly to facilitate communication and cooperation of the conformity assessment bodies.
- b) The Technical Secretariat must also be in a position to provide, at the request of the Commission services, technical advice on subjects relating to the application of the PED / SPVD. At the request of the Commission, the Technical Secretariat may also be asked to draft working documents on specific topics reflecting the various opinions and present such document in the meetings in order to facilitate the discussions. It is expected that this activity may take up to 25 % of the resources of the contracting period.
- c) The Technical Secretariat must maintain a complete timetable of its activities; it must be appended to the activity reports mentioned at item 4. 2.
- d) Specific tasks may be performed by members of the corresponding group of conformity assessment bodies, i.e. by members of the Pressure Equipment Directive / Simple Pressure Vessels Directive - Conformity Assessment Bodies Forum (PED / SPVD CABF), when they are designated for this task by the group itself. The execution and reporting on such tasks, when they are performed in the context and scope of work of this specification, is to be supervised and accounted by the Technical Secretariat.

The working language to be used in performing the tasks of the Technical Secretariat shall be English.

The activity is estimated at 60 mandays a year. The activity of the Technical Secretariat is considered to be:

- 3 meetings of the conformity assessment bodies a year, of one- or two-day duration each. These meetings will take place in Brussels.
- 6 meetings per year with the Member States experts group, of one - or two-day duration each. These meetings will take place in Brussels or Luxemburg.
- 2 meetings per year related to the pressure sector (e.g. in the field of standardisation), of one- or two-day duration each. These meetings may take place outside Brussels.
- In addition to the meetings envisaged above the Technical Secretariat shall consider one kick-off meeting in the beginning of the initial period of 12 months and one interim meeting during the second and third period of 12 months, of one -day duration each, with the Commission on Commission premises in Brussels.

Initial period of 12 months	Second period of 12 months	Third period of 12 months	Fourth period of 12 months
60 mandays, inclusive	60 mandays, inclusive	60 mandays, inclusive	60 mandays, inclusive
3x2-day meetings of PED / SPVD CABF in Brussels	3x2-day meetings of PED / SPVD CABF in Brussels	3x2-day meetings of PED / SPVD CABF in Brussels	3x2-day meetings of PED / SPVD CABF in Brussels
6x2-day meeting of the Member States experts group in Brussels or Luxemburg	6x2-day meeting of the Member States experts group in Brussels or Luxemburg	6x2-day meeting of the Member States experts group in Brussels or Luxemburg	6x2-day meeting of the Member States experts group in Brussels or Luxemburg
2x2-day pressure sector related meeting outside Brussels	2x2-day pressure sector related meeting outside Brussels	2x2-day pressure sector related meeting outside Brussels	2x2-day pressure sector related meeting outside Brussels
1x1-day kick-off meeting with the Commission in Brussels	1x1-day kick-off meeting with the Commission in Brussels	1x1-day kick-off meeting with the Commission in Brussels	

With regard to the PED / SPVD CABF meetings the Technical Secretariat has the task of organising the meetings in close cooperation with the Chairman, the Administrative Secretariat and in accordance with the parties concerned, anticipating subsequent Working Group Pressure meetings, by preparing the invitations, agendas and documents, judging matters coming from members of the group, the Commission and others whether or not it can be of importance for the PED / SPVD CABF meeting . After the meetings, the Technical Secretariat draws up the minutes reflecting the discussions and decisions taken during the meetings and carries out those actions agreed by the group. Documents are distributed via the Administrative Secretariat and are forwarded to the Commission.

1.1.3. Other tasks, missions and specific obligations of the Technical Secretariat

1.1.3.1. Appointment of only one person or of several persons

Only one person will be named as a Technical Secretary to carry out the tasks and missions of the Technical Secretariat. Tenders should envisage the names of one or two substitutes to cover the cases where the named person would be unable to continue exercising his/her function.

The tender should include the name of the proposed persons for the technical secretariat which is tendered and that of the possible substitutes, as well as their **Complete**

Curriculum Vitae (dated and signed). These CVs must contain, at least, the description of the diplomas and the professional qualifications of proposed persons to undertake the tasks of the technical secretariat in the technical field in question, including the field of conformity assessment and standardisation. In addition, the CV will have to show the degree of knowledge of the Community directives in the technical field concerned.

It should be noted that no change of technical secretary may take place after the signature of the contract, without the prior written agreement of the Commission. The Commission reserves the right to refuse a proposal of the contractor to replace the technical secretary.

1.1.3.2. Absence of a subordination link

The contractor will have the sole responsibility for persons working under his authority. There will be no subordination link between the Commission, on the one hand, and the contractor and/or its personnel, on the other. The contract must be performed in such a way as to preclude the contractor or his personnel providing their services under conditions identical to those existing for the services rendered by a dependent worker. The contractor or his personnel cannot be incorporated within the administrative organisation of the Commission of the European Communities.

Any Commission communication - in particular instructions, if necessary - to the contractor, in each phase of implementation of the contract, will be made to the person designated by the contractor concerned as a person responsible for the contract, and not to the personnel of the contractor concerned responsible for the implementation of the contract.

1.1.3.3. Rules of ethical conduct

The secretary has to be and remain independent of the interests of the manufacturers and of the users (among which purchasers and the contracting entities) of the products being the subject of certification in the sector concerned, unless he belongs to an entity representing all the economic actors concerned.

Moreover, the personnel of the contractor, his management, administrators and/or shareholders or any other person working under his authority, is required to inform the contractor of any situation which can give rise to conflict of interests. Similarly, the contractor will have to undertake under the terms of the contract to inform the Commission, which reserves the right to examine the case to decide on the action to be taken.

The contractor must undertake to treat all data of whatever nature as strictly confidential if it relates to the implementation of the contract. The use of this information for purposes other than the implementation of the contract for the benefit alone of the Commission is subject to the express and prior authorisation of the latter (as noted in Article II.9 of the Contract).

1.1.3.4. Control of the activities of the contractor

The contractor must submit a regular statement of the costs relating to the benefits delivered by them for each 4-month period.

The Commission reserves expressly the right to carry out system controls periodically and systematically. These checks may be made either by the Commission itself or by persons nominated by it for this purpose, including external bodies qualified in the field of verification and audits, having appropriate experience and approved by the national authorities concerned. In order to be able to carry out its checks, the Commission and persons entitled by it will have access to all the books, documents, papers or files in the contractor's possession and concerning the expenditure paid by the Commission or will be able, if that proves necessary, to require that this documentation be given to them. Checks will be able to take place for all the duration of the contract and within five years which follow the end or the cancellation of the last contract signed with this contractor following this call for tenders. The European Court of Auditors will have the same control powers as the Commission (as stated in Article II.17 of the Contract).

The Commission will have the option of cancelling the contract at any moment or suspending payments as precautionary measure in the event of non-respect of the contractual obligations, in particular, on the basis of the results of these controls. In this case, the Commission reserves the right to ask for the refunding (partial) of the amounts paid as well as damages and interests and/or penalties.

1.1.3.5. Control of the performances of the contractor

The labour costs of the contractor will be attributed on the basis of the time actually devoted by the technical secretary to the tasks being the subject of the contract. The time devoted to these tasks will be recorded on work sheets filled out by the personnel for all the duration of the contract and certified at least once a month by the technical secretary and by his possible superior or any other member of the supervisory staff of the contractor concerned.

1.2. DESCRIPTION OF TASKS FOR LOT 2: Technical Secretariat of the notified bodies related to the directive 90/396/EEC on appliances burning gaseous fuels

Introduction

The experience in implementing the GAD has shown the need, so as to implement in a coherent way Community policy, in the interest of effectiveness, to assist the Chairmen of the co-ordination of notified bodies by a stable Technical Secretariat.

This call for tenders is intended to designate the Technical Secretariat of the group of notified bodies related to the Directive 90/396/EEC on appliances burning gaseous fuels⁵.

The contract consists of the assumption of responsibility, in accordance with these specifications, of the Technical Secretariat of the group of the organisations notified under the gas appliances directive 90/396/EEC.

⁵ Directive 90/396/EEC of 29th June 1990 (OJEC L 196 of 26th July 1990, p. 15) as modified by directive 93/68/EEC (OJEC L 220 of 31st August 1993, p. 1)

The Technical Secretariat will be assisted by the Administrative Secretariat (designated separately) responsible for logistical support for the meetings of the coordination groups of the notified bodies. The regularly required tasks of the Administrative Secretariat include the management of any aspect referring to the preparation, in the organisation and in the monitoring from the logistical point of view of the meetings or conferences. The tasks of the Administrative Secretariat do not include the drafting of documents in general or of technical documents, but e.g. the distribution of information and of the documents on the work of the group by the CIRCA System. The Administrative Secretariat is also responsible for the tasks of the "leader" of the specific CIRCA group dedicated to GAD-AC e.g. by granting access to the users, uploading documents prepared by the Technical Secretariat on the corresponding site and answering the users' requests with the necessary explanations on the operating mode of the site.

The following information is considered of interest as regards potential bidders:

- More information on the Directive 90/396/EEC can be found on the website http://ec.europa.eu/enterprise/gas_appliances/in dex en.htm
- The full list of conformity assessment bodies notified according to the directive 90/396/EEC can be found in the NANDO database on the following link: <http://ec.europa.eu/enterprise/newapproach/nando/index.cfm?fuseaction=directive.main>.

1.2.1. TECHNICAL TASKS AND MISSIONS OF THE TECHNICAL SECRETARIAT

The tasks of the Technical Secretariat shall be the following:

- a) The Technical Secretariat assists the Chairman of the co-ordination group of notified bodies (GAD -AC) in his functions. In this context, the Contractor has as mission in the fields covered by the group, of:
- taking the initiative to ensure, in collaboration with the Chairman of the co - ordination group of notified bodies, that productive meetings of the notified bodies can be held.
 - taking part in the meetings of the sector group of notified bodies (GAD -AC meetings) in Brussels
 - collecting and drawing up the documents for the meetings and preparing the agenda in collaboration with the Chairman of the co -ordination of notified bodies
 - drafting the technical working papers, the reports (including minutes) of these meetings and their recommendations,
 - keeping informed and reporting to the group on:
 1. work of the intersectoral groups of notified bodies when they meet;
 2. progress with implementation of the Community legislation in the related area, according to the possible information provided by the Commission services;
 3. work in the field of European standardisation;

- to ensure the continuity of the work of the Technical Secretariat throughout the contract;
 - to collect all useful technical information and, at the request of the Commission services, to format them to allow notified bodies to carry out and co-ordinate their activity in the most effective way;
 - to propose answers or solutions to the technical problems raised by the notified bodies between and at the meetings of notified bodies group (GAD - AC) - see also point d) below;
 - to take part, at the request of the Commission services, in the sector related meetings related to the notified bodies (e.g. the Working Group Gas Appliances, organised by the Commission services and discussing implementation and interpretation issues of the GAD; this group is composed of representatives of Member States, European federations, the notified bodies and CEN and chaired by a representative of the Commission services);
 - to ensure in co-operation with the Administrative Secretariat that electronic tools (e.g. a specific CIRCA group dedicated to GAD -AC; more information about the CIRCA System at <http://forum.europa.eu.int/>) are operated properly to facilitate communication and cooperation (group work) of the notified bodies.
- b) The Technical Secretariat must also be in a position to provide, at the request of the Commission services, technical advice on subjects relating to the application of the GAD.
- c) The Technical Secretariat must maintain a complete timetable of its activities; it must be appended to the activity reports mentioned at item 4.2.
- d) The Technical Secretariat should draw up data sheets for survey and finalised data sheets:

A data sheet is a document, showing a raised question and the response to it.

A data sheet for survey is a data sheet where questions are in the process of discussion and/or drafting.

A finalised data sheet is a sheet where the answer has been approved by the co-ordination of notified bodies. Such finalised data sheets are called “guidance sheets” being proposals and guidelines to solve problems applying the GAD within the Member States. Guidance sheets consist of those ones reflecting good working practice and those ones touching upon interpretation questions with profound consequences. Guidance sheets approved by GAD -AC need to be submitted as proposals to the Working Group Gas Appliances for approval.

These data sheets must be written and classified in order to allow rapid and effective use. This involves, amongst other things, the regrouping of the sheets dealing with the same subject or with similar subjects, the use of a standard model for all the sheets, the checking of all the sheets by the co-ordination of notified bodies, etc.

More information about the current guidance sheets:
http://ec.europa.eu/enterprise/gas_appliances/guidances.htm

Other more specific documents could be drawn up at the request of the Commission services.

- e) Specific tasks may be performed by members of the corresponding group of the notified bodies, i.e. by members of the Gas Appliances Directive - Advisory Committee (GAD-AC), when they are designated for this task by the group itself. The execution and reporting on such tasks, when they are performed in the context and scope of work of this specification, is to be supervised and accounted by the Technical Secretariat.

The working language to be used in performing the tasks of the Technical Secretariat in relationships with the stakeholders shall be English.

The foreseeable meetings that the Technical Secretariat is expected to take part in are as follows:

Initial period of 12 months	Second period of 12 months	Third period of 12 months	Fourth period of 12 months
35 mandays, inclusive	35 mandays, inclusive	35 mandays, inclusive	35 mandays, inclusive
2x1-day meetings of GAD-AC in Brussels	2x1-day meetings of GAD-AC in Brussels	2x1-day meetings of GAD-AC in Brussels	2x1-day meetings of GAD-AC in Brussels
2x1-day meeting of the Member States experts group in Brussels or Luxemburg	2x1-day meeting of the Member States experts group in Brussels or Luxemburg	2x1-day meeting of the Member States experts group in Brussels or Luxemburg	2x1-day meeting of the Member States experts group in Brussels or Luxemburg
1x1-day co-ordination meeting with the Standards institutions in Brussels	1x1-day co-ordination meeting with the Standards institutions in Brussels	1x1-day co-ordination meeting with the Standards institutions in Brussels	1x1-day co-ordination meeting with the Standards institutions in Brussels
1x1-day kick-off meeting with the Commission in Brussels	1x1-day interim meeting with the Commission in Brussels	1x1-day interim meeting with the Commission in Brussels	

The activity is estimated at 35 mandays a year. The activity of the Technical Secretariat is considered to be:

- 2 meetings of the notified bodies a year, of one -day duration each. These meetings will take place in Brussels.

- 2 meetings a year with the Member States experts group, of one -day duration each. These meetings will take place in Brussels or Luxembourg.

In addition to the meetings envisaged above the Technical Secretariat shall consider one kick-off meeting in the beginning of the initial period of 12 months and one interim meeting during the second and third period of 12 months, of one -day duration each, with the Commission on Commission premises in Brussels.

Similarly the Technical Secretariat will be asked, *on request of the Commission services*, to take part in technical co-ordinating meetings with the Standards institutions (CEN/CENELEC/ETSI). The Technical Secretariat shall consider one co -ordinating meeting with the Standards institutions a year, of one -day duration each.

With regard to the GAD-AC meetings the Technical Secretariat has the task of organising the meetings in close cooperation with the Chairman, the Administrative Secretariat and in accordance with the parties concerned, anticipating subsequent Working Group Gas Appliances meetings, by preparing the invitations, agendas and documents, judging matters coming from members of the group, the Commission and others whether or not it can be of importance for the GAD -AC meeting. After the meetings, the Technical Secretariat has always drawn up the minutes reflecting the discussions and decisions taken during the meetings and carried out those actions agreed by the group. Documents have been distributed via the Administrative Secretariat and they have been forwarded to the Commission.

GAD-AC has followed carefully the review process of the GAD in its meetings and provided the Commission with comments on specific subjects possibly affecting the work of notified bodies. Issues discussed are e.g. widening the scope of the GAD, the types of gas and corresponding supply pressures, CE marking for fittings, need to amend and/or modify the essential requirements, the potential of the introduction of a full quality assurance module and validity of certificates.

1.2.2. Other tasks, missions and specific obligations of the Technical Secretariat

1.2.2.1. Appointment of only one person or of several persons

Only one person will be named as a Technical Secretary to carry out the tasks and missions of the Technical Secretariat. Tenders should envisage the names of one or two substitutes to cover the cases where the named person would be unable to continue exercising his/her function.

The tender should include the names of the proposed persons for the technical secretariat which is tendered and that of the possible substitutes, as well as their **Complete Curriculum Vitae (dated and signed)**. These CVs must contain, at least, the description of the diplomas and the professional qualifications of proposed persons to undertake the tasks of the technical secretariat in the technical field in question, including the field of conformity assessment and standardisation. In addition, the CV should show the degree of knowledge of the Community directives in the technical field concerned.

It should be noted that no change of technical secretary may take place after the signature of the contract, without the prior written agreement of the Commission. The

Commission reserves the right to refuse a proposal of the contractor to replace the technical secretary.

1.2.2.2. Absence of a subordination link

The contractor will have the sole responsibility for persons working under his authority. There will be no subordination link between the Commission, on the one hand, and the contractor and/or its personnel, on the other. The contract must be performed in such a way as to preclude the contractor or his personnel providing their services under conditions identical to those existing for the services rendered by a dependent worker. The contractor or his personnel cannot be incorporated within the administrative organisation of the Commission of the European Communities.

Any Commission communication - in particular instructions, if necessary - to the contractor, in each phase of implementation of the contract, will be made to the person designated by the contractor concerned as a person responsible for the contract, and not to the personnel of the contractor concerned responsible for the implementation of the contract.

1.2.2.3. Rules of ethical conduct

The secretary has to be and remain independent of the interests of the manufacturers and of the users (among which purchasers and the contracting entities) of the products being the subject of certification in the sector concerned, unless he belongs to an entity representing all the economic actors concerned.

Moreover, the personnel of the contractor, his management, administrators and/or shareholders or any other person working under his authority, is required to inform the contractor of any situation which can give rise to conflict of interests. Similarly, the contractor will have to undertake under the terms of the contract to inform the Commission, which reserves the right to examine the case to decide on the action to be taken.

The contractor must undertake to treat all data of whatever nature as strictly confidential if it relates to the implementation of the contract. The use of this information for purposes other than the implementation of the contract for the benefit alone of the Commission is subject to the express and prior authorisation of the latter (as noted in Article II.9 of the Contract).

1.2.2.4. Control of the activities of the contractor

The contractor must submit a regular statement of the costs relating to the benefits delivered by them for each 4-month period.

The Commission reserves expressly the right to carry out system controls periodically and systematically. These checks may be made either by the Commission itself or by persons nominated by it for this purpose, including external bodies qualified in the field of verification and audits, having appropriate experience and approved by the national authorities concerned. In order to be able to carry out its checks, the Commission and persons entitled by it will have access to all the books, documents, papers or files in the contractor's possession and concerning the expenditure paid by the Commission or will be able, if that proves necessary, to require that this documentation be given to them.

Checks will be able to take place for all the duration of the contract and within five years which follow the end or the cancellation of the last contract signed with this contractor following this call for tenders. The European Court of Auditors will have the same control powers as the Commission (as stated in Article II.17 of the Contract).

The Commission will have the option of cancelling the contract at any moment or suspending payments as precautionary measure in the event of non-respect of the contractual obligations, in particular, on the basis of the results of these controls. In this case, the Commission reserves the right to ask for the refunding (partial) of the amounts paid as well as damages and interests and/or penalties.

1.2.2.5. Control of the performances of the contractor

The labour costs of the contractor will be attributed on the basis of the time actually devoted by the technical secretary to the tasks being the subject of the contract. The time devoted to these tasks will be recorded on work sheets filled out by the personnel for all the duration of the contract and certified at least once a month by the technical secretary and by his possible superior or any other member of the supervisory staff of the contractor concerned.

1.3. REPORTS AND DOCUMENTS

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The Contractor is to provide the required reports and documents in accordance with the conditions of the standard service contract appended in Annex 5.2.

For Lot 1 and Lot 2

The Contractor is to provide the required reports and documents in accordance with the conditions of the standard service contract appended in Annex 5.3.

Reports and documents shall be written in English. The contractor shall guarantee a high linguistic quality of the documents. If need be, the contractor shall provide for a linguistic review by a native speaker or a qualified person with equivalent skills.

Work carried out by the Contractor in performance of the contract will be the subject of the following reports, two copies of which must be sent in writing (hard form) and one electronic copy (Word and/or Excel) of which must be sent to the Commission by the Contractor.

In addition to the technical documents necessary to carry out the tasks described at item 4.1., the technical secretary will draw up a management activity report, for each **four-month** period, **from the signature of the contract**, for the attention of the Commission services, as follows:

- a) **The interim activity reports** for the two initial **four-month** periods will be submitted within 15 days which follow each period and will be composed of three parts:
- Detailed description of the work achieved for the four-month period;

- Detailed description of the work in progress as well as a detailed forecast of the future tasks;
- A timetable of the activities of the technical secretary making it possible to determine precisely the number of man -days worked for the period concerned. This timetable has to correspond to the bases for calculation of the invoices concerning the period covered by the management report. A copy of the duly filled out and signed attachment sheets, attesting the time devoted to the tasks (achieved work and work in progress) will be joined to the management activity report.

The Commission reserves the right to ask the Contractor to provide it with a copy of all the documents drawn up by the Technical Secretary as well as the documents, in preparation or finalised but not yet submitted or approved by the group(s).

b) **The final activity report** will be submitted, at the latest, 12 months after the date of signature of the contract. It will be composed of the three parts described above. The Commission will have 20 (twenty) days to make its comments known to the Contractor, which will also have 20 (twenty) days to amend its report taking into account these remarks and to deliver the final document.

c) An electronic version (Word and/or Excel) of all reports is requested.

Moreover, the Commission and the Contractor will exchange in writing all information available on the possible events likely to harm the proper implementation of the Contract. As from the first manifestation of an action of a third party, in particular of a claim, even occurring after the implementation of the Contract, any incriminated party, will inform the other party as soon as possible and the two parties will communicate to each other all information and all the elements of proof that they can possess or obtain

ANNEX II

CONTRACTOR'S OFFER O F [XXX]