



EUROPEAN COMMISSION
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

New Approach Industries, Tourism and CSR
Construction, Pressure Equipment, Metrology

CALL FOR TENDERS

No ENTR/08/007

**Liability and insurance regimes in the
construction sector: national schemes
and guidelines to stimulate innovation
and sustainability**

SPECIFICATIONS

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1. PRELIMINARY INFORMATION CONCERNING THE INVITATION TO TENDER

These specifications follow the publication of:

- the prior information notice in OJ S 28-036804 of 09/02/2008, project no. I5/1.
- the contract notice in OJ S 102-136162 of 28/05/2008.

1.1. NATURE OF THE CONTRACT

Service contract for a study 'Liability and insurance regimes in the construction sector: national schemes and guidelines to stimulate innovation and sustainability'

1.2. BACKGROUND

Between 1991 and 1993, the Commission services analysed in cooperation with a group representing the interests of the construction and the insurance sectors - GAIPEC ("Groupe des Associations InterProfessionnelles Européennes de la Construction") - the conditions for a possible harmonisation of the regimes related to the liability of the various participants intervening in construction projects.

This analysis more particularly addressed the legal issues related to 4 priority domains: the acceptance of construction works, the liability of various project participants, the legal guarantees and the financial cover. Although there was a large consensus within GAIPEC on most of the elements for a possible directive, there were significant differences of opinion regarding the field of application of a possible directive (all construction sectors or only buildings), the applicable acceptance system in case of public works divided in separated lots, the duration of the liability and of the guarantee, and the extent of the responsibilities of a specific participant in different countries¹.

The harmonisation work on the liability and insurance regimes in construction was therefore not pursued. However, within the context of the achievement of an Internal Market for Services, there is again a growing attention about the potential impact of these regimes on the functioning of the construction markets and on the quality of the related services.

Directive 2006/123/EC provides a legal framework for facilitating the provision of a number of services across borders. At the same time, the Directive sets out the principles to ensure high quality both in cases of cross border provision of services and in cases of services delivered in a Member State by a provider established there. In particular, Article 23 defines the general rules applicable to professional liability insurance or to the provision of a guarantee or similar arrangements in cases of services with particular risks for the health, the safety or the financial security of the recipient or third persons.

¹ See report
http://ec.europa.eu/enterprise/construction/info/study_liability_insur_regimes_sect_construct.pdf

Because construction services have to cope with stringent requirements in terms of safety, health and environmental protection and materialise a significant financial value for the property owners, the above mentioned principles are relevant for construction. However, the very fragmented nature of construction markets and of the liability regimes applicable to them means that a mutual recognition of insurance cover or guarantees will be especially complex for this sector.

Recent studies have assessed the actual situation regarding liability and insurance regimes applicable to construction in some Member States². European Federations related to the construction sector have also set up specific working groups on this matter³. These studies indicate that the situation differs greatly among Member States and that in some circumstances professional liability insurance is becoming increasingly expensive for some market players, if available at all. For some countries, it is questioned whether the indemnity to be paid by some project partners in case of dispute is proportional to their intervention in the project or their fees.

This diversity of the national regimes might discourage market players from entering new markets where they are unsure of their liabilities. This could suggest a need to develop an information base that will enable market players to better understand the liability and insurance regimes applicable across the EU. At a local level, this could enable a wider supply of insurance services, especially to cover the risks related to the growing market demand for high quality and sustainable construction solutions.

Within the context of the “Lead Market Initiative”⁴, the Commission services have suggested that the insurance sector might play a larger role in helping to enforce policy measures for sustainable construction. This might take the form of for instance quality schemes linked to insurance arrangements for construction partners adopting good standards in terms of health and safety, training, environmental protection, etc. as part of their daily operation. Such schemes are intended to reward firms which comply with a “label” that has customer recognition. The conditions for supporting the formation and promotion of such quality schemes need to be assessed properly.

The scope of the proposed feasibility study is to provide the basis for developing an EU wide framework for the promotion of insurance schemes which could stimulate the uptake of innovative and sustainable solutions in construction projects as well as the adoption of responsible management in construction enterprises, in particular in craft and small firms. The contractor will identify the conditions necessary to keep insurance schemes in line with responsible and good risk management and with the achievement of an Internal Market for construction services, and make concrete recommendations

² See among others :

(a) “Rapport particulier sur les régimes d’assurance construction dans une vingtaine de pays étrangers”, Inspection Générale des Finances et Conseil Général des Ponts et Chaussée, October 2006 (https://www.igf.minefi.gouv.fr/IGF/sections/rapports/assurance_constructio/downloadFile/file/01_-_Rapport.pdf)

(b) “Etude européenne sur la responsabilité des architectes”, Centre d’Etudes d’Assurances (CEA), October 2004 (see http://www.groupe-cea.com/upload/doc_doc/Document_fr/155/SYNTHESE.pdf)

³ See website of (a) the Architects’ Council of Europe (<http://www.ace-cae.org/MemberN/Content/EN/ins/tof/tofins.html>) and of (b) the European Federation of Engineering Consulting Associations (http://www.efcanet.org/menuOnder/Committees/Professional_Liability.aspx)

⁴ COM (2007) 860 (<http://ec.europa.eu/enterprise/leadmarket/leadmarket.htm>) and thematic report on sustainable construction (http://ec.europa.eu/enterprise/leadmarket/sustainable_construction.htm)

about the extent to which the European Commission should support the formation and/or the promotion of specific schemes in the Member States.

1.3. STARTING DATE OF THE CONTRACT AND DURATION OF THE TASKS

The contract shall enter into force on the date on which it is signed by the last contracting party.

It is expected to be signed in November 2008.

The duration of the tasks shall not exceed 15 months.

The execution of the tasks may not start before the contract has been signed. The period of execution of the tasks may be extended, only with the written agreement of the contracting parties, before the end of the period originally stated in the contract.

1.4. PERIOD OF VALIDITY OF THE TENDER

The offer must remain valid for a period of 9 months following the final date for submitting tenders (see point 3 of the invitation to tender). During this period, the tenderer may not modify the terms of his tender in any respect.

1.5. DATE AND PLACE OF OPENING OF THE TENDERS

Tenders will be opened at **14.30 pm** on **22.07.2008** at the following location:

Office address:

European Commission
Enterprise and Industry Directorate-General
Unit ENTR I5 – Construction, Pressure Equipment, Metrology
Rue Belliard 100 - Office B100 06/SDR
B-1040 Brussels

An **authorised representative** of each tenderer may attend the opening of the bids. Companies wishing to attend are requested to notify their intention by sending a fax or e-mail at least 48 hours in advance to the address given under 1.6. This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will attend the opening of the bids on the tenderer's behalf.

1.6. CONTACT BETWEEN THE TENDERER AND THE COMMISSION

Contacts between the contracting authority and tenderers are prohibited throughout the procedure save in **exceptional circumstances** and under the following conditions only:

- Before the final date for submission of tenders:

- * At the request of the tenderer, the contracting authority may provide additional information solely for the purpose of clarifying the nature of the contract.
- * The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or other clerical error in the text of the call for tenders.
- After the opening of tenders :

If clarification is requested or if obvious clerical errors in the tender need to be corrected, the contracting authority may contact the tenderer provided the terms of the tender are not modified as a result.

The requests for additional information may be made **to the address below by letter, fax or e-mail.**

European Commission Enterprise Directorate-General Invitation to tender No: ENTR/08/007 Unit ENTR I5 – Construction, Pressure Equipment, Metrology B100 04/28 B-1049 Brussels - BELGIUM Fax: (+32-2)-299.80.08 - e-mail: ENTR-0807-INSURANCE@ec.europa.eu
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Insofar as it has been requested in good time, the additional information will be made available to all economic operators who requested specifications or showed interest in submitting a bid no later than six calendar days before the final date for the receipt of bids or, in the case of requests for information received less than eight calendar days before the final date for the receipt of bids, as soon as possible after the request for information has been received.

Potential tenderers are encouraged to formulate, at least six days before the time limit to submit tenders, any remark, complaint or objection they would have in relation to all aspects of this call for tender in order that the Commission can evaluate the need for corrective measures and implement them before the submission of tenders.

The answers to the requests for additional information can also be found at the following Internet address: <http://ec.europa.eu/enterprise/calls/calls.html>

1.7. TERMS OF PAYMENT

Payments shall be made in accordance with Articles I.3, I.4 & II.4 of the draft service contract (Annex 5.2).

The payment scheme will consist of a pre-financing of 10%, one interim payment of 40 % and the balance.

The schedule and the procedure for the approval of payments and the documents to be submitted are described in Articles I.4, II.4, II.5 and II.7 and in Annex I to the draft service contract referred to above.

1.8. GUARANTEES

Not applicable.

1.9. GENERAL TERMS AND CONDITIONS FOR THE SUBMISSION OF TENDERS

The present tender documents are drawn up in respect of the Financial Regulation applicable to the general budget of the European Communities (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 as amended by Council Regulation (EC, Euratom) N° 1995/2006 of 13 December 2006), as well as its implementing rules (Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 as amended by i) Commission Regulation 1261/2005 of 20 July 2005, ii) Commission Regulation 1248/2006 of 7 August 2006 and iii) Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007), hereinafter referred to as the Financial Regulation.

Participation in tendering procedures is open on equal terms to all natural and legal persons from one of the EU Member States and to all natural and legal persons in a third country which has a special agreement with the Communities in the field of public procurement on the conditions laid down in that agreement.

Where the Plurilateral Agreement on Government Procurement concluded within the WTO applies, the contracts are also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down. In that connection, it should be noted that the services under Annex IIB to Directive 2004/18/EC and the R&D services listed in category 8 of Annex IIA to that Directive are not caught by the Agreement.

Operators in third countries which have signed a bilateral or multilateral agreement with the Communities in the field of public procurement must be allowed to take part in the tendering procedure on the conditions laid down in this agreement. The Commission refuses tenders submitted by operators in third countries which have not signed such agreements for the present call for tender.

Submission of a tender implies acceptance of the terms and conditions set out in this invitation to tender, in the tendering specifications and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. It is binding on the tenderer to whom the contract is awarded for the duration of the contract.

Once the Commission has accepted the tender, it shall become the property of the Commission and the Commission shall treat it confidentially.

The Commission shall not reimburse expenses incurred in preparing and submitting tenders.

The Protocol on the Privileges and Immunities or, where appropriate, the Vienna Convention of 24 April 1963 on Consular Relations shall apply to this invitation to tender.

Variants are not allowed.

1.10. NO OBLIGATION TO AWARD THE CONTRACT

This invitation to tender is in no way binding on the Commission. The Commission's contractual obligation commences only upon signature of the contract with the successful tenderer.

Up to the point of signature, the contracting authority may either abandon the procurement or cancel the award procedure. This decision must be substantiated and the candidates or tenderers notified.

No compensation may be claimed by tenderers whose tender has not been accepted, including when the Commission decides not to award the contract.

1.11. PLACE OF PERFORMANCE

The place of performance of the tasks shall be the Contractor's premises or any other place indicated in the tender, with the exception of the Commission's premises.

1.12. SUBCONTRACTING

Subcontracting is defined as the situation where a contract has been or is to be established between the Commission and a contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other legal entities for performing part of the service. However, the **Commission has no direct legal commitment with the subcontractor(s).**

At the level of the liability towards the Commission, tasks provided for in the contract may be entrusted to subcontractors, but **the contractor retains full liability towards the Commission for performance of the contract as a whole.**

Accordingly:

- The Commission will treat all contractual matters (e.g. payments) exclusively with the contractor, whether or not the tasks are performed by a subcontractor;
- The Commission will privilege direct contacts with the contractor, who is responsible for executing the contract;
- Under no circumstances can the contractor avoid liability towards the Commission on the grounds that the subcontractor is at fault.

A contract which includes subcontracting is subject to certain general conditions in particular the provisions on subcontracting, checks and audits, and confidentiality. Where justified by the subject matter of the contract, a statement of confidentiality may be required to be submitted to the Commission. **The subcontracting arrangement between the contractor and his subcontractor is supposed to render directly applicable all those contractual obligations with regard to the Commission to the subcontractor.**

Consequently, the bid must clearly identify the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set out

in 1.9 above, in particular article II.17 of the standard service contract by returning the form in annex 5.5, filled in and signed.

Tenderers must inform the subcontractor(s) and include in their sub-contracting documents that Article II.17 of the standard service contract (Annex 5.2) may be applied to sub-contractors.

Once the contract has been signed, Article II.13 of the above-mentioned service contract shall govern the subcontracting.

1.13. JOINT OFFERS

A joint offer is a situation where an offer is submitted by a group of tenderers. If awarded the contract, the tenderers of the group will have an equal standing towards the Commission in executing a supply, service or works contract.

The Commission will not request consortia to have a given legal form in order to be allowed to submit a tender, but reserves the right to require a consortium to adopt a given legal form **before the contract is signed** if this change is necessary for proper performance of the contract. This can take the form of an entity with or without legal personality but offering sufficient protection of the Commission's contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

Grouping of firms must nominate one party to be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration, and for coordination. The documents required and listed in the present specifications must be supplied by every member of the grouping, the checklist in annex 5.7 will help verifying the level of information to be provided according to the role of each entity in the tender.

Each member of the grouping assumes a joint and several liability towards the Commission.

The offer has to be signed by all members of the group. However, if the members of the group so desire they may grant an authorisation to one of the members of the grouping. In this case they should attach to the offer a power of attorney (see model in annex 5.5). For groupings not having formed a common legal entity, model 1 should be used, and for groupings with a legal entity in place (model 2).

The contract will have to be signed by all members of the group. If the members of the group so desire, they may grant authorisation to one of the members of the grouping by signing a power of attorney. The same model as above duly signed and returned together with the offer (see annex 5.6) is valid also for signature of the contract.

Partners in a joint offer assume joint and several liability towards the Commission for the performance of the contract as a whole.

Statements, saying for instance: "that one of the partners of the joint offer will be responsible for part of the contract and another one for the rest", or "that more than one contract should be signed if the joint offer is successful", are thus incompatible with the

principle of joint and several liability. The Commission will disregard any such statement contained in a joint offer, and reserves the right to reject such offers without further evaluation, on the grounds that they do not comply with the tendering specifications.

2. FORM AND CONTENT OF THE TENDER

2.1. GENERAL

Tenders must be **signed** by the tenderer or his duly authorised representative. Tenders must be **perfectly legible** so that there can be **no doubt as to words and figures**.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc.).

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

Tenders **must include** the following information:

- all the **information and documents requested by the Commission** in order to assess the tender. In order to help tenderers presenting a complete tender, a **checklist of the documents to submit is provided in annex 5.7**. This checklist does not need to be included in the tender but we encourage to use it in order to ease the assessment of the tenders;
- the **price in euros**;
- one **specimen signature of an authorised representative** on the legal entity form (http://europa.eu/comm/budget/execution/legal_entities_fr.htm), and a statement confirming the validity of the tender (preferably in blue ink), the tender must provide evidence of the authorisation to sign in name of the tenderer;
- the **name of a contact person** in relation to the submission of the bid.

2.2. HOW TO SUBMIT A TENDER

Tenderers shall observe precisely the indications in point 3 and 4 of the invitation to tender in order to ensure their tenders are admissible.

Evidence of timely submission by post or courier service will be constituted by the date of dispatch, the postmark or the date of the deposit slip. In the case of hand-delivery, the signed and dated receipt will serve as evidence.

Late delivery will lead to the non admissibility of the tender and its rejection from the award procedure for this contract. Offers sent by e-mail or by fax will also be non admissible. Envelopes found open at the opening session will also lead to non admissibility of the tender. Consequently, tenderers must ensure that their bids are packed in such a way as to prevent any accidental opening during its mailing.

2.3. STRUCTURE OF THE TENDER

All tenders must be presented in five sections:

Section one: Administrative information – Presentation of the tender (see 2.1 & 2.3.1)

Section two: Evidence relating to the exclusion criteria (see 3.1)

Section three: Evidence relating to the selection criteria (see 3.2.2 & 3.2.3)

Section four: Technical Proposal – Addressing technical specifications and award criteria (see 2.3.2, 3.3 and 4)

Section five: Financial Proposal (see 2.3.3)

2.3.1. *Section One: Administrative proposal*

a) **Tenderers** may choose between presenting a **joint bid** (see 1.13) and introducing a bid as a **sole contractor**, in both cases with the possibility of having one or several subcontractors (see 1.12).

Whichever type of bid is chosen, the tender must stipulate the legal status and role of each legal entity in the tender proposed and the monitoring arrangements that exist between them and, failing this, the arrangement they foresee to establish if they are awarded the contract (see 1.12 and 1.13).

b) To identify himself the tenderer must fill in a Legal Entity Form and a Financial Identification Form:

- The **Legal Entity Form** is to be signed by a representative of the tenderer authorised to sign contracts with third parties. There is one form for individuals, one for private entities and one for public entities. Specific forms in each Member State language are available at :

http://europa.eu/comm/budget/execution/legal_entities_fr.htm

- The **Financial identification form** shall be duly filled in and signed by an authorised representative of the tenderer and his or her banker. A specific form for each Member State is available at the following Internet address:

http://europa.eu/comm/budget/execution/ftiers_fr.htm.

The Legal Entity Form **must be accompanied by all the information** indicated in the form. When neither this form nor the evidence to be attached to them includes the following information, the tender must include:

For private and public entities:

- a legible copy of the notice of **appointment of the persons authorised to represent the tenderer** in dealings with third parties and in legal

proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

For Individuals:

- Where applicable, a proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or any other official document showing the registration number.

All tenderers must provide their legal entity files as well as the necessary evidence. Only subcontractors are requested to provide solely the legal entity file without evidence.

Economic operators already registered as a legal entity in the Commission's files (i.e. they are or have been contractors of the Commission) are not obliged to provide the evidence requested in the form, on condition they indicate in their offer the references of the procedure and the Commission's department for which this evidence was already provided.

In case of a joint bid or a bid presenting subcontracting, only the co-ordinator is obliged to return the financial identification form.

2.3.2. Section Four: Technical proposal

Tenderers must include in their bids the technical proposal addressing all aspects detailed in the specifications set out in section 4 below.

The technical proposal must respond to these technical specifications and provide, as a minimum, all the information needed for the purpose of awarding the contract.

Please note that, to grant equal treatment of all tenders, **it is not possible to modify offers after their submission in relation to the technical and financial proposals.** As a consequence, **incompleteness in this section can only result in negative impact for the evaluation of award criteria.** Please note also, that proposals deviating from the technical specifications may be rejected for non-conformity.

The technical specifications and the tenderer's bid shall be integral parts of the contract and will constitute annexes to the contract.

2.3.3. *Section Five: Financial proposal*

The tenderer's attention is drawn to the following points:

- **Prices must be expressed in euros;**
- **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 not be conditional and be directly applicable by following the technical specifications.**
- **Prices shall be fixed and not subject to revision.**
- **The reference price for the award of the contract shall consist of one amount: the amount in payment of the tasks executed**, as stated in Article I.3.1 of the contract.

For each category of staff to be 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. Flat-rate amounts should be avoided. If, exceptionally, they are used, specimen quotations for the flat-rate amounts must be provided;
- § the amount corresponding to travel expenses.

The following information is intended to help tenderers to estimate the maximum amount of expenses (only travel and subsistence and related costs are to be foreseen here):

- Meetings with the Commission:

Three one-day meetings, all to be held in Brussels, in which two representatives of the contractor should participate, as follows: kick-off (shortly after signature), interim (about five-and-a-half months after signature), and final (about twelve-and-a-

half months after signature) meeting with the Commission services, followed, the same day, by a steering group meeting.

- Validation workshop planned by the Commission:

A one-day common workshop (about thirteen-and-a-half months after signature), to be held in Brussels, in which two representatives of the contractor should participate.

Bids involving more than one legal entity must specify the amounts above for each legal entity.

Tenderers must use the following format to formulate their financial proposal:

<i>Price component</i>	<i>Unit price</i>	<i>Quantity</i>	<i>Total</i>
Human resources			
Person X (role)			
Person Y (role)			
Travel costs			
Subtotal (1)			
Other			
Item X			
Item Y			
.....			
Subtotal (2)			
TOTAL (1+2)			

The Commission will reject tenders where no technical offers or financial offers are proposed.

Non-conformity with the technical specifications in section 4 will also result in rejection from award.

The Commission reserves the right, however, to request clarification or additional evidence in relation to the exclusion and selection stages after the opening within a time-limit stipulated in its request and in the conditions explained in section 1.6.

A total maximum budget of 300.000 EUR has been foreseen for this contract, including the reimbursement of travel, subsistence and shipment expenses.

3. ASSESSMENT AND AWARD OF CONTRACT

The assessment will be based on the information provided in the tender. The Commission reserves the right to use any other information from public or specialist sources.

This assessment will be performed by applying the criteria set out in these specifications. To award of the contract, the assessment of admissible bids (see 2.2) will be carried out in three successive stages. Only bids meeting the requirements of one stage will be examined in the next stage.

The aim of each of these stages is:

- 1) to check, in the first stage (exclusion criteria), whether tenderers can take part in the tendering procedure and, where applicable, be awarded the contract;
- 2) to check, in the second stage (selection criteria), the technical and professional capacity and economic and financial capacity of each tenderer who has passed the exclusion stage;
- 3) to assess on the basis of the award criteria the technical and financial offers and establish a ranking list, by order of merit, of all tenders having passed the exclusion and selection stages, as well as the quality thresholds set for the assessment of the award criteria.

3.1. STAGE 1 – APPLICATION OF EXCLUSION CRITERIA AND EXCLUSION OF TENDERERS

3.1.1. Declaration

Tenderers or their representatives shall provide a declaration on their honour, duly signed and dated in which they:

- state whether or not they are in one or more of the situations referred to in Articles 93 and 94 of the Financial Regulation and detailed in the form;
- undertake to submit to the Commission any additional document relating to the exclusion criteria, that the Commission considers necessary to perform its checks, within seven calendar days following the receipt of the Commission's request.

To this end, tenderers must fill in and sign the form in Annex 5.1 to these specifications.

Where the bid involves more than one legal entity (including subcontractors), each entity must provide the form.

Any total or partial omission for which one or more legal entities involved in the tender are responsible may lead the Commission to exclude the tender from the procedure, in accordance with Articles 93 and 94 of the Financial Regulation.

3.1.2. Grounds for disqualification

In accordance with Articles 93 and 94 of the Financial Regulation, tenderers shall be excluded from the selection and award procedures if they do not satisfy criteria a) to f) specified in the standard form in annex 5.1.

In addition, contracts may not be awarded to tenderers who, during the procurement procedure are subject to a conflict of interest (criteria g) or are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information (criteria h) or fall into one of the situations as specified under criteria a) to f).

If a member of a consortium is subject to exclusion, the rest of the consortium shall be excluded.

If a subcontractor is subject to exclusion, the tender shall be excluded.

3.1.3. Evidence

The tenderer to whom the contract is to be awarded shall provide, within the 15 days following the receipt of the letter informing him of the proposed award of the contract and preceding the signature of the contract, the following evidence confirming the declaration referred to in paragraph 3.1.1:

1. The Commission shall accept as satisfactory evidence that the tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied;
2. The Commission shall accept, as satisfactory evidence that the tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State.
3. Where the document or certificate referred to in paragraph 1 & 2 is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, 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.
4. Depending on the national legislation of the country in which the tenderer is established, the documents referred to in paragraphs 1, 2, 3 and 3.1.1 shall relate to legal persons and/or natural persons including, where necessary, company directors or any person with power of representation, decision-making or control in relation to the candidate or tenderer. This would be the case when the national legislation concerned gives juridical responsibility of the acts committed by a legal entity (moral persons) to their legal representatives. The tenderer shall provide information on the ownership or on the management, control and power of representation of

the legal entity whenever necessary for the proper understanding of the evidence submitted or whenever the Commission requests it.

5. Where they have doubts as to whether tenderers are in one of the situations of exclusion, the Commission may itself apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.
6. The Commission may waive the obligation of a tenderer to submit the documentary evidence referred to in paragraphs 1 and 2 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year 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 to the Commission in a previous procurement procedure and confirm that no changes in his situation have occurred. He shall indicate in its tender all the references necessary to allow the Commission services to check this evidence.

3.1.4. Administrative and financial penalties

By returning the form in Annex 5.1, duly signed, tenderers confirm that they have been notified of the following points.

Administrative or financial penalties may be imposed by the Commission on tenderers who are in one of the cases of exclusion provided for in 3.1.2 above after they have been given the opportunity to present their observations.

These penalties are detailed in Article 96 of the Financial Regulation and Articles 133a and 134b of the Regulation laying down the rules for the implementation of the Financial Regulation. We invite tenderers to read carefully these two articles.

3.2. STAGE 2 - APPLICATION OF SELECTION CRITERIA (SELECTION OF TENDERERS)

This part of the tender concerns the criteria and evidence relating to the technical and professional capacity and economic and financial capacity of the service provider(s) involved in the bid. It should also contain any other document that the tenderer(s) wish(es) to include by way of clarification.

An economic operator may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. In that case, evidence must be provided that it will have at its disposal the resources necessary for performance of the contract, for example by producing a clear undertaking on the part of those entities to place those resources at its disposal.

If several service providers are involved in the bid, each of them must have the professional and technical capacity to perform the tasks assigned to them in the tender and the necessary economic and financial capacity.

This rule applies to all legal entities once they have chosen to be tenderers. If the tender includes subcontractors, the Commission reserves the right to request evidence of their

economic and financial capacity if the tasks subcontracted represent a substantial part of the contract.

3.2.1. Selection criteria

<u>SELECTION CRITERIA</u>	
1. FINANCIAL AND ECONOMIC CAPACITY	
1.1	Sufficient economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract.
2. TECHNICAL AND PROFESSIONAL CAPACITY	
2.1	Solid background and work experience in the fields of this study and the specific issues concerned by it, and regarding the concerns of related public and private stakeholders in the construction and insurance sectors;
2.2	Proven legal, economical and technical experience, of at least three years, in analysing and assessing issues at national and Community level affecting directly and/or indirectly the development of the construction and insurance sectors;
2.3	Proven technical experience, of at least three years, in analysing and assessing the developments of new business/organisational models and related risk management methods in the construction and insurance sectors.
2.4	Reliability of the tenderer to perform the services in terms of human and technical resources, including language skills needed, and quality control systems.

These criteria will be assessed on the basis of the documents referred to in 3.2.2 and 3.2.3.

3.2.2. Evidence of the economic and financial capacity of the service provider(s)

All tenderers must provide proof of their economic and financial capacity by submitting the following documents:

- a) A full copy of the concerned legal entities' annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) of the last two years, as approved by the general assembly of the company and, where applicable, audited and/or published. These documents must be signed by the authorised representative of the tenderer;
- b) A statement of overall turnover and turnover concerning the tasks, supplies covered by this contract for the last three financial years;

If, for some exceptional reason which the Commission considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Commission considers appropriate. In any case, the Commission must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

3.2.3. Evidence of the technical and professional capacity of the service provider(s)

The ability of service providers to perform services will be assessed in particular with regard to their know-how, efficiency, experience and reliability.

Evidence of the technical and professional capacity of the providers involved in the tender may, be furnished on the basis of the following documents:

- a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the tasks; The Europass curriculum vitae format (http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1) shall be filled in and signed, by each person involved in the execution of the tasks foreseen in the tender. The precise contractual link with the tenderer will also be described.

This evidence refers to selection criterion 2.1.

- b) a list of the services carried out in the last three years, with the sums, dates and place. The list of the most important services shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;

This evidence refers to selection criteria 2.2 and 2.3.

- c) a description of the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;

This evidence refers mainly to selection criteria 2.4.

- d) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;

This evidence refers to selection criterion 2.4.

- e) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;

This evidence refers to selection criterion 2.4.

- f) an indication of the proportion of the contract which the service provider may intend to subcontract.

By submitting a tender, each legal entity involved therein accepts the possibility of a check being carried out by the Commission on its technical capacities and, if necessary, on its research facilities and quality control measures.

In addition, all tenderers are informed that they may be asked to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a professional or trade register or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

3.3. STAGE 3 - APPLICATION OF AWARD CRITERIA (ASSESSMENT OF TENDERS)

The contract will be awarded to the most cost-effective tender. The following award criteria will be applied:

No	Qualitative award criteria	Weighting (maximum points)
1.	Methodology, coherence, clarity and practicability of the service to be provided, in particular the <u>work programme and the methodologies for review, analysis, assessment and good practice</u> proposed to be used, completeness of aspects considered in relation to the subject of this study, and specificity of the proposed approach in relation to the study subject.	35
2.	Proposed structure and information value of the <u>output of the service to be provided</u> , its practical usability, the relevance, quality and completeness of the information proposed to be provided, and the proposed way of presenting findings.	25
3.	Overall <u>understanding of the requirements and critical elements</u> of the study, of the issues to be examined, and of the legal, economic and technical challenges involved.	20
4.	Relevance, quality and completeness of the <u>information proposed to be used, and of the analysis proposed to be undertaken</u> ; quality and extent of contacts proposed with relevant public and private stakeholders in the sphere of construction.	20
Total number of points		100

The selected tender is assessed according to the above qualitative award criteria and the weighting applicable to each criterion.

Tenders scoring less than 65 % in the overall points total or less than 50% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.

Award criterion	
	Total price

Tenders presenting a total price superior to the maximum amount of 300.000 € will be excluded from the rest of the assessment procedure.

The contract will be awarded to the tender which is the most cost-effective (offers the best value for money) on the basis of the ratio between the total points scored and the price.

Final Evaluation	
	Total Quality Points/Price

Tenders should elaborate on all points addressed by these specifications in order to score as many points as possible. The mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, will only result in a very low score. In addition, if certain essential points of these specifications are not expressively covered by the tender, the Commission may decide to give a zero mark for the relevant qualitative award criteria.

3.4. INFORMATION FOR TENDERERS

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

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

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the

legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

3.5. AWARD OF THE CONTRACT

The procurement procedure is concluded by a contract signed by the parties. In this case, the General Terms and Conditions applicable to service contracts referred to above shall apply.

After the period of validity of the tender has expired, conclusion of the contract shall be subject to the tenderer's agreement in writing.

The Commission shall not sign the contract or framework contract with the successful tenderer until a standstill period of 14 calendar days has elapsed, running from the day after the simultaneous dispatch of the award decisions and decisions to reject.

After the award, during standstill period, the Commission will request to the tenderer proposed for award the evidence on exclusion criteria defined in section 3.1.3. If this evidence was not provided or proved to be unsatisfactory the Commission reserves the right to cancel the award procedure or to change the award decision to the benefit of the next best ranked tenderer on condition that he satisfies with the provision of the evidence on exclusion.

3.6. DATA PROTECTION

The follow up of your response to the invitation to tender will require the recording and further processing of personal data (name, address, CV, for example). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. Except if mentioned otherwise, replies to questions and personal data are necessary for the purpose of assessing your tender according to the specifications of the invitation to tender and will only be processed by Unit I5 Construction, Pressure Equipment, Metrology, DG Enterprise and Industry for this purpose. You may, upon request, obtain the communication of your personal data and rectify any inaccurate or incomplete personal data. Should you have any queries concerning the processing of your personal data, please address them to Unit I5 Construction, Pressure Equipment, Metrology, DG Enterprise and Industry. As regards to the processing of your personal data, you have a right to recourse at any time to European Data Protection Supervisor.

4. TECHNICAL SPECIFICATIONS

4.1. DESCRIPTION OF TASKS

4.1.1 Objectives

This contract is part of the implementation of the Lead Market Initiative and of a pilot project supported by the European Parliament to facilitate access to insurance by building contractors, especially the self-employed and small firms, in order to stimulate innovation and the promotion of eco-technologies in the European Union.

The specific aim of this action is to identify the conditions in which insurance schemes could support the uptake of innovative and sustainable solutions in construction projects, to clarify the overall benefits/effects of insurance on consumer protection, the competitiveness of the actors in the supply chain and the economics of the insurance market, as well as to assess whether and how the EU could play a role in promoting best practice in this area and/or the formation of pilot schemes.

The scope of this feasibility study does not include an examination of a possible harmonisation of the liability and insurance systems across Europe, although it will provide key elements for understanding the issues related to the development of an Internal Market for construction services.

4.1.2 Subject of the services

The Commission invites tenders to carry out a feasibility study to provide the basis for developing an EU wide framework for the promotion of insurance schemes which could stimulate the uptake of innovative and sustainable solutions in construction projects as well as the adoption of responsible management in construction enterprises, in particular in craft and small firms.

4.1.3 Work programme

The work programme will include at least the following elements:

a) To critically review the national systems in the EU-27 related to the requirements to insure the liability of market actors in construction projects (clients, architects, consulting engineers, contractors, technical auditors, etc.) with a view towards the achievement of an EU Internal Market for services.

Based on existing studies and ongoing work in EU federations related to the construction sector, in particular those mentioned in section 1 of these technical specifications, and on other information sources which will be defined in the bid, the contractor will clarify the liability of each actor intervening in a construction project and appraise whether these liabilities are clearly defined in regard to the national law.

The contractor will assess to what extent insurance premiums are proportional to the services provided by the market actors and to the duties and liabilities they endorse, taking into account the specific situation in each Member State.

The review will also provide elements to understand how insurance solutions work or would work in case of a cross border provision of construction services and if the limited availability of insurance cover for such case could be perceived as an obstacle to the development of the Internal Market.

b) To assess the impact of the insurance regimes on consumer protection, the competitiveness and the sustainability of the construction sector, and the economics of the insurance market, including the issue of administrative cost and burden for the market actors concerned and an analysis of related cost-benefit for them.

The contractor will provide key information about the structure and the functioning of the insurance market relative to construction services and identify the criteria which lead to different premium rates and financial caps on liability across the EU. Particular attention will be given to how the risks inherent to construction projects are assessed in various contexts, how the insurance premium and the financial cap are determined accordingly and how risk management is ensured at different levels (qualification, resources, etc.) and at different stages of the project (from early design phase till the acceptance of works). Moreover, the contractor will appraise how the European standardisation activity on construction products and the energy/environmental performances of buildings is taken into account in this process.

Based on this information, the contractor will assess the extent to which the requisites to insure construction risks could evolve and the corresponding cost-benefits for the consumers, the supply chain and the insurance sector. In doing so, the contractor will take into account the recent proposal of the Commission for a directive on the solvency of insurance companies (“Solvency II draft Directive”) which covers among others a requirement to align the underlying capital with the risk an insurance company is exposed to.

c) To identify insurance schemes and good practices that could help especially craft and small construction enterprises to exploit innovative solutions for sustainable construction and to adopt responsible management.

Based on the review and the assessment in points a) and b) above, the contractor will identify existing schemes and/or propose new developments which could serve as a good basis for sustainable construction, responsible management and proper risk assessment. This would cover also label schemes for firms adhering to good standards in particular in terms of environmental protection, health and safety, and training, or possibly the development of new appropriate insurance cover or reinsurance schemes.

The contractor will define in a practical way the criteria considered for the identification of the schemes and the qualification of “good practices”, the effects on consumer protection, the supply chain competitiveness and the economics of the insurance sector, as well as the mechanisms in place to ensure risk assessment.

d) To make concrete recommendations about the extent to which the European Commission should support the formation and the promotion of such insurance schemes in the Member States, including legal, administrative, financial and management aspects.

The contractor will assess the relevance for the European Commission to support the formation and the promotion of some of the insurance schemes and of good practice identified in point c) above and make accordingly concrete recommendations about among others the subject matter and the scope, the instruments to be implemented, their financial envelope and period of validity, the intermediate bodies to be used in the administration and the management of the instruments, the eligible beneficiaries and the implementation modalities.

In doing so, the contractor should take into account the general principles of subsidiarity and simplification in administrative procedures.

e) To contact a representative range of public and private stakeholders of the construction and of the insurance sectors⁵ at relevant levels⁶, in order to know their views under a), b), c) and d). The results of these contacts will be assessed and presented in a well-structured way in specific part of the final report or annex to it.

f) To participate before the end of the 15-month duration of the tasks in a one-day evaluation and validation workshop to present the draft results of the work undertaken. The contractor would ensure the participation of 2 representatives in the workshop, and draw up and forward to the Commission detailed minutes of the workshop within one week following it.

g) To provide a progress report and a final report as specified in point 4.2.

The Commission will ensure general supervision and guidance of the study through a Monitoring and Steering Group chaired by the Commission and including representatives of relevant Commission services, Member State representatives and other stakeholder experts invited by the Commission. It is planned to hold three meetings of the Group. The contractor shall ensure the participation of two representatives in these meetings and draw up detailed minutes to be forwarded to the Commission, within two weeks following the meeting in question.

4.1.4 Methodology

For the work to be undertaken, the contractor will apply the methodological tools and format that he proposes and develops in his bid.

For further details, see 4.1.3.

⁵ E.g. public authorities in charge of issues related to the construction sector and the insurance market, industry associations (there exist more than 200 of such organisations at European level, see <http://www.eurafedac.com>), single enterprise

⁶ International, European, national, regional and local

4.2. REPORTS AND DOCUMENTS

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.

All numbers of pages refer to a paper version of A4 size. The reports, their summaries, and the manuscript and material for publishing have to be submitted in electronic version as Word (.doc) documents.

§ A **progress report** must be submitted no later than **five months** after the signature of the contract.

§ The **final report** must be submitted no later than **13 months** after the signature of the contract.

The reports must be submitted in English, together with a 10-page summary in English, French and German.

The length of the progress report shall not exceed 60 pages, and that of the final report 150 pages, including illustrative material; the main supporting documents are to be attached as annexes.

The contractor shall provide five copies of the final report and its annexes and of the three language versions of the executive summary, together with all materials necessary, ready for reproduction. In addition, these documents must be forwarded by e-mail and on CD-ROM.

4.2.1 *The progress report*

- must present the general framework for the study and a glossary describing the relevant terms that are to be used;
- describe the methodology used, including details on the references and information that are utilised and on their sources, on measures taken to ensure quality of the work, and on consultation made or foreseen;
- specify how the work was undertaken in respect of the agreed work programme;
- adequately present the results of the work undertaken with regard to the element a) as well as first significant results of the elements b) and c), and an advanced approach to the remaining items of the work programme set out under point 4.1.3, and explain the work undertaken and the approach chosen for the work ahead.

4.2.2 *The final report*

shall provide the Commission with the results of the study and information for internal evaluation purposes, a part or all of which the Commission may want to disseminate. The contractor must address the following points:

- Background to the study, terms of reference and understanding of the work to be performed;

- The methodology used, including details on the references and information that have been utilised and the sources of these, on measures taken to ensure quality of the work, and on consultation made;
- How the work was undertaken in respect of the work programme;
- The characteristics of the work undertaken (ideas; innovative elements; technical feasibility and likelihood of findings resulting in successful further work, positive and negative aspects experienced);
- The collaboration established during the course of the work (for example, involvement of Commission services and national administrations, public and private bodies in the sphere of construction; industry associations and authorities at local, regional and national level; experts and special knowledge bodies; etc.).
- The comprehensive results of the work undertaken with regard to all elements of the work programme set out under point 4.1.3.

5. ANNEXES

ANNEXES

5.1. EXCLUSION CRITERIA FORM (INVITATION TO TENDER NO ENTR/08/007)

Exclusion Criteria Form

The undersigned:

Name of the company/organisation:

Legal address:

Registration number:

VAT number:

Name of the signatory of this form (representative legally authorised to represent the tenderer vis-à-vis third parties and acting on behalf of the aforementioned company or organisation):

declares on his or her honour that the company or organisation that he or she represents:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled its 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 it is established, or with those of the country of the contracting authority or those of the country where the contract is to be carried out;
- e) has not 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) is not currently 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 procurement procedure or failing to supply this information, or for having been declared to be in serious breach of its obligations under contracts covered by the Community budget.
- g) that on the date of submission of the tender, the company or organisation he or she represents and the staff proposed for this tender:
 - *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;

- will inform the contracting department, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;

- have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;

- 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.

- h) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

The Commission reserves the right to check the information provided. By returning this form, duly signed, the tenderer, undertakes, when he is the tenderer proposed for award of the contract, to send to the Commission, within fifteen calendar days following the receipt of the Commission's request, preceding the signature of the contract, the evidence referred to in paragraph 3.1.3 of the tender specifications and any additional document the Commission considers necessary to perform its checks.

By signing this form, the undersigned acknowledges to be informed of the existence of the exclusion criteria and applicable administrative and financial penalties, detailed in Articles 93, 94, 95 and 96 of the Financial Regulation and Articles 133, 133a, 134, 134a and 134b of the Regulation laying down the rules for the implementation of the Financial Regulation.

Full name

Date

Signature

5.2. DRAFT SERVICE CONTRACT



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.ACPROCE **XXX**

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 for DG Enterprise and Industry or his authorized representative,

of the one part,

and

[official name in full]

[official legal form]⁷

[statutory registration number]⁸

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"⁹), [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:

⁷ Delete if contractor is a natural person or a body governed by public law.

⁸ Delete if contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

⁹ In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract".

Annex I – Tender Specifications (Invitation to Tender No ENTR/08/007 of 28/05/2008 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

- I.1.1.** The subject of the Contract is a study on ‘Liability and insurance regimes in the construction sector: national schemes and guidelines to stimulate innovation and sustainability’.
- 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 **15 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.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than 3 months before expiry of the period of execution or with less than one third of the period of execution left to run, whichever period is the shorter.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The total amount to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.
- I.3.2.** Not applicable.
- I.3.3.** Not applicable.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

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

I.4.1. Pre-financing:

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

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

a pre-financing payment of **xxx** EURO, equal to 10% of the total amount referred to in article I.3.1. shall be made.

I.4.2 Interim payment:

The request for interim payment by the Contractor shall be admissible if accompanied by :

- a progress report in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the report has been approved by the Commission.

The Commission shall have thirty days from receipt to approve or reject the report, and the Contractor shall have thirty 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 [EUR complete amount in figures and in words] equal to 40 % of the total amount referred to in Article I.3.1 shall be made.

I.4.3. Payment of the balance:

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

- the final 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 thirty days from receipt to approve or reject the report, and the Contractor shall have thirty 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 [EUR complete amount in figures and in words] equal to 50 % of the total amount referred to in Article I.3.1 shall be made.

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

For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n.

633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell'8/8/1996”.

I.4.4. Performance guarantee:

Not applicable

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro¹⁰, identified¹¹ as follows:

Name of bank: [complete]
Address of branch in full: [complete]
Exact designation of account holder: [complete]
Full account number including codes: [complete]
[IBAN¹² 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 addresses¹³:

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]

¹⁰ Or local currency where the receiving country does not allow transactions in EUR.

¹¹ By a document issued or certified by the bank.

¹² BIC or SWIFT code for countries with no IBAN code.

¹³ Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).

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, as provided by the internal rules for the implementation of the budget.
- 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 Construction, Pressure Equipment and Metrology, DG Enterprise and Industry, 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 Construction, Pressure Equipment and Metrology, DG Enterprise and Industry. 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 three months formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract 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 debit note, in the manner and within the time limits set by the Commission.

II.6.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

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

ARTICLE II.7 - REIMBURSEMENTS

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

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

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

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

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

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

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

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

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

ARTICLE II.9 – CONFIDENTIALITY

- II.9.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.
- II.9.2.** The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

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

- II.10.1.** The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.
- II.10.2.** Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.
- II.10.3.** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.
- II.10.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

- II.11.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.11.2.** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- II.11.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour

disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

- II.12.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

- II.13.1.** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.13.2.** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.13.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

- II.14.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.
- II.14.2.** In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II.15 – TERMINATION BY THE COMMISSION

- II.15.1.** The Commission may terminate the Contract in the following circumstances:
 - (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (b) where the Contractor has 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 months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

II.15.3. Prior to termination under point 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% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.17 – CHECKS AND AUDITS

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

budget of the European Communities from signature of the Contract up to five years after payment of the balance.

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

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

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

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

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

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

ANNEX I

Tender Specifications and Monitoring

Technical specifications

1 Description of tasks

1.1 Objectives

This contract is part of the implementation of the Lead Market Initiative and of a pilot project supported by the European Parliament to facilitate access to insurance by building contractors, especially the self-employed and small firms, in order to stimulate innovation and the promotion of eco-technologies in the European Union.

The specific aim of this action is to identify the conditions in which insurance schemes could support the uptake of innovative and sustainable solutions in construction projects, to clarify the overall benefits/effects of insurance on consumer protection, the competitiveness of the actors in the supply chain and the economics of the insurance market, as well as to assess whether and how the EU could play a role in promoting best practice in this area and/or the formation of pilot schemes.

The scope of this feasibility study does not include an examination of a possible harmonisation of the liability and insurance systems across Europe, although it will provide key elements for understanding the issues related to the development of an Internal Market for construction services.

1.2 Subject of the services

The Commission invites tenders to carry out a feasibility study to provide the basis for developing an EU wide framework for the promotion of insurance schemes which could stimulate the uptake of innovative and sustainable solutions in construction projects as well as the adoption of responsible management in construction enterprises, in particular in craft and small firms.

1.3 Work programme

The work programme will include at least the following elements:

- a) *To critically review the national systems in the EU-27 related to the requirements to insure the liability of market actors in construction projects (clients, architects, consulting engineers, contractors, technical auditors, etc.) with a view towards the achievement of an EU Internal Market for services.*

Based on existing studies and ongoing work in EU federations related to the construction sector, in particular those mentioned in section 1 of these technical specifications, and on other information sources which will be defined in the bid, the contractor will clarify the liability of each actor intervening in a construction project and appraise whether these liabilities are clearly defined in regard to the national law.

The contractor will assess to what extent insurance premiums are proportional to the services provided by the market actors and to the duties and liabilities they endorse, taking into account the specific situation in each Member State.

The review will also provide elements to understand how insurance solutions work or would work in case of a cross border provision of construction services and if the limited availability of

insurance cover for such case could be perceived as an obstacle to the development of the Internal Market.

- b) To assess the impact of the insurance regimes on consumer protection, the competitiveness and the sustainability of the construction sector, and the economics of the insurance market, including the issue of administrative cost and burden for the market actors concerned and an analysis of related cost-benefit for them.*

The contractor will provide key information about the structure and the functioning of the insurance market relative to construction services and identify the criteria which lead to different premium rates and financial caps on liability across the EU. Particular attention will be given to how the risks inherent to construction projects are assessed in various contexts, how the insurance premium and the financial cap are determined accordingly and how risk management is ensured at different levels (qualification, resources, etc.) and at different stages of the project (from early design phase till the acceptance of works). Moreover, the contractor will appraise how the European standardisation activity on construction products and the energy/environmental performances of buildings is taken into account in this process.

Based on this information, the contractor will assess the extent to which the requisites to insure construction risks could evolve and the corresponding cost-benefits for the consumers, the supply chain and the insurance sector. In doing so, the contractor will take into account the recent proposal of the Commission for a directive on the solvency of insurance companies (“Solvency II draft Directive”) which covers among others a requirement to align the underlying capital with the risk an insurance company is exposed to.

- c) To identify insurance schemes and good practices that could help especially craft and small construction enterprises to exploit innovative solutions for sustainable construction and to adopt responsible management.*

Based on the review and the assessment in points a) and b) above, the contractor will identify existing schemes and/or propose new developments which could serve as a good basis for sustainable construction, responsible management and proper risk assessment. This would cover also label schemes for firms adhering to good standards in terms of environmental protection, health and safety, training, etc., or possibly the development of new appropriate insurance cover or reinsurance schemes.

The contractor will define in a practical way the criteria considered for the identification of the schemes and the qualification of “good practices”, the effects on consumer protection, the supply chain competitiveness and the economics of the insurance sector, as well as the mechanisms in place to ensure risk assessment.

- d) To make concrete recommendations about the extent to which the European Commission should support the formation and the promotion of such insurance schemes in the Member States, including legal, administrative, financial and management aspects.*

The contractor will assess the relevance for the European Commission to support the formation and the promotion of some of the insurance schemes and of good practice identified in point c) above and make accordingly concrete recommendations about among others the subject matter and the scope, the instruments to be implemented, their financial envelope and period of validity,

the intermediate bodies to be used in the administration and the management of the instruments, the eligible beneficiaries and the implementation modalities.

In doing so, the contractor should take into account the general principles of subsidiarity and simplification in administrative procedures.

- e) To contact a representative range of public and private stakeholders of the construction and of the insurance sectors¹⁴ at relevant levels¹⁵, in order to know their views under a), b), c) and d). The results of these contacts will be assessed and presented in a well-structured way in specific part of the final report or annex to it.*
- f) To participate before the end of the 15-month duration of the tasks in a one-day evaluation and validation workshop to present the draft results of the work undertaken. The contractor would ensure the participation of 2 representatives in the workshop, and draw up and forward to the Commission detailed minutes of the workshop within one week following it.*
- g) To provide a progress report and a final report as specified in point 5.*

The Commission will ensure general supervision and guidance of the study through a Monitoring and Steering Group chaired by the Commission and including representatives of relevant Commission services, Member State representatives and other stakeholder experts invited by the Commission. It is planned to hold three meetings of the Group. The contractor shall ensure the participation of two representatives in these meetings and draw up detailed minutes to be forwarded to the Commission, within two weeks following the meeting in question.

1.4 Methodology

For the work to be undertaken, the contractor will apply the methodological tools and format that he proposes and develops in his bid. For further details, see 1.3.

2. Reports and documents

All numbers of pages refer to a paper version of A4 size. The reports, their summaries, and the manuscript and material for publishing have to be submitted in electronic version as Word (.doc) documents.

§ A progress report must be submitted no later than five months after the signature of the contract.

§ The final report must be submitted no later than 13 months after the signature of the contract.

The reports must be submitted in English, together with a 10-page summary in English, French and German.

The length of the progress report shall not exceed 60 pages, and that of the final report 150 pages, including illustrative material; the main supporting documents are to be attached as annexes.

¹⁴ E.g. public authorities in charge of issues related to the construction sector and the insurance market, industry associations (there exist more than 200 of such organisations at European level, see <http://www.eurafedac.com>), single enterprise

¹⁵ International, European, national, regional and local

The contractor shall provide five copies of the final report and its annexes and of the three language versions of the executive summary, together with all materials necessary, ready for reproduction. In addition, these documents must be forwarded by e-mail and on CD-ROM.

2.1. The progress report

- must present the general framework for the study and a glossary describing the relevant terms that are to be used;
- describe the methodology used, including details on the references and information that are utilised and on their sources, on measures taken to ensure quality of the work, and on consultation made or foreseen;
- specify how the work was undertaken in respect of the agreed work programme;
- adequately present the results of the work undertaken with regard to the element a) as well as first significant results of the elements b) and c), and an advanced approach to the remaining items of the work programme set out under point 1.3, and explain the work undertaken and the approach chosen for the work ahead.

2.2 The final report

shall provide the Commission with the results of the study and information for internal evaluation purposes, a part or all of which the Commission may want to disseminate. The contractor must address the following points:

- Background to the study, terms of reference and understanding of the work to be performed;
- The methodology used, including details on the references and information that have been utilised and the sources of these, on measures taken to ensure quality of the work, and on consultation made;
- How the work was undertaken in respect of the work programme;
- The characteristics of the work undertaken (ideas; innovative elements; technical feasibility and likelihood of findings resulting in successful further work, positive and negative aspects experienced);
- The collaboration established during the course of the work (for example, involvement of Commission services and national administrations, public and private bodies in the sphere of construction; industry associations and authorities at local, regional and national level; experts and special knowledge bodies; etc.);
- The comprehensive results of the work undertaken with regard to all elements of the work programme set out under point 1.3.

5.3. MODEL GUARANTEE

Model Contract performance guarantee

Bank (Letterhead)
[Place/Date]

European Community
Represented by the European Commission
Directorate-General Enterprise and Industry – [Unit]
B – 1049 Belgium

Contract performance guarantee No ... [Subject/Brief description of contract]

We hereby confirm that we give the European Community an unconditional and irrevocable joint and several guarantee for an unlimited period to the value of

EUR [...] (in words: ... euro)

for performance of the contract concluded between the European Community and
[Firm/Name/Address – as given in the contract (No/exact title – hereinafter “the contract”)]
(hereinafter “the Contractor”).

If the Commission gives notice that the Contractor has for any reason failed to fulfil his obligations under the contract by the due date, the Bank, acting on behalf of the Contractor, undertakes to pay up to the above amount into a bank account designated by the Commission immediately on receipt of a first written request from the Commission (sent by registered post, with acknowledgement of receipt).

The Bank waives the right to require exhaustion of remedies against the principal, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the Commission under the contract or in connection with it or on any other grounds.

The Bank may be released from this guarantee only with the Commission’s written consent and does not have the right of deposit without its consent.

The Bank’s obligations under this guarantee are not affected by any arrangements or agreements made by the Commission with the Contractor which may concern his obligations under the contract.

This guarantee shall take immediate effect. It shall expire on return of this document, which must occur within [30] days after the final payment under the contract has been made.

This guarantee is governed by the law applicable to the contract.

The courts having jurisdiction for matters relating to the contract shall have sole jurisdiction in respect of matters relating to this guarantee.

[Place/Date]

[Signature/Function]

[Signature/Function]

**5.4. FINANCIAL AND ECONOMIC CAPACITY OVERVIEW FORM (INVITATION TO TENDER
No ENTR/08/007)**

Financial and Economic Capacity Overview			
Currency : EURO		Figures (000)	
	N* (* most recent figures available)	N-1	N-2
Total Balance Sheet			
TRADE DEBTORS <i>Amounts due by commercial customers</i>			
CAPITAL and RESERVES (Equity) <i>Amounts owned by the company</i>			
TRADE CREDITORS <i>Amounts due to commercial suppliers</i>			
SHORT TERM DEBT			
LONG TERM DEBT			
LIQUIDITY <i>Bank accounts, cash at hand</i>			
<u>About PROFIT & LOSS</u>			
TURNOVER			
ORDINARY RESULT			
EXTRAORDINARY RESULT			
INCOME TAX			
NET RESULT			

You may add any data that you would consider of vital relevance for your organisation and for the understanding of the above figures.

Comments: Please explain BRIEFLY important variations from one year to another if appropriate. In case of negative equity or repeated losses, please explain how the future of the organisation will be ensured.

5.5. SUBCONTRACTOR / LETTER OF INTENT ENTR/08/007

Study on ‘Liability and insurance regimes in the construction sector: national schemes and guidelines to stimulate innovation and sustainability’

The undersigned:

Name of the company/organisation:

Address:

Declares hereby the intention to collaborate in the execution of the tasks subject to the above call for tender, in accordance with the terms of the offer to which the present form is annexed, if the contract is awarded to *(name of the tenderer)*.

Declares hereby accepting the general conditions attached to the tendering specifications for this call for tender, and in particular art. II.17 in relation with checks and audits.

Full name	Date	Signature
.....		

5.6. POWER OF ATTORNEY

POWER OF ATTORNEY – MODEL 1

Agreement / Power of Attorney

(DESIGNATING ONE OF THE COMPANIES OF THE GROUP AS LEADER AND GIVING A MANDATE TO IT)

We the undersigned:

- Signatory 1 (Name, Function, Company, Registered address, VAT Number)
- Signatory 2 (Name, Function, Company, Registered address, VAT Number)
-
- Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company, HEREBY AGREE AS FOLLOWS:

(1) In case the European Commission awards Contract (« **the Contract** ») to Company 1, Company 2, ..., Company N (« **the Group Members** »), based on the joint offer submitted by them on for the supply of and/or the provision of services for ... (« **the Supplies and/or the Services** »).

(2) As co-signatories of the Contract, all the Group Members:

- (a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.
- (b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(3) To this effect, the Group Members designate Company X as **Group Leader**. *[N.B.: The Group Leader has to be one of the Group Members]*

(4) Payments by the European Commission related to the Supplies or the Services shall be made through the Group Leader's bank account .*[Provide details on bank, address, account number, etc.]*.

(5) The Group Members grant to the Group Leader all the necessary powers to act on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks:

- (a) The Group Leader shall sign any contractual documents—including the Contract, and Amendments thereto—and issue any invoices related to the Supplies or the Services on behalf of the Group Members.
- (b) The Group Leader shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. It shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present agreement / power of attorney shall be subject to the European Commission's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the European Commission in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in on
Name
Function
Company

Name
Function
Company

Name
Function
Company

Name
Function
Company

POWER OF ATTORNEY – MODEL 2

Agreement / Power of Attorney

(CREATING THE GROUP AS SEPARATE ENTITY, APPOINTING A GROUP MANAGER AND GIVING A MANDATE TO HIM/HER)

We the undersigned:

- Signatory 1 (Name, Function, Company, Registered address, VAT Number)
- Signatory 2 (Name, Function, Company, Registered address, VAT Number)
-
- Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company, HEREBY AGREE AS FOLLOWS:

(1) In case the European Commission awards Contract (« **the Contract** ») to Company 1, Company 2, ..., Company N (« **the Group Members** »), based on the joint offer submitted by them on for the supply of and/or the provision of services for ... (« **the Supplies and/or the Services** »).

(2) As co-signatories of the Contract, all the Group Members:

- (a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.
- (b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(3) To this effect, the Group Members have set up under the laws of the Group (« **the Group** »). The Group has the legal form of a [*Provide details on registration of the Group: VAT Number, Trade Register, etc.*].

(4) Payments by the European Commission related to the Supplies or the Services shall be made through the Group's bank account . [*Provide details on bank, address, account number, etc.*].

(5) The Group Members appoint Mr/Ms as **Group Manager**.

(6) The Group Members grant to the Group Manager all the necessary powers to act alone on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks :

- (a) The Group Manager shall sign any contractual documents—including the Contract, and Amendments thereto—and issue any invoices related to the Supplies or the Services on behalf of the Group Members.
- (b) The Group Manager shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. He/she shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the European Commission, and shall see to a proper administration of the Contract.

Any modification to the present agreement / power of attorney shall be subject to the European Commission's express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the European Commission in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission's consent.

Signed in on

Name
Function
Company

Name
Function
Company

Name
Function
Company

Name
Function
Company

5.7. CHECKLIST OF DOCUMENTS TO BE SUBMITTED

The purpose of the table below is to facilitate the preparation of the tender by providing an overview of the documents that must be included (marked by n) depending on the role of each economic operator in the tender (coordinator/group leader in joint bid, partner in joint bid, single contractor, main contractor, subcontractor).

Some of the documents are only relevant in cases of joint bids or when subcontractors are involved. Additional documents might be necessary depending on the specific characteristics of each tender.

Description	Section	Coordinator or group leader in joint bid	All partners in joint bid	Single or Main contractor	Sub-contractor
Power of attorney of partners in joint bid indicating the group leader (see annex 5.6)	1		n		
Letter of intent of subcontractor (see annex 5.5)	1				n
Legal Entity Form (see section 2.3.1) Download the form from : http://ec.europa.eu/budget/execution/legal_entities_en.htm	1	n	n	n	n
Supporting documents for the Legal Entity File Form	1	n	n	n	
Financial Identification form (see section 2.3.1) Download the form from: http://europa.eu.int/comm/budget/execution/ftiers_fr.htm .	1	n		n	
Exclusion Criteria form (see section 3.1 and annex 5.1)	2	n	n	n	n
Evidence of Economic and financial capacity (see section 3.2.2 and annex 5.4)	3	n	n	n	
Evidence of Technical and professional capacity (see section 3.2.3) Go to the following page to fill in the CV: http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1	3	n	n	n	n

The following sections must be provided in the bid, their absence would mean rejection of the bid for incompleteness:

Description	Section	Coordinator or single tenderer
Technical Proposal (see section 2.3.2 and 4)	4	n
Financial Proposal (see section 2.3.3)	5	n

