



European Commission
Enterprise & Industry Directorate General

CALL FOR TENDER

No ENTR/90/PP/2011/FC

INDUSTRIAL COMPETITIVENESS AND MARKET PERFORMANCE

Open procedure

2011/S 117-192323

TENDER SPECIFICATIONS

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1. TECHNICAL SPECIFICATIONS

1.1. DESCRIPTION OF TASKS

The Communication on industrial policy [COM(2010) 614], which should be read in conjunction with the other (flagship) initiatives of the European strategy for smart, sustainable and inclusive growth, defines an industrial policy agenda for the Commission and Member States for the coming years. The Communication sets out a policy with both a horizontal and a sectoral dimension. It is horizontal by providing a consistent institutional framework for all industries, emphasizing the links and dependency of industrial policy on other policies such as internal market, competition, R&D and innovation, trade and education policies. It is sectoral by highlighting a number of issues and particular sectoral needs, but without prioritising particular sectors at the expense of others. Indeed, the Communication emphasises that all sectors are important, and that they typically form part of complex international value chains, ranging from access to raw materials and the services provided by network industries to after-sales services. Furthermore, the Communication lays down enhanced EU governance for industrial policy emphasising better coordination of national and EU industrial policies and monitoring of the success and competitiveness performance of policies at the EU and Member State level.

The actions in the Communication will need to be complemented by further analytical work to support policy making and monitoring. This is the background for the Commission launching this framework service contract on "Industrial Competitiveness and Market Performance". The study reports from this framework contract will provide an input to the assessment of existing and the formulation of future EU industrial and related policies as well as to monitor industrial performance.

Typically, the unit of analysis for the work in this framework contract is the individual industry. This analysis will normally also include the value chain(s) in which the industry is embedded and to which it contributes. However, as appropriate, the studies may also cover groups of related industries (vertically or horizontally) or they may only focus on a particular segment of an industry. The analysis may also include the assessment of a particular (industrial) policy initiative and its impact on the competitiveness of the industry in question or otherwise directly or indirectly affected. The emphasis of the studies will typically be on the structural and microeconomic factors affecting and reflecting competitiveness and market performance of an industry. However, in some studies macroeconomic analysis, econometric analysis and modelling could be part of a study.

The scale of each individual study will depend on the amount of data to be analysed, the amount of data available at the outset, the effort required for updating and collecting new data, as well as the structure of the sector concerned. These factors will be taken into account in preparing the requests for service, under the terms of the general framework contract.

While the exact task requirements can vary between the individual studies, for example as a function of industry specificities, it should be assumed that the individual studies can be classified as follows:

- Scenario 1 study: study with substantial theoretical or methodological work on the basis of desk research. The study will cover all the tasks below in sections 1.1.1 to

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1.1.5, but with particular emphasis on literature review, data analysis on the basis of publicly available data from e.g. Eurostat, the OECD, business associations and independent research institutions, methodological work including developing methods for statistical analysis or modelling, assessment of industry competitiveness and market performance. It will include regulatory assessment and scenario building, and make policy recommendations. These studies may include some interviews or meetings with selected stakeholders as a means of validation of results.

- Scenario 2 study: study with substantial field research through interviews or surveys in addition to desk research. The study will in particular emphasise developments in industrial research and technologies and non-technological innovation, and it may require particular technical knowledge of the industry concerned. The study will cover all the tasks below in sections 1.1.1 to 1.1.5, but with particular emphasis on data analysis on the basis of publicly available data e.g. from Eurostat, the OECD, business associations and independent research institutions, as well as the data collected by the contractor from interviews and surveys. The study will assess industry competitiveness and market performance including the impact of relevant individual policies, relevant regulatory and other framework conditions, and it will develop scenarios and policy recommendations.

Bidders should provide, for both scenarios, in accordance with the requirements in section 5.3 a “dummy” proposal:

- A “standard” offer, coherent in price and method;
- an estimate of the resources (manpower and costs);
- as well as a mechanism for ensuring that appropriately qualified resources are employed, in order to ensure the quality of the result (cf. award criterion I.2).

As an indication of the total volume and type of work expected under the framework contract bidders should assume that 10 studies of type 1 scenarios and 20 studies of type 2 scenarios will be required for a total duration of 48 months. For formulating their financial proposal, the tenderers must use the table provided in point 4.2.5, and tables A, B and C in Annex 6.8 of these specifications.

For each of the scenarios, bidders should propose:

1. an analytical approach for the studies, based on their experience with specific industrial sectors.
2. bidders should briefly illustrate the principles of how this analytical approach would be applied to specific industries, by choosing two specific examples from the typical statistical categories of manufacturing industries or, as appropriate, a sub-category or collection of those (see table below).

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	Industry
Food and Life Science Industries	Food, drink & tobacco
	Cosmetics
	Pharmaceuticals
	Biotech
	Medical devices
Machine and System Industries	ICT ³⁾
	Mechanical engineering
	Electrical engineering
	Motor vehicles
	Aerospace
	Defence industries
	Shipbuilding
Fashion Goods and Design Industries	Textiles
	Leather and leather goods
	Footwear
	Furniture
Basic and Intermediate Goods Industries	Non-energy extractive industries
	Non-ferrous metals
	Cement and lime
	Ceramics
	Glass
	Wood & products of wood
	Pulp, paper & paper products
	Printing & publishing
	Steel
	Chemicals, rubber, and plastics
	Construction

1.1.1. Task 1: Literature review

The contractor will undertake a review of the existing business and academic literature on the policy, industry and market concerned, where relevant, including key elements of the value chains to which an industry to be analysed belongs or contributes, or which might be affected by the policy to be analysed, dealing with issues such as the economic characteristics of the industry (value chain), industry business models, the main sources of competitiveness, state of competition and profitability, state of R&D and innovation, effect of internal market and globalisation, trends in production processes and technologies, and (future) opportunities and challenges. One output of the literature review should be an analytical framework for the subsequent stages of analysis.

1.1.2. Task 2: Data collection and analysis

The contractor will collect data on and provide an analysis of key data on industry and market structure including on the role of SMEs, skill levels, competition, profitability, R&D and innovation, and relevant policies affecting the industry. The contractor is asked to identify the data and indicators that are relevant for the subsequent analytical tasks, and indicate how they would collect and present the information. As applicable for the specific study, they should specify which surveys, questionnaires or interviews they intend to do.

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Furthermore, as applicable for the specific study, the contractor should propose appropriate quantitative methods, models, and IT tools to analyse and present the data.

One output of the data collection and analysis should be a set of tables and graphs documenting the analysis.

1.1.3. Task 3: Assessment of industry competitiveness and market performance

The contractor will undertake an assessment of the role and performance of EU industry in the global market as well as an analysis of the dynamics of competition and market performance in the EU internal market.

The analysis should, as appropriate include an analysis of factors such as labour and other input costs, prices, market clearance, profitability, competition, productivity developments, process and product innovation as well as capacity (utilization) and market share developments. In general, the analysis should identify the main performance indicators, including those relevant for addressing (future) opportunities and challenges. As appropriate and feasible, this involves developing benchmarks of European industry against its main competitors, including the main emerging economies, or against the performance of other European industries.

The output of this task should be a synthetic analysis based on the data analysis of industry competitiveness and market performance. Where relevant, this should include the identification of potential structural adjustment needs, e.g. in case structural excess capacities had been identified. This analysis in this task should provide the basis for an informed analysis of the impact of regulatory and other framework factors in task 4, and of the scenario building and policy recommendations in task 5.

1.1.4. Task 4: Analysis of regulatory and other framework conditions

The contractor will undertake an analysis of the regulatory environment and other framework conditions such as individual policies, if relevant. The contractor should identify the elements of the regulatory environment which have the main influence on the performance of the industry sector. As well as the strictly legislative environment, this analysis should also cover, for example:

- the development of other framework conditions affecting competitiveness, such as knowledge (R&D, innovation, and product development);
- labour force and skills;
- access to finance;
- energy and the environment;
- openness of international markets;
- structural change and geographical cohesion;
- competition policy issues.

The output of the analysis should be a synthetic documentation of the impact of the main regulatory and other framework conditions on industry competitiveness and market performance.

1.1.5. Task 5: Scenario building and policy recommendations

The contractor should develop as appropriate qualitative and quantitative scenarios for the industry over the medium to long term and identify the main implications both for EU industry's strategy and EU industrial policy and, as appropriate propose recommendations for policy makers.

1.2. BACKGROUND

This contract is a follow-up to the Framework Contract ENTR/06/054 on Sectoral Competitiveness Studies (2007-2010, awarded to a consortium headed by ECORYS. See study reports.¹). The new framework contract is linked to a number of initiatives by the European Commission in the context of the Europe 2020 Strategy for smart, sustainable and inclusive growth, notably the flagship initiative on Industrial Policy as set out in the Communication on 'An Integrated Industrial Policy for the Globalisation Era: Putting Competitiveness and Sustainability at Centre Stage' [COM (2010) 614].

The purpose of the present call for tenders is to conclude a framework service contract with cascade for the production of a series of studies to assess the market performance and competitiveness of industries as well as the effectiveness of industrial policies and the impacts of EU policies on the competitiveness of the European industry and individual sectors. The study reports will provide an input to the assessment and formulation of EU industrial and related policies. In particular the framework contract should enable the Commission to receive at short notice on-demand relevant information and analysis in support of policy formulation, assessment and monitoring activities in the area of industrial policy as defined in the above mentioned Communication. As appropriate, on the basis of the reports, the contractor may be asked to participate in seminars and workshops.

The total maximum budget earmarked for the contract is € 8 000 000 for the total duration of 48 months. For more details concerning the description of the tasks and activities involved see Section 4.2.4 of these specifications.

The legal base for this Framework Contract is Decision 1639/2006/EC of the European Parliament and of the Council of 24 October 2006, establishing a Competitiveness and Innovation Framework Programme (2007 – 2013) (OJL 310/15)

1.3. REPORTS AND DOCUMENTS

The Contractor is to provide the required reports and documents for **each individual study** in accordance with the conditions of the standard service contract (Annex 6.2) and the specific contract for the individual study (Annex 6.3).

Each report must be in English of a high linguistic standard, and their reading should not require a special effort for an informed reader. In particular, review of the studies by qualified economists to ensure consistency not only on linguistic grounds but also for correct professional terminology and interpretation is required as part of the contract.

¹ The study reports are under the following link: http://ec.europa.eu/enterprise/policies/industrial-competitiveness/documents/index_en.htm

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For each of the studies, an executive summary of the issues and the findings and conclusions must also be included. **The executive summary, of no more than 15 pages, should be suitable for publication as a stand-alone paper.**

Once a study has started, in order to follow the preparation of the study, meetings between the Contractor and the Commission will take place during which the Contractor will inform the Commission of work progress and the Commission will give feedback to the Contractor on this work on the basis of these meetings and **interim written reports**. The Contractor will take into account this feedback. The Commission may use independent experts as advisors in this context. Monitoring of the preparation of the studies may also take other forms, such as e-mail or teleconference, according to circumstances.

The copyrights of all documents prepared under the contract belong to the European Commission, which has exclusive rights to publish them. Printing, distribution and promotion of the reports are the responsibility of the Commission. However, the Contractor should agree to make up to two presentations of each final study report if required by the Commission as part of its policy development or external communications activities, and the Contractor should provide two hard copies of each final study report, if requested by the Commission.

2. CONTRACTUAL CONDITIONS

2.1. NATURE OF THE CONTRACT

'Industrial competitiveness and market performance' is a framework service contract with cascade to support industrial policy making in the EU by providing information, analysis, and assessment of policies impacting on industrial competitiveness and market performance.

2.2. 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 2011.

The duration of the tasks shall not exceed 48 months.

The implementation of the contract may not start before it has been signed by both contracting parties. The execution of the specific tasks may not start before the relevant specific contracts have been signed. The period of the 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 specific contract. See the framework contract in annex for the instructions related to the implementation of the framework contract and the conclusion of specific contracts.

2.3. TERMS OF PAYMENT – IMPLEMENTATION OF THE CONTRACT

The framework contract will be implemented through the issuing of specific agreements.

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Payments shall be made in accordance with Articles I.3, I.4 & II.4 of the draft framework contract (Annex 6.2) and Article III.1 of the draft specific contract. The payment scheme will consist as follows:

- A pre-financing payment of 30% of the amount specified in article III.1 of the specific contract
- An interim payment, applicable only to specific contracts of duration equal to or above 18 months, of 30% of the amount specified in the article III.1 of the contract, to be made within 30 days of the Commission's approval of the documents supporting the request for the payment
- Payment of the balance due (40% or 70%, depending on the duration of the specific contract) will be made within 30 days of the Commission's approval of the documents supporting the request for payment. This request for payment will be admissible only if it is supported by duly established invoices and a final technical report drawn-up in accordance with the instructions given in Annex I to the framework contract. The Commission shall have 45 days to approve or reject these documents. The time allowed to the Contractor for amending them will be specified in each specific agreement, but will be 30 calendar days at most.

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

Payments shall be made in accordance with Articles I.5 and II.4 of the draft framework contract (Annex 6.2).

The Commission reserves the right to pay less than the amount foreseen in article III.1 of a specific contract, according to tasks performed.

2.4. GUARANTEES

The Contractor may be required to provide a guarantee for advance payment of 30% of the amount specified under III.1 of the specific contract, in compliance with article II.4.1 of the draft framework contract. The Commission reserves the right to cancel the advance payment foreseen, according to its management risk analysis or in the case the awarded tenderer refuses such guarantee, and to modify the final version of the contract accordingly.

The guarantee will remain valid throughout the duration of the contract plus three months. It will be released once the final payment of the final specific agreements has been made. In all cases, release is conditioned upon the proper and complete execution of the contract and its specific agreements (article I.5 of the contract). If the contract is not performed, the Commission will be entitled to call in the guarantee, regardless of whether it was provided by the contractor himself or by a third party.

A model guarantee is provided in annex 6.3 of these tendering specifications.

2.5. 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.

2.6. 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. The contractor remains notably fully responsible for timely execution.

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 paragraph 3.3, in particular article II.17 of the draft framework contract by returning the form in annex 6.5, filled in and signed.

Tenderers must inform the subcontractor(s) and include in their sub-contracting documents that Article II.17 of the draft framework contract (Annex 6.2) may be applied to sub-contractors.

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

2.7. 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 6.7 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 6.6). 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 6.6) is valid also for signature of the contract.

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

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.

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An economic operator can only participate once as a tenderer, whether as single tenderer, lead organisation in a consortium/joint bid or partner in a consortium. **The economic operator may however agree to act as a subcontractor in a distinct bid** from which it is participating as either of the aforementioned options. However, such a situation is not advisable for the high potential of conflicts of interest it may generate.

3. ADMINISTRATIVE INFORMATION CONCERNING THE INVITATION TO TENDER

These specifications follow the publication of:

- the contract notice in OJ S – **2011/S 117-192323** of 21 June 2011.

3.1. DATE AND PLACE OF OPENING OF THE TENDERS

Tenders will be opened at **10:00 am** on **02.09.2011** at the following location:

Office address:

*Meeting room BREY 5/B
European Commission
DG Enterprise and Industry
Unit B.2 "Industrial Competitiveness Policy"
Av. d'Auderghem 45
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 3.2. 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.

3.2. CONTACT BETWEEN THE TENDERER AND THE COMMISSION

Contacts between the Commission and the tenderers may take place only in **exceptional circumstances** and under the following conditions only:

- Before the final date for submission of tenders:
 - * Potential tenderers may request clarifications with regard to the tender documents and 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 :

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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/90/PP/2011/FC
Unit B.2
BREY 07/100
B-1049 Brussels - BELGIUM
Fax: (+32-2)-2299.83.62 - e-mail: ENTR-CFT-11-90PP-ICMP@ec.europa.eu

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 will be made available at the following Internet address:

http://ec.europa.eu/enterprise/contracts-grants/calls-for-tenders/index_en.htm

3.3. 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 European Union in the field of public procurement on the conditions laid down in that agreement.

Where the Plurilateral Agreement on Government Procurement (GPA) 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

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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.

The parties to the GPA can be consulted on the following web page: http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm#parties.

Operators in third countries which have signed a bilateral or multilateral agreement with the European Union 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.

3.4. 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 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.

3.5. DATA PROTECTION

If processing your reply to the invitation to tender involves the recording and processing of personal data (such as your name, address and CV), such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose

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by Unit ENTR.B.2. Details concerning processing of your personal data are available on the [privacy statement at the page http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf](http://ec.europa.eu/dataprotectionofficer/privacystatement_publicprocurement_en.pdf).

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

Data of economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation² may be included in a central database and communicated to the designated persons of the Commission, other institutions, agencies, authorities and bodies mentioned in Article 95(1) and (2) of the Financial Regulation. This refers as well to the persons with powers of representation, decision making or control over the said economic operators. Any party entered into the database has the right to be informed of the data concerning it, up on request to the accounting officer of the Commission.

3.6. OPPORTUNITIES FOR SMALL AND MEDIUM SIZED ENTERPRISES

The Directorate General for Enterprise and Industry has the task to promote opportunities for Small and Medium sized Enterprises (SMEs) and is aiming in its activities to facilitate the activities of SMEs. In this context, **SMEs are particularly encouraged to submit tenders** either on its own if feasible or by constituting a bid using either of the options mentioned in paragraphs 2.6 and 2.7.

The **Enterprise Europe Network** provides advice on tender opportunities and training in relation to procurement, which may be of assistance to newly initiated tenderers. Please refer to the following web-site for further details:

<http://www.enterprise-europe-network.ec.europa.eu/services/advice-eu-law-and-standards>

The Commission has further published a brochure on "Doing business with the European Commission – Tips for potential contractors": http://ec.europa.eu/budget/library/publications/public_contracts/doing_business_en.pdf

This brochure intends to give tips for interested parties on how to deal with procurement procedures in general.

² Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 (OJ L 248 of 16.09.2002), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390 of 30.12.2006)

4. FORM AND CONTENT OF THE TENDER

4.1. HOW TO SUBMIT A TENDER

Tenderers shall observe precisely the indications in point 1 and 2 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.

4.2. STRUCTURE OF THE TENDER

- 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** 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 6.7**. 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;
- **Prices must be established in euros.**

All tenders must be presented in five sections:

Section one: Administrative information

Section two: The exclusion criteria form

Section three: Evidence relating to the selection criteria

Section four: Technical Proposal – Addressing technical specifications and award criteria

Section five: Financial Proposal

4.2.1. Section One: Administrative proposal

Tenderers may choose between presenting a **joint bid** (see 2.7) and introducing a bid as a **sole contractor**, in both cases with the possibility of having one or several subcontractors (see 2.6).

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 2.6 and 2.7).

a) 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**.
- The form is available for individuals, private entities and public entities at the following address :

http://europa.eu/comm/budget/execution/legal_entities_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.
- 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.

b) The tender must include a **statement confirming the validity of the tender** (preferably in blue ink) signed by the authorised representative.

c) The tender must indicated the **name of a contact person** in relation to the submission of the bid.

- ! All tenderers, as part of a consortium or a joint bid if applicable, 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.**

4.2.2. Section Two: The Exclusion Criteria Form

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 6.1 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.

4.2.3. Section Three: Evidence relating to the selection criteria

Tenderers must provide proof of their economic and financial capacity by submitting the documents stated under paragraph 5.2.2 below.

They must equally provide proof of their professional and technical capacity by submitting the documents required under paragraph 5.2.3 below.

4.2.4. Section Four: Technical proposal

Tenderers must include in their bids the **technical proposal addressing all aspects detailed in the technical specifications** set out in section 1.1.

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.

The following aspects should be taken into consideration when drafting the tender:

- (a) methodology for implementation;
- (b) reasons for the proposed methodology;
- (c) how do you intend to build on and link with previous activities (where applicable);
- (d) project management and procedures for internal evaluation;
- (e) level of involvement and activity of other stakeholders;
- (f) role of each partner (in case of a consortium, joint bid and/or use of subcontractors);
- (g) team proposed for implementation of the contract The composition of the team, which will be implementing the project must be properly described. Team staff should be singled out by function (e.g. project managers, administrator, secretary, expert, technical assistant);
- (h) a plan of action with description of activities and their timing.

Due consideration should also be given to the award criteria and method as stipulated under section 5.3 in this document.

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.

4.2.5. Section Five: Financial proposal

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

Price component	
Human resources	Unit price (in € per man-day)
Person X (team leader/manager)	
Person Y (senior expert)	

4. Assessment and award of contract

Person Z (junior expert)	
Person ...	
Other	
Item 1. One-day meetings in Brussels (for 2 persons)	
Item 2. Subcontracting	
Item 3. Participation of two person in seminars or workshops in the EU on the basis of the study reports.	
Item 4. Purchase of data	
Item	

Tenderers must also provide a table (Annex 6.8) with the price calculated on the basis of the scenarios described in section 1.1. Please note that unit prices must be the same, in both tables.

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

- **prices must be expressed in Euros;**
- **the total budgeted earmarked for the contract is 8.000.000,00 € for the full 4-year period.**
- **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 for the first 12 month of the Contract. At the beginning of the second and every following year of the

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Contract, the unit prices per man-day may be revised upwards or downwards, if such revision is requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which it was signed. The Commission shall purchase on the basis of the prices in force on the date on which orders or specific contracts are signed. Such prices shall not be subject to revision.

The price revision shall be determined by the trend in the harmonised consumer price MUICP published by the Publications Office of the European Union in the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>.

Revision shall be calculated in accordance with the following formula:

$$Pr = Po \times (Ir/Io)$$

where:

- Pr* = revised price;
- Po* = price in the original tender;
- Io* = index for the month in which the validity of the tender expires;
- Ir* = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

- The reference price for the award of the contract shall consist of: **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 below, 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.

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

Tenderers must provide a table with unit prices, using the format above, to formulate their financial proposal for the execution of the framework contract. Please note that unit prices may be revised each year calculated according to the indexation formula above.

- ! The Commission will reject tenders where no technical offers or financial offers are proposed.**
- ! Non-conformity with the technical specifications in section 1.1 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 3.3.**

5. 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 the contract, the assessment of admissible bids (see paragraph 1 and 2 of the Invitation to tender) 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.

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

5.1.1. *Declaration*

As mentioned above under paragraph 4.2.2, tenderers or their representatives shall provide the form in Annex 6.1 duly signed and dated in which they declare:

- not to be in one or more of the situations referred to in Articles 93 and 94 of the Financial Regulation and detailed in the form;
- to 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.

5.1.2. *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 6.1.

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.

5.1.3. *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 5.1.1:

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 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 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.

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.

You may refer to the e-Certis web-site listing the certificates available in EU Member States:

<http://ec.europa.eu/markt/ecertis/login.do>

5.1.4. Administrative and financial penalties

By returning the form in Annex 6.1, 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 5.1.2 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.

5.2. 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.

5.2.1. Selection criteria

<u>SELECTION CRITERIA</u>
1. FINANCIAL AND ECONOMIC CAPACITY
<i>1.1 Sufficient economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract.</i> <i>1.2 Sufficient financial capacity in relation to the pre-financing foreseen under the contract.</i> <i>1.3 Reliability of the mitigating measures presented to cover possible deficiencies in the evidence presented for the above criteria.</i>
2. TECHNICAL AND PROFESSIONAL CAPACITY
<i>2.1 The regulatory and economic competences and experience to carry out analytical and assessment work of industries, as demonstrated by at least two relevant studies not more than three years old.</i> <i>2.2 The ability to carry out comparative analysis of policies and measures in the EU, the US, Japan, and the BRIC countries (Brazil, Russia, China and India) as evidenced by work done on these countries and regions of the world in the last three years (study references can overlap with 2.1).</i> <i>2.3. The ability to provide the human and technical resources to perform any aspect of the technical specifications within the required time scale, including,</i>

at least three senior experts:

- o One senior expert with at least five years experience in regulatory, technical and economic analysis, and of applying CGE (computable general equilibrium) or equivalent modelling in the context of industrial policy.*
- o Two senior experts with at least five years experience in regulatory, technical, and economic analysis in the context of innovation and technology policy.*

2.4. Capability to provide up to three teams at the same time composed of, at least:

- One senior expert/team leader with at least seven years of experience in managing projects similar to the specific contracts of the future frame contract.*
- One senior (highly qualified) expert with at least five years of professional experience in conducting legal, regulatory, technical and economical analysis.*
- Two junior (qualified) experts with at least two years of professional experience in conducting legal, regulatory, technical and economical analysis.*

2.5 As appropriate for individual assignments, access to experts with technical knowledge of the industries concerned.

2.6 Knowledge of and access to data sources, and capacity to establish datasets and use quantitative methods of analysis including econometric modelling.

2.7 High quality of written language skills in English. Ability to communicate well orally in English, since all communication with the Commission will be in English.

These criteria will be assessed on the basis of the documents referred to in 5.2.2 and 5.2.3.

5.2.2. 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) Alternatively to a), by filling Annex 6.4, consisting of an extract 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.

- c) A statement of overall turnover and turnover concerning the tasks, supplies or services covered by this contract for the last three financial years.
- d) Appropriate statements from banks or evidence of professional risk indemnity insurance, for legal entities facing the impossibility to fully present evidence a).

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.

5.2.3. 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 as specified in paragraph 5.2.1.

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

Selection criteria 2.1 and 2.2

- *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 to the extent possible be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed.*

Selection criteria 2.3, 2.4, 2.5, 2.6 and 2.7

- *an indication of the experts or technical bodies involved, whether or not belonging directly to the firm, including those responsible for quality control;*
- *a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;*
- *a description of the measures employed to ensure the quality of services including a description of the firm's study and research facilities, and how language checks of written English will be conducted;*
- *an indication of the proportion of the contract which the service provider may intend to subcontract;*

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- *a description of the logistic facilities available (i.e. databases, research centres, electronic network);*
- *identifying any part of the contract which the service provider may intend to award to subcontractors, with references for the subcontractors envisaged and their written agreement;*
- *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;*

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.

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

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. The following award criteria will be applied:

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No	Qualitative award criteria	Weighting (maximum points)
I	General aspects relating to the technical proposal and the organisation of the work, notably the overall understanding and quality of the technical proposal (section 1.1 and 4.2.4), and the modalities for the organisation of the work of the framework contract including the allocation of resources to and the quality control of the specific contracts.	28
II	Industry studies	72
	Scenario 1 (see section 1.1)	36
1	Quality of the proposed methodology for performing the analysis required	12
2	Quality of the composition of the proposed team in relation to the tasks	12
3	Quality of the proposed literature review and the proposed choice of information and data sources	12
	Scenario 2 (see section 1.1)	36
4	Quality of the proposed methodology for performing the analysis required	12
5	Quality of the composition of the proposed team in relation to the tasks	12
6	Quality of the proposed literature review and the proposed choice of information and data sources	12
Sum I+II	Total points	100

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

Criterion no. 1 relates to the understanding of the work to be performed and to the quality and technical value of the bid.

Criterion no. 2 relates to the quality of the organization of the team involved, and to the means proposed to mobilise the expertise necessary to fulfil the requirement set out in specific agreements, given that services may have to be performed within a relatively short time frame.

Criterion no. 3 to 10 relates to the quality of the method proposed for performing the analysis required for each of the tasks as mentioned in section 1 (see 1.1.1 to 1.1.5) in the context of two scenarios for specific contracts.

The programme of studies may be too large for most single organisations to cover both in terms of being able to commit sufficient human resources to carry out several studies at the same time as well as in terms of knowledge of a broad range of industries. Therefore, tenderers have the possibility to present joint bids, or bid as a consortium. In particular for joint bids and consortia, the ability to manage and coordinate a number of studies with different partners and at the same time is an important part of the work.

For the assessment of tenders two "dummy" scenario proposals are requested. These proposals, which should preferably not be longer than 10 (ten) pages each, are to be based on the tasks described in sections 1.1.1., 1.1.2., 1.1.3., 1.1.4. and 1.1.5.

Tenders scoring less than 60 % 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.

The points scored for the above qualitative criteria will be compared to the total price **for the two "dummy" scenario proposals**. The scenarios should each involve at least (see annex 6.8 for details on levels of qualifications):

Scenario 1:

- 20 man days of a team leader/senior expert
- 40 man days of a senior expert
- 50 man days of a junior expert
- 2 one-day meetings for two persons in Brussels
- 1 day participation of two persons in one seminar within the European Union (e.g. Paris, London, Berlin)

Scenario 2:

- 40 man days of a team leader/senior expert
- 90 man days of a senior expert
- 120 man days of a junior expert
- 4 one day meetings for two persons in Brussels
- 1 day participation of two persons in one seminar within the European Union (e.g. Paris, London, Berlin)

To facilitate calculation of the price for the proposal, the consultant must complete table B and C of annex 6.8.

Financial award criterion	
	Total price for the two "dummy" scenarios, as set out in the financial proposal.

Tenders presenting a price in excess of 150 000 € for scenario 1 and 300 000 € for scenario 2 will be excluded from the rest of the assessment procedure.

The contract will be awarded to the tenderer which are 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.

5.4. 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.

5.5. AWARD OF THE FRAMEWORK SERVICE 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 framework contract with the successful tenderers 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 tenderers proposed for award the evidence on exclusion criteria defined in section 5.1.3. 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.

The Commission intends to conclude a contract in the form of a framework contract with cascade, with a maximum of four contractors. A framework contract with cascade functions as follows: after evaluating the tenders the contracting authority ranks the tenderers in descending order with a view to establishing the list of contractors and the sequence in which they will be offered work when orders are placed. If the first contractor on the list is unavailable (this shall not constitute non-performance), the Commission may approach the second contractor, and so on.

5.6. AWARD OF SPECIFIC CONTRACTS UNDER THE FRAMEWORK CONTRACT

Once the Framework Contract has been signed the Commission, when the need arises, sends an invitation to submit an offer for carrying out an individual assignment according to the procedure described in section 5.5. The offers must contain:

- a) A technical part, detailing the methodology, the composition and skills of the team and the responsible team leader for the specific agreement;
- b) A financial part detailing the number of person-day to be multiplied by the person-day price as defined in the framework contract, and other cost items.

The Specific Contract will be awarded after the Commission has examined the offer and if it is satisfied that the offer fulfils its invitation and that the offer is in accordance with the conditions laid down in the framework contract.

Reimbursable expenses are not allowed. All estimated travel and other costs should be incorporated into the total price.

Changes or additions to the team initially proposed must be notified to the Commission in writing. The Commission will have the right to object to any changes of members of the team from those initially proposed. In case the original team is no longer available, the Commission will have the right to cancel the specific contract.

Specific contracts will NOT be awarded to contractors who:

- a) Are subject to a conflict of interest;

4. Assessment and award of contract

- b) Are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

6. ANNEXES

ANNEXES

6.1. Exclusion criteria form (Invitation to tender No ENTR/90/PP/2011/FC)**Exclusion Criteria Form**

The undersigned [*name of the signatory of this form, to be completed*]:

1. in his/her own name (*if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator³*)

or

2. representing (*if the economic operator is a legal person*)

official name in full (*only for legal person*):

official legal form (*only for legal person*):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents / he/she:

- 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 all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and 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 Union's financial interests;
- f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

³ To be used depending on the national legislation of the country in which the tenderer is established and where considered necessary by the contracting authority (see art. 134(4) of the Implementing Rules).

- g) they have no 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;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.
- k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.
- l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above⁴.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.]

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature

⁴ Mandatory for contracts of value above €125 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.

6.2. MULTIPLE FRAMEWORK SERVICE CONTRACT



EUROPEAN COMMISSION
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

Industrial policy and economic analysis
Industrial Competitiveness Policy

MULTIPLE FRAMEWORK SERVICE CONTRACT

CONTRACT NUMBER – [complete]

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

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

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

of the other part,

HAVE AGREED

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

- Annex I –** Tender Specifications (Invitation to Tender No ENTR/90/PP/2011/FC of [complete])
- Annex II –** Contractor's Tender (No [complete] of [complete])
- Annex III –** Specific Contract

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 specific contracts (Annex III), the latter taking precedence over 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.8 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1** The **subject of** this multiple framework contract is to produce a series of industry studies to assess market performance and competitiveness of industries as well as the effectiveness of industrial policies.
- I.1.2** Signature of the Contract imposes no obligation on the Commission to purchase. Only implementation of the Contract through specific contracts is binding on the Commission.
- I.1.3** Once implementation of the Contract has been asked or has commenced, the Contractor shall reply and provide the services in accordance with all terms and conditions of the Contract.
- I.1.4** The Contract *does not* confer on the Contractor an exclusive right to provide the services described in Annex I to the Commission. The Contractor is selected as the [*complete*] contractor for a multiple framework contract.

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** Under no circumstances may implementation commence before the date on which the Contract enters into force. Execution of the tasks may under no circumstances begin before the date on which the order or specific contract enters into force.
- I.2.3** The Contract is concluded for a period of 24 (twenty four) months, with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4** The specific contracts shall be returned signed before the Contract to which they refer expires.

The Contract shall continue to apply to such specific contracts after its expiry, but no later than 12 (twelve) months.

ARTICLE I.3 –PRICES

- I.3.1** The price of the services shall be as listed in Annex II.
- I.3.2** Prices shall be expressed in EUR.
- I.3.3** Prices shall be fixed and not subject to revision for implementation during the first year of the Contract.

At the beginning of the second and every following year of the Contract, the unit prices per man-day may be revised upwards or downwards, if such revision is requested by one of the contracting parties by registered letter no later than three months before the anniversary of the date on which it was signed. The Commission shall purchase on the basis of the prices in force on the date on which orders or specific contracts are signed. Such prices shall not be subject to revision.

This revision shall be determined by the trend in the harmonised consumer price index MUICP published for the first time by the Publications Office of the European Union in the Eurostat monthly 'Data in Focus' publication at <http://www.ec.europa.eu/eurostat/>.

Revision shall be calculated in accordance with the following formula:

$$Pr = Po \times (Ir/Io)$$

where:

Pr = revised price;

Po = price in the original tender;

Io = index for the month in which the validity of the tender expires;

Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

Within 10 or 15 working days (or exceptionally longer, depending on the characteristics) of a request for services being sent by the Commission to the Contractor, the Commission shall receive an estimate of the resources to be allocated for its execution, with particulars in support. Should the Contractor be unavailable, he shall give reasons for refusal within the same period and the Commission shall be entitled to send a request to the next contractor on the list. In the event of failure to observe this deadline or disagreement on the allocation of resources, the Contractor shall be considered unavailable.

Within 10 working days of a specific contract being sent by the Commission to the Contractor, the Commission shall receive it back, duly signed and dated. In the event of failure to observe this deadline, the Contractor shall be considered unavailable.

ARTICLE I.5 – PAYMENT PERIODS

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 orders or specific contracts have not been executed as a result of default or negligence on the part of the Contractor.

I.5.1 Pre-financing:

Within 30 (thirty) days of the latest of the following dates:

- the date on which the Contractor returns the specific contract and the relevant invoice, indicating the reference number of the Contract and of the specific contract to which it refers,
- the receipt by the Commission of a duly constituted financial guarantee equal to at least 30% of the total value of the specific contract, where applicable

a pre-financing payment of 30% of the total value of the specific contract shall be made.

I.5.2 Interim payment (only applicable to service contracts of duration equal or above 18 months):

Requests for interim payment by the Contractor in accordance with the instructions laid down in Annex I shall be admissible if accompanied by:

- an interim technical report
- the relevant invoices, indicating the reference number of the Contract and of the specific contract to which they refer.

The Commission shall have 45 (forty-five) days from receipt to approve or reject the report, and the Contractor shall have 30 (thirty) days in which to submit additional information or a new report.

Within 30 (thirty) days of the date on which the report is approved by the Commission, an interim payment corresponding to the relevant invoices equal to 30% of the total amount referred in the relevant specific contract shall be made.

I.5.3 Payment of the balance:

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

- the final technical report in accordance with the instructions laid down in Annex I, and
- the relevant invoices, indicating the reference number of the Contract and of the specific contract to which they refer.

provided the report has been approved by the Commission.

The Commission shall have 45 (forty-five) days from receipt to approve or reject the report, and the Contractor shall have 30 (thirty) days in which to submit additional information or a new report.

Within 30 (thirty) days of the date on which the report is approved by the Commission, payment of the balance corresponding to the relevant invoices equal to 40 % or 70% (depending on whether or not an interim payment has been made according to Article I.5.2) of the total amount referred to in the relevant specific contract shall be made.

For Contractors established in Belgium, the orders shall include the following provision: “En Belgique, l’utilisation de ce bon de commande vaut présentation d’une demande d’exemption de la TVA n° 450” or an equivalent statement in the Dutch or German language. The Contractor shall include 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.

I.5.4 Performance guarantee:

Not applicable.

ARTICLE I.6 – BANK ACCOUNT

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

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

ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS

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

Commission:

European Commission
 Directorate-General Enterprise and Industry
 Directorate Industrial Policy and Economic Analysis
 Industrial Competitiveness Policy
 c/o Head of Unit
 BREY 07/094
 B-1049 Brussels
 Fax: +32.2.299.80.36

Contractor:

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

ARTICLE I.8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.8.1** The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Belgium.
- I.8.2** 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.9 – DATA PROTECTION

Any personal data included in or relating to the Contract, including its execution 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. The data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by Unit ENTR/B2, 'Industrial Competitiveness Policy', Directorate-General Enterprise and Industry without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in application of Union law. The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to Unit ENTR/B2, 'Industrial Competitiveness Policy', Directorate-General Enterprise and Industry. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

Where the Contract requires the processing of personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

The data shall be confidential within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council 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. The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - aa) unauthorised reading, copying, alteration or removal of storage media;
 - ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - ac) unauthorised persons from using data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;

- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE I.10 – 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 two months formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to the services ordered before the termination date. 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 services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

ARTICLE I.10a – CONTRACT CONCLUDED DURING STANDSTILL PERIOD

In case this Contract was signed by both the Commission and the Contractor before the expiry of 14 calendar days from the day after simultaneous dispatch of information about the award decisions and decisions to reject, this Contract shall be null and void.

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 executes the tasks assigned to him.

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.

- II.1.8** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II. 2 – LIABILITY

- II.2.1** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.
- II.2.5** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

ARTICLE II. 3 - CONFLICT OF INTERESTS

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

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

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

II.3.3 The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an unjustified 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 – INVOICING AND PAYMENTS

II.4.1 Pre-financing:

Where required by Article I.5.1, 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 or, at the latest, three months after the issuance of a recovery order. 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 and of the order or specific 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 each order or specific contract, 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 and of the order or specific 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.5 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.5 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 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** In the event of failure to pay by the deadline specified in the request for reimbursement, 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 Union or the European Atomic Energy Community 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 that 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 Union 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.
- 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 Union, 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.9 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 Union. 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 Union.

- 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, a pending order or a specific 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 Union's 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 under a pending order or a specific contract has not actually commenced within fifteen days⁵ of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;

⁵ This period can be modified in the Special Conditions depending on the nature of the contract.

- (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;
- (l) when due to the termination of the contract with one or more of the contractors there is no minimum required competition within the multiple framework service contract with reopening of competition.

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 or a pending order or specific 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 execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees enforceable 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 of 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%⁶ of the amount of the relevant purchase 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 Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.17.2** The Commission or an outside body of its choice shall have the same rights as the 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 of the last implementation.
- 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 of the last implementation.

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. An order or a specific contract may not be deemed to constitute an amendment to the Contract.

⁶ The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.

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 Contract, pending orders or specific contracts 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, of the orders or specific contracts, or of part thereof.

SIGNATURES

For the Contractor,

[*Company name*/forename/surname/function]

For the Commission,

[forename/surname/function]

signature[s]: _____

signature:_____

Done at _____, date _____

Done at Brussels, date _____

In duplicate in English.

ANNEX I

Tender Specifications and Monitoring

The tender specifications of invitation to tender No. ENTR/90/PP/2011/FC form an integral part of the Contract. The terms set out in the tender specifications shall take precedence over the tender (Annex II)

ANNEX II

Contractor's Tender

The tender submitted by [name] to the Commission in the framework of the call for tender No. ENTR/90/PP/2011/FC and which was received on [date] form an integral part of this Contract. In the event of conflict of interpretation, the term of the Contract shall take precedence over those in the tender.

ANNEX III

SPECIFIC CONTRACT No [complete] implementing Framework service contract No ...

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

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), *[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] [represented for the purposes of the signature of this contract by [forename, surname and function,]]*

of the other part,

HAVE AGREED

ARTICLE III.1: SUBJECT

III.1.1 This specific contract implements Framework service contract No [complete] signed by the Commission and the Contractor on [complete date] *[and renewed on complete date]*.

III.1.2 The subject of this specific contract is [short description of subject]. This specific contract relates to lot [complete] of the Framework service contract.

III.1.3 The Contractor undertakes, on the terms set out in the Framework service contract and in this specific contract and the annex[es] thereto, which form an integral part thereof, to perform the following tasks *specified in Annex II*.

ARTICLE III.2: DURATION

III.2.1 This specific contract shall enter into force on the date on which it is signed by the last contracting party.

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: “”.

III.2.2 The duration of the tasks shall not exceed [complete (*duration range from x to 24 (twenty four)*)] months. Execution of the tasks shall start from *date of entry into force of this specific contract*. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE III.3: PRICE

III.3.1 The total amount to be paid by the Commission under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.

III.3.2 In addition to the price **no** reimbursable costs are foreseen.

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

ARTICLE III.4: ANNEXE[S]

Annex A - Resources allocated

Annex B – Contractor’s specific Tender (no [complete] of [complete])

SIGNATURES

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

For the Commission,
[forename/surname/function]

signature[s]: _____

signature:_____

Done at _____, date _____

Done at Brussels, date _____

In duplicate in English

6.3. MODEL GUARANTEE

[MODEL] LETTER FOR PRE-FINANCING FIRST DEMAND GUARANTEE

Financial institution/Bank (Letterhead)
[Place/Date]

European Union
Represented by the European Commission
Directorate-General [...] – [Unit]
B – 1049 Belgium

Reference: Contract N° and exact title: [...]

ARTICLE 1 – DECLARATION ON GUARANTEE, AMOUNT AND PURPOSE

We, the undersigned [name and address of the financial institution or bank] (hereinafter referred to as "the Guarantor") hereby confirm that we give the European Union, represented by the European Commission (hereinafter referred to as "the Commission"), an unconditional, irrevocable and independent first-demand guarantee consisting in the undertaking to pay to the Commission a sum equivalent to the amount of:

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

upon simple demand, for guarantee of the pre-financing(s) stipulated in the contract (N°/exact title, hereinafter referred to as the "contract") concluded between the Commission and [name and address], (hereinafter referred to as "the Contractor").

ARTICLE 2 – EXECUTION OF GUARANTEE

If the Commission gives notice that the Contractor has for any reason failed to reimburse pre-financings paid by the Commission, we, acting by order and for account of the Contractor, shall undertake to immediately pay up to the above amount, in EUR, without exception or objection, into a bank account designated by the Commission, on receipt of the first written request from the Commission sent by registered letter or by courier with acknowledgement of receipt. We shall inform the Commission in writing as soon as the payment has been made.

ARTICLE 3 – OBLIGATIONS OF THE GUARANTOR

1. We waive the right to require exhaustion of remedies against the Contractor, 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.
2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by the Commission with the Contractor which may concern his obligations under the contract.
3. We shall undertake to immediately inform the Commission in writing, by registered letter or by courier with acknowledgement of receipt, in the event of a change of our legal status, ownership or address.

ARTICLE 4 – DATE OF ENTRY INTO FORCE

This guarantee shall come into force upon its signature. If, on the date of its signature, the [first] pre-financing has not been paid to the Contractor, this guarantee shall enter into force on the date on which the Contractor receives the [first] pre-financing.

ARTICLE 5 – END DATE AND CONDITIONS OF RELEASE

1. We may be released from this guarantee only with the Commission's written consent.
2. This guarantee shall expire on return of this original document by the Commission to our offices by registered letter or by courier with acknowledgement of receipt.
3. [Option 1: *This must occur at the latest one month after the payment of the balance under the contract has been made or three months after the issuance of the corresponding recovery order.*¹⁰]

[Option 2: *This must occur at the latest during the month after the pre-financing under the contract has been cleared through interim payment[s].*]

[Option 3: *This must occur in any case, at the latest, on (indicate a precise date*¹¹*).*]

4. After expiry, this guarantee shall become automatically null and void and no claim relating thereto shall be receivable for any reason whatsoever.

ARTICLE 6 – APPLICABLE LAW AND COMPETENT JURISDICTION*Option 1*

1. *This guarantee shall be governed by and construed in accordance with the law applicable to the contract.*
2. *The courts having jurisdiction for matters relating to the contract shall have sole jurisdiction in respect of matters relating to this guarantee.*

Option 2

Any dispute concerning this guarantee shall be governed by and construed in accordance with the Law [of the country of establishment of the [Contractor][Bank]] and fall within the sole competence of the [corresponding national] Courts.

ARTICLE 7 - ASSIGNMENT

The rights arising from this guarantee may not be assigned [*without our written consent*].

¹⁰ In any case, this period should never be reduced.

¹¹ This mention has to be inserted where the law applicable to the guarantee imposes a precise expiry date.

Done at [insert place], on [insert date]

[Signature/
Function at the Financial Institution/Bank]

[Signature/
Function at the Financial Institution/Bank]

6.4. FINANCIAL AND ECONOMIC CAPACITY OVERVIEW FORM (INVITATION TO TENDER No ENTR/90/PP/2011/FC)

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.

6.5. SUBCONTRACTOR / LETTER OF INTENT ENTR/90/PP/2011/FC**INDUSTRIAL COMPETITIVENESS AND MARKET PERFORMANCE**

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

.....

6.6. 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:

In case the European Commission awards **[Framework]** 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** »).

(1) 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.

(2) 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]*

(3) 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.]*.

(4) 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 **[Framework]** Contract, **[Specific Agreements]** 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:

In case the European Commission awards **[Framework]** 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** »).

(1) 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.

(2) 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.]*.

(3) 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.]*.

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

(5) 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 **[Framework]** Contract, **[Specific Agreements]** 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

6.7. 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 6.6)	1		n		
Letter of intent of subcontractor (see annex 6.5)	1				n
Legal Entity Form (see section 4.2.1) 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 4.2.1) Download the form from: http://europa.eu.int/comm/budget/execution/ftiers_fr.htm .	1	n		n	
Exclusion Criteria form (see section 5.1.1 and annex 6.1)	2	n	n	n	n
Evidence of Economic and financial capacity (see section 5.2.2 and annex 6.4)	3	n	n	n	
Evidence of Technical and professional capacity (see section 5.2.3) 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 4.2.4 and 4)	4	n
Financial Proposal (see section 4.2.5)	5	n

6.8. SUMMARY TABLES FOR CERTAIN AWARD CRITERIA

Table A: Composition of the proposed team

NB: Please add as many rows as appropriate

Name of person	Level of qualification*	Role in the team

* The level of qualification of the personnel will be determined on the basis of the following elements (see also section 5.2.1).

Level of qualification	Personnel Category
A. Team leader/senior expert	Highly qualified manager who has assumed important responsibilities in his/her profession, recruited for his/her management/supervisory skills and capacity to coordinate international and multicultural teams and consortia. He/she must have at least years' professional experience in the management of international projects with multiple partners and/or subcontractors
B. Highly qualified expert/senior expert	Highly qualified expert who has assumed important responsibilities in his/her profession, recruited for his/her conceptual and creative skills in the exercise of his/her profession. He/she must have at least five years' of relevant professional experience.
C. Qualified expert/junior expert	Qualified expert having received high-level training in his/her profession, recruited for his/her conceptual and creative skills in the exercise of his/her profession. He/she must have at least two years' of relevant professional experience.

Table B: Price for scenario 1 described in section 1.1 and 5.3 (price in euros)

Human Resources			
Qualification	Man-days	Unit price ¹² (in € per man-day)	Cost (Euro)
Team leader	Minimum 20		
Highly qualified expert	Minimum 40		
Qualified expert(s)	Minimum 50		
Total I			

Other	Cost (Euro)
2 one-day meetings in Brussels for two persons	
1 day participation of two persons in one seminar within the European Union (e.g. Paris, London, Berlin)	
Total II	

PRICE OF SCENARIO (I+II)	
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Table C: Price for scenario 2 described in section 1.1 and 5.3 (price in euros)

Human Resources			
Qualification	Man-days	Unit price ¹³ (in € per man-day)	Cost (Euro)
Team leader	Minimum 40		
Highly qualified expert	Minimum 90		
Qualified expert(s)	Minimum 120		
Total III			

Other	Cost (Euro)
4 one-day meetings in Brussels for two persons	
1 day participation of two persons in one seminar within the European Union (e.g. Paris, London, Berlin)	
Total IV	

PRICE OF SCENARIO (III+IV)	
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¹² Please refer to the unit prices indicated in section 4.2.5.

¹³ Please refer to the unit prices indicated in section 4.2.5.