



EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change
Health, Safety and Hygiene at Work

Service Contract

Contract title **Contract to further develop a methodology for the systematic evaluation of Health and Safety at Work Directives and to test the methodology in a pilot evaluation of Directive 89/654/EEC concerning the minimum safety and health requirements**

Contract ref. no. **VC/2009/0501**
The above title and reference no. **must** be quoted in **all** correspondence with the Commission.

Contractor
.....

Other administrative information

Department **DG EMPL/F/4**

Pre-information notice O.J. publication ref. no: —
Call for tenders DG EMPL ref. no: VT/2009/056 of
Contract notice O.J. publication ref. no:
EPIC (CIAME) ref. no:/.....
Service category no:

Other accounting information

Commitment no. **SI2.**
This commitment no. **must** be quoted in correspondence relating to **invoices / payments.**

Type of Contract **V/SE/SEC02**

The European Community (hereinafter referred to as “**the Community**”),
represented by the Commission of the European Communities (hereinafter referred to as “**the Commission**”),
which is represented for the purposes of the signature of this Contract by Costas
CONSTANTINOU, Head of Unit - EMPL/F/4, Employment, Social Affairs and Equal
Opportunities DG,

on the one part,

AND

.....(*official name in full*),
registered legal form:,
statutory registration number:,
official address in full:,
VAT registration number:,
(hereinafter referred to as “**the Contractor**”),
represented for the purposes of the signature of this Contract by(*forename and name
in full*),(*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. VT/...../..... of)
and Monitoring
- **Annex II** Contractor's Tender (Registre CAD ref. no. of)
- **Annex III** Breakdown of prices
- **Annex IV** CVs and classification of experts
- **Annex V** Fiscal provisions regarding invoicing by the Contractor
[“Submission of reports” option]
[option 1: normal (no Annex VI)]
[option 2: special Annex VI (PROGRESS 2007-2013)]
- **Annex VI** Final technical report to be submitted
- [end of “Submission of reports option”]

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) and in the Breakdown of prices (Annex III) shall take precedence over those in the Tender (Annex II).

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

I. **Special conditions**

Article I.1 **Subject**

I.1.1. The subject of the Contract is: **Contract to further develop a methodology for the systematic evaluation of Health and Safety at Work Directives and to test the methodology in a pilot evaluation of Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace ..**

I.1.2. The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

Article I.2 **Duration**

I.2.1. The Contract shall enter into force on the date on which it is signed by the last contracting party. The date of signature of the present Contract is that of the date stamp applied by the postal services of Employment, Social Affairs and Equal Opportunities DG on the title page of the present Contract after it has been signed by both parties.

I.2.2. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.

I.2.3. The duration of the tasks shall not exceed 24 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than 30 days before expiry of the period of execution or with less than one third of the period of execution left to run, whichever period is the shorter.

Article I.3 **Contract price**

I.3.1. *Maximum total amount*

The maximum total amount to be paid by the Commission under the Contract shall be EUR 499 999.00 covering all tasks executed.

I.3.2. *Price revisions*

Not applicable.

I.3.3. *Travel, subsistence and shipment expenses*

In addition to the total amount specified in Article I.3.1, travel, subsistence and shipment expenses shall be reimbursed in accordance with Article II.7, as shall other expenses provided for by the Tender Specifications up to a maximum amount of EUR 1.00. The daily subsistence allowance referred to in Article II.7.4(d) shall be determined in accordance with Annex III, 2.2.1.

Article I.4 **Payment periods and formalities**

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the

invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

I.4.1. Pre-financing

Following signature of the Contract by the last contracting party, within 30 days of the receipt by the Commission of a request for pre-financing with a relevant invoice, a pre-financing payment equal to 30% of the total amount referred to in Article I.3.1 shall be made.

I.4.2. Interim payment

Requests for interim payment by the Contractor shall be admissible if accompanied by

- an interim technical report in accordance with the instructions laid down in Annex I,
- the relevant invoices,
- statements of reimbursable expenses in accordance with Article II.7,

provided the report has been approved by the Commission.

The Commission shall have 60 days from receipt to approve or reject the report, and the Contractor shall have 30 days in which to submit additional information or a new report.

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

I.4.3. Payment of the balance

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

- the final technical report in accordance with the instructions laid down in Annex I,
- the relevant invoices,
- statements of reimbursable expenses in accordance with Article II.7,

provided the report has been approved by the Commission.

The Commission shall have 60 days from receipt to approve or reject the report, and the Contractor shall have 30 days in which to submit additional information or a new report.

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

I.4.4. Performance guarantee

Not applicable.

Article I.5 Bank account

Payments shall be made to the Contractor's bank account denominated in euro ¹, identified ² as follows:

- Name of bank:
- Address of branch in full:
- Exact designation of account holder:
- Full account number including codes:
- IBAN or, if non available, BIC code: —

Article I.6 General administrative provisions

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

¹ Or local currency where the receiving country does not allow transactions in EUR.

² By a document issued or certified by the bank.

Commission

European Commission
Directorate-General Employment, Social Affairs and Equal Opportunities
EMPL/F/4
B-1049 Brussels (Belgium)

Contractor

..... (Mr/Mrs/Ms + forename and name)
..... (function)
..... (company name)
..... (official address in full)

Article I.7 Applicable law and settlement of disputes

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

I.7.2. Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

Article I.8 Other special conditions**Definition of the term “payment request” regarding the interests for late payments**

It is understood that a payment request, as mentioned in Article II.5.3, will only be considered as complete, if all specific documents mentioned in Article I.4; are joined to this request. If these specific documents are not sent to the Commission all together with the payment request, the 60 days shall only run from the date of the first registered receipt of the last document, making the payment request complete. As regards payments subject to the prior approval of a report (or to the signature of a certificate of final acceptance for supplies delivery) by the Commission, according to Article I.4, the period of 30 calendar days shall start only on the date when both the complete payment request has been registered and the report has been approved (or the certificate of final acceptance has been signed) by the Commission, provided the Commission has itself respected the time limits set in the present Contract and its annexes for such approvals.

Data protection

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by Employment, Social Affairs and Equal Opportunities DG without prejudice to possible transmission to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community.

The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to Employment, Social Affairs and Equal Opportunities DG. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

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

II. General conditions

Article II.1 Performance of the Contract

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

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

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

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

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

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

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

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

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

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

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

Article II.2 Liability

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

II.2.2. The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

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

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

Article II.3 Conflict of Interests

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

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

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

II.3.3. The Contractor declares:

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

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

Article II.4 Payments

II.4.1. Pre-financing

Where required by Article I.4.1, the Contractor shall provide a financial guarantee in the form of a bank guarantee or equivalent supplied by a bank or an authorised financial institution (guarantor) equal to the amount indicated in the same Article to cover pre-financing under the Contract. Such guarantee

may be replaced by a joint and several guarantee by a third party. The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part. The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor). The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

II.4.2. *Interim payment*

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

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

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed. Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.3. *Payment of the balance*

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

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

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed. Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

Article II.5 General Provisions concerning Payments

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

II.5.2. The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount

is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.5.3. In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (*"the reference rate"*) plus seven percentage points (*"the margin"*). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

Article II.6 Recovery

II.6.1. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

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

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

Article II.7 Reimbursements

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

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

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

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

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

- (a) for journeys of less than 200 km (return trip) no subsistence allowance shall be payable;
- (b) daily subsistence allowance shall be payable only on receipt of a supporting document proving that the person concerned was present at the place of destination;

- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including accommodation, meals, local transport, insurance and sundries;
- (d) daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3.3.

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

Article II.8 Ownership of the Results – Intellectual and Industrial Property

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

Article II.9 Confidentiality

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

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

Article II.10 Use, Distribution and Publication of Information

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

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

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

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

Article II. 11 Taxation

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

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

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

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

Article II.12 Force Majeure

II.12.1. *Force majeure* shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as *force majeure* unless they stem directly from a relevant case of *force majeure*.

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

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

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

Article II.13 Subcontracting

II.13.1. The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.

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

II.13.3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

Article II.14 Assignment

II.14.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

II.14.2. In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

Article II.15 Termination by the Commission

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

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject

- of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
 - (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
 - (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
 - (f) where the Contractor is in breach of his obligations under Article II.3;
 - (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
 - (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
 - (i) where execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
 - (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
 - (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

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

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

II.15.4. Consequences of termination

In the event of the Commission terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

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

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

Article II.15a Substantial errors, irregularities and fraud attributable to the Contractor

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities

or fraud are attributable to the Contractor, the Commission may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

Article II.16 Liquidated Damages

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

Article II.17 Checks and Audits

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

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

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

Article II.18 Amendments

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

Article II.19 Suspension of the Contract

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

Signatures

1. For the Contractor,

..... (*forename and name*)

..... (*position*)

..... (*company name*)

2. For the Commission,

Costas CONSTANTINOU

Head of Unit - EMPL/F/4

Employment, Social Affairs and Equal
Opportunities DG

Done at (*place*), Done at Brussels,

..... (*date*) (*date*)

In duplicate in English.

Draft

Tender Specifications and Monitoring

ANNEX I Tender No. VT/...../... of

1. Background

1.1. Progress Programme

The Social Agenda (2005-2010) has fixed as its overall strategic goal to promote more and better jobs and to offer equal opportunities for all. The realisation of the Social Agenda relies on a combination of instruments comprising EU legislation, the implementation of open methods of coordination in various policy fields and financial incentives such as the European Social Fund.

The Decision n°1672/2006 establishing a Community programme for employment and social solidarity – PROGRESS was adopted by the European Parliament and the Council on 24 October and published in the OJ on 15 November.

PROGRESS aims at supporting the core functions of the European Community towards fulfilling its Treaty-delegated tasks and powers in its respective areas of competence in the employment and social sphere. PROGRESS mission is to strengthen the EU contribution in support of Member States' commitments and efforts to create more and better jobs and to build a more cohesive society. To that effect, PROGRESS will be instrumental in:

- providing analysis and policy advice on PROGRESS policy areas;
- monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;
- promoting policy transfer, learning and support among Member States on EU objectives and priorities; and
- relaying the views of the stakeholders and society at large.

More specifically, PROGRESS will support:

- (1) the implementation of the European Employment Strategy (section 1);
- (2) the implementation of the open method of coordination in the field of social protection and inclusion (section 2);
- (3) the improvement of the working environment and conditions including health and safety at work and reconciling work and family life (section 3);
- (4) the effective implementation of the principle of non-discrimination and promotion of its mainstreaming in all EU policies (section 4);
- (5) the effective implementation of the principle of gender equality and promotion of its mainstreaming in all EU policies (section 5).

The present call for tenders is issued in the context of the implementation of the 2009 annual plan of work which is consultable at:

<http://ec.europa.eu/social/main.jsp?catId=327&langId=en>

1.2. Background information specific to this contract

One step on the way to achieving the goal of the EU Lisbon Strategy to promote more and better jobs is the provision of an appropriate legal framework for business activities within the European Union. The legal framework should be effective in reaching its aims.

In order to assess the effectiveness of the existing legal framework, Unit EMPL/F/4 has in the past carried out evaluations of the practical implementation of the EU Health and Safety at Work Directives (COM(2004) 62³, COM(2008) 698⁴). Further evaluations will be finalised and published in 2009. Major input to these evaluations is provided by the national reports provided by the Member States which are based on a common outline established by the Unit EMPL F/4 in collaboration with the Advisory Committee on Safety and Health at Work (ACSH) and which also indicate the opinions of the social partners. The Commission's evaluations also build on an independent experts' report, analysing the implementation of the Directives in all sectors, including the public sector. Finally, these evaluations reflect the experience gained by the Commission in its work of monitoring the transposition of the Directives into national laws and their application across the economy.

The current initiative to further develop a methodology for a systematic evaluation of OSH Directives and to assess Directive 89/654/EEC follows the recent Commission undertaking⁵ to assess the implementation of the regulatory framework with a view to improving it.

In 2006 a new initiative in the area of health and safety at work was launched by a group of Member States and a European Working Group was formed by several EU Member States to study the effectiveness and efficiency of existing EU legislation in this area. To this aim, an ex post evaluation of Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment⁶ was launched in six EU Member States: the Czech Republic, Denmark, Finland, Germany, the Netherlands and the United Kingdom. This evaluation took the form of a pilot study, aimed not only at analysing the specific legislation related to visual display units (VDU), but also at showing the general possibilities and limitations of the evaluation instrument.

Each of the participating Member States conducted its own evaluation. As a common basis for the national evaluations the Working Group produced two papers:

1. "Common Requirements for the Evaluation of the VDU Directive", which describes the fundamental aims and framework conditions of the evaluation; and
2. "Overview about Terms of Reference for the Preparation of Empirical Investigations" (TOR), in order to establish a minimum level of comparability between the various national evaluations.

These documents are available on the following website of DG EMPL:

<http://ec.europa.eu/social/main.jsp?catId=626&langId=fr&callId=164&furtherCalls=yes>

Apart from guidelines on the contents of the evaluation, the Terms of Reference also contained some requirements regarding the choice of methodology for the evaluation. However, the final

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the practical implementation of the provisions of the Health and Safety at Work Directives 89/391 (Framework), 89/654 (Workplaces), 89/655 (Work Equipment), 89/656 (Personal Protective Equipment), 90/269 (Manual Handling of Loads) and 90/270 (Display Screen Equipment).

⁴ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the practical implementation of Health and Safety at Work Directives 92/57/EEC (temporary and mobile sites) and 92/58/EEC (safety signs at work).

⁵ In the communication *Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work*, COM(2007) 62 final, 21.2.2007.

⁶ OJ L 156, 21.6.1990, p. 14.

decisions on the data collection methodology and details of sampling etc. were agreed at national level. This led to certain differences between methodologies in the various countries which put some restrictions on cross-national comparison.

Despite these methodological limitations, the key general results of the different national evaluation projects were able to be compared and analysed from a cross-national perspective, albeit often at an aggregated level only. It was concluded that an ex-post evaluation of European OSH legislation is feasible and produces additional and valuable input for the ongoing debate on smarter and better regulation. It was therefore recommended that the European Commission conduct further empirical evaluations of the practical implementation of specific Directives in the area of occupational health and safety. The final integrated cross-national evaluation report⁷ is available on the following website of DG EMPL:

<http://ec.europa.eu/social/main.jsp?catId=626&langId=fr&callId=164&furtherCalls=yes>.

Consequently, the Advisory Committee on Safety and Health at Work⁸ has set up a working party on the “Evaluation of OSH Directives” (hereafter “ACSH Working Group”) mandated to assist the Commission in the development of a pilot evaluation project on the “Workplace” Directive 89/654/EEC, taking advantage of the methodology and the results of the evaluations of the VDU Directive (and its implementation) in a number of Member States. Further development of the evaluation methodology and the evaluation of Directive 89/654/EEC, subject of this contract, should therefore be carried out in close cooperation with the ACSH Working Group, which is composed of members representing national governments, trade unions and employers’ organisations in several EU Member States. The multi-country composition of the ACSH Working Group ensures that differences in the national context are taken into account from the very beginning of the project.

The evaluation of Directive 89/654/EEC also has the status of a pilot study, as the common methodology for a systematic evaluation of OSH Directives will be used for the first time to evaluate a specific OSH Directive in all 27 Member States and a sample of EFTA-EEA countries. Unlike the evaluation of the VDU Directive conducted by various national contractors, the evaluation of Directive 89/654/EEC will be carried out by a single contractor selected through the present invitation to tender. The aim of this evaluation is not confined to the assessment of Directive 89/654/EEC; it will also serve as a means for testing and improving the common methodology for ex-post evaluation of EU OSH Directives to be further developed by the contractor with a view to allowing better comparability of the situation in the various Member States and efficient involvement of all stakeholders.

The results and recommendations of this pilot evaluation should also contribute to the formulation of the Community strategy 2013-2018 on health and safety at work.

2. Purpose of the Contract

This invitation to tender invites bids for further developing a methodology for the systematic evaluation of OSH Directives and testing it in a pilot evaluation of Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace.

The work to be carried out by the contractor therefore has two outcomes.

On the one hand, the contractor must provide, before starting the evaluation, a common evaluation methodology for assessing the EU OSH legislation, building on the methodology developed in the evaluation of the VDU Directive, and making it possible to achieve the necessary improvements and eliminate the shortcomings identified in the course of testing the methodology in the pilot evaluation of the VDU Directive. In this regard, the contractor's evaluation methodology must inter alia allow the comparability of the results of the various evaluations carried out at national level, the assessment of

⁷ The development of a methodology to assess the quality of EU directives: a pilot study on basis of the Directive on Visual Display Units (Directive 90/270 EEC) — Integrated cross-national report (author: TNS Infratest Sozialforschung GmbH).

⁸ Council decision of 22 July 2003 setting up an Advisory Committee on Safety and Health at Work (OJ 2003/C 218/01).

relevance and effectiveness of European OSH legislation and the subsequent development recommendations to improve this relevance and effectiveness.

The evaluation methodology must make it possible to assess both the quality of the European OSH legislation and the actual practical implementation at the workplaces of this legislation.

On the other hand, he/she must carry out the evaluation of specific legislation, namely the “Workplace” Directive 89/654/EEC in which he/she will use and test his improved methodology. This evaluation will thus also serve for further improvements of the contractor's evaluation methodology.

The contractor will therefore deliver two final reports, one including an effective and efficient common evaluation methodology for the systematic assessment of EU OSH legislation applicable to all EU Member States and the other one containing the cross-nationally comparative evaluation of Directive 89/654/EEC in all 27 Member States and a sample of EFTA-EEA countries.

The tasks to be carried out are described in section 3.

3. Tasks to be performed by the Contractor

3.1 General description of tasks

3.1.1 The Assignment

The contractor shall in a first step develop a common evaluation methodology for the systematic evaluation of EU OSH legislation.

The evaluation methodology should make it possible to assess both the quality of the European OSH Directives and the actual practical implementation at the workplaces including promoting and inhibiting factors.

The contractor shall subsequently carry out an evaluation of Directive 89/654/EEC in all EU 27 Member States and a sample of EFTA-EEA countries and summarise the results of the national evaluations in a cross-national evaluation report. In this evaluation, the contractor shall apply and test the common evaluation methodology he had developed. He is expected to have developed this methodology *ex ante*, i.e. before starting the evaluation itself. Nevertheless, he/she will further improve the methodology according to the practical experiences he/she will obtain during the evaluation.

3.1.2 Demands on the Methodology

The contractor is requested to develop a methodology for the systematic evaluation of the European OSH Directives. This methodology should be based on the methodology used for the pilot evaluation of the VDU Directive and set out in the “Common requirements for the Evaluation of the VDU Directive” and the “Overview about Terms of Reference for the Preparation of Empirical Investigations” (see section 1.2.). The methodology should also take into account the work of the working party of the Advisory Committee on Safety and Health at Work on the development of the structure and questionnaire for the national practical implementation reports to be transmitted by the Members States to the Commission according to Article 17bis of Directive 89/391/EEC.

The contractor is also expected to apply a creative approach and look for best solutions.

To avoid the shortcomings of the evaluation of the VDU Directive it should pay particular attention to the

- (1) Comparability of evaluation results across MS;
- (2) Measurement of costs and benefits;

- (3) The definition of empirical indicators which allow an assessment of the effectiveness of the individual requirements;
- (4) The concept of "relevance" of the legislation and an interpretation and operationalisation which is compatible between MS.

The final integrated cross-national evaluation report of the evaluation of the VDU Directive includes a relevant set of recommendations.

The evaluation methodology to be developed by the contractor should identify the core of indicators and sources common for the assessment of all EU H&S at work Directives as well as the indicators and sources likely to vary according to the characteristics and specific objectives of individual Directives or their categories.

With respect to development of these indicators, the contractor is requested to make, where possible, a clear distinction between:

- A. the quality of the European OSH legislation
- B. the actual practical implementation at the workplaces

Ad A: Quality of European OSH legislation

The contractor is requested to analyse the quality of the European OSH Directives. The contractor's indicators should therefore make it possible to, *inter alia*, answer the following questions:

1. Have the requirements of a Directive been chosen adequately?
2. Have the objectives of the Directive been achieved with the instruments used (effectiveness of the instruments)? Which intended and unintended side effects did it produce?
3. Have the instruments been used efficiently?
4. What is the relevance of the Directive?
5. Which changes related to the policy and regulatory framework and/or practice would have happened anyway in the subject covered by the Directive? Could the same objectives have been reached with other instruments than legislation?
6. Has the Directive led to a level playing field between MS with regard to OSH?
7. Are the obligations laid down in the Directive clearly formulated?

Ad B: Implementation at the workplace

The methodology developed by the contractor should also allow an assessment of the practical implementation of European OSH Directives. It should, *inter alia*, ensure an answer to the following questions:

8. What is the level of practical implementation of the provisions of the Directive (including (technical) requirements of the annex (s))? This includes also the question whether the different groups involved in its implementation, in particular employers, workers and workers representatives with specific responsibility for the safety and health of workers are aware of the Directive and have adequate knowledge. Note: "Knowledge" is not necessarily equivalent to "literal" knowledge of the European Directives and/or the national laws!
9. What is the level of the fulfilment by the employers of general legal obligations laid down in Directive 89/391/EEC (e.g. risk assessment, information of workers, consultation of workers, workers participation and training) in the context of the implementation at workplace of the specific Directive under evaluation?
10. What are the results of the comparison with the workers/workers representatives/experts estimations as regards the fulfilment of legal obligations by the employers?

Finally, the application of the methodology should, *inter alia*, result in the identification of answers to the following questions, interlinking the quality of the legislation and its practical implementation:

11. What are the reasons for the successes/shortcomings found (e.g. the Directive itself/the national transposition/the national enforcement strategies/other factors)?
12. Should there be changes in
 - the legal provisions
 - the implementation at company level
 - the enforcement strategies of national authorities
 - other accompanying measures for improving OSH at workplaces (e.g. economic incentives, awareness raising, practical tools)?
13. Has the Directive had particular effects on any type of establishments (e.g. depending on sector, size etc.) and workers (depending on sex, age occupation etc.)?
14. Has the Directive had an impact on the rates of occupational accidents and diseases?

In addition, the broader economic effects need to be addressed in this evaluation. The relevant questions in this respect are:

15. How to measure compliance cost of the Directive for employers?
16. Do the benefits of the Directive outweigh the costs linked to its implementation and enforcement?
17. Did the Directive have macroeconomic effects (for example on employment, productivity, competitiveness)? How can these effects be measured and assessed?

The approach should aim at quantification whenever this is reasonable or explain why quantification is not adequate or actually not possible.

Use and Collection of Data

The contractor is requested to make use of available data from European level as well as from national level whenever possible (e.g. statistics on occupational accidents or data on health problems attributed to workplace conditions). Such sources can be official statistics as well as any other relevant and reliable sources of information.

The contractor will take due account of the results of and practical experience with the pilot evaluation of the VDU Directive, and in particular the organisational and methodological changes recommended for future evaluations in the aforementioned final integrated cross-national evaluation report. In the light of those recommendations, the contractor is expected to perform, *inter alia*, the following tasks:

- In order to establish real cross-national comparability of the evaluations, the contractor should carry out an ex-ante harmonisation of the evaluation methodology to be applied in all countries concerned. In this context, the contractor should among other things develop an English core master questionnaire for all those indicators for which strict cross-national comparability is desirable. To this end, he should use also the research questions of the Terms of Reference referred to in section 1.2. of this invitation to tender and operationalise them, i.e. transform them into a practical questionnaire.
- The contractor should devise a common and efficient data collection methodology (e.g. mode of data collection, choice of respondents including a common definition for the establishment of size-classes and sectors of activity). This data collection methodology should be uniform across all countries and guarantee that differences between countries appearing in the analysis phase are genuinely due to differences in reality and not merely the result of methodological differences.

- For the data collection method, semi-structured qualitative and/or quantitative interviews with employers, workers and workers' representatives with specific responsibility for the safety and health of workers, and other OSH experts or other stakeholders within the selected establishment, conducted by telephone or face-to-face, should be given priority over online interviews and phone interviews and especially mail questionnaires, which tend to have a much stronger self-selection bias than methods involving an interviewer.
- Sampling for the establishment survey should be carried out in an appropriate way ensuring that from each size-class a sufficiently high number of interviews is available for later analysis to be carried out by the contractor. Sampling should also take place in all the private and/or public sectors of economic activity. The results should then in any case be weighted so that they are really representative of the economy in a country. The weighting may be made establishment – or employee-proportional – consideration should be given to presenting results on both bases. When making cross-country comparisons, the same type of proportionality has to be used for the data of all national evaluations. Special attention should be given to small and medium-sized enterprises (SMEs) and to micro-sized organisations.
- In addition to the individual employers, workers, workers' representatives with specific responsibility for the safety and health of workers or other actors within the enterprises, the contractor should conduct qualitative, semi-structured interviews with a number of additional stakeholders. These should include, for example, employer's federations, formal worker's representative organisations (e.g. trade unions), institutions responsible for enforcement (e.g. the labour inspectorate), officials of national OSH authorities and national OSH research institutes, relevant insurance companies, manufacturers and suppliers of the equipment and devices required by the specific Directive evaluated.
- The strictly cross-nationally comparable evaluation indicators to be developed by the contractor should make it possible to measure differences in the degree of application, awareness, effectiveness etc. of the legislation in the countries concerned. A cross-country study should therefore be possible on the basis of such indicators, enabling researchers to analyse for example how far different approaches with regard to the transposition of European law into national law or with regard to national dissemination and implementation strategies lead to different results. In this way, the most successful implementation and dissemination strategies should be identified so that other countries have the chance to learn from these "good practice" models. This, rather than the production of country rankings, should be the ultimate aim of making the indicators cross-nationally comparable.
- The European and national practical implementation reports can give hints as to potentially conflictual or problematic issues in the legislation itself or its practical implementation and can indicate recent or future developments which might call for changes in the legislation. Such hints should be taken up and empirically investigated in the framework of an evaluation.

3.1.3 Organisation of Work

The contractor will carry out his/her work in close collaboration with the ACSH Working Group and European Commission (Unit EMPL F/4) and take due account of all their suggestions, contributions and proposed arrangements.

The contractor will: take part in eight (8) meetings - four (4) with the Commission (Unit EMPL F/4) and four (4) with the ACSH Working Group. The latter will take place the day after each meeting with the Commission. These meetings will be organised by the Commission (Unit EMPL F/4) and held on the Commission premises in Luxembourg.

3.1.4 Outcome

The outcome of this evaluation shall be two main reports, namely:

a report developing the evaluation methodology covering at least 30 pages plus annexes and one page with an executive summary. This report is expected to be in English.

a final report, containing a cross-nationally comparative evaluation of Directive 89/654/EEC in all 27 Member States and a sample of EFTA-EEA countries; this report should be in English and cover at least 80 and max. 120 pages including an executive summary in English, French and German.

Furthermore the consultants should provide references to all sources used during their work. In particular data collected in the course of the project should be made accessible – while respecting the principles of data protection.

3.2. Emphasis

Bids must contain evidence of the tenderer's ability to perform the tasks laid down in section 3.1 of these specifications, the rigour of the proposed approach (methodology) and the ability to meet the requirements set out in section 2 ("Purpose of the contract") which will also be among the factors governing the award of the contract.

Tenderers may choose not to give full details of their evaluation methodology unless they are awarded the contract. But in their bid they **must clearly indicate** the fundamental elements of the methodology allowing the objectives set out in section 2 of these specifications to be achieved. In this case, they must indicate their intention in their bid, and include a summary of the methodology.

The methodology must enable the various elements cited in sections 2 and 3.1 to be identified, analysed and assessed and should not be restricted to documentary identification and analysis. It must also show the approach envisaged and its suitability for reflecting correctly the requirements set out in sections 2 and 3.1 as well as the work plan, which will be among the factors governing the award of the contract.

The methodology described above and the work plan proposed will be among the factors governing the award of the contract.

3.3. Guide on how the activities shall be carried out

The PROGRESS Programme aimed at promoting gender mainstreaming in all its five policy sections and commissioned or supported activities. Consequently, the Contractor will take the necessary steps to ensure that:

- Gender equality issues are taken into account when relevant for the drafting of the technical offer by paying attention to the situation and needs of women and men;
- Implementation of the requested tasks includes a gender perspective by considering systematically women and men dimension.
- Performance monitoring includes the collection and gathering of data disaggregated by sex when needed.
- His proposed team and/or staff respects the gender balance at all levels.

Equally, needs of disabled people shall be duly acknowledged and met while executing the requested service. This will in particular entail that where the Contractor organises training sessions, conference, issues publications or develops dedicated websites, people with disabilities have equal access to the facilities or the services provided.

Finally, the Contracting Authority encourages the Contractor to promote equal employment opportunities for all its staff and team. This entails that the Contractor shall foster an appropriate mix of people, whatever their ethnic origin, religions, age, and ability.

The Contractor will be required to detail in its activity report accompanying the request for the final instalment the steps and achievements it made towards meeting these contractual provisions.

4. Expertise required ⁹

See Annex IV.

Specific requirements other than those mentioned in Annex IV

Tenderers must have at their disposal a team with confirmed experience in the specific field of health and safety at work as well as in applying analysis and assessment methods and techniques and in collecting information. In order to carry out the required evaluation and methodology development properly, tenderers and their teams must be familiar with the existing evaluation tools and with EU legislation in the field of health and safety at work.

5. Schedule of reports – Terms for approval, structure and content

See Article I.4.

5.1. Specific deadlines for the performance of tasks:

The work must be completed within a maximum of **twenty-four (24) months** from the date on which the contract is signed. The various stages are as follows.

1. **One (1) month** after signature of the contract, a **first (1st) meeting** of the contractor with the Commission and the day after with the ACSH working group will take place to further explain the purpose of the study, coordinate the dates of the meetings, explain the role of the ACSH working group and exchange other useful information.
2. Not later than **three (3) months** after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4), in English, a **draft evaluation methodology** for assessing the EU OSH legislation as well as **the working method for applying this methodology** to the evaluation of Directive 89/654/EEC, together with the work schedule.
3. Not later than **five (5) months** after signature of the contract, the contractor must give a presentation to the Commission and the ACSH Working Group on the draft evaluation methodology for assessing the EU OSH legislation, on the application of this methodology to the evaluation of Directive 89/654/EEC and on the aspects referred to in section 3.1 at the **second (2nd) meeting** with the Commission (Unit EMPL F/4) and the day after with ACSH Working Group following the signature of the contract. The contractor will take into account the suggestions and recommendations made at those meetings by the members of the ACSH Working Group as well as the proposals made by the Commission (Unit EMPL F/4). He will subsequently adapt the evaluation methodology as well as the working method for applying this methodology to the evaluation of Directive 89/654/EEC no later than **six (6) weeks** after the meeting with the ACSH Working Group and inform the Commission what are these adaptations.
4. No later than **twelve (12) months** after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) an **interim report** in English, describing the

⁹ See Article II.1 as regards the replacement of experts.

progress made in relation to the envisaged timetable, together with a summary of the results obtained so far, both as regards the development of the evaluation methodology and the evaluation itself. This interim report must also indicate whether any methodological adjustments to the evaluation methodology were made during the evaluation and what exactly were such adjustments. This interim report must be presented and discussed at the **third (3rd) meeting** with the Commission (Unit EMPL F/4) and the day after with the ACSH Working Group. The contractor will take into account the suggestions and recommendations made at those meetings by the members of the ACSH Working Group as well as the proposals made by the Commission (Unit EMPL F/4). He will subsequently adapt the evaluation methodology as well as the working method for applying this methodology to the evaluation of Directive 89/654/EEC no later than **four (4) weeks** after the meeting with the ACSH Working Group.

5. **Eighteen (18) months** after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) a **preliminary draft final report** in English including the final evaluation methodology for assessing the EU OSH Directives and describing the results of the evaluation of Directive 89/654/EEC. This preliminary draft final report must be presented and discussed at the **fourth (4th) meeting** with the Commission (Unit EMPL F/4) and the day after with the ACSH Working Group. The conclusions of those meetings will be taken into account by the contractor in preparing the draft final report.
6. **Twenty-one (21) months** after signature of the contract, the contractor must submit to the European Commission (Unit EMPL F/4) a **draft final report** in English. This draft final report will contain both an effective and efficient common evaluation methodology for the systematic assessment of European OSH legislation applicable to all EU Member States and a cross-nationally comparative evaluation of Directive 89/654/EEC in all 27 Member States and a sample of EFTA-EEA countries.
7. The European Commission (Unit EMPL F/4) may communicate any objections and comments to the contractor within **sixty (60) days of receiving** the draft final report. **Within thirty (30) days of receiving** such objections and comments, the contractor must submit a **final report** in English taking account of them. Having done so, the contractor can obtain written acceptance. If there are no objections and/or comments from the European Commission (Unit EMPL F/4) **within the sixty (60) days** of receiving of the draft final report, the report will be regarded as accepted.

The final report submitted by the contractor must cover the various aspects referred to in section 3 above.

The detailed methods and plan of work and the various reports mentioned in this section must be submitted to the Commission (Unit EMPL F/4) both in hard copy (in triplicate) and in a widely used electronic format. The contractor must also provide a copy of the information collected and used in preparing the final report. At the contractor's request, this information will be treated confidentially.

5.2. Publicity and information requirements

In accordance with the General conditions, all contractors are under the obligation to acknowledge that the present service has been commissioned for the Community in all documents and media produced, in particular final delivered outputs, related reports, brochures, press releases, videos, software, etc, including at conferences or seminars. In the context of the Community Programme for Employment and Social Solidarity – PROGRESS, the following formulation shall be used:

This (publication, conference, training session etc) is commissioned under the European Community Programme for Employment and Social Solidarity - PROGRESS (2007-2013). This programme is managed by the Directorate-General for Employment, social affairs and equal opportunities of the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries.

PROGRESS mission is to strengthen the EU contribution in support of Member States' commitment. PROGRESS will be instrumental in:

- *providing analysis and policy advice on PROGRESS policy areas;*
- *monitoring and reporting on the implementation of EU legislation and policies in PROGRESS policy areas;*
- *promoting policy transfer, learning and support among Member States on EU objectives and priorities; and*
- *relaying the views of the stakeholders and society at large*

For more information see:

<http://ec.europa.eu/social/main.jsp?catId=327&langId=en>

For publications it is also necessary to include the following reference: "The information contained in this publication does not necessarily reflect the position or opinion of the European Commission"

With regard to publication and any communication plan linked to the present activity, the Contractor will insert the European Union logo and mention the European Commission as the Contracting Authority in every publication or related material developed under the present contract.

5.3 Reporting requirements

PROGRESS will be implemented through a results-based management - RBM. Managing for outcomes and results is about working to maximise results for European citizens. This includes:

- Identifying the most important results for European citizens;
- Managing for these results, including setting clear desired results, implementing plans based upon these results and learning about 'what works' in the process;
- Seizing opportunities to work together whenever this helps achieve the results.

As a first step, a Strategic Framework for the implementation of *PROGRESS* has been developed in collaboration with Member states and organisations from the civil society. The Strategic Framework provides the framework for implementing *PROGRESS*, complemented by the Performance Measurement, which defines *PROGRESS* mandate, its long-term and specific outcomes. See in Annex the overview of *PROGRESS* performance measurement framework. For more information on the strategic framework, please visit *PROGRESS* website.

The Commission will in that context monitors the effect of *PROGRESS* supported or commissioned initiatives and considers how these initiatives contributes to *PROGRESS* outcomes as defined in the Strategic Framework. In that context, the Contractor will be asked to loyally work in close cooperation with the Commission and/or persons authorised by it to define their expected contributions and the set of performance measures against which their contribution will be assessed. The Contractor will be asked to collect and report on its own performance to the Commission and/or persons authorised by it against a template which will be annexed to the contract. In addition, the Contractor will make available to the Commission and/or persons authorised by it all documents or information that will allow *PROGRESS* performance measurement to be successfully completed and to give them the rights of access.

6. Schedule of audits to be carried out in accordance with Article II.17 of this Contract

.....

Contractor's Tender

ANNEX II

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See attached document: pages.

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ANNEX III Breakdown of prices

1. Breakdown of prices

Description	Unit price in €	Max. No of units	Unit type	Sub-total per item	Total amounts in €
FEES AND DIRECT COSTS (fixed prices)					
Experts' fees (to be specified for each specific task)					0,00
Details	0,00	0	w.d.	0,00	
Other direct costs (to be specified)					0,00
Details	0,00	0	unit	0,00	
Sub-total "Fees and Direct Costs" (Art. I.3.1)					0,00
REIMBURSABLE EXPENSES (max. prices)					
Travel expenses					0,00
Journeys for experts as mentioned in Annex I					
Details	0,00	0	trip	0,00	
Provision for supplementary journeys upon request of the Commission					
Details	0,00	0	trip	0,00	
Accommodation expenses					0,00
Hotel expenses for experts as mentioned in Annex I					
Details	0,00	0	pers..	0,00	
Provision for supplementary accommodation expenses upon request of the Commission					
Details	0,00	0	pers.	0,00	
Subsistence expense					0,00
Subsistence expenses for experts as mentioned in Annex I					
Details	0,00	0	w.d.	0,00	
Provision for supplementary subsistence upon request of the Commission					
Details	0,00	0	w.d.	0,00	
Shipment and/or other reimbursements (to be specified)					0,00
Details	0,00	0	unit	0,00	
Contingencies (cannot be used without the prior and express approval by the Commission, by the way of a written note allowing for reallocation(s) of part or total of this provision to one or several items above)					
Calculation base	0,00				
Contingencies: approx. % of calculation base		0	%	0,00	
Sub-total "Reimbursable Expenses" (Art. I.3.3)					0,00
Overall Total				MAXIMUM	500,000 €

w.d. =1 working day for 1 expert

Additional information to the Breakdown of prices

See attached document: pages.

2. Calculation of amounts due under the present Contract

2.1. Fees

Initial calculation based on unit price(s) per w.d. of expert(s) depending on the level of qualification of the expert(s) executing the mission. The unit price(s) is (are) expected to cover the expert(s) fees, the

Contractor's administrative expenses, as well as the costs of producing the contractual number of copies of the required report(s) ¹⁰ in the required format(s), but does not include the reimbursable expenses defined below.

N.B. Duration of the services: This includes, besides the time necessary for the carrying out of the services themselves, the necessary time for preparatory work, trips and travelling back and forth between the offices of the Contractor and/or the expert(s) and the places where the services are being carried out and for meetings with the services of the Commission, as well as time for the preparation of reports and output documents related to the work.

2.2. Reimbursements

If the reimbursement of expenses is foreseen in the Special Conditions, the Commission will reimburse only:

- the subsistence expenses of the Contractor and his staff,
- travel expenses (other than local transport costs),
- expenses for the shipment of equipment or unaccompanied luggage,

directly connected with performance of the tasks specified in Article I.1. of this Contract.

2.2.1 DSAs (Daily Subsistence Allowances)

The daily subsistence allowance (DSA) is paid as a flat-rate amount and is considered to cover breakfast and two main meals, local travel, the cost of telecommunications, including fax and Internet, and all other sundries. They will be paid for each calendar day spent on mission away from the usual place of work, provided that the corresponding assignment is of a short-term nature. The DSA will vary according to the country in which the missions are to be carried out.

Daily subsistence allowances (DSA) are to be calculated as follows according to the length of the mission:

- 6 hours or less: reimbursement of actual expenses (on production of supporting documents);
- more than 6 hours but not more than 12 hours: 0.5 DSA;
- more than 12 hours, but not more than 24 hours: 1 DSA;
- more than 24 hours but not more than 36 hours: 1.5 DSA;
- more than 36 hours but not more than 48 hours: 2 DSA;
- more than 48 hours but not more than 60 : 2.5 DSA, and so on.

The agreed rates (in EUR per calendar day) to be used for the purposes of the present Contract are set as follows:

Destinations		DSA in EUR	Maximum hotel price in EUR
AT	Austria	95,00	130,00
BE	Belgium	92,00	140,00
BG	Bulgaria	58,00	169,00
CY	Cyprus	93,00	145,00
CZ	Czech Republic	75,00	155,00
DE	Germany	93,00	115,00
DK	Denmark	120,00	150,00
EE	Estonia	71,00	110,00
EL	Greece	82,00	140,00
ES	Spain	87,00	125,00
FI	Finland	104,00	140,00
FR	France	95,00	150,00
HR	Croatia	60,00	120,00
HU	Hungary	72,00	150,00
IE	Ireland	104,00	150,00

Destinations		DSA in EUR	Maximum hotel price in EUR
IT	Italy	95,00	135,00
LT	Lithuania	68,00	115,00
LU	Luxembourg	92,00	145,00
LV	Latvia	66,00	145,00
MK	F.Y.R. of Macedonia	50,00	160,00
MT	Malta	90,00	115,00
NL	The Netherlands	93,00	170,00
PL	Poland	72,00	145,00
PT	Portugal	84,00	120,00
RO	Romania	52,00	170,00
SE	Sweden	97,00	160,00
SI	Slovenia	70,00	110,00
SK	Slovakia	80,00	125,00
TR	Turkey	55,00	165,00
UK	United Kingdom	101,00	175,00

¹⁰ All details on Monitoring and Reporting are to be indicated and included in the Tender Specifications.

2.2.2 *Travel expenses*

Travel expenses shall be reimbursed following the provisions of Article II.7.3.

3. Additional provision

It is understood that the Parts “Fees and Direct Costs” and “Reimbursable Expenses” are set as provisions only. They constitute a maximum for the overall cumulative value of all services rendered by the Contractor under the present Contract – they will be due only if services are actually rendered to the Commission according to this Contract and its Annexes, both in quantity and in quality.

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ANNEX IV CVs and classification of experts

1. Classification of experts according to level of expertise

<i>Level of qualification</i>	<i>Category of personnel</i>
I	Highly qualified expert having assumed important responsibilities in his/her profession, recruited for his/her management/supervisory, thought and creativity skills as regards professional practise. He/she must have at least 15 years professional experience of which at least 7 must be connected with the professional sector concerned and the type of tasks to be performed.
II	Highly qualified expert having assumed responsibilities in his/her profession, recruited for his/her management/supervisory, thought and creativity skills as regards professional practise. He/she must have at least 10 years professional experience of which at least 4 must be connected with the professional sector concerned and the type of tasks to be performed.
III	Certified expert having received a high-level training in his/her profession, recruited for his/her thought and creativity skills as regards professional practise. He/she must have at least 5 years professional experience of which at least 2 must be connected with the professional sector concerned and the type of tasks to be performed.
IV	Junior expert, newcomer to the profession but holding a university degree or equivalent training related to the professional sector concerned and the type of tasks to be performed.

2. List of experts assigned

<i>Full names of experts assigned</i>	<i>Level of Qualification (I to iv, see above)</i>
M.....	
M.....	
M.....	

3. CVs of experts assigned

See Annex II.

Fiscal provisions regarding invoicing by the Contractor

Choose 1 out of 4 options:

- **(option 1: the Contractor is subject to VAT and his place of fiscal imposition is in Belgium)**

Local supplies and services

Supplier with fiscal imposition place in Belgium – delivery address in Belgium

1. VAT exemption – Exemption level

In Belgium, the terms of the present Contract have the same value as the VAT exemption request No 450 (VAT exemption – Article 42, § 3.3, VAT Code).
The European Commission benefits of a direct VAT exemption for all invoices EUR 123.95 and more.

2. Invoicing the Commission

An invoice will be made for each payment related to the present Contract. The applied VAT rate and amount shall be specified.

In view of VAT exemption, invoices addressed to the European Commission should bear the mention:

“Exonération de la TVA, article 42, § 3.3, du code de la TVA” or

“Vrijstelling van BTW, artikel 42, § 3.3, BTW-Wetboek”.

The above indication is given only as piece of information. The Contractor must refer to the Belgian national laws.

- **(option 2: the Contractor is subject to VAT and his place of fiscal imposition is a Member State other than Belgium)**

Intra-community supplies and services

Supplier with fiscal imposition place in a Member State other than Belgium – delivery address in Belgium

1. VAT exemption level

The European Commission benefits of a direct exemption of VAT for all invoices of EUR 123.95 and more.

2. Use of form 15.10

To allow the Contractor to justify to the fiscal authorities an invoicing to the European Commission using a 0% VAT rate (direct exemption) or to enable the benefit of the exemption by reimbursement, it is necessary to use the form 15.10.

These forms have recently been up-dated, and the new versions are the only ones to remain in official use. They entered into force on 01.04.1997, with a new ref. XXI/03278 – 01.04.1997.

See attached document: 2 pages and 1 page of explanatory notes.

3. Signature of the form 15.10 – Delegation of signature

The forms must normally be signed by the fiscal authorities of Belgium. However, a delegation of signature has been awarded by the Belgium authorities to the European Commission – ref. ET 76430 of 22.12.1992 (this ref. No. should be inserted in box 7 of new form 15.10). The Commission being represented for the present Contract by Costas CONSTANTINOU, Head of Unit - EMPL/F/4 of Employment, Social Affairs and Equal Opportunities DG, form 15.10 will therefore be signed by the latter.

4. Invoicing the Commission

An invoice will be made for each payment related to the present Contract. The applied VAT rate and amount shall be specified. Concerning the direct VAT exemption or VAT exemption by the way of reimbursement, the invoice shall bear all the necessary mentions.

The above indication is given only as piece of information. The Contractor must refer to the national laws in force in his Member State of fiscal imposition.

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- **(option 3: the Contractor is not subject to VAT)**

Not applicable to the present Contract.

- **(option 4: the country of fiscal imposition of the Contractor is unknown)**

Provisions to be applied depending on the country of fiscal imposition of the Contractor.

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ANNEX VI **Final technical report to be submitted**

See attached document(s): pages.

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