



EUROPEAN COMMISSION  
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

## **CALL FOR TENDERS**

### **No ENTR/08/040**

*TITLE: The nature and impacts of barriers to trade with the United States for European defence industries*

*Open procedure, 2008-S 139-185292 (19/07/2008)*

## **SPECIFICATIONS**

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## **1. PRELIMINARY INFORMATION CONCERNING THE INVITATION TO TENDER**

These specifications follow the publication of:

- the prior information notice in OJ 2008 S – 038-051602 of 23/02/2008
- the contract notice in OJ 2008 S-139-185292 (19/07/2008)

### **1.1. NATURE OF THE CONTRACT**

Service contract: The nature and impacts of barriers to trade with the United States for European defence industries.

### **1.2. BACKGROUND**

There has been a long history of commercial ties in the defence field between the United States and many Member States of the European Union. This was born out of the Cold War and the creation of the NATO alliance. Although many Member States have long established defence industries, the United States has, since the Second World War, been a major arms supplier to its partners in NATO and other allies.

While the US has exported considerable quantities to arms to Europe there has not been an equivalent flow in the other direction. This is not surprising given the size of the US defence budget amounting to around half of the world's defence spending<sup>1</sup> which has allowed it to maintain strong national industrial capabilities across the whole spectrum of defence technologies.

The lack of access to the American market for European defence companies is raised in the European Commission's Communication on a *Strategy for a Stronger and more Competitive European Defence Industry*<sup>2</sup>. It also points out that, in addition to improving access, it was for the European defence industry to match its competitors in the US in terms of innovation and quality.

There are a number of direct and indirect barriers to accessing the US market. In the United States, there is an inherent preference for US products reinforced by the 'Buy American' defence provisions. The Department of Defense (DoD) has an explicit programme to defend its technological leadership and ensure its national autonomy, and so it takes a guarded approach to transfers of US technology and to direct foreign investment in R&D and production facilities in the US. The Committee on Foreign Investment in the US (CFIUS), in which the DoD participates, can impose strict conditions on, or even ban, foreign investments in US companies in the defence sector which create high barriers to direct investments into the US defence industrial base.

The US Government has taken action to improve defence trade with certain allied countries; for example, there have been *Declarations of Principles on defence equipment*

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<sup>1</sup> SIPRI Yearbook 2006

<sup>2</sup> COM (2007) 764 final, adopted on 5 December 2007

*industrial cooperation* (DoPs) signed bilaterally with some EU Member States including UK, Denmark and Sweden with a view to facilitate cooperative projects between the US and the individual countries concerned. Moreover, the US DoD has concluded bilateral MoUs with several Member States about reciprocity of market access. More recently, in 2007, the Bush administration signed a US/UK Defence Cooperation Treaty which, subject to ratification, will allow the exchange of certain goods and services without the need for an export licence.

European companies have pursued a number of strategies to overcome barriers to improve access to the US market. The principal ones are:

- 1) jointly developing defence systems under agreement between governments (e.g. the Medium Extended Air Defence System (MEADS));
- 2) teaming arrangements with US prime contractors for specific US programmes (e.g. EADS & Northrop Grumman bid for the contract to produce the next generation of the US Air Force's refuelling tankers);
- 3) buying an American subsidiary to become a 'national' supplier in the US (e.g. a strategy pursued extensively by BAE Systems); and
- 4) establishing joint ventures, which are rare.

The purpose of the study is to look at the hurdles facing the European defence industry in accessing the US market, the impact this is having on the European Defence and Technological Industrial Base<sup>3</sup> (EDTIB) and recommend ways access can be improved.

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

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

It is expected to be signed in December 2008

The duration of the tasks shall not exceed *twelve* months.

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

### **1.4. PERIOD OF VALIDITY OF THE TENDER**

The offer must remain valid for a period of 8 months following the final date for submitting tenders (see point 6 of the invitation to tender). During this period, the tenderer may not modify the terms of his tender in any respect.

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<sup>3</sup> <http://www.eda.europa.eu/newsitem.aspx?id=58>

## 1.5. DATE AND PLACE OF OPENING OF THE TENDERS

Tenders will be opened at **02.30 PM** on **18/09/2008** at the following location:

*Office address:*

*European Commission  
Enterprise and Industry Directorate-General  
Avenue d'Auderghem 45, (BREY 9/147)  
B-1040 Brussels, Belgium*

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

## 1.6. CONTACT BETWEEN THE TENDERER AND THE COMMISSION

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

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

- After the opening of tenders :

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

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

*European Commission  
Enterprise Directorate-General  
Invitation to tender No: ENTR/08/040  
Unit H1  
Administrative address (BREY 9/147)  
B-1049 Brussels - BELGIUM  
Fax: (+32-2)-296 70 14 - e-mail: entr-def-tra@cec.eu.int*

Insofar as it has been requested in good time, the additional information will be made available to all economic operators who requested specifications or showed interest in

submitting a bid no later than six calendar days before the final date for the receipt of bids or, in the case of requests for information received less than eight calendar days before the final date for the receipt of bids, as soon as possible after the request for information has been received.

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

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

## **1.7. TERMS OF PAYMENT**

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

The payment scheme will consist of one pre-financing of 20 %, an interim payment of 30 % and the balance of 50 %.

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

## **1.8. GUARANTEES**

The Contractor may be required to provide a guarantee for pre-financing of 20% of the amount specified under I.3 of the draft contract, in compliance with article II.4.1 of the draft contract. The Commission reserves the right to cancel the pre-financing foreseen, according to its management risk analysis or in the case the awarded tenderer refuses such pre-financing guarantee, and to modify the final version of the contract accordingly.

## **1.9. GENERAL TERMS AND CONDITIONS FOR THE SUBMISSION OF TENDERS**

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

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

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

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

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

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

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

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

Variants are *not* allowed.

#### **1.10. NO OBLIGATION TO AWARD THE CONTRACT**

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

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

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

#### **1.11. PLACE OF PERFORMANCE**

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

## 1.12. SUBCONTRACTING

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

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

Accordingly:

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

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

Consequently, the bid must clearly identify the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set out in 1.9 above, in particular article II.17 of the standard service contract by returning the form in annex 5.5, filled in and signed.

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

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

## 1.13. JOINT OFFERS

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

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

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

*Each member of the grouping assumes a joint and several liability towards the Commission. **The offer has to be signed by all members of the group.*** However, if the members of the group so desire they may grant an authorisation to one of the members of the grouping. In this case they should attach to the offer a power of attorney (see model in annex 5.6). 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 5.6) is valid also for signature of the contract.

## **2. FORM AND CONTENT OF THE TENDER**

### **2.1. GENERAL**

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

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

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

Tenders **must include** the following information:

- all the **information and documents requested by the Commission** in order to assess the tender. In order to help tenderers presenting a complete tender, a **checklist of the documents to submit is provided in annex 5.7**. This checklist does not need to be included in the tender but we encourage to use it in order to ease the assessment of the tenders;
- the **price in euros**;
- one **specimen signature of an authorised representative** on the legal entity form ([http://europa.eu/comm/budget/execution/legal\\_entities\\_fr.htm](http://europa.eu/comm/budget/execution/legal_entities_fr.htm)), and a

statement confirming the validity of the tender (preferably in blue ink), the tender must provide evidence of the authorisation to sign in name of the tenderer;

- the **name of a contact person** in relation to the submission of the bid.

## 2.2. HOW TO SUBMIT A TENDER

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

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

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

## 2.3. STRUCTURE OF THE TENDER

All tenders must be presented in five sections:

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

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

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

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

**Section five:** Financial Proposal (see 2.3.3)

### 2.3.1. *Section One: Administrative proposal*

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

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

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

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

[http://europa.eu/comm/budget/execution/legal\\_entities\\_fr.htm](http://europa.eu/comm/budget/execution/legal_entities_fr.htm)

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

[http://europa.eu/comm/budget/execution/ftiers\\_fr.htm](http://europa.eu/comm/budget/execution/ftiers_fr.htm).

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

**For private and public entities:**

- a legible copy of the notice of **appointment of the persons authorised to represent the tenderer** in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

**For Individuals:**

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

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

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

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

### 2.3.2. *Section Four: Technical proposal*

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

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

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

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

### 2.3.3. *Section Five: Financial proposal*

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

- **prices must be expressed in euros;**
- **prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT,** as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.  
  
For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Community is exempt from VAT;
- **Prices shall not be conditional and be directly applicable by following the technical specifications.**
- **Prices shall be *fixed and not subject to revision.***
- The reference price for the award of the contract shall consist of *one amount* **the amount in payment of the tasks executed**, as stated in Article I.3.1 of the contract.

For each category of staff to be involved in the project, the tenderer must specify:

§ the total labour costs;

§ the **daily rates** and **total number of days** (man-days) each member of staff will contribute to the project;

§ other categories of costs, except for the costs specified under point b) 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;

- *Meetings with the Commission:*

1) a kick-off meeting between the contractor's project manager and the Commission's services in the Commission's offices in Brussels, not later than 14 days after the contract has been signed by both parties, to discuss the draft outline approach and work programme elaborated by the contractor for the execution of the contract. 2) an interim meeting between representatives of the contractor's project team and the Commission's services, not later than five months after the signature of the contract. This meeting will discuss the draft interim report, any Commission comments made on it and next steps. This meeting will take place in the Commission offices in Brussels.

3) a final meeting between representatives of the contractor's project team and the Commission's services no later than one month after the submission of the draft final report, to discuss the Commission's comments on it. This meeting will also take place in the Commission's offices in Brussels.

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

**Tenderers must use the following format to formulate their financial proposal;**

*The table below should be adapted to the complexity of the contract for which you are inviting tenders.*

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

Subtotal (2)	
<b>TOTAL (1+2)</b>	

Tenders presenting a total price greater than **90.000 €** will be rejected and shall be excluded from award.

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

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

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

### **3. ASSESSMENT AND AWARD OF CONTRACT**

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

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

The aim of each of these stages is:

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

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

##### ***3.1.1. Declaration***

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

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

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

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

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

### ***3.1.2. Grounds for disqualification***

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

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

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

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

### ***3.1.3. Evidence***

*The Commission may decide to check information in relation to one or several exclusion criteria indicated in the declaration on oath, after the time limit to submit tenders. The tenderer may be required to provide the evidence listed below in a time limit the Commission will specify in its request:*

1. The Commission shall accept as satisfactory evidence that the tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied;

2. The Commission shall accept, as satisfactory evidence that the tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State.
3. Where the document or certificate referred to in paragraph 1 & 2 is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.
4. Depending on the national legislation of the country in which the tenderer is established, the documents referred to in paragraphs 1, 2, 3 and 3.1.1 shall relate to legal persons and/or natural persons including, where necessary, company directors or any person with power of representation, decision-making or control in relation to the candidate or tenderer. This would be the case when the national legislation concerned gives juridical responsibility of the acts committed by a legal entity (moral persons) to their legal representatives. The tenderer shall provide information on the ownership or on the management, control and power of representation of the legal entity whenever necessary for the proper understanding of the evidence submitted or whenever the Commission requests it.
5. Where they have doubts as to whether tenderers are in one of the situations of exclusion, the Commission may itself apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.
6. The Commission may waive the obligation of a tenderer to submit the documentary evidence referred to in paragraphs 1 and 2 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided to the Commission in a previous procurement procedure and confirm that no changes in his situation have occurred. He shall indicate in its tender all the references necessary to allow the Commission services to check this evidence.

#### ***3.1.4. Administrative and financial penalties***

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

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

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

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

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

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

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

This rule applies to all legal entities once they have chosen to be tenderers. If the tender includes subcontractors, the Commission reserves the right to request evidence of their economic and financial capacity if the tasks subcontracted represent a substantial part of the contract.

#### 3.2.1. Selection criteria

<b><u>SELECTION CRITERIA</u></b>
<b>1. FINANCIAL AND ECONOMIC CAPACITY</b>
<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 Reliability of the mitigating measures presented to cover possible deficiencies in the evidence presented for the above criteria.</i>
<b>2. TECHNICAL AND PROFESSIONAL CAPACITY</b>
<i>The tenderers (and, if relevant, the members of the consortium) will have to prove their:</i>
<i>2.1 knowledge and expertise in transatlantic defence trade as well as the defence industry in both the United States of America and the European Union substantiated by evidence of at least three years of relevant experience.</i>
<i>2.2 Demonstrable expertise in the regulatory and policy framework governing transatlantic defence trade and especially in the United States substantiated by evidence of at least three years of relevant experience.</i>
<i>2.3 Demonstrable knowledge of, and access to, the necessary data sources in</i>

*all the markets covered by the specifications to provide a thorough and relevant review of the issues substantiated by relevant evidence of at least two years of experience.*

*2.4 Fluency in English (both written and spoken).*

*2.5 Reliability in terms of sufficient resources to perform all the tasks within the period foreseen by the contract.*

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

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

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

- a) *A full copy of the concerned legal entities' annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) of the last two years, as approved by the general assembly of the company and, where applicable, audited and/or published. These documents must be signed by the authorised representative of the tenderer;*
- b) *Alternatively to a), by filling Annex 5.4, 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.

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

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

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

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

*This evidence refers to selection criteria 1.1, 1.2, 2.1, 2.2, 2.3, 2.4, & 2.5,*

- b) *a list:*

*of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;*

*This evidence refers to selection criteria 1.1 & 1.2*

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

*This evidence refers to selection criteria 1.1, 1.2, & 2.5*

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

*This evidence refers to selection criteria 1.1, 1.2, 2.1, 2.2, 2.3 & 2.4*

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

*This evidence refers to selection criteria 1.1 & 1.2*

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

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

*In addition, all tenderers are informed that they may be asked to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a*

*professional or trade register or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.*

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

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

No	Qualitative award criteria	Weighting (maximum points)
1.	Understanding of the objectives of the contract, its scope and the work to be carried out.	20
2.	Quality of the methodology for identifying the main barriers for access for the European industry to the American defence market.	20
3.	Quality of the methodology for identifying the strategies currently used for overcoming these barriers and their impacts on the EDTIB.	30
4.	Quality of methodology for establishing recommendations for action to support European industry in accessing the US market.	30
<b>Total number of points</b>		<b>100</b>

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

*You are strongly recommended to use the following formulation.*

***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.***

Award criterion	
	Total price

*When there has been a maximum budget announced in the contract notice or specifications, please add the following:*

***Tenders presenting a total price superior to the maximum amount of 90.000€ will be excluded from the rest of the assessment procedure.***

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

<b>Final Evaluation</b>	
	<i>Total Price/Quality Points</i>

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

#### **3.4. INFORMATION FOR TENDERERS**

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

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

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

### **3.5. AWARD OF THE CONTRACT**

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

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

### **3.6. DATA PROTECTION**

The follow up of your response to the invitation to tender will require the recording and further processing of personal data (name, address, CV, for example). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. Except if mentioned otherwise, replies to questions and personal data are necessary for the purpose of assessing your tender according to the specifications of the invitation to tender and will only be processed by DG Enterprise and Industry, Unit H1 for this purpose. You may, upon request, obtain the communication of your personal data and rectify any inaccurate or incomplete personal data. Should you have any queries concerning the processing of your personal data, please address them to DG Enterprise and Industry, Unit H1. As regards to the processing of your personal data, you have a right to recourse at any time to European Data Protection Supervisor.

## **4. TECHNICAL SPECIFICATIONS**

### **4.1. DESCRIPTION OF TASKS**

The purpose of this invitation to tender is to identify the main barriers to trade with the United States encountered by the European defence industry, their impact and to examine strategies to improve access.

#### **Duties and tasks**

##### **Setting the scene**

###### *Globalisation*

It will be important to set the context of the study, in particular, by describing how the defence trade is affected by the general trends towards globalisation of world trade

###### *The US defence market and trade with the EU*

The size of the US defence market and its recent growth represents a major opportunity for the European defence industry while European defence budgets have, at best, remained static. At the same time, US and EU firms compete with each other and face new competition from new players such as Russia and China. In this context it will be important to clearly identify the scale and scope of the trade flows in defence goods between the US

and EU market, their relative importance in terms of overall trade between the two and identifying trends.

The study should also include a comprehensive summary of relevant statistics illustrating the current trade between the United States and the EU and how this has evolved since the early 1990s. The statistics should be broken down, as far as possible, into the key sectors of the industry such as aircraft, land, naval, etc. There should be a clear indication in which of these fields the EU is exporting to the US (this should be backed up with examples of contracts awarded and any principle restrictions/conditions that were set).

#### *Identifying barriers to trade*

The different barriers to trade affecting access to the US defence market should be identified and set out within the context of overall US industrial and security policies. This examination should cover both legislative measures governing access to the market and the policy behind them. Although the clear focus of the study is on the US market, there should also be a general comparative overview of measures governing access to the fragmented EU defence market with a particular focus on the Letter of Intent countries<sup>4</sup>.

### **Access Strategies**

#### *Political strategies*

European and national political strategies aiming at promoting EU-US trade in the defence sector should be examined. This examination should take account of the Commission's overall industrial strategy for the sector, as set out in the recent 'defence package'<sup>5</sup>, the role and initiatives pursued by the European Defence Agency, initiatives such as the Transatlantic Economic Council and the impact of national strategies such as the recent US/UK Defence Trade Co-operation Treaty.

#### *Industrial strategies*

There should also be an examination of the various existing strategies used by European companies to access the US market taking into account the description of the mechanisms and policies described in the earlier section on 'Identifying barriers to trade'. This assessment should look at these strategies and also consider the involvement of European SMEs directly in the US market and the transatlantic supply chain.

#### *Impact of these strategies on the EDTIB*

The methodology for this section should allow for an evaluation of the success of the initiatives and strategies and identify benchmarks for measuring their impact. There should also be an evaluation of the impact these strategies are having on the development of a competitive EDTIB i.e. can success in accessing the US defence market come at a price for the EDTIB in terms of loss of production, jobs, technology transfer etc. Part of the analysis should include a brief descriptive comparison with the approach taken by the US Government and American companies to access the EU market.

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<sup>4</sup> France, Germany, Italy, Spain, Sweden and the UK

<sup>5</sup> See COM (2007) 764

## **Drivers for Change**

This section should examine the drivers for change affecting access to the US defence market and how they are likely to evolve. It will be for the study to identify the drivers but they could include:

- § levels of R&D investment and the technological gap between the US and the EU;
- § evolution of defence budgets;
- § continuing consolidation of the industry in the EU;
- § NATO;
- § the possibility of increasing competition from third countries;
- § the rise in energy prices; and
- § the dollar/euro exchange rate.

## **Conclusions and recommendations**

The final part of the study should bring the above elements together and summarise the current state of EU/US trade in the field of defence. In particular it should:

- § summarise the main barriers (and policies behind them) preventing or restricting access to the American defence market and identify their relative importance to the European industry;
- § Identify the most successful strategies for overcoming these barriers and the impact on the EDTIB;
- § Identify how the drivers for change will affect access to the American defence market in the future; and
- § Options for European institutions and national governments to improve access to the US market.

## **4.2. REPORTS AND DOCUMENTS**

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

### **Work Plan**

- within 3 weeks after signature of the contract, a detailed description of the proposed approach for the execution of the study;

### **Interim Report**

- interim report: required for payment of the interim invoice, within 4 months from contract signature at the latest. The interim report should contain a summary of the main barriers for European companies accessing the US defence market and the main strategies used to overcome them and an indication of an approach for tackling the rest of the tasks requested.

- The interim report shall consist of a maximum of 15 pages with any essential additional background information provided, if necessary, in annexes. The Commission must approve the report, request changes or additional analyses or reject it within 20 days of receiving it. If the Commission fails to react within 20 days, the report will be considered to be accepted as the interim report. The contractor shall have 20 days to submit a revised report.

### **Final Report**

- final report: required for payment of the final invoice, at the conclusion of the service assignment, which must be executed during the period of execution of the contract (12 months). No later than 10 months after the contract is signed, the contractor must submit a draft final report to the Commission. This report must describe in detail and in full the information collected, the analyses and principal conclusions in line with section 4.1. above. The Commission will have 20 days to request amendments and additional analyses or reject the draft final report. 30 days after receiving the Commission's opinion on the draft final report, the contractor must submit the final report. An executive summary of no more than 15 pages and suitable for publication as a stand-alone paper must be included in the final report. The electronic version of the final report may be made available to the public on the Enterprise and Industry DG web site

All the reports should be submitted in English in 5 paper copies and electronically by e-mail (format Word for Windows).

<b>Time-line</b>	<b>Meetings</b>	<b>Reports</b>	<b>Approval of reports</b>	<b>Payments</b>
Contract signature				Pre-financing (20%) on request.
1 month	Kick-off meeting	Submission of work programme	Approval of work programme	
5 months	Interim meeting	Submission of interim report	Approval of interim report	Interim payment of 30%
10 months		Submission of final report		
11 months	Final meeting			
12 months		Submission of the final report	Approval of final report	Final payment (50%)

**5. ANNEXES**

**ANNEXES**

## 5.1. EXCLUSION CRITERIA FORM (INVITATION TO TENDER NO ENTR/08/040)

### Exclusion Criteria Form

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

- 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 operator<sup>6</sup>*)  
or
- 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 Communities' 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:

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<sup>6</sup> To be used depending on the national legislation of the country in which the candidate or 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 above<sup>7</sup>.

*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

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<sup>7</sup> Mandatory for contracts of value above €133 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.

## 5.2. DRAFT SERVICE CONTRACT

# SERVICE CONTRACT<sup>\*</sup>

CONTRACT NUMBER – [complete]<sup>8</sup>

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 Heinz Zourek, Director General, DG Enterprise and Industry,

of the one part,

and

[official name in full]

[*official legal form*]<sup>9</sup>

[*statutory registration number*]<sup>10</sup>

[official address in full]

[*VAT registration number*]

(hereinafter referred to as "the Contractor"<sup>11</sup>), [*represented for the purposes of the signature of this contract by [name in full and function,]*]

of the other part,

HAVE AGREED

the **Special Conditions** and the **General Conditions** below and the following Annexes<sup>12</sup>:

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\* The footnotes/options are internal instructions for authorizing officers only and must be deleted/completed before contracts are sent out. The General Conditions contain references to articles in the Special Conditions, the re-numbering of which should be avoided.

<sup>8</sup> Options [*in italics*] to be deleted where not applicable.  
Options [in roman] to be completed.

<sup>9</sup> Delete if contractor is a natural person or a body governed by public law.

<sup>10</sup> 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.

<sup>11</sup> In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract".

<sup>12</sup> Voluminous annexes may be replaced by a reference to the documents concerned, provided the content of such documents is not subject to challenge (by virtue of their public nature).

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

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

[Other Annexes]<sup>13</sup>

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

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

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

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<sup>13</sup> Specific additional rules resulting from the specific requirements of the contract concerned or imposed by the applicable legislation.

## **I – SPECIAL CONDITIONS**

### **ARTICLE I.1 - SUBJECT**

- I.1.1.** The subject of the Contract is deliver a study on the barriers to trade with the United States for European Defence Industries.
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

### **ARTICLE I.2 - DURATION**

- I.2.1.** The Contract shall enter into force on the date on which it is signed by the last contracting party.
- I.2.2.** Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.
- I.2.3.** The duration of the tasks shall not exceed 12 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

### **ARTICLE I.3 – CONTRACT PRICE**

- I.3.1.** *The* total amount to be paid by the Commission under the Contract shall be EUR, covering all tasks executed.

### **ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES**

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

**I.4.1.** *Pre-financing:*

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

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

a pre-financing payment of EUR [complete amount in figures and in words] equal to 20% 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

provided the report has been approved by the Commission.

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

Within thirty days of the date on which the report is approved by the Commission, an interim payment corresponding to [EUR complete amount in figures and in words] equal to 30% 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

provided the report has been approved by the Commission.

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

Within thirty days of the date on which the report is approved by the Commission, payment of the balance corresponding to [EUR complete amount in figures and in words equal to 50% of the total amount referred to in Article I.3.1] shall be made.

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

## **ARTICLE I.5 – BANK ACCOUNT**

Payments shall be made to the Contractor's bank account denominated in euro<sup>14</sup>, identified<sup>15</sup> 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*<sup>16</sup> code: [complete]]

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<sup>14</sup> Or local currency where the receiving country does not allow transactions in EUR.

<sup>15</sup> By a document issued or certified by the bank.

<sup>16</sup> BIC or SWIFT code for countries with no IBAN 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<sup>17</sup>:

### Commission:

European Commission  
Directorate-General [complete]  
[Directorate [complete]]  
[Unit [complete]]  
[Postcode and city]

### Contractor:

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

## **ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- I.7.1.** The Contract shall be governed by Community law, complemented, where necessary, by the national substantive law of the Kingdom of Belgium.
- I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

## **ARTICLE I.8 – DATA PROTECTION**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by [entity acting as data controller] 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 DG ENTR, unit H1 . The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

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<sup>17</sup> Fax number and e-mail accounts may be added. If an e-mail account is given, incoming e-mails should be redirected if the account holder is absent and a clause should be added specifying what is considered to be the reference date of the electronic communication (date of sending, receiving or opening).

## **ARTICLE 1.9 – TERMINATION BY EITHER CONTRACTING PARTY**

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 3 months formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to part-performance of the Contract. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

## **II – GENERAL CONDITIONS**

### **ARTICLE II.1 – PERFORMANCE OF THE CONTRACT**

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

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

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
  - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own

initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

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

## **ARTICLE II.2 – LIABILITY**

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

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

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

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

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

## **ARTICLE II.3 - CONFLICT OF INTERESTS**

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

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

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

**II.3.3.** The Contractor declares:

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

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

## **ARTICLE II.4 – PAYMENTS**

**II.4.1.** Pre-financing:

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

The guarantor shall pay to the Commission at its request an amount corresponding to payments made by it to the Contractor which have not yet been covered by equivalent work on his part.

The guarantor shall stand as first-call guarantor and shall not require the Commission to have recourse against the principal debtor (the Contractor).

The guarantee shall specify that it enters into force at the latest on the date on which the Contractor receives the pre-financing. The Commission shall release the guarantor from its obligations as soon as the Contractor has demonstrated that any pre-financing has been covered by equivalent work. The guarantee shall be retained until the pre-financing has been deducted from interim payments or payment of the balance to the Contractor. It shall be released the following month. The cost of providing such guarantee shall be borne by the Contractor.

#### **II.4.2. Interim payment:**

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

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

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

#### **II.4.3. Payment of the balance:**

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

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

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

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

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

## **ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS**

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

**II.5.2.** The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

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

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

## **ARTICLE II.6 – RECOVERY**

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

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

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

## **ARTICLE II.7 - REIMBURSEMENTS**

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

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

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

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

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

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

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

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

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

## **ARTICLE II.9 – CONFIDENTIALITY**

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

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

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

## **ARTICLE II. 11 – TAXATION**

- II.11.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- II.11.2.** The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.
- II.11.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

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

#### **ARTICLE II.12 – FORCE MAJEURE**

- II.12.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.12.2.** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4.** The contracting parties shall take the necessary measures to reduce damage to a minimum.

#### **ARTICLE II.13 – SUBCONTRACTING**

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

#### **ARTICLE II.14 – ASSIGNMENT**

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

## **ARTICLE II.15 – TERMINATION BY THE COMMISSION**

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

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- (d) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (e) where the Commission has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months<sup>18</sup> 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.

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<sup>18</sup> This period can be modified in the Special Conditions depending on the nature of the contract.

**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%<sup>19</sup> 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

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<sup>19</sup> The daily rate for liquidated damages may be modified in the Special Conditions where the subject of the contract so justifies.

the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

#### **ARTICLE II.17 – CHECKS AND AUDITS**

- II.17.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.
- II.17.2.** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

#### **ARTICLE II.18 – AMENDMENTS**

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

#### **ARTICLE II.19 – SUSPENSION OF THE CONTRACT**

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

#### **SIGNATURES**

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

For the Commission,  
[forename/surname/function]

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

## ANNEX I

### **Tender Specifications and Monitoring<sup>20</sup>**

*The purpose of this Annex is to enable the Commission to conduct, throughout the duration of the Contract, an accurate appraisal of whether the Contractor is executing the tasks assigned to him in accordance with the provisions of the Contract.*

*So that the Commission can regularly identify the progress made in execution of the tasks in accordance with the Tender Specifications, appropriate monitoring, assessment, and supervisory procedures shall be set up. For these purposes, this Annex shall include all necessary details, in particular, where relevant, the following:*

- (i) schedule of interim and final reports – terms for approval, structure and content (where provision is made for such reports and a specific annex is not necessary);*
- (ii) schedule of audits to be carried out in accordance with Article II.17 of the Contract.*

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

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<sup>20</sup> The following instructions are to be followed by the authorising officer but not published.

### 5.3. MODEL GUARANTEE

#### **Model Contract performance guarantee**

Bank (Letterhead)  
[Place/Date]

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

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

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

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

for performance of the contract concluded between the European Community and

[Firm/Name/Address – as given in the contract (No/exact title – hereinafter “the contract”)]  
(hereinafter “the Contractor”).

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

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

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

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

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

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

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

[Place/Date]

\_\_\_\_\_  
[Signature/Function]

\_\_\_\_\_  
[Signature/Function]

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

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

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

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

**5.5. SUBCONTRACTOR / LETTER OF INTENT ENTR/./..**

*Insert title of this call*

The undersigned: .....

Name of the company/organisation: .....

Address: .....

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

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

**Full name**

**Date**

**Signature**

.....

## 5.6. POWER OF ATTORNEY

### POWER OF ATTORNEY – MODEL 1

# Agreement / Power of Attorney

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

We the undersigned:

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

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

(1) In case the European Commission awards **[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** »).

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

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

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

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

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

- (a) The Group Leader shall sign any contractual documents—including the **[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:

(1) 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** »).

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

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

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

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

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

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

- (a) The Group Manager shall sign any contractual documents—including the [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

## 5.7. CHECKLIST OF DOCUMENTS TO BE SUBMITTED

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

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

Description	Section	Coordinat or 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 ( <a href="#">see annex 5.6</a> )	1		n		
Letter of intent of subcontractor ( <a href="#">see annex 5.5</a> )	1				n
Legal Entity Form ( <a href="#">see section 2.3.1</a> ) Download the form from : <a href="http://ec.europa.eu/budget/execution/legal_entities_en.htm">http://ec.europa.eu/budget/execution/legal_entities_en.htm</a>	1	n	n	n	n
Supporting documents for the Legal Entity File Form	1	n	n	n	
Financial Identification form ( <a href="#">see section 2.3.1</a> ) Download the form from: <a href="http://europa.eu.int/comm/budget/execution/ftiers_fr.htm">http://europa.eu.int/comm/budget/execution/ftiers_fr.htm</a> .	1	n		n	
Exclusion Criteria form ( <a href="#">see section 3.1</a> and <a href="#">annex 5.1</a> )	2	n	n	n	n
Evidence of Economic and financial capacity ( <a href="#">see section 3.2.2</a> and <a href="#">annex 5.4</a> )	3	n	n	n	
Evidence of Technical and professional capacity ( <a href="#">see section 3.2.3</a> ) Go to the following page to fill in the CV: <a href="http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1">http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1</a>	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 ( <a href="#">see section 2.3.2</a> and <a href="#">4</a> )	4	n
Financial Proposal ( <a href="#">see section 2.3.3</a> )	5	n

