



EUROPEAN COMMISSION
DIRECTORATE-GENERAL ENERGY AND TRANSPORT

Brussels,

INVITATION TO TENDER No. TREN/D1/40-2005

(open procedure)

Dear Sir or Madam,

1. The European Commission is launching an invitation to tender for a services contract regarding the following project :

Preparatory Studies for Eco-design Requirements of EuPs (I)

Directive 2005/32/EC¹ provides for the setting of eco-design requirements for energy-using products (EuP). First step in considering whether and which eco-design requirements should be set for a particular product is a preparatory study looking into the relevant provisions of the Directive and recommending ways to improve the environmental performance of the product. The preparatory study shall provide the necessary information to prepare for the next phases (carried out by the Commission) and in particular the impact assessment, consultation of the Forum and possible draft implementing measure.

This tender is subdivided into **14 lots**.

This invitation to tender follows the publication of:

- the prior information notice in OJEU S 30 of 11/02/2005
and
- the contract notice in OJEU S 129 of 07/07/2005

2. Tenderers who wish to submit an offer are invited to send to the European Commission **a bid duly signed** by their authorised representative, together with **three copies** of their bid, strictly identical to the original bid. Non signed bids will not be taken into consideration.

Bids can be submitted in two different ways:

- (a) **either by registered mail**

¹ Directive of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of eco-design requirements for Energy-Using Products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council

in this case the bid shall be submitted by Post office registered mail posted not later than **21/09/2005** (the stamp of the **post office** acting as proof) to the following address :

European Commission
Directorate-General Energy and Transport
DM 28 - 0/110 - Archives
B-1049 Brussels
Belgium

(b) or by hand-delivery

in this case hand delivery should be made at the Central Mail of the European Commission **not later than 4 p.m. on 21/09/2005** (Brussels time). Such hand delivery should be made at the following address:

European Commission
Directorate-General Energy and Transport – DM 28 0/110
Rue de Genève 1
B-1140 Brussels (Evere)
Belgium

A dated and signed receipt issued by an official of the above-mentioned department will be given as a proof of submission of the bid to attest the delivery of the bid.

Any type of delivery other than Post office registered mail shall be considered as hand delivery including delivery by private courier services.

Bids must be submitted in two envelopes, one inside the other. Both envelopes are to be sealed. **The inner envelope must be marked as follows:**

Call for tenders No. TREN/D1/40 lot ... -2005
not to be opened by the internal mail department
DM 28 0/110 – Archives

If self-sealed envelopes are used, they must be closed by adhesive tape with the sender's signature written across it.

The non-compliance with these formal conditions will entail the rejection of the bids at opening session.

3. The bids will be opened on 29/09/2005 at 10AM, in the offices of the Directorate General for Energy and Transport: mail department, 28 Rue De Mot (ground floor, office 110) 1040-Brussels.

This opening session will be public. A representative of each tenderer may assist to the opening of the bids. At the end of the opening session, the Chairman of the opening committee will indicate the name of the tenderers and the decision concerning the

admissibility of each offer received. The prices indicated in each received bid will not be indicated.

4. Submission of a bid implies full acceptance of the draft contract attached to this invitation totender.This offer will bind the tender during implementation, should the contract is awarded.
5. The terms specifications concerning this call for tenders are attached to this invitation to tender.
6. Validity period of the tender: nine months as from the final date for submission of tenders mentioned under point 2 above.
7. Tenderers will be informed by the Commission whether or not their bids have been accepted.
8. During the procedure, any contact between the contracting authority and the tenderers is prohibited. However, any additional information deemed necessary for preparing an adequate offer could be asked in writing at the latest ten days before the deadline for submission of the bids to the following address:

Mr Toth Andras
European Commission
DM 24- 4/112
B-1049 Brussels
Belgium

Fax (+ 32 2) 2964254 e-mail: andras.toth@cec.eu.int

The Commission will respond to such requests for additional information in strict compliance with the equal treatment principle. Before submitting any written question, the tenderers should consult the frequently asked questions relating to the current invitation to tender, located at the following webpage:

http://europa.eu.int/comm/energy/demand/legislation/eco_design_en.htm

Questions and answers will be published on this webpage with full respect to the anonymity of the enquiring tenderers.

Yours faithfully,

A. Gonzalez Finat
Director

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

Invitation to tender No. TREN/D1/40-2005 concerning
Preparatory Studies on Eco-design Requirements for EuPs (I)

1. Introduction

Many aspects of energy-using products (EuPs) have a negative impact on the environment (emissions to air including greenhouse gases, to soil, recycling, water consumption...).

In line with the Integrated Product Policy (which promotes the principle that requirements on the environmental performance of products should address all environmental aspects during the complete lifecycle of the product), the Commission decided in August 2003 to propose an integrated framework for setting “eco-design” requirements for EuPs (including energy efficiency requirements) while avoiding fragmentation of the market.

By adopting the proposal (Directive 2005/ / EC²), the European Parliament and the Council have granted a mandate to the Commission, assisted by a committee and after consultation of the stakeholders forum, to regulate the environmental characteristics of energy-using products (except vehicles) through adopting implementing measures (daughter directives) laying down eco-design requirements for particular EuPs.

2. Purpose of this procurement contract

First step in considering whether and which eco-design requirements should be set for a particular product is a preparatory study identifying and recommending ways to improve at the design phase the environmental performance of the product throughout its lifecycle.

The new Directive also highlights that energy consumption of all EuPs while in stand-by or off-mode should be reduced to the minimum necessary to their proper functioning. A horizontal study should therefore recommend ways to reduce stand-by and off-mode consumption of EuPs while improving their environmental performance.

Preparatory studies should provide the necessary information to prepare for the next phases (carried out by the Commission) and in particular the impact assessment, the consultation of the Forum and the possible draft implementing measure.

The study will identify namely: market characteristics for the product, the relevant environmental aspects of the product to be covered and their technical/economical potential for improvement, existing relevant legislation, self regulation by industry and standards, needs for standards to be developed.

² Directive of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of eco-design requirements for Energy-Using Products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council

The studies will involve affected stakeholders willing to contribute and keep a website updated with the most significant developments. For some of the products (those where raising the awareness of customers through labelling may be efficient), the studies will also examine the relevance of labelling schemes.

This tender is subdivided into 14 lots, each lot corresponding to a family of EuPs.

- Lot 1: boilers and combi-boilers (gas/oil/electric)
- Lot 2: water heaters (gas/oil/electric)
- Lot 3: Personal Computers (desktops & laptops) and computer monitors
- Lot 4: imaging equipment: copiers, faxes, printers, scanners, multifunctional devices...
- Lot 5: consumer electronics: televisions
- Lot 6: standby and off-mode losses of EuPs
- Lot 7: battery chargers and external power supplies
- Lot 8 : office lighting
- Lot 9: (public) street lighting
- Lot 10:residential room conditioning appliances (airco and ventilation)
- Lot 11:electric motors 1-150 kW and
 - § water pumps (in commercial buildings, drinking water pumping, food industry, agriculture)
 - § circulators in buildings
 - § fans for ventilation (non residential buildings)
- Lot 12: commercial refrigerators and freezers, including chillers, display cabinets and vending machines
- Lot 13: domestic refrigerators and freezers
- Lot 14: domestic dishwashers and washing machines.

Tenderers may submit their bid(s) for one or several lots; tenderers will send separate bids for every individual lot, identifying the lot number to be included in the tender number.

Technical, Environmental and Economic Analysis

EuP Eco-Design general methodology, applicable to all lots

PART I – PRESENT SITUATION

DEFINITION

Scope: This task should define the product category and define the system boundaries of the ‘playing field’ for eco-design. It is important for a realistic definition of design options and improvement potential and it is also relevant in the context of technically defining any implementing legislation or voluntary measures (if any).

Product category and performance assessment

- Prodcom category or categories (Eurostat)
- Categories according to EN- or ISO-standard(s)
- Labelling categories (EU Energy Label, Eco-label, Energy Star label)

If not defined by the above categorisation, it will often be linked to the assessment of the primary product performance parameters (the “functional unit”)

If needed, on the basis of functional performance characteristics and not on the basis of technology, a further segmentation can be applied on the basis of

- Secondary product performance parameters³.

Test Standards

Identify and shortly describe

- the harmonised test standards and
- additional sector-specific directions for product-testing, regarding the test procedures for:
 - the primary and secondary functional performance parameters mentioned above
 - resources use (energy, water, paper, toner, detergent, etc.) and emissions (SO₂, NO_x, particulate matter) during product-life
 - safety (gas, oil, electricity, EMC, stability of the product, etc.)
 - noise and vibrations (if applicable)
 - other product specific test procedures.

Apart from mentioning these standards, including a short description, it should also be reported which new standards are being developed, which other international standards could be relevant, which problems (e.g. regarding tolerances, etc.) exist and what alternatives are being developed or should be developed in particular in the context of mandate M341.

Existing legislation

Task 1.3 should identify the relevant legislation for the product. This task can be subdivided in three parts:

³ For instance, for washing machines and dishwashers the primary product performance parameters is given in x kg of laundry washed or x standard settings of dishes over the lifetime. The cleaning performance, rinsing performance, etc. can be secondary parameters. The number of (sub) categories should be kept to the minimum necessary, based on functional aspects and not on the basis of the technology or price.

Legislation and Agreements at European Community level

Apart from the obvious environmental directives (RoHS, WEEE, Packaging directive), this could be building regulations (e.g. developed under the Performance of Buildings Directive), regulations on product safety, health and labour conditions (e.g. for air conditioners, copiers), minimum efficiency directives (boilers, refrigerators, ballasts, etc.), product liability, safety, EMC, etc... Also EU Voluntary Agreements (Ceced, Eicta,...) and already existing eco-design standards (e.g. ECMA, EIA) of the sector or related sectors need to be identified. And finally, especially in a Business-to-business context it needs to be described which quality requirements (e.g. “proven design”, maximum failure rate) are customary.

Legislation at Member State level

This section deals with the subjects as above, but now for legislation that is indicated as being relevant by the Member States.

Third Country Legislation

This section again deals with the subjects as above, but now for legislation and measures in Third Countries (extra-EU) that have been indicated by stakeholders (NGO's, industry, consumers) as being relevant for the product group

ECONOMIC AND MARKET ANALYSIS

Scope: To place the product group within the total of EU industry and trade policy (subtask 2.1). To provide market and cost inputs for the EU-wide environmental impact of the product group (subtask 2.2). To provide insight in the latest market trends so as to indicate the market-structures and ongoing trends in product design (subtask 2.3, also relevant for the impact analyses in Task 3). And finally, to provide a practical dataset of prices and rates to be used in a Life Cycle Cost (LCC) calculation (Subtask 2.4).

Generic economic data

- EU Production
- Extra-EU Trade
- Intra-EU Trade
- Apparent EU-consumption⁴

Data should relate to the latest full year for which at least half of the Member States have reported. Preferably data should be in physical volume and in money units and split up per Member State.

Information for this subtask should be derived from official EU statistics so as to be coherent with official data used in EU industry and trade policy.

Market and stock data

In physical units, for EU-25, for each of the categories as defined in 1.1 and for reference years

- 1990 or 1995 (Kyoto ref.),
- 2003-2005 (most recent real data),
- 2010-2012 (forecast, end of Kyoto phase 1, relevant also for Stockholm, etc.),

⁴ Calculated from production, imports and exports. If available, changes in product stock should be taken into account, but usually this will not be the case.

- 2020-2025 (forecast, year in which all new eco-designs of today will be absorbed by the market)
- the following parameters are to be identified:
- Installed base (“stock”)⁵ and penetration rate,
 - Annual sales growth rate (% or physical units)
 - Average Product Life, differentiated in overall lifetime and time in service, (in years) and a rough indication of the spread (e.g. standard deviation)
 - Total sales/ real EU-consumption⁶, (also in € when available)
 - Replacement sales (derived)
 - New sales (derived).

Market trends

- General trends in product-design and product-features⁷
- Description of the market and of the production structure and identification of the major players
- Duration of redesign cycle of the EuP
- Latest consumer tests (anecdotal, not necessarily valid for the whole of the EU).

Consumer expenditure base data

For each of the categories defined in subtask 1.1:

- Average consumer prices, incl. VAT, in Euro

Determination of applicable rates for running costs and disposal, per EU Member State, specifically⁸:

- Electricity rates (€ kWh)
- Water (and sewage) rates (€m³)
- If applicable: fossil fuel rates (€ GJ)
- Consumer prices of other consumables (detergent, toner, paper, etc.) (€/kg or €/piece)
- Repair and Maintenance costs (€/product life)
- Installation costs (for installed appliances only)
- Disposal tariffs/ taxes (€/product)
- Interest and inflation rates (%).

CONSUMER BEHAVIOUR AND LOCAL INFRASTRUCTURE

Scope: Consumer behaviour can –in part- be influenced by product-design but overall it is a very relevant input for the assessment of the environmental impact and the Life Cycle Costs of a product. One aim is to identify barriers and restrictions to possible eco-design measures, due to social, cultural or infra-structural factors. A second aim is to quantify

⁵ Forecasts 2010 and 2020 are to take into account population growth rates and/or building growth rates

⁶ The objective is to define the actual consumption as reliably as possible for the categories defined in task 1.1, for the latest full year for which consistent data could be retrieved. Significant differences between the actual consumption and the apparent consumption in subtask 2.2 may occur.

⁷ From the marketing point of view, not from the perspective of a detailed technical analysis

⁸ Note that a part of these data could be harmonised for all product groups.

relevant user-parameters that influence the environmental impact during product-life and that are different from the Standard test conditions as described in Subtask 1.2.⁹

Identification of possible barriers to eco-design innovations

- cultural and social aspects relating to purchase, use and disposal of the product. Including an estimate of the e.g. second-hand market, repairs and product life, etc.
- local infra-structure related to the product. E.g. reliability of the electric grid and how consumers deal with it. Special tariffs and consumer behaviour. For installed appliances: Penetration of gas-grid, logistics of oil/coal/peat/ wood storage, chimney renovation costs, etc...

User defined parameters

Quantification of user-defined parameters relating to the product, e.g.

- load efficiency (real load vs. nominal capacity),
- temperature- and/or timer settings,
- dosage and consumption of auxiliary inputs (detergents, paper- and toner use, etc.),
- frequency and characteristic of use.

PRODUCT SYSTEM ANALYSIS

Scope: The Eco-design directive is clearly on product design; it does not regulate systems or installations as a whole. However Annex VII.4 of the directive looks into the interaction of the EuP with the installation/system in which it operates and implies that the possible effects of the EuP being part of a larger system and/or installation are identified and evaluated. This task includes therefore a functional analysis of the system to which the product belongs, including a rough estimate of the overall impacts¹⁰ and an assessment of how the integration of the product into the system and its design can improve its overall environmental performance.

DEFINITION OF BASE-CASE

Scope: For this assessment one or two average EU product (s) have to be defined or a representative product category as the “Base-case” for the whole of the EU-25 has to be chosen. On this Base-Case most of the environmental and Life Cycle Cost analyses will be built throughout the rest of the study. The Base-Case is a conscious abstraction of reality, necessary one for practical reasons (budget, time). The question whether this abstraction leads to inadmissible conclusions for certain market segments will be addressed in the impact- and sensitivity analysis.

The description of the Base-Case builds on the results of Tasks 1 to 3 plus a number of product-specific parameters that have to be established within this task.

⁹ Examples are the actual temperature-settings for laundry and dishwashing equipment, the loading efficiency (real load vs. nominal capacity) for a whole range of appliances, power management enabling rate for ICT equipment, etc..

¹⁰ E.g. from IPP studies like EIPRO

Product-specific inputs

- Bill-of-Materials, distinguishing materials fractions / electronics modules (weight) at the level of the EuP EcoReport Unit Indicators as proposed in the VHK Methodology report. This includes packaging materials.
- Primary scrap production during sheet metal manufacturing¹¹
- Volume and weight of the packaged product
- Annual resources consumption (energy, water, detergent) and direct emissions during product life according to the test standards defined in subtask 1.2 [“Standard Base-Case”]
- Annual resources consumption (energy, water, detergent) and direct emissions during product life according to the real-life situation as defined in subtask 3.2 [“Real-life Base-Case”]
- Most probably scenario at end-of-life of materials flow¹² for
 - o Disposal (landfill, pyrolytic incineration)
 - o Thermal Recycling (non-hazardous incineration optimised for energy recovery)
 - o Re-use or Closed-loop Recycling.

Base-Case Environmental Impact Assessment.

Using the “EuP EcoReport” (see <http://www.eupproject.org/>) indicate the environmental impact analysis, specifying

- emission/resources categories as mentioned in the “EuP Methodology Report”, for

- Raw Materials Use, Manufacturing
- Distribution,
- Use and
- End-of-Life Phase,

distinguishing for the Use phase between the Standard Base-Case and the Real-life Base-Case.¹³

Furthermore, if more than one type of resource is used in the Use phase, make a split-up between resources and their individual impacts.

Base-Case Life Cycle Costs

Combining the results from tasks 2 and 3 define – for the Standard and Real-Life Base-Case the Life Cycle Costs¹⁴

¹¹ Necessary input into “EuP EcoReport” (VHK, 2005)

¹² At least for plastics and electronics, as defined in the “EuP EcoReport”. For metals and glass this may also be indicated if the recycling percentage is less than 95%.

¹³ Making two analyses

¹⁴ $LCC = PP + PWF * OE$, where LCC is Life Cycle Costs, PP is the purchase price, OE is the operating expense and PWF (Present Worth Factor) is $PWF = \{1 - 1/(1+r)^N\}/r$, in which N is the product life and r is the discount (interest-inflation) rate.

EU Totals

Aggregate the Real-Life Base-Case environmental impact data (subtask 5.3) and the Life Cycle Cost data (subtask 5.4) to EU-25 level, using stock and market data from task 2, indicating

- The life cycle environmental impact and total LCC of the new products designed in 2005 (this relates to a period of 2005 up to 2005+product life)
- The annual (2005) impact of production, use and (estimated) disposal of the product group, assuming post-RoHS and post-WEEE conditions.¹⁵

EU-25 Total System Impact

Using the estimates of task 4 to estimate the total environmental impact of the product system and compare with outputs from input/output analysis (e.g. EIPRO study).

PART II – IMPROVEMENT POTENTIAL

TECHNICAL ANALYSIS

Scope: Identify design options, their monetary consequences in terms of Life Cycle Cost for the consumer, their environmental costs and benefits and pinpointing the solution with the Least Life Cycle Costs (LLCC) and the Best Available Technology (BAT). The assessment of monetary Life Cycle Costs is relevant to indicate whether design solutions might negatively or positively impact the total EU consumer's expenditure over the total product life (purchase, running costs, etc.). The distance between the LLCC and the BAT indicates - in a case a LLCC solution is set as a minimum target - the remaining space for product-differentiation (competition). The BAT indicates a medium-term target that would probably more subject to promotion measures than restrictive action. The BNAT (= Best Not yet Available Technologies see subtask 6.5) indicates long-term possibilities and helps to define the exact scope and nature of possible measures.

Options

- Identification and description of individual design options for environmental improvement

Impacts

- Quantitative assessment of the environmental improvement per option (using EuP EcoReport)

Costs

- Estimate of price increase due to implementation of these design options, either by looking at prices of products on the market and/or by applying a production cost model with sector-specific margins

¹⁵ The “Business-as-Usual” scenario is to be based on that assumption.

Analysis LLCC and BAT

- Ranking of the individual design options by LCC (e.g. option 1, option 2, option 3)
- Determination/ estimation of possible trade-offs (positive or negative side effects of the envisaged options/individual design measures)
- Estimating the accumulative improvement and cost effect of implementing the ranked options simultaneously (e.g. option 1, option 1+2, option 1+2+3, etc.), also taking into account the above possible side-effects
- Ranking of the accumulative design options, drawing of a LCC-curve (Y-axis= LLCC, X-axis= options) and identifying the Least Life Cycle Cost (LLCC) point and the point with the Best Available Technology (BAT).¹⁶

Long-term targets (BNAT) and systems analysis

- Discussion of long-term technical potential on the basis of outcomes of applied and fundamental research (BNAT= Best Not yet Available Technologies), but still in the context of the present product archetype
- Discussion of long-term potential on the basis of changes of the total system to which the present archetype product belongs: Societal transitions, product-services substitution, dematerialisation, etc...

SCENARIO-, POLICY-, IMPACT- AND SENSITIVITY ANALYSIS

Scope: This task summarizes and totals the outcomes of all previous tasks. It looks at suitable policy means to achieve the potential e.g. implementing LLCC as a minimum and BAT as a promotional target, using legislative or voluntary agreements, labelling and promotion. It draws up scenarios 1990 – 2020 quantifying the improvements that can be achieved vs. a Business-as-Usual scenario and compares the outcomes with EU environmental targets, the societal costs if the environmental impact reduction would have to be achieved in another way, etc...

It makes an estimate of the impact on consumers (purchasing power, societal costs) and industry (employment, profitability, competitiveness, investment level, etc.), explicitly describing and taking into account the typical design cycle (platform change) in a product sector. Finally, in a sensitivity analysis of the main parameters (as described in Annex II of the Directive) it studies the robustness of the outcome.

3. Reports and documents to be submitted

5 copies of the reports shall be supplied on paper form and one copy in electronic form, either in MS Word or in HTML format.

The Commission may publish the results of the study. For this purpose, the tenderer must ensure that there are no restrictions based on confidentiality and/or intellectual property rights are expected from the third party. Should he intend to use the study data, which cannot be published, this must be explicitly mentioned in the offer.

Timetable

The work shall start from the signature of the contract.

¹⁶ This is usually the last point of the curve showing the product design with the lowest environmental impact, irrespective of the price.

Shortly after 20 days from the signature of the contract a **kick-off meeting** will be held in (Brussels) in order to settle all the details of the study, report, etc to be undertaken.

Interim reports

Not later than

5 months after the signature of the contract for lots 7, 9,

9 months after the signature of the contract for lots 3, 5, 6, 8, 13, 14,

12 months after the signature of the contract for lots 1, 2, 4, 10, 11, 12,

an **interim report** on the drawing up of the study, report, etc is to be submitted to the Commission.

The Commission shall have

20 days for lots 7, 9

45 days for lots 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14

from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

Final Report

Not later than

9 months for lots 7, 9,

12 months for lots 3, 5, 6, 8, 13, 14

18 months for lots 1, 2, 4, 10, 11, 12,

after the signature of the contract the **draft final report** is to be submitted to the Commission.

For lots 7 and 9, the Commission shall have 20 days from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

For lots 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13 and 14, within 45 days after the submission of this draft final report the Commission will provide the contractor with its comments on the draft final report and the date of a **meeting** in Brussels will be agreed in order to discuss the Commission's comments. After this meeting, the Contractor shall have 20 days in which to submit additional information or a new report.

3a Information sourcing and publicity

The contractor shall involve the stakeholders willing to contribute, namely industry affected by the study (European federations, national associations and individual companies), representative consumer and environment NGO's. Stakeholders will get the opportunity for providing timely and appropriate contributions. To that effect, the contractor shall keep a website updated with the significant developments of the study.

4. Estimate of the amount of work involved

The estimated amount to carry out this contract is assessed at:

For lot 1: 400 000 €

<i>For lot 2:</i>	<i>400 000 €</i>
<i>For lot 3:</i>	<i>250 000 €</i>
<i>For lot 4:</i>	<i>350 000 €</i>
<i>For lot 5:</i>	<i>250 000 €</i>
<i>For lot 6:</i>	<i>300 000 €</i>
<i>For lot 7:</i>	<i>150 000 €</i>
<i>For lot 8:</i>	<i>250 000 €</i>
<i>For lot 9:</i>	<i>150 000 €</i>
<i>For lot 10:</i>	<i>350 000 €</i>
<i>For lot 11:</i>	<i>400 000 €</i>
<i>For lot 12:</i>	<i>350 000 €</i>
<i>For lot 13:</i>	<i>150 000 €</i>
<i>For lot 14:</i>	<i>250 000 €</i>

5. Terms of payment

Payments shall be issued in accordance to the provisions of the draft contract attached to this invitation to tender (Annex I).

6. Terms of contract

In drawing up his bid, the tenderer should bear in mind the terms of the draft contract attached to this invitation to tender (Annex I).

The Commission may, before the contract is signed, either abandon the procurement or cancel the award procedure for one or more lots without the tenderers being entitled to claim any compensation.

7. Financial guarantees

Guarantee on pre-financing

For any pre-financing higher than 100,000 EUR, a financial guarantee equivalent to amount of the pre-financing will be requested. Depending on the financial situation of the tenderers, the Commission may ask for the financial guarantee for amounts lower than 100,000 EUR.

8. Sub contracting

If the tenderer intends to either sub contract part of the work or realise the work in co-operation with another consultant he shall indicate in his offer which part will be subcontracted, as well as the name and qualifications of the subcontractor or partner. (NB: overall responsibility for the work remains with the tenderer).

9 Requirements as to the tender

Tenders must be drawn up in one of the official languages of the EU.

The tender must include:

- (a) a technical part including all the information and documents required by the contracting authority for the appraisal of tenders on the basis of the selection criteria set out under point 12 and the award criteria set out under point 13 of these specifications ;
- (b) a financial part setting out prices in accordance with point 10 of these specifications.

10 Prices

- Prices must be quoted in euro using (to the exception of the countries within the EURO zone) the conversion rates published in the C series of the Official Journal of the European Union on the day when the contract notice was published.
- Prices must be fixed amounts and include travelling expenses.
- Bids must indicate the number of actual man-days needed to carry out the work sought under this contract, split up per staff member involved;
- Under Article 3 and 4 of the Protocol on the privileges and immunities of the European Communities, the later are exempt from all duties, taxes and other charges, including VAT. These duties, taxes and other charges can therefore not enter in the calculation included in the bid. The amount of VAT must be shown separately.

11. Legal form to be taken by the grouping of service providers to whom the contract is awarded

Groupings, irrespective of their legal form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortia) must specify the company or person heading the project and must also submit a copy of the document authorising this company or person to submit a bid. If awarded, the contract will be signed by the company or the person heading the project, who will be, vis à vis the Commission, the only contracting party responsible for the performance this contract.

Tenders from consortiums of firms or groups of service providers, contractors or suppliers must specify the role, qualifications and experience of each member or group.

12. Information concerning the personal situation of the service provider and information and formalities necessary for the evaluation of the minimum economic, financial and technical capacity required

12.1 Legal position – means of proof required

Tenderers must indicate in which State they have their headquarters or domicile and to present the supporting evidence normally acceptable of that country law.

In addition, tenderers should provide evidence of their inscription in the professional/trade register. This could be evidenced either by a sworn statement or by any proof accepted under the law of the Member State in which tenderers are established. If the tenderer is a natural person, he/she must provide proof that he/she is covered by a social security scheme as a self-employed person

12.2 Grounds for exclusion

To be eligible for participating in this contract award procedure, tenderers must not be in any of the following exclusion grounds¹⁷:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any

¹⁷ Article 93 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16.9.2002)

analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have 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 they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have 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) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.
- (g) they have a direct conflict of interest (see Article II.3 of the general conditions of the contract) in particular with the industrial sector under consideration in the lot for which they submit a bid. This is valid for individual consultants and all partners participating in a consortium.

Evidence to be provided by the tenderers

1. The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point (a), (b) or (e) above, production of a recent extract from the judicial record 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.
2. The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point (d) above a recent certificate issued by the competent authority of the State concerned.

Where no such certificate is 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.

3. The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point (g) above, a solemn statement made in written by the interested party and annexed to the bid.

<p>Bids submitted by tenderers which do not contain such documents will not be taken into consideration for the evaluation.</p>
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12.3 Economic and financial capacity – means of proof required

To prove their financial and economic capacity, tenderers should provide with their offer the balance sheets or extracts from balance sheets for the last three financial years,

a statement of overall turnover and turnover relating to the relevant services for the last three financial years.

12.4 Technical and professional capacity – means of proof required

Tenderers should provide with their offer a detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills.

The CV's shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.

Selection criteria for technical and professional capacity
12.4.1 Knowledge and experience of at least 3 years in the fields of environmental impacts of products, eco-design, structure and functioning of the markets and industrial sectors to which belong the product(s) that will be investigated in the specific lot
12.4.2 Knowledge of the major legal texts, voluntary agreements, past studies, projects and databases which are relevant for the study (including those indicated in the detailed technical specifications)
12.4.3 Knowledge of relevant international policy initiatives and access to comprehensive information sources necessary for the study
12.4.4 Relevant research carried out and/or services provided in the field of the technical specifications

These criteria will be assessed on the basis of the documents referred to above. In addition, the Commission reserves the right to use any other information from public sources.

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

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 tenderer should demonstrate solid knowledge of the major past projects and databases which are relevant for the study;
- b) The tenderer should provide a list of relevant research carried out and/or services provided over the last 5 years, which proves that the tenderer has been active in the field of the technical specifications; summaries of the pieces of work that the tenderer considers most relevant for the present call/lot;
- c) The tenderer should provide an indication of the in-house available information and of contacts (e.g. with industry associations, participation in specialist networks etc) allowing easy access to comprehensive information necessary for the study.

13. Criteria for the award of the contract

- 13.1** The contract will be awarded to the tenderer who submits the most economically advantageous bid, as assessed on the basis of the following factors :

No	Qualitative award criteria	Weighting (maximum points)
1	Understanding of - the objectives of the study and of the issues involved	20
2	- the technical and economical aspects related to it, with special focus on the product(s) covered by the lot. This will be judged on the further elaboration of the tenderer on the information contained in the technical specifications. Merely repeating the mandatory requirements without going into detail or adding any value will result in a low score.	20
3	- Quality,	20
4	- relevance and feasibility,	20
5	- completeness	10
	of the proposed overall methodology/approach, including work plan, and timetable for carrying out the study. This will be judged on the further elaboration of the tenderer on the information contained in the technical specifications. Merely repeating the mandatory requirements without going into detail or adding any value will result in a low score.	
3.	Quality and comprehensiveness of data sourcing and processing	10
Total number of points		100

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

Tenders scoring less than 70 % in the overall points total or less than 60% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.

The points scored for the above qualitative criteria will be compared to the price, and 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.

Award criterion
Total price

Since assessment of the tenders will focus on the quality of the proposed services, 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 expressly covered by the tender, the Commission may decide to give a zero mark for the relevant qualitative award criteria.

13.2 Contracts will not be awarded to tenderers who, during the procurement procedure:

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

14. Without prejudice to the application of penalties laid down in the contract, tenderers and contractors who have been guilty of making false declarations concerning situations referred to in points 12 and 13 above or have been found to have seriously failed to meet their contractual obligations in an earlier procurement or grant shall be subject to Administrative and financial penalties set out in Article 133 of Commission Regulation 2342/2002 of 23/12/2002. (OJ L 357 of 31/12/2002)

15. Other information

Tenderers are requested to :

- indicate their banking details on the financial forms attached in Annex II ;
- indicate their VAT number ;
- indicate the name and position of the person authorised to sign the contract ;
- Complete the legal entity form, which should be accompanied by a number of supporting documents, available on the Web site : http://europa.eu.int/comm/dgs/energy_transport/legal_entities/index_en.htm. Please note that we can only accept either original documents or certified copies, which must be less than 6 months old.

Annexes

- Annex I : Draft contract
- Annex II : Financial identification form

ANNEX I



EUROPEAN COMMISSION
DG Energy and Transport
Directorate New Energies & Demand Management
Unit D1

DRAFT SERVICE CONTRACT

CONTRACT NUMBER – []

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by Mr GONZALEZ FINAT, Director in the Directorate-General for Energy and Transport, Directorate New energies and Demand Management

of the one part,

and

[official name in full]

[official legal form] (Delete if contractor is a natural person or a body governed by public law.)

[statutory registration number] 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

[official address in full]

[VAT registration number]

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

of the other part,

HAVE AGREED

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

Annex I – Tender Specifications (Invitation to Tender No TREN/D1/40-2005 of [] and Monitoring

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

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

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

I.1.1. The subject of the Contract is, in the context of Framework Directive 2005/ /EC¹⁸, to carry out a preparatory study identifying - and recommending ways to improve, when acting at its design phase, the environmental performance of the following energy-using product(s):

- § [Lot 1: boilers, combi-boilers (gas/oil/electric) (In coordination with Lot 2)
- § Lot 2: water heaters (gas/oil/electric) (In coordination with Lot 1)
- § Lot 3: Personal Computers (desktops & laptops) and computer monitors
- § Lot 4: imaging equipment: copiers, faxes, printers, scanners, multifunctional devices
- § Lot 5: consumer electronics: televisions
- § Lot 6: standby and off-mode losses of EuPs
- § Lot 7: battery chargers and external power supplies
- § Lot 8 : office lighting
- § Lot 9: (public) street lighting
- § Lot 10:residential room conditioning appliances (airco and ventilation)
- § Lot 11:electric motors 1-150 kW and
 - water pumps (in commercial buildings, drinking water pumping, food industry, agriculture)
 - circulators in buildings
 - fans for ventilation (non residential buildings)
- § Lot 12: commercial refrigerators and freezers, including chillers, display cabinets and vending machines
- § Lot 13: domestic refrigerators and freezers
- § Lot 14: domestic dishwashers and washing machines.]

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

¹⁸ Directive of the European Parliament and of the Council establishing a framework for the setting of eco-design requirements for Energy-Using Products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council

- 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 **11 months for lots (7 an 9), 16 months for lots (3, 5, 6, 8, 13, 14) and 21 months for lots (1, 2, 4, 10, 11, 12)**. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the date of entry into force of the Contract. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The maximum total amount to be paid by the Commission under the Contract shall be EUR [] covering all tasks executed for the Lot.
- I.3.2** Price revision: Not applicable

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

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

I.4.1. Pre-financing:

Following signature of the Contract by the last contracting party, within 30 days of:

- the receipt by the Commission of a duly constituted financial guarantee equal to at least EUR [] (where applicable)
- the receipt by the Commission of a request for pre-financing with a relevant invoice

a pre-financing payment of EUR [] equal to 30 % of the total amount referred to in Article I.3.1. shall be made.

I.4.2 Interim payment:

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

- an interim technical report in accordance with the instructions laid down in Annex I,
- the relevant invoice,

provided the report has been approved by the Commission.

The Commission shall have twenty days for lots [7 and 9] or forty-five days for lots [1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14] from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

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

I.4.3. Payment of the balance:

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

- the final 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 for lots [7 and 9] or forty-five days for lots [1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14] days from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

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

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

[For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell’8/8/1996”.]

ARTICLE I.5 – BANK ACCOUNT

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

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

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

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

Commission:

European Commission
Directorate-General for Energy and Transports
Directorate New Energies and Demand Management
Unit Regulatory Policy and Promotion of New Energies and of Demand Management
B-1049 Bruxelles

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 the national substantive law of Belgium.

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

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 the entity acting as data controller without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. 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 the entity acting as data controller. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving 2 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 has the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him.

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

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

by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

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

ARTICLE II.2 – LIABILITY

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

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

II.3.3. The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an 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.

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.

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 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 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

Not applicable

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 been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
 - (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

- (d) 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;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (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 months¹⁹ of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

II.15.3. Prior to termination under point 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.16 – LIQUIDATED DAMAGES

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

ARTICLE II.17 – CHECKS AND AUDITS

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

ARTICLE II.18 – AMENDMENTS

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

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

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

SIGNATURES

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

For the Commission,
[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

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 indicated and included in the Tender Specifications.

ANNEX II

FINANCIAL IDENTIFICATION

<u>ACCOUNT HOLDER</u>	
NAME	<input type="text"/>
ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/>
COUNTRY	<input type="text"/>
CONTACT PERSON	<input type="text"/>
TELEPHONE	<input type="text"/>
E - MAIL	<input type="text"/>
POSTCODE	<input type="text"/>
VAT NUMBER	<input type="text"/>
FAX	<input type="text"/>

<u>BANK</u>	
BANK NAME	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN (optional)	<input type="text"/>
POSTCODE	<input type="text"/>

REMARKS :

<u>BANK STAMP + SIGNATURE of BANK REPRESENTATIVE</u> (Both Obligatory)

<u>DATE + SIGNATURE of ACCOUNT HOLDER :</u> (Obligatory)
