



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate E – Public Procurement and Intellectual Property, Bilateral Trade Relations
The Director

Brussels, 24 September 2008

Dear Sir/Madam,

Subject: Invitation to tender related to a contract to carry out a study on the protection of geographical indications for products other than wines, spirits, agricultural or foodstuffs.

1. The European Commission is planning to conclude a contract to carry out a study on the protection of geographical indications for products other than wines, spirits, agricultural or foodstuffs.

2. If you are interested in bidding for this contract, you should submit a tender (original plus two copies) by only one of the following methods:

(a) either by registered mail or private courier service, posted not later than **10 November 2008** (postmark or date on the slip issued by the courier service), to the following address:

**European Commission
Directorate-General for Trade
For the attention of the Financial Cell/Unit A1 (CHAR 07/23)
TRADE08/E2/E06
Avenue du Bourget n° 1
B - 1140 Brussels**

(b) or by delivery (in person or by an authorised representative) to the following address:

**European Commission
Directorate-General for Trade
For the attention of the Financial Cell/Unit A1 (CHAR 07/23)
TRADE08/E2/E06
Avenue du Bourget n° 1
B - 1140 Brussels (Evère)
Belgium**

The documents should be delivered not later than 16.00 hours on **10 November 2008**, in which case a receipt must be obtained as proof of submission, signed and dated by the official in the central delivery department who took delivery. The department is open from 08.00 to 17.00 Monday to Thursday, and from 08.00 to 16.00 on Fridays. It is closed on Saturdays, Sundays and Commission holidays.

3. Tenders (original plus two copies) must be placed inside two sealed envelopes. Both envelopes should mention the following reference: '**TRADE08/E2/E06**'. The inner envelope, addressed to the department indicated in the invitation to tender, should be marked: '**Invitation to tender related to a contract to carry out a study on the protection of geographical indications for products other than wines, spirits, agricultural or foodstuffs. - Not to be opened by the internal mail department**'.'

If self-adhesive envelopes are used, they must be sealed with adhesive tape and the tenderer must sign across this tape.

Any other method of transmission of the tender (ie. e-mail, etc.) is not permitted and will automatically render the tender null and void even if the tender has also been transmitted by the required method specified above.

4. The Terms of Reference, listing all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity, and the draft contract are enclosed.
Your attention is drawn in particular to the provisions setting out the compulsory content of the offer (points 9 and 10 of the Terms of Reference).
5. Tenders must be:
 - signed by the tenderer or his duly authorised representative;
 - perfectly legible so that there can be no doubt as to words and figures;
 - drawn up using the model reply forms as set out in the specification.
6. Period of validity of the tender, during which the tenderer may not modify the terms of his tender in any respect: 9 months after the closing date of **10 November 2008**.
7. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the Terms of Reference, 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.
8. Contacts between the contracting department 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 department may provide additional information solely for the purpose of clarifying the nature of the contract.

Any requests for additional information must be made in writing only to:

European Commission
Directorate-General for Trade
For the attention of Mr Luc Devigne
Head of Unit TRADE E.2
CHAR 08/235
B - 1049 Brussels
e-mail: luc.devigne@ec.europa.eu

Requests for additional information received less than five calendar days before the closing date for submission of tenders will not be processed.

* The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other clerical error in the text of the call for tenders.

- After the opening of tenders

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

9. 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 department may either withdraw from the contract or cancel the procurement procedure, without the candidates or tenderers being entitled to claim any compensation. This decision must be substantiated and the candidates or tenderers notified.

10. You will be informed whether or not your tender has been accepted.
11. Processing your reply to the invitation to tender will involve the recording and processing of personal data (such as your name, address and CV)¹. Such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by the European Commission, DG Trade. You are entitled to obtain access to your personal data on request and to rectify any such data that is inaccurate or incomplete. If you have any queries concerning the processing of your personal data, you may address them to Mr Luc Devigne, Head of Unit E.2, DG Trade. You have the right of recourse at any time to the European Data Protection Supervisor for matters relating to the processing of your personal data.



[signed]

Ewa Synowiec
Director

¹ You are informed that for the purposes of safeguarding the financial interest of the Communities, your personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF). Data of economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006) may be included in a central database and communicated to the designated persons of the Commission, other institutions, agencies, authorities and bodies mentioned in Article 95(1) and (2) of the Financial Regulation. This refers as well to the persons with powers of representation, decision making or control over the said economic operators. Any party entered into the database has the right to be informed of the data concerning it, up on request to the accounting officer of the Commission.

TERMS OF REFERENCE

Related to a contract to carry out a study on the protection of geographical indications for products other than wines, spirits, agricultural or foodstuffs.

Reference of the contract notice: OJ 2008/S 193-254260 of 04/10/2008

1. BACKGROUND INFORMATION OR MISSION STATEMENT OF THE DIRECTORATE GENERAL FOR TRADE (DG TRADE):

Under the direction of Commissioner Mandelson, DG Trade is in charge of conducting the Union's commercial policy in accordance with Article 133 of the EC Treaty.

Trade policy plays a key role in the European Union's relations with the rest of the world and the EU is one of the most important players in international trade, accounting for a fifth of all world trade. The EU's common trade policy enables its 27 members to speak with one voice on the international stage. This policy covers all the main aspects of trade in goods and services (tariff and non-tariff barriers, trade defence, particularly in cases of dumping and subsidies, export loans as well as key aspects of intellectual property, investment and competition, bilateral agreements, participation in the multilateral World Trade Organisation). Trade liberalisation is at the heart of the common trade policy, and it has developed into setting up and implementing multilateral trade rules. The EU is indeed committed to harnessing globalisation so as to address citizens' concerns regarding environment, health, social welfare and cultural diversity. The EU also strives to include developing countries more fully into the world trade system so that all countries may share its potential benefits. Better trade rules and stronger multilateral institutions can help contribute to these aims.

See also: http://ec.europa.eu/trade/whatwedo/work/index_en.htm

2. CONTEXT OF THE PROJECT

Geographical Indications (GIs) are indications which identify a good as originating in a certain territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. The main international instruments for the protection of GIs include the TRIPS Agreement (WTO) and the Lisbon Agreement for the protection of appellations of origin and their international registration (WIPO).

The European Community has developed a sui generis system for the protection of geographical indications and designations of origin for agricultural products and foodstuffs under Council Regulation (EC) 510/06 of 20 March 2006². Subsequent to Council Regulation (EC) 1493/1999 of 17 May 1999³, Council Regulation (EC)

² OJ L 93 of 31 March 2006.

³ OJ L 179 of 14 July 1999.

479/2008 of 29 April 2008⁴ on the common organisation of the market in wine provides for the definition and protection of designations of origin and geographical indications for wines. Protection of geographical indications of spirits drinks is foreseen in Regulation (EC) 110/2008 of 15 January 2008⁵. Well-known European GIs include Cognac, Rioja, Champagne, Prosciutto di Parma, Parmiggiano-Reggiano, etc. For products other than agricultural products, foodstuffs, wines and spirits (hereinafter referred to "non-agricultural goods/products"), there is currently no sui generis system harmonised between the 27 Member States of the European Union. Some EU Member States are Parties to the Lisbon Agreement and have notified for registration and protection certain "non-agricultural goods". Such products are usually seen as traditional typical locally-made products.

3. OBJECTIVES OF THE PROJECT

The objectives of the current project, which is tendered by DG Trade, are:

- a) To identify *15 to 20 economically most significant EU non-agricultural products*⁶ that enjoy protection at Member State level, either via a sui generis GI protection system, specific laws and/or case-law, or through registration of a collective or certification trademark;
- b) To identify *5 to 10 economically most significant non-agricultural products from third countries*⁷ including China, Russia, India, Switzerland and Brazil, protected at national level, either via a sui generis GI protection system, specific laws and/or case-law, or through registration of a collective or certification trademark;
- c) To identify the relevant legal instruments used for the protection of such products;
- d) To collect economic and market data related to the products;
- e) To assess the main differences, strengths and weaknesses in the protection systems identified, including positive aspects and difficulties in protection and enforcement of rights.

4. WORK TO BE CARRIED OUT

Firstly, the contractor should define the work methodology, including the most relevant **information sources** and the **method** used to collect the data. The contractor should explain how the required information is to be obtained. If the required information is only available at the level of the producer groups, the contractor should therefore develop a method for contacting and interviewing these producer groups to obtain the data. If the

⁴ OJ L 148 of 06 June 2008.

⁵ OJ L 39 of 13 February 2008.

⁶ The list of *EU* non-agricultural products will be determined in common agreement with the European Commission based on a proposed list from the Contractor.

⁷ The list of *non-EU* non-agricultural products will be determined in common agreement with the European Commission based on a proposed list from the Contractor.

information cannot be obtained from the producer groups, the contractor should look for alternatives such as databases, surveys, studies, contact persons in administrations and institutes to be interviewed.

For the legal aspects, information should include relevant legal texts and case studies.

As far as EU products are concerned, field trips may be carried out where appropriate, for example to collect unavailable data directly from the producers.

The final study should, *inter alia*, contain the following elements:

- 1) Name and description of the product, main characteristics, place of origin (country/region) and definition of the geographical area, number of producers, legal requirements that must be met as far as methods of production and factors relating to the geographical environment are concerned; justification as to why it could be argued that the product is fulfilling Article 22 TRIPS definition of a GI;
- 2) Legal instruments providing recognition and protection: type of recognition and protection (specific law, case-law, sui generis GI protection system, registration of a collective or certification trademark ...) and level of protection⁸ enjoyed in the country of origin and in the main export markets (for EU products: intra-EC and extra-EC);
- 3) Description of the market segment as well as distribution practices, including an analysis of the sale strategy in relation with its intellectual property aspects;
- 4) Production (in volume/value) and sales on national market for a period if possible of not less than 5 years up to 2007;
- 5) Exports (for EU products: intra-EC and extra-EC) in volume and value for a period if possible of not less than 5 years up to 2007;
- 6) General evaluation of the development of sales on the national market/ of exports (for EU products: intra-EC and extra-EC) in relation with the protection, when relevant;
- 7) A conclusion presenting an analysis of the main differences, strengths and weaknesses in the systems of protection identified; information on potential usurpations/counterfeiting at national and international level;
- 8) An executive summary.

Reporting Requirements

- A draft outline for the study (to be submitted at the latest 1 month after signature of the contract) taking into consideration the above mentioned elements and making suggestions for other areas relevant to the study. The outline will propose the methodologies to fulfil the analytical requirements of the study and a tentative table of contents. It will also propose the list of products to be studied and the reasons for their choice. It will be discussed and agreed with the contracting authority.
- A first draft of the final study (to be submitted 5 months after the signing of the contract). It will be discussed with the Commission services.

⁸ When relevant, extracts of national legislation should be included in the study in the form of annexes

- The final study to be submitted at the latest 2 months after the presentation of the draft study.
- The final study will be presented by the contractor and discussed with relevant Commission services during a meeting that will be organised by the Commission within one month of the submission of the final report. This seminar will be hosted in the European Commission premises and will involve participants invited by DG Trade.
- All documents should be presented in English. The contractor should submit 5 paper copies of the final report plus an electronic copy. When available, annexed materials -including information sources- should be translated into English. If the material is only available in another language, it should nevertheless be annexed but translation of the provisions cited in the analysis should be included in a footnote.
- The Commission reserves its right to decide on the publication of the study or parts thereof by the end of the contract.

5. TIMING

The project should be completed within a maximum period of eight months.

The contract will be awarded for the above-mentioned period of time, but may be extended at the sole discretion of the Commission for a further period of 3 months.

6. BUDGET

The budget of the contract, including all costs cannot exceed Euro 100 000 for its total duration.

The tenderer should however be aware that the contract award criteria are based on the most economically advantageous tender.

The price offer of the tender must be complete. The tenderer must not include in the price offer expenses for items that cannot be itemized and specified as requested (see Annex 2), otherwise his tender will be rendered null and void.

7. PAYMENT

Payment shall be made in Euro (€).

Remuneration:

Payment shall be made in 3 instalments (2 interim and a final) on submission to the Commission by the Contractor of duly established invoices. The first interim payment (30% of the total amount) will take place after the submission of the draft outline for the study; the second interim payment (60% of the total amount) will take place after the submission of the first draft of the final study; and the final payment (10% of the total amount) at the end of the project, following the presentation of the study at the meeting organised by the Commission.

Reimbursements:

Travel and related costs (accommodation- bed and breakfast) can be invoiced according to the amount agreed in the contract. For the reimbursable costs,

payment shall be made following presentation of original receipts (plus one copy) as part of the final payment.

It is specified that the Commission may in its absolute discretion withhold all or part of the final payment as long as any of the documents mentioned above in the section on reporting requirements are missing.

8. CONTRACTUAL CONDITIONS

In drawing up his bid, the tenderer should bear in mind the provisions of the standard contract annexed to this invitation to tender (see annex 3). This contract will be proposed to the successful tenderer. By submitting an offer, the tenderer accepts the conditions of this contract.

The tenderer must not include in the offer conditions, clauses etc. that are not specified as requested in, or that modify these Terms of Reference. His tender will otherwise be rendered null and void.

Initiation of a tendering procedure imposes no obligation on the Commission to award the contract. Should the invitation to tender cover several items or lots, the Commission reserves the right to award a contract for only some of them. The Commission shall not be liable for any compensation with respect to tenderers whose tenders have not been accepted. Nor shall it be so liable if it decides not to award the contract.

9. THE TENDER MUST INCLUDE (SEE ANNEXES FOR THE STANDARD FORMS TO BE USED):

- Tender submission form and tenderer's declaration;
- All the information and documents required by the authorising department for the appraisal of tenders on the basis of the exclusion, selection and award criteria set out at points 11, 12 and 13;
- Description of the methodology and planning of the works, including the time limits for delivery of each report and document;
- The details of educational and professional qualifications of the persons providing the services and statement of exclusivity and availability;
- A fixed price: using the quotation form in annex, the contractor will provide a total cost for the honoraria, the reimbursement of travels and the accommodation (bed and breakfast);
- A duly completed legal entity form⁹;
- A duly completed banking reference form¹⁰;

Wherever the tenderer is a consortium of firms or groups of service providers with a distinct legal personality, the tender should clarify the legal status of the consortium and specify the role, qualifications and experience of each member or group.

⁹ You are not required to submit a legal entity form if you have already submitted such a legal entity form in the context of a contract signed with the European Communities since 01.01.2004 and if the information recorded on this form has remained unaltered since.

¹⁰ You are not required to submit a banking reference form if you have already submitted such a banking reference form in the context of a contract signed with the European Communities since 01.01.2004 and if the information recorded on this form has remained unaltered since.

The above mentioned legal entity form and tenderer's declaration should be provided for each member or group.

As already mentioned in point 8, the tenderer must not include in the offer conditions, clauses etc. that are not specified as requested in, or that modify this Terms of Reference. His tender will otherwise be rendered null and void.

10. QUOTATION OF PRICES

Prices must be quoted in EUR (€) using the conversion rates published in the C series of the 'Official Journal of the European Communities' on the day when this invitation to tender was published.

Prices must be fixed amounts that are non-revisable. Prices should be quoted free of all duties, taxes and other charges, including VAT, as the Communities are exempt from such charges under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ No 152, 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 immediate exemption. The successful tenderer shall be given the necessary instructions by the Commission.

Estimated travel and subsistence expenses must be indicated separately. This estimate should be based on article II.7 of the 'General Conditions' of the contract (see annex 3) and include any travel required to meet representatives of DG Trade, if applicable. In any event, it should represent the maximum amount of travel and subsistence expenses payable for all the services provided.

11. EXCLUSION CRITERIA:

Tenderers shall be excluded from participation in this procurement procedure if:

- 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 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) they have been the subject of an 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.

Contracts may 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;
- (c) find themselves in one of the situations of exclusion, referred to at the beginning of point 11 (letters (a) to (f)).

Tenderers must provide a **declaration of honour** that they are not in one of the above-mentioned situations. However, tenderers should be aware that the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to submit evidence confirming his declaration on honour by providing:

- for point (a), (b) or (e): 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.
- for point (d), a recent certificate issued by the competent authority of the State concerned.

Where no such documents or certificates are issued in the country concerned, they 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.

Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in the above two paragraphs shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

Wherever the tenderer is a consortium of firms or groups of service providers, the above-mentioned information must be provided for each member or group.

However, if such evidence confirming the declaration on honour has already been submitted to the Commission for the purpose of another procurement procedure, and provided that the issuing date of the documents does not exceed one year and that they are still valid, the tenderer to whom the Contract is to be awarded is allowed to send a copy of the relevant documentation together with a declaration on honour that no changes in his situation have occurred.

12. SELECTION CRITERIA – MINIMUM QUALIFICATIONS REQUIRED

The following information, concerning the service provider's own position and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him, should be supplied:

- Details of **educational and professional qualifications** of the proposed experts providing the services (detailed CV's have to be included for this contract). These should clearly indicate:

- expertise in economic and financial analysis,
- in-depth knowledge of the Geographical Indications sector,
- knowledge of international law, in particular with relation to intellectual property law and the protection of Geographical Indications,
- A list of the principal related projects that were carried out under the applicant's direct responsibility during the past 3 years proving merit and experience in similar studies.
- Evidence of the tenderer's **experience** and **technical capacity** to perform the tasks involved in this contract notice. The team must therefore include substantial expertise and professional experience in each of the following areas:
 1. Economic and legal research;
 2. Economic and financial analysis
 3. Legal analysis.

The tenderer should also demonstrate its capacity to carry out a multi-country study including a wide geographic/linguistic coverage: relevant EU countries and third countries (India, China, Russia, Switzerland and Brazil).

- Evidence of the tenderer's **financial and economic capacity** to perform the tasks involved in this contract notice.

For this purpose all tenderers must provide a full set of financial statements (comprising at least a balance sheet and profit and loss account) for the last two financial years (or the annual budget of the last two years in the case of semi-public or non-profit organisations), where the tenderer is required by law to produce such statements.

1. Where the relevant company law requires these financial statements to be audited, the auditors' statement should be included.
2. Where the tenderer is not required to produce full financial statements, other documents establishing financial capacity should be submitted (e.g. internal reports, management accounts, appropriate bankers' statements, evidence of professional risk indemnity insurance etc.).

The Commission will conclude a contract following this tender with a single legal counterpart. Where the tenderer that will complete the contract represents a consortium of firms or groups of service providers, the above mentioned financial information must be provided for each member or group.

Where the tenderer wishes to sub-contract or otherwise rely on the capacities of other entities, it must in that case prove that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Where the successful tenderer is an individual, a partnership of individuals, or a sole trader, it will be expected to demonstrate that continuity of service can be guaranteed. The Commission will consider, *inter alia*, the risk to successful project completion that would be occasioned by the death or resignation of one or more of the individuals involved.

Only those proposals which meet all the Selection Criteria will be carried forward for assessment under the Award Criteria.

13. AWARD CRITERIA FOR THE CHOICE OF THE CONTRACTOR

The contract will be awarded to the “most economically advantageous tender”. Criteria to be applied are:

- price (price of the tender measured as a ratio compared to the lowest tender¹¹), (40%), and
- quality in terms of technical quality of the offer (60%): see table below for detailed criteria.

Quality Criteria (QC)		Maximum points	
QC 1: General approach and organisation of work:		35	
	• General approach to objectives and demonstrated understanding of the tasks	15	
	• Coverage of the scope	10	
	• Planning and organisation of work: daily management of the work and measurement of progress achieved	10	
QC 2: Proposed methodology and tools		35	
	• Descriptive part and approach to meet data needs	15	
	• Analytical tools for the processing of legal information	10	
	• Analytical tools for the processing of economic data	10	
QC 3: Complementarity and coherence of the team		20	
	• Mix of legal and economic expertise	20	
QC 4: Contacts and networking relevant to the project		10	

¹¹ By using the formula: $\frac{\text{Price of the lowest tender}}{\text{Price of the tender}} * \text{fixed percentage} = \dots \% \text{ for the criterion 'price'}$

The evaluation board will compare the offers based on this score, it being clear that the Commission cannot be required to accept an offer the quality of which does not reach the minimum standard of 65%.

The sum of the price and quality criteria will result in a numerical score (e.g. 75%).

Note and links

In case of difficulty accessing this, please contact: Ms Lore Genand - tel: +32+2+29 85407

DG Trade Web site on the Europa server of the European Commission:

<http://europa.eu.int/comm/trade>

Enclosures of the Terms of reference:

- Annex 1:** Tender submission form including tenderer's declaration, statement of exclusivity and availability, banking references form and legal entities form
- Annex 2:** Quotation form for unit prices
- Annex 3:** Model of contract, which will be proposed to the selected Contractor.

ANNEX 1.

- **TENDER SUBMISSION FORM**
- **TENDERER'S DECLARATION(S)**
- **STATEMENT OF EXCLUSIVITY AND AVAILABILITY**
- **BANKING REFERENCES FORM**
- **LEGAL ENTITIES FORM**
- **DECLARATION OF HONOUR WITH RESPECT TO THE EXCLUSION CRITERIA AND ABSENCE OF CONFLICT OF INTEREST**

(preferably on headed notepaper of the tenderer)

TENDER SUBMISSION FORM

To be completed by the authorised signatory of the tenderer
One signed original and two copies of this form and each of the documents mentioned
in it must be supplied.

**Contract to carry out a study on the protection of geographical indications for
products other than wines, spirits, agricultural or foodstuffs**

Publication reference:

1 SUBMITTED by

Tenderer name *	
---------------------------	--

* In the case of a consortium, insert the agreed name of the consortium

2 STATEMENT

I, the undersigned, being the authorised signatory of the above tenderer (including all consortium partners, in the case of a consortium), hereby declare that we have examined and accept without reserve or restriction the entire contents of the tender dossier for the tender procedure referred to above.

We offer to provide the services requested in the tender dossier on the basis of the following documents, which comprise our technical and financial offer, which is submitted in a sealed envelope:

- Tenderer's declaration (see below) and all documents as specified in the tender specifications (including one from every consortium partner, in the case of a consortium)
- Statements of exclusivity and availability signed by each of the key experts
- Description of the organisation & methodology
- Key experts (comprising a list of the key experts and their CVs)
- Unit prices quote, using the model in Annex 2 of the Terms of Reference

[*If applicable*: We undertake to guarantee the eligibility of the sub-contractor(s) for the parts of the services for which we have stated our intention to sub-contract in the Organisation and Methodology.]

This tender is subject to acceptance within the validity period stipulated in the “Invitation to tender”.

Signed on behalf of the tenderer.

Name	
Signature	
Date	

(preferably on headed notepaper of the tenderer)

TENDERER'S DECLARATION(S)

**To be completed and signed by the tenderer
(including one from each consortium partner, in the case of a consortium).**

**Contract to carry out a study on the protection of geographical indications for
products other than wines, spirits, agricultural or foodstuffs**

Publication reference:

In response to your letter of invitation to tender for the above contract, we hereby declare that we:

- nominate the following person to act on our behalf for the purposes of this tender and any subsequent contract based on it:

Name	
Position	
Organisation	

- reconfirm that we are not in any of the situations excluding us from participating in contracts, as set out in point 11 of the Terms of Reference;
- agree to abide by the highest ethical standards and, in particular, declare that we do not have any potential conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- will inform the Commission immediately if there is any change in the above circumstances at any stage during the tender procedure or during the implementation of the contract;
- have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract; and
- fully recognise and accept that any inaccurate or incomplete information deliberately provided in this tender may result in our exclusion from this and other contracts funded by the European Communities.

<Signature of authorised representative of the tenderer>

< **Name and position of authorised representative of the tenderer** >

STATEMENT OF EXCLUSIVITY AND AVAILABILITY¹²

I, the undersigned, hereby declare that I agree to participate exclusively with the tenderer < tenderer name > in the above-mentioned service tender procedure. I further declare that I am able and willing to work for the position for which my CV has been included in the event that this tender is successful.

(the expert should select one of the two options underneath and delete the other one)

– [I confirm that I am not engaged in another EC-funded project or contract, in a position for which my services are required beyond the expected starting date of my services under this tender.]

– [I confirm that I am engaged in the following EC-funded project(s) or contract(s), in a position for which my services are required beyond the expected starting date of my services under this tender.

Title + reference of the project(s) + DG concerned (if applicable):

Nevertheless, I confirm that this other engagement will not impair my availability to carry out the tasks for which my CV has been included in this tender.

Furthermore, I declare that there will be not, by reason of my involvement in both this project under tender and the other aforementioned EC project(s), be any double-financing of time spent or work carried out under any of these projects.

I also confirm that my involved in other EC-funded projects as well as in the project currently tendered will present me with no conflict of interest and will not prevent, or tend to prevent, me from carrying out my tasks under any of the EC-funded contracts with due impartiality.]

Name	
Signature	
Date	

¹² To be completed by all key experts

BANKING REFERENCES FORM AND LEGAL ENTITY FORM

Please **complete and sign**:

- the banking references form¹³.
- the form providing details on the “legal entity”¹⁴: select either the public entity form, the private entity form or the form for individuals

You are not required to submit a legal entity form or a banking reference form if you have already submitted these forms in the context of a contract signed with the European Communities since 01.01.2004 and if the information recorded on these forms has remained unaltered since. In the case of the banking reference form, please submit such a form if you have used more than one bank account with your previous contracts with the European Communities.

¹³ Tenderers may prefer completing the banking references form on-line at this address http://ec.europa.eu/budget/execution/ftiers_en.htm. Once completed, it must be printed, signed and attached to the tender.

¹⁴ Tenderers may prefer completing the form providing details on the “legal entity” on-line at this address http://ec.europa.eu/budget/execution/legal_entities_en.htm. Once completed, it must be printed, signed and attached to the tender.



FINANCIAL IDENTIFICATION

PRIVACY STATEMENT

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

ACCOUNT NAME	
ACCOUNT NAME ⁽¹⁾	<input type="text"/>
	<input type="text"/>
ADDRESS	<input type="text"/>
	<input type="text"/>
TOWN/CITY	<input type="text"/>
	POSTCODE <input type="text"/>
COUNTRY	<input type="text"/>

CONTACT	<input type="text"/>
TELEPHONE	<input type="text"/>
	FAX <input type="text"/>
E - MAIL	<input type="text"/>

<u>BANK</u>	
BANK NAME	<input type="text"/>
	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
	<input type="text"/>
TOWN/CITY	<input type="text"/>
	POSTCODE <input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN ⁽²⁾	<input type="text"/>

REMARKS:

BANK STAMP + SIGNATURE OF BANK REPRESENTATIVE (Both Obligatory) ⁽³⁾

DATE + SIGNATURE ACCOUNT HOLDER : (Obligatory)
DATE <input type="text"/>

(1) The name or title under which the account has been opened and not the name of the authorized agent
(2) If the IBAN Code (International Bank account number) is applied in the country where your bank is situated
(3) It is preferable to attach a copy of recent bank statement, in which event the stamp of the bank and the signature of the bank's representative are not required. The signature of the account-holder is obligatory in all cases.



LEGAL ENTITIES

PRIVACY STATEMENT

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

PUBLIC ENTITIES

TYPE OF COMPANY	<input type="text"/>		
NGO	YES <input type="checkbox"/>	NO <input type="checkbox"/>	(Non-Governmental Organisation)
NAME(S)	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
ABBREVIATION	<input type="text"/>		
OFFICIAL ADDRESS	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
POSTCODE	<input type="text"/>	P.O. BOX	<input type="text"/>
TOWN/CITY	<input type="text"/>		
COUNTRY	<input type="text"/>		
VAT**	<input type="text"/>		
PLACE OF REGISTRATION	<input type="text"/>		
DATE OF REGISTRATION	<input type="text"/>	<input type="text"/>	<input type="text"/>
	DD	MM	YYYY
REGISTRATION No	<input type="text"/>		
PHONE	<input type="text"/>	FAX	<input type="text"/>
E-MAIL	<input type="text"/>		

THIS "LEGAL ENTITIES" FORM SHOULD BE COMPLETED, SIGNED AND RETURNED TOGETHER WITH:
* A COPY OF THE RESOLUTION, LAW, DECREE OR DECISION ESTABLISHING THE ENTITY IN QUESTION;
* OR, FAILING THAT, ANY OTHER OFFICIAL DOCUMENT ATTESTING TO THE ESTABLISHMENT OF THE ENTITY BY THE NATIONAL AUTHORITIES
** IF THIS FIELD IS COMPLETED, PLEASE ATTACH AN OFFICIAL VAT DOCUMENT

DATE:	STAMP
NAME + FUNCTION OF AUTHORISED REPRESENTATIVE	
SIGNATURE	



LEGAL ENTITIES

PRIVACY STATEMENT

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

PRIVATE COMPANIES

TYPE OF COMPANY	<input type="text"/>		
NGO	YES <input type="checkbox"/>	NO <input type="checkbox"/>	(Non-Governmental Organisation)
NAME(S)	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
ABBREVIATION	<input type="text"/>		
ADDRESS OF HEAD OFFICE	<input type="text"/>		
	<input type="text"/>		
	<input type="text"/>		
POSTCODE	<input type="text"/>	P.O. BOX	<input type="text"/>
TOWN/CITY	<input type="text"/>		
COUNTRY	<input type="text"/>		
VAT (1)	<input type="text"/>		
PLACE OF REGISTRATION	<input type="text"/>		
DATE OF REGISTRATION	<input type="text"/>	<input type="text"/>	<input type="text"/>
	DD	MM	YYYY
REGISTRATION No (2)	<input type="text"/>		
PHONE	<input type="text"/>	FAX	<input type="text"/>
E-MAIL	<input type="text"/>		

THIS "LEGAL ENTITIES" FORM SHOULD BE COMPLETED AND RETURNED TOGETHER WITH:

1. A COPY OF THE VAT REGISTRATION DOCUMENT IF APPLICABLE AND IF THE VAT NUMBER DOES NOT APPEAR ON THE OFFICIAL DOCUMENT REFERRED TO AT 2 BELOW.
2. A COPY OF SOME OFFICIAL DOCUMENT (OFFICIAL GAZETTE, COMPANY REGISTER ETC.) SHOWING THE NAME OF THE LEGAL ENTITY, THE ADDRESS OF THE HEAD OFFICE AND THE REGISTRATION NUMBER GIVEN TO IT BY THE NATIONAL AUTHORITIES.

DATE AND SIGNATURE OF AUTHORISED REPRESENTATIVE



LEGAL ENTITIES

PRIVACY STATEMENT http://ec.europa.eu/budget/execution/legal_entities_fr.htm

INDIVIDUAL

NAME	<input type="text"/>		
FIRST NAME	<input type="text"/>		
(NAME 2)	<input type="text"/>		
(NAME 3)	<input type="text"/>		
OFFICIAL ADDRESS	<input type="text"/>		
	<input type="text"/>		
<small>(OFFICIAL Address = Your PERMANENT address; generally the one which is registered on your identity card)</small>			
POSTAL CODE	<input type="text"/>	P.O. BOX	<input type="text"/>
TOWN/CITY	<input type="text"/>		
COUNTRY	<input type="text"/>		
** VAT NR	<input type="text"/>		
IDENTITY CARD NUMBER	<input type="checkbox"/>	<input type="text"/>	
PASSPORT NUMBER	<input type="checkbox"/>	<input type="text"/>	
DATE OF BIRTH	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<small>D D</small>	<small>M M</small>	<small>Y Y Y Y</small>
PLACE OF BIRTH	<input type="text"/>		
COUNTRY OF BIRTH	<input type="text"/>		
PHONE	<input type="text"/>	FAX	<input type="text"/>
E-MAIL	<input type="text"/>		

THIS "LEGAL ENTITY" SHEET MUST BE COMPLETED AND SIGNED, AND SUBMITTED TOGETHER WITH A LEGIBLE PHOTOCOPY OF THE IDENTITY CARD OR PASSPORT

**** IF THIS FIELD IS FILLED IN, PLEASE ATTACH AN OFFICIAL "VAT" DOCUMENT.**

DATE AND SIGNATURE

[Model]
Declaration of honour
with respect to
the Exclusion Criteria and absence of conflict of interest

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 operator¹⁵*)

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

¹⁵ 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).

being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

- 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 above¹⁶.

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

¹⁶Mandatory 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.

ANNEX 2. QUOTATION FORM FOR PRICE¹⁷

Tenderers are required to quote a rate for all of the following tasks

COSTS	Rates per Unit (Euro)	Number of Units	TOTAL (EUR)
A. UNIT RATES <u>Honoraria</u> : * e.g.: - senior - junior <u>Translation/Interpretation</u> Sub Total A			
B. REIMBURSABLE 1. Meetings with Commission and presentation of the study (Brussels) <u>Travel:</u> <u>Accommodation (bed & breakfast):</u> 2. Field trips within the EU <u>Travel:</u> <u>Accommodation (bed & breakfast):</u>		
Sub Total B		
TOTAL estimated COST of contract (A + B)		

* If applicable: The honoraria are to be detailed for the purposes of comparison. It is understood that the resulting total will be treated as lump-sum.

¹⁷ Listing of other costs will render the tender inadmissible.

ANNEX 3. MODEL CONTRACT



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate E – Public Procurement and Intellectual Property, Bilateral Trade Relations

The Director

SERVICE CONTRACT

CONTRACT NUMBER – **SI2. -----**

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:

Ms Ewa Synowiec, Director

Directorate E

On behalf of the Directorate General for Trade

of the one part,

and

[official name in full]

[official legal form]¹⁸

[statutory registration number]¹⁹

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"²⁰), 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:

¹⁸ Delete if contractor is a natural person or a body governed by public law.

¹⁹ 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.

²⁰ In the case of a joint offer and provided the invitation to tender so specifies, the following clause should be added below the identification of the parties: "The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract".

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

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

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

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

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

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is to carry out a study on the protection of geographical indications for products other than wines, spirits, agricultural or foodstuffs.
- 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 8 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 up to 3 months at the sole discretion of and only with the express written agreement of the parties before such period elapses.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than 1 month before expiry of the period of execution or with less than one third of the period of execution left to run, whichever period is the shorter.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The total amount to be paid by the Commission under the Contract shall be EUR [amount in figures and in words] covering all tasks executed.
- I.3.2.** In addition to the total amount specified in Article I.3.1, travel and accommodation expenses (bed and breakfast) shall be reimbursed in accordance with Article II.7 up to a maximum amount of EUR [amount in figures and in words].

The detailed remuneration of the Contractor for carrying out the duties as described in the Technical specifications is indicated in the table hereinafter:

COSTS	Rates per Unit (Euro)	Number of Units	TOTAL (EUR)
A. UNIT RATES <u>Honoraria :</u> e.g.: - senior - junior <u>Translation/Interpretation</u> Sub Total A			
B. REIMBURSABLE 1. Meetings with Commission and presentation of the study (Brussels) <u>Travel:</u> <u>Accommodation (bed & breakfast):</u> 2. Field trips within the EU <u>Travel:</u> <u>Accommodation (bed & breakfast):</u>		
Sub Total B		
TOTAL estimated COST of contract (A + B)		

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. First interim payment:

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

- a draft outline of the study in accordance with the instructions laid down in Annex I
- the relevant invoices

provided the draft outline has been approved by the Commission.

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

Within thirty days of the date on which the draft outline 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.4.2. Second interim payment:

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

- the first draft of the final study in accordance with the instructions laid down in Annex I
- the relevant invoices

provided the draft final study has been approved by the Commission.

The Commission shall have forty-five days from receipt to approve or reject the draft final study, 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 draft final study is approved by the Commission, an interim payment corresponding to [EUR complete amount in figures and in words] equal to 60% 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 after the presentation of the final study in accordance with instructions laid down in Annex I and if accompanied by:

- the final study
- the relevant invoices
- statements of reimbursable expenses in accordance with Article II.7

provided the final study has been approved by the Commission and presented by the contractor at the meeting organised by the Commission.

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

After approbation of the final study and within thirty days of the date of the presentation of the study by the contractor at the meeting organised by the Commission, payment of the balance corresponding to [EUR complete amount in

figures and in words] equal to 10 % of the total amount referred to in Article I.3.1 shall be made. The balance of the reimbursable expenses shall be paid upon production of the original supporting documents, including receipts and used tickets, up to the maximum amount indicated in Article I.3.2.

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]
[IBAN²¹ code: [complete]]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

The requests of payment have to be sent to the following address:

European Commission
Directorate-General for Trade
Unit A.1 Accounting Officer
CHAR 07/03
B - 1049 Brussels

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 Trade
Mr. Luc Devigne
Head of Unit E.2

²¹ BIC code for countries with no IBAN code.

CHAR 8/235
B - 1049 Brussels
Telephone: +32 2 299 18 73
Telefax: +32 2 299 05 86

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 which shall be complemented, where necessary, by the national substantive law of Belgium, as provided by the internal rules for the implementation of the budget.
- I.7.2.** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels, as provided by the internal rules for the implementation of the budget.

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 European Commission, DG Trade, 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 Mr Luc Devigne, Head of Unit E2, DG Trade. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

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

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

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

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

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

ARTICLE II.2 – LIABILITY

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

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

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

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

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

ARTICLE II.3 - CONFLICT OF INTERESTS

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

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

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

II.3.3. The Contractor declares:

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

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

ARTICLE II.4 – PAYMENTS

II.4.1. Pre-financing :

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

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

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

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

II.4.2. Interim payment:

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

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

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

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

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

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

II.4.3. Payment of the balance:

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

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

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

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

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

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

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

- II.5.1.** Payments shall be deemed to have been made on the date on which the Commission's account is debited.
- II.5.2.** The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly 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.3.2.

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 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 months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;

(k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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

II.15.3. Prior to termination under point 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,
Ewa Synowiec, Director

signature[s]: _____

signature: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

ANNEX I

Tender Specifications

ANNEX II

Contractor's Tender